

DISTRICT COURT, WATER DIVISION 1 WELD COUNTY COURT HOUSE 901 9TH AVENUE P.O. BOX 2038 GREELEY, CO 80632	DATE FILED: January 12, 2018 8:51 AM CASE NUMBER: 2016CW3174
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN BOXELDER CREEK, A NATURAL STREAM; IN THE CACHE LA POUDRE WATERSHED, IN LARIMER COUNTY, COLORADO.	<div style="text-align: center;"> ^ COURT USE ONLY ^ </div> <div> Case No.: 2016CW3174 </div>
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE 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 8, 2016. The Water Court for Water Division 1 referred the application to the Water Referee for Water Division 1, 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 1, 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. Name & Address of Applicant:
 Colorado Water Conservation Board ("CWCB")
 1313 Sherman Street, Suite 718
 Denver, CO 80203

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. Opposers: A statement of opposition was filed by the City of Fort Collins on February 23, 2017. A Statement of opposition was filed by the Cache La Poudre Water Users Association on February 28, 2017. No other statements of opposition were filed. The time for filing 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. (2016), on March 31, 2017. No response to the Summary of Consultation was required. The Referee has given the Summary of Consultation due consideration.

5. Name of water right: Boxelder Creek Instream Flow Water Right.

6. Legal Description: The Boxelder Creek Instream Flow Water Right is located in the natural stream channel of Boxelder Creek from the confluence of the South & North Branches of Boxelder Creek to the confluence with an unnamed tributary, a distance of approximately 4.72 miles. A map depicting the approximate location of the Boxelder Creek Instream Flow Water Right reach is attached as **Exhibit 1**.

A. Upstream Terminus: Confluence of South & North Branches of Boxelder Creek at:

1. UTM: Northing: 4533562.13; Easting: 482402.33 (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 40° 57' 10.85"N and longitude 105° 12' 32.74"W

B. Downstream Terminus: Confluence with an unnamed tributary at:

1. UTM: Northing: 4529230.45; Easting: 485243.56 (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 40° 54' 50.57"N and longitude 105° 10' 30.84"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).

7. Source: Boxelder Creek, tributary to the Cache la Poudre River, tributary to the South Platte River.
8. 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.
9. Amount of water claimed: Instream flow of 1.3 cfs (7/1 - 5/15), and 5.0 cfs (5/16 - 6/30), absolute.
10. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.

CONCLUSIONS OF LAW

11. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
12. Notice and Jurisdiction: The Water Court for Division 1 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).
13. 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).
14. Burden of Proof: The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water right requested in the application and is therefore entitled to a decree approving the requested water right.

RULING OF THE 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 1.3 cfs (7/1 - 5/15), and 5.0 cfs (5/16 - 6/30), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of Boxelder Creek, between the upstream and downstream termini described in paragraph 6 above. The appropriation date for this water right is January 26, 2016.

17. 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 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 and the State Engineer.

Dated this 21st day of December, 2017.

BY THE REFEREE:

A handwritten signature in black ink, appearing to read "John S. Cowan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John Cowan, Water Referee
Water Division 1

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 12th day of January, 2018.

BY THE COURT:



Todd L. Taylor, Alternate Water Judge
Water Division 1

