


DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8th Street, Ste. 104, Glenwood Springs, CO, 81601	DATE FILED: May 21, 2017 9:01 AM CASE NUMBER: 2016CW3160
In the Interest of: COLORADO WATER CONSERVATION BOARD	<p style="text-align: center;"><b>⚠ COURT USE ONLY ⚠</b></p> <p>Case Number: 2016CW3160 Division: E                      Courtroom:</p>
<b>Decree: Decree of the Water Court</b>	

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;"> <b>▲ COURT USE ONLY ▲</b> </div> <hr/> <div style="text-align: center;"> <b>Case Number:</b>           2016CW3160       </div>
<div style="text-align: center;"> <b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, AND JUDGMENT AND DECREE</b> </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 December 15, 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 March 17, 2017. Applicant filed a Response to the Summary of Consultation on March 20, 2017. The Referee has given the Summary of Consultation due consideration.
6. Name of water right: West Hawxhurst Creek Instream Flow Water Right.
7. Legal Description: The West Hawxhurst Creek Instream Flow Water Right is located in the natural stream channel of West Hawxhurst Creek from its headwaters to the confluence with East Hawxhurst Creek, a distance of approximately 5.57 miles. A map depicting the approximate location of the West Hawxhurst Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
  - A. Upstream Terminus: West Hawxhurst Creek headwaters in the vicinity of:
    1. UTM: Northing: 4361117.90; Easting: 250123.61 (NAD 1983 Zone 13 North)
    2. Lat/Long: latitude 39° 21' 48.24"N and longitude 107° 54' 1.20"W

- B. Downstream Terminus: Confluence with East 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: West 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 1.6 cfs (4/15 - 6/30), and 0.56 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 1.6 cfs (4/15 - 6/30), and 0.56 cfs (7/1 - 4/14), all absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of West 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 West Hawxhurst Creek is subject to the following decreed water right

and present uses and practices in existence at the time the CWCB appropriated the West Hawxhurst Creek ISF on January 26, 2016:

1. The CWCB acknowledges that the Hawxhurst-Smalley Ditch water right, decreed in Civil Action 8303 for 3.8 cfs and in Case No. 91CW029 for 1.0 cfs, historically has been used to divert water tributary to West Hawxhurst Creek into Smalley Gulch for subsequent use for irrigation, domestic (filling of cisterns) and livestock watering during non-irrigation season. The threads of the creek have historically shifted due to beaver dam activity and erosion in the area, causing side tributaries to become the main stem of the creek and altering the original point of diversion. In 2014, to control an overflow channel created by a beaver pond, a headgate was constructed on the ditch to divert water back to the creek; the headgate is located below the current diversion point. Pursuant to section 37-92-102(3)(b), the CWCB acknowledges that its West Hawxhurst Creek ISF water right is subject to the current uses and practices of the Hawxhurst-Smalley Ditch existing at the time of this agreement, including a diversion of of the West Hawxhurst Creek and use of a headgate, as described above, at the two following UTM coordinates: Easting 249,647 Northing 4,356,720 and Easting 249,631 Northing 4,356,661 (meters, Zone 13, NAD83).
  - 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 West Hawxhurst Creek ISF water right to any other junior water rights. Although the CWCB's West 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.

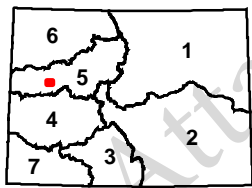
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BY THE COURT:

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





**Exhibit 1**  
**West Hawxhurst Creek - Instream Flow Reach**  
**Water Division 5**

0 0.5 1 2 Miles

