

DISTRICT COURT, WATER DIVISION 6, STATE OF COLORADO 1955 SHIELD DRIVE, UNIT 200 STEAMBOAT SPRINGS, COLORADO 80487	DATE FILED: June 5, 2016 CASE NUMBER: 2015CW3048
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN BRUSH CREEK, A NATURAL STREAM, IN THE LOWER WHITE WATERSHED, IN GARFIELD AND RIO BLANCO COUNTIES, COLORADO.	^ COURT USE ONLY ^ Case No.: 2015CW3048 Div. 6
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, AND 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 10, 2015. The Water Court for Water Division 6 referred the Application to the Water Referee for Water Division 6, in accordance with section 37-92-203(7), C.R.S. (2015).

The Referee, having made such investigations as are necessary to determine whether or not the statement in the Application are true, having consulted with the Division Engineer for Water Division 6, 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 name and address of Applicant:

Colorado Water Conservation Board
 1313 Sherman Street, Suite 718
 Denver, CO 80203
 (303) 866-3441

2. 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.
3. No Statements of Opposition: No statements of opposition were filed in this matter. The time for filing additional Statements of Opposition has expired.
4. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to section 37-92-302(4), C.R.S. (2015) dated April 22, 2016. No response was required to the Summary of Consultation. The Referee has given the Summary due consideration.
5. Name of Water Right: Brush Creek Instream Flow Water Right.
6. Legal Description: The Brush Creek Instream Flow Water Right is located in the natural stream channel of Brush Creek from its headwaters to the confluence with East Douglas Creek, a distance of approximately 5.31 miles. This segment of Brush Creek can be located on the Brushy Point, Calf Canyon and Douglas Pass U.S.G.S. quadrangles. A map of the Brush Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
 - A. Upstream Terminus: Brush Creek Headwaters in the Vicinity of
 1. UTM: Northing: 4390370.44 Easting: 177459.80 (NAD 1983 Zone 13 North)
 2. Lat/Long: latitude 39° 36' 8.52"N and longitude 108° 45' 23.01"W
 - B. Downstream Terminus: Confluence East Douglas Creek
 1. UTM: Northing: 4395976.77 Easting: 181933.58 (NAD 1983 Zone 13 North)
 2. Lat/Long: latitude 39° 39' 16.01"N and longitude 108° 42' 25.5"W
 - C. The Universal Transverse Mercator (UTM) and geographical descriptions (e.g., confluences) of the upstream and downstream termini will be used as the legal description for the decree in this

matter. The Lat/Long coordinates are provided as cross-reference locations only. The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD).

7. Source: Brush Creek, tributary to East Douglas Creek, tributary to Douglas Creek, tributary to the White River.
8. A. Date of initiation of appropriation: January 26, 2015
B. How appropriation was initiated: Appropriation and beneficial use occurred on January 26, 2015, by the action of the CWCB pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2015).
C. Date applied to beneficial use: January 26, 2015.
9. Amount of Water Claimed: Instream flow of 0.65 cfs (4/1-10/31), and 0.50 cfs (11/1-3/31), absolute.
10. Use of the Water: Instream flow uses to preserve the natural environment to a reasonable degree.

CONCLUSIONS OF LAW

11. Incorporation: The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
12. Notice and Jurisdiction: The Water Court for Water Division 6 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 no 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. (2015).

13. Legal Requirements: The CWCB has fulfilled all legal requirements for a decree for water rights, including sections 37-9-302, 304 and 305, C.R.S. (2015).
14. Burden of Proof: The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water rights requested in the Application and is therefore entitled to a decree approving the requested water rights.

RULING OF REFEREE

15. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee by this reference.
16. The Application is granted and a decree in the amount of 0.65 cfs (4/1-10/31), and 0.50 cfs (11/1-3/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of Brush Creek between the upstream and downstream termini described in paragraph 6 above. The appropriation date for this water right is January 26, 2015.
17. The priority herein confirmed was filed in the water court in the year of 2015 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 the historical date of appropriation and shall not be affected by the date of entry of this decree.
18. 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 for Water Division 6 and the State Engineer.

DATED this 30th day of April, 2016.

BY THE REFEREE:

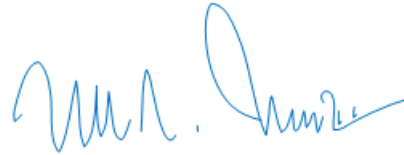
/s/ Daniel R. Birch
Daniel R. Birch, Water Referee
Water Division 6, State of Colorado

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 5TH DAY OF JUNE, 2016.

BY THE COURT:



Michael A. O'Hara, III, Water Judge
Water Division 6, State of Colorado

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