


DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8th Street, Ste. 104, Glenwood Springs, CO, 81601	DATE FILED: May 21, 2017 8:59 AM CASE NUMBER: 2016CW3154
In the Interest of: COLORADO WATER CONSERVATION BOARD	⚠ COURT USE ONLY ⚠ Case Number: 2016CW3154 Division: E Courtroom:
Decree: Decree of the Water Court	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 5/21/2017



JAMES BERKLEY BOYD
 District Court Judge

DISTRICT COURT, WATER DIVISION 5 STATE OF COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, Colorado 81601	<div style="text-align: center;"> ▲ COURT USE ONLY ▲ </div> <hr/> <div style="text-align: center;"> Case Number: 2016CW3154 </div>
<div style="text-align: center;"> FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, AND JUDGMENT AND DECREE </div>	

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 November 30, 2016. The Water Court for Water Division 5 referred the Application to the Water Referee for Water Division 5, in accordance with section 37-92-203(7), C.R.S. (2016).

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 5, 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. Name & Address of Applicant:
Colorado Water Conservation Board ("CWCB")
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. Statements of Opposition: No Statements of Opposition were filed. The time for filing 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. (2016), on February 16, 2017. The CWCB filed a Response to the Summary of Consultation on February 21, 2017. The Referee has given the Summary of Consultation due consideration.
6. Name of water right: East Hawxhurst Creek Instream Flow Water Right.
7. Legal Description: The East Hawxhurst Instream Flow Water Right is located in the natural stream channel of East Hawxhurst Creek from the outlet of McCurry Reservoir to the confluence with West Hawxhurst Creek, a distance of approximately 5.75 miles. A map depicting the approximate location of the East Hawxhurst Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
 - A. Upstream Terminus: Outlet of McCurry Reservoir at:
 1. UTM: Northing: 4360638.30; Easting: 251782.92 (NAD 1983 Zone 13 North)
 2. Lat/Long: latitude 39° 21' 34.43"N and longitude 107° 52' 51.31"W
 - B. Downstream Terminus: Confluence with West Hawxhurst Creek at:
 1. UTM: Northing: 4353102.99; Easting: 248989.35 (NAD 1983 Zone 13 North)
 2. Lat/Long: latitude 39° 17' 27.40"N and longitude 107° 54' 37.76"W

- C. The Universal Transverse Mercator (UTM) 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).
8. Source: East Hawxhurst Creek, tributary to Hawxhurst Creek, tributary to Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River.
9. A. Date of initiation of appropriation: January 26, 2016.
- B. How appropriation was initiated: Appropriation and beneficial use occurred on January 26, 2016, 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. (2016).
- C. Date applied to beneficial use: January 26, 2016.
10. Amount of water claimed: Instream flow of 1.7 cfs (4/15 - 6/30), and 0.46 cfs (7/1 - 4/14), absolute.
11. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.

CONCLUSIONS OF LAW

12. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
13. Notice and Jurisdiction: The Water Court for Division 5 has jurisdiction over the subject matter of these proceedings and over all persons and 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. (2016).
14. The CWCB has fulfilled all legal requirements for a decree for water rights including sections 37-92-302, 304 and 305, C.R.S. (2016).

15. 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 THE REFEREE

16. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of Referee by this reference.

17. The application is granted and a decree in the amount of 1.7 cfs (4/15 - 6/30), and 0.46 cfs (7/1 - 4/14), all absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of East Hawxhurst Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 26, 2016.

18. The priority herein confirmed was filed in the water court in the year of 2016 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.

19. This water right is subject to the following terms and conditions:

A. Pursuant to section 37-92-102(3)(b), C.R.S. (2016), the CWCB acknowledges and agrees that the ISF water right decreed herein on East Hawxhurst Creek is subject to the following decreed water right and present uses and practices in existence at the time the CWCB appropriated the East Hawxhurst Creek ISF on January 26, 2016:

1. The CWCB acknowledges that the McCurry (Hawxhurst) Reservoir storage right decreed for 12,337,480 cubic feet (283.20 acre feet) in Civil Action 2635 is senior in priority to CWCB's East Hawxhurst Creek ISF appropriation.
2. The CWCB and Laramie Energy acknowledge and agree that McCurry (Hawxhurst) Reservoir's maximum historical surface area at the reservoir's full storage capacity is 21.25 acres.

3. The CWCB acknowledges that the McCurry (Hawxhurst) Reservoir is difficult to access as it is located in a high-altitude remote area falling within a U.S. Forest Service Designated Roadless Area; visits to the reservoir have historically been limited to twice a year to open and close the reservoir headgate. The CWCB acknowledges the existing and historical operation of the McCurry (Hawxhurst) Reservoir whereby after the final irrigation releases, the reservoir outlet is closed and the reservoir fills, capturing inflows that replace evaporation, until the outlet is again opened and water is released for supplemental irrigation of lands on Hawxhurst Ranch. Pursuant to section 37-92-102(3)(b), the CWCB recognizes that diversions into McCurry (Hawxhurst) Reservoir at the following rates for replacing evaporation losses in the described months, is a use pre-existing the CWCB's East Hawxhurst Creek ISF appropriation: (1) January: 0.01 cfs; (2) February: 0.04 cfs; (3) March: 0.07 cfs; (4) April: 0.11 cfs; (5) May: 0.14 cfs; (6) June: 0.18 cfs; (7) July: 0.18 cfs; (8) August: 0.15 cfs; (9) September: 0.13 cfs; (10) October: 0.09 cfs; (11) November: 0.05 cfs; (12) December: 0.02 cfs.

B. The recognition of the pre-existing use of water by Laramie Energy, described above, shall not interfere with the administration of Laramie Energy's water right in-priority as against other water rights, and will not constitute a general subordination of the CWCB's East Hawxhurst Creek ISF water right to any other junior water rights. Although the CWCB's East Hawxhurst Creek ISF water right decreed herein is subject to the historical practices of Laramie Energy as described above and pursuant to section 37-92-102(3)(b), the water rights approved in this decree will be administered subject to the prior appropriation system in relation to all other water rights.

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 26th day of April, 2017.

BY THE REFEREE



Susan M. Ryan, Water Referee
Division 5, Water Court

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 _____ day of _____, 2017.

BY THE COURT:

James B. Boyd, Water Judge
Water Division No. 5

