

DISTRICT COURT, WATER DIVISION 4 MONTROSE COUNTY, COLORADO 1200 N. GRAND AVE., BIN A MONTROSE, CO 81401	DATE FILED: May 26, 2015 11:54 AM
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN OH BE JOYFUL CREEK, A NATURAL STREAM, IN THE EAST-TAYLOR WATERSHED (INCREASE), IN GUNNISON COUNTY, COLORADO.	▲ COURT USE ONLY ▲
	Case No: 2014CW3098 Div. 4
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, JUDGMENT AND DECREE OF THE WATER COURT	

This matter comes before the Water Referee by Application of the Colorado Water Conservation Board ("CWCB") for a water right to preserve the natural environment to a reasonable degree. The Application was filed on December 19, 2014. The Water Court for Water Division 4 referred the Application to the Water Referee for Water Division 4, in accordance with section 37-92-101, C.R.S (2014).

The Referee, having made such investigations as are necessary to determine whether or not the statements in the Application are true, having consulted with the Division Engineer for Water Division 4, and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, and Ruling of the Referee in this matter:

FINDINGS OF FACT

1. The statements in the Application are true.
2. The name and address of Applicant:
 Colorado Water Conservation Board
 1313 Sherman Street, Suite 718
 Denver, CO 80203

3. Notice and Jurisdiction: All notices of this matter required by law have been fulfilled and the Court has jurisdiction over the Application and all parties affected thereby, whether or not they have chosen to appear.
4. Opposers: No Statements of Opposition were filed and the time for filing additional Statements of Opposition has expired.
5. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to section 37-92-302(4), C.R.S. (2014), dated March 31, 2015. The Division Engineer recommends approval for the increase to the existing instream flow right being confirmed herein.
6. Name of water right: Oh Be Joyful Creek Instream Flow Water Right (Increase).
7. Legal Description: The Oh Be Joyful Creek Instream Flow Water Right is located on the natural stream channel from the confluence of an unnamed tributary extending to the confluence with the Slate River being a distance of approximately 1.66 miles. This segment can be located on the Oh-Be-Joyful U.S.G.S. quadrangle. A map of the Oh Be Joyful Creek Instream Flow Water Right is attached as Exhibit 1.
 - a. Upstream Terminus = Confluence Unnamed Tributary at:
 1. UTM: Northing: 4308454.01 Easting: 321737.28 (NAD 1983 Zone 13 North).
 2. PLSS: NW SW Section 19, Township 13 South, Range 86 West 6th PM 333' East of the West Section Line; 1,455' North of the South Section Line.
 3. Lat/Long: latitude 38° 54' 24.83"N and longitude 107° 03' 21.14"W.
 - b. Downstream Terminus = Confluence Slate River at:
 1. UTM: Northing: 4308782.60 Easting: 323966. 18 (NAD 1983 Zone 13 North).

2. PLSS: SE NW Section 20, Township 13 South, Range 86 West 6th PM 2,403' East of the West Section Line; 2,394' South of the North Section Line.
3. Lat/Long: latitude 38° 54' 37.10"N and longitude 107° 01' 48.95"W.
- c. The Universal Transverse Mercator (UTM) and geographical descriptions (e.g., confluences) of the upstream and downstream termini are provided as the legal descriptions for this decree. The Public Land Survey System (PLSS) and Lat/Long coordinates are provided as cross-reference locations only. The UTM, PLSS and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). The PLSS locations in this decree were derived using DWR's Aquamap.
8. Source: Oh Be Joyful Creek, tributary to the Slate River.
9. A. Date of initiation of appropriation: January 28, 2014.
B. How appropriation was initiated: Appropriation and beneficial use occurred on January 28, 2014 by the action of the CWCB under the provisions of sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2014).
C. Date applied to beneficial use: January 28, 2014.
10. Amount of water claimed: Instream flow of 3.0 cfs (4/1 – 4/30), 14.0 cfs (5/1 – 7/15) and 3.0 cfs (7/16 – 8/15), absolute.
11. Use of the water: Instream flow to preserve the natural environment to a reasonable degree.
12. Remarks: The CWCB has a previously existing instream flow water right on Oh Be Joyful Creek from the confluence with an unnamed tributary to the confluence with the Slate River, in the amount of 3.0 cfs (1/1 – 12/31), decreed in Case No. 4-80CW093A with an appropriation date of 3/17/1980. The flow rates decreed herein are in addition to the amount of the existing instream flow water right.

CONCLUSIONS OF LAW

13. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
14. Notice and Jurisdiction: The Water Court for Division 4 has jurisdiction over the subject matter of these proceedings and over all persons, owners of property and water rights that may be affected hereby, whether or not they have chosen to appear. The Application in this matter and the resume publication of the Application placed such persons on notice of the relief requested by the Application and granted by this decree. §§ 37-92-203 and 302, C.R.S. (2014).
15. The CWCB has fulfilled all legal requirements for a decree for water rights including sections 37-92-302, 304 and 305, C.R.S. (2014).
16. Burden of Proof: The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water rights required in the Application and is therefore entitled to a decree approving the requested water rights.

RULING OF REFEREE


17. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of Referee by this reference.
18. The application is granted and a decree in the amount of Instream flow of 3.0 cfs (4/1 – 4/30), 14.0 cfs (5/1 – 7/15) and 3.0 cfs (7/16 – 8/15), absolute is hereby entered to preserve the natural environment to a reasonable degree in the reach of Oh Be Joyful Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 28, 2014.
19. The priority herein confirmed was filed in the water court in the year of 2014 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical date of appropriation and not affected by the date of entry of ruling.
20. The CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

It is accordingly **ORDERED** that this Ruling shall be filed with the water clerk subject to judicial review.

It is further **ORDERED** that a copy of this Ruling shall be filed with the Division Engineer and the State Engineer.

Dated this 30th day of April, 2015.

BY THE REFEREE:




S. Gregg Stanway, Water Referee
Water Division No. 4

JUDGMENT AND DECREE OF THE WATER COURT

No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

Dated this 26th day of May, 2015.

BY THE COURT:



J. Steven Patrick, Water Judge
Water Division No. 4

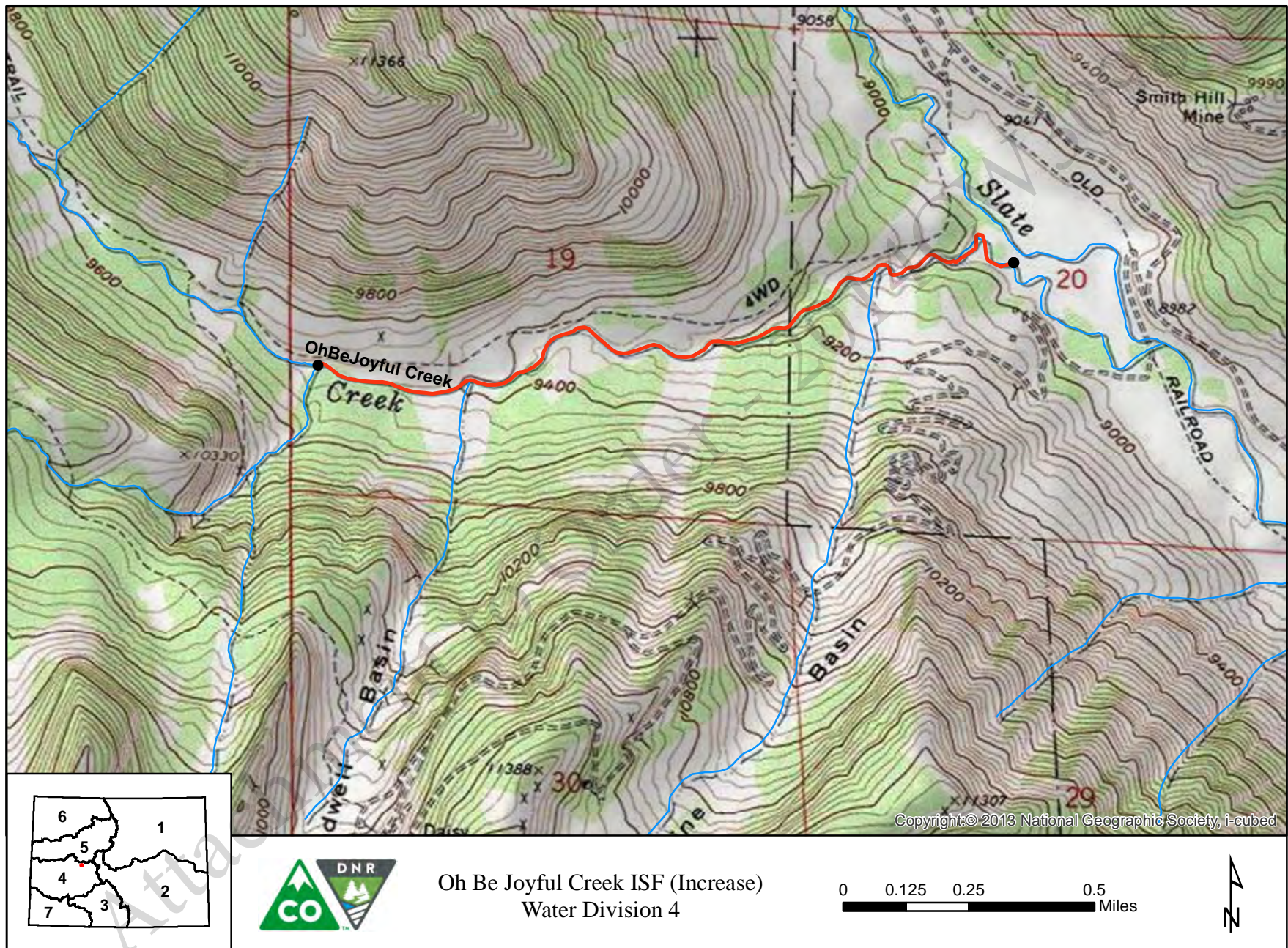


Exhibit 1