

DISTRICT COURT, WATER DIVISION 6 ROUTT COUNTY JUSTICE CENTER 1955 SHIELD DRIVE, UNIT 200 STEAMBOAT SPRINGS CO 80487	DATE FILED: November 12, 2017 CASE NUMBER: 2015CW3051
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD,          IN SOLDIER CREEK, A NATURAL STREAM,          IN THE LOWER WHITE WATERSHED          (Increase),</b>  <b>IN RIO BLANCO COUNTY, COLORADO.</b>	^ COURT USE ONLY ^
	Case No. 2015CW3051  Div. 6
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE,          AND JUDGMENT AND DECREE OF THE WATER COURT</b>	

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 29, 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 statements 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 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: Statements of Opposition were filed by the Michael K. Brady Family Trust ("Brady") and Nona Powell ("Powell"). The time for filing additional statements of opposition has expired. The CWCB and Brady have entered into a stipulation dated August 24, 2016. The Court approved the parties' stipulation on September 4, 2016. The CWCB and Powell have entered into a stipulation dated September 6, 2017. The Court approved the parties' stipulation on September 8, 2017.

5. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to section 37-92-302(4), C.R.S. (2015), on April 15, 2016. No response to the Summary of Consultation was required. The Referee has given the Summary of Consultation due consideration.

6. Name of water right: Soldier Creek Instream Flow Water Right.

7. Legal Description: The Soldier Creek Instream Flow Water Right is located in the natural stream channel of Soldier Creek from the confluence of Right Fork (RF) and Middle Fork (MF) Soldier Creek to the confluence with Cathedral Creek, a distance of approximately 3.67 miles. This segment of Soldier Creek can be located on the Black Cabin Gulch and Razorback Ridge U.S.G.S. quadrangles. A map of the Soldier Creek Instream Flow Water Right reach is attached as Exhibit 1.

A. Upstream Terminus: Confluence of RF & MF Soldier Creek

1. UTM: Northing: 4402321.62 Easting: 193527.82 (NAD 1983 Zone 13 North).
2. Lat/Long: latitude 39° 42' 56.65"N and longitude 108° 34' 30.54"W.

B. Downstream Terminus: Confluence of Cathedral Creek

1. UTM: Northing: 4407196.87 Easting: 194744.74 (NAD 1983 Zone 13 North).

2. Lat/Long: latitude 39° 45' 36.05"N and longitude 108° 33' 47.66"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).
8. Source: Soldier Creek, tributary to Cathedral Creek, tributary to East Douglas Creek, tributary to Douglas Creek, tributary to the White River.
9. 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.
10. Amount of water claimed: Instream flow of 0.40 cfs (4/1-9/30), absolute.
11. Use of the Water: Instream flow uses to preserve the natural environment to a reasonable degree.
12. Remarks: The CWCB has an existing instream flow water right on Soldier Creek from the confluence of Right Fork and Middle Fork of Soldier Creek to the confluence with Cathedral Creek, in the amount of 1.5 cfs (1/1 – 12/31), decreed in Case No. 5-85CW256 with an appropriation date of 5/3/1985. The flow rates sought 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 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 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. (2015).

15. Legal Requirements: The CWCB has fulfilled all legal requirements for a decree for water rights including sections 37-92-302, 304 and 305, C.R.S. (2015).

16. 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**

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 0.40 cfs (4/1-9/30), absolute is hereby entered to preserve the natural environment to a reasonable degree in the reach of Soldier Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 26, 2015.

19. 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 historical date of appropriation and not affected by the date of entry of this decree.

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 for Water Division No. 6 and the State Engineer.

Dated this 17<sup>th</sup> day of September, 2017.

BY THE REFEREE:

/s/ Daniel R. Birch

Daniel R. Birch, Water Referee

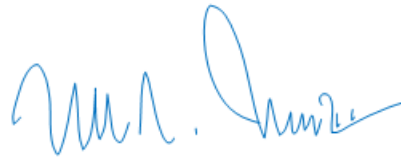
Water Division No. 6

**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 12<sup>th</sup> day of November, 2017.

BY THE COURT:



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Michael A. O'Hara III, Water Judge

Water Division No. 6



