

DISTRICT COURT, WATER DIVISION 6 STATE OF COLORADO 1955 Shield Dr., Unit 200 Steamboat Springs, Colorado 80487	DATE FILED: October 8, 2018 CASE NUMBER: 2016CW3044 ▲ COURT USE ONLY ▲	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN WILLOW CREEK, A NATURAL STREAM, IN THE UPPER YAMPA WATERSHED IN ROUTT COUNTY, COLORADO.	Case No.: 2016CW3044 Div. 6	
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, 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 6 referred the Application to the Water Referee for Water Division 6, 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 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 under section 37-92-302(3) C.R.S. (2016), 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. Statements of Opposition: The Colorado Division of Parks and Wildlife and Parks and Wildlife Commission (“CPW”) and Steamboat Lake Water & Sanitation District filed statements of opposition in this matter. No other parties filed Statements of Opposition. The time for filing additional Statements of Opposition has expired.
4. Stipulations: CWCB and the CPW entered into a stipulation dated January 17, 2018. CWCB and Steamboat Lake Water & Sanitation District entered into a stipulation dated June 25, 2018.
5. Summary of Consultation: The Division Engineer filed a Summary of Consultation under section 37-92-302(4), C.R.S. (2016), dated June 30, 2017. No response was required to the Summary of Consultation. The Referee has given the Summary of Consultation due consideration.
6. Name of Water Right: Willow Creek (Upper) Instream Flow Water Right and Willow Creek (Lower) Instream Flow Water Right.
7. Legal Description: Both Willow Creek Instream Flow (“ISF”) water rights are located in the natural stream channel of Willow Creek. Each segment is described individually below.

A. **Willow Creek (Upper) ISF Water Right** is located in the natural stream channel of Willow Creek from the outlet of Steamboat Lake to the confluence with Beaver Creek, a distance of approximately 4.94 miles. A map depicting the approximate location of the Willow Creek (Upper) ISF Water Right reach is attached as **Exhibit 1**.

1. Upstream Terminus: Outlet of Steamboat Lake at:
 - a. UTM: Northing: 4517363.92; Easting: 335797.39
(NAD 1983 Zone 13 North)
 - b. Lat/Long: latitude 40° 47' 27.12"N and longitude 106° 56' 46.46"W
2. Downstream Terminus: Confluence with Beaver Creek at:
 - a. UTM: Northing: 4514833.43; Easting: 338266.19
(NAD 1983 Zone 13 North)

- b. Lat/Long: latitude 40° 46' 6.86"N and longitude 106° 54' 58.81"W

B. **Willow Creek (Lower) ISF Water Right** is located in the natural stream channel of Willow Creek from the confluence with Beaver Creek to the confluence with Lester Creek, a distance of approximately 1.47 miles. A map depicting the approximate location of the Willow Creek (Lower) ISF Water Right reach is attached as **Exhibit 2**.

- 1. Upstream Terminus: Confluence with Beaver Creek at:
 - a. UTM: Northing: 4514833.43; Easting: 338266.19 (NAD 1983 Zone 13 North)
 - b. Lat/Long: latitude 40° 46' 6.86"N and longitude 106° 54' 58.81"W
- 2. Downstream Terminus: Confluence with Lester Creek at:
 - a. UTM: Northing: 4514098.44; Easting: 339789.19 (NAD 1983 Zone 13 North)
 - b. Lat/Long: latitude 40° 45' 44.11"N and longitude 106° 53' 53.21"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: The source for both water rights is Willow Creek, tributary to the Elk River, tributary to the Yampa River, tributary to the Green River.

9. A. Date of initiation of appropriation: January 26, 2016.

B. How appropriation was initiated: Appropriation and beneficial use of both Willow Creek (Upper) and Willow Creek (Lower) ISF Water Rights occurred on January 26, 2016, by action of the CWCB under

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 for both ISF water rights.

10. Amount of water claimed:

- a. Willow Creek (Upper) ISF: Instream flow of 7 cfs (4/16-6/30), absolute;
- b. Willow Creek (Lower) ISF: Instream flow of 13 cfs (4/16 - 6/30), absolute, and 3 cfs (7/1 - 7/31), absolute.

11. Use of the Water: Instream flow uses to preserve the natural environment to a reasonable degree.

CONCLUSIONS OF LAW

12. Incorporation: The foregoing Findings of Fact are incorporated herein to the extent they constitute Conclusions of Law.

13. 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 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. 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. (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 the Referee by this reference.

17. The Application for the Willow Creek (Upper) ISF is granted and a decree in the amount of 7 cfs (4/16 – 6/30), absolute, for the reach of the Willow Creek

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(Upper) ISF between the upstream and downstream termini described in paragraph 7(A)(1)-(2) above is hereby entered to preserve the natural environment to a reasonable degree. The appropriation date for this water right is January 26, 2016.

18. The Application for the Willow Creek (Lower) ISF is granted and a decree in the amount of 13 cfs (4/16 – 6/30), absolute, and 3 cfs (7/1 – 7/31), absolute, for the reach of the Willow Creek (Lower) ISF described in paragraph 7(B)(1)-(2) is hereby entered to preserve the natural environment to a reasonable degree. The appropriation date for this water right is January 26, 2016.
19. The CWCB has existing instream flow water rights on Willow Creek: one from the outlet of Steamboat Lake Reservoir to the confluence with Beaver Creek, in the amount of 5.0 cfs (1/1 – 12/31), decreed in Case No. W-1270-77 with an appropriation date of 9/23/1977, and a second segment from the confluence with Beaver Creek to the confluence with the Elk River, in the amount of 7 cfs (1/1-12/31), decreed in Case No. W-1273-77 with an appropriation date of 9/23/1977 (together the “Existing Willow Creek ISFs”). The flow rates decreed herein are in addition to the amount of the Existing Willow Creek ISFs.
20. The CWCB also has two existing instream flow water rights on the Elk River: one from the North Fork Elk River to the confluence with Rock Creek, in the amount of 65 cfs, decreed in Case No. W-1279-77 with an appropriation date of 9/23/1977, and a second segment from the confluence with Rock Creek to the confluence of the Yampa River, in the amount of 65 cfs, decreed in Case No. W-1331-77 with an appropriation date of 9/23/1977 (together the “Existing Elk River ISFs”). The confluence of Willow Creek and the Elk River is approximately one mile above the lower terminus of the Elk River ISF decreed in Case No. W-1279-77.
21. CPW’s Historical Use: CPW owns and operates Steamboat Lake as part of Steamboat Lake State Park, and has water rights in Steamboat Lake that were decreed in Case No. CA3926, 90CW001, 95CW142, and 95CW150 (“CPW Decreed Rights”). In order to provide for a variety of water-based recreational activities and to maintain adequate head for the inlet of the Park’s drinking water supply pipeline, CPW has historically operated Steamboat Lake at full, or near full capacity, throughout the year. Beginning after Steamboat Lake was constructed in the 1960s, CPW’s historical operations have included filling and refilling of Steamboat Lake throughout the year to replace evaporative losses (“Existing Evaporative Refill Use”). The ISF water rights decreed herein (“New ISFs”), as well as the Existing Willow Creek ISFs and the Existing Elk

River ISFs described in paragraphs 19 and 20, are subject to the Existing Evaporative Refill Use pursuant to section 37-92-102(3)(b), C.R.S. A call placed by CWCB pursuant to the Existing Willow Creek ISFs, the Existing Elk River ISFs, and/or the New ISFs shall not be enforced against (1) the CPW Decreed Rights that are senior to the respective calling Existing Willow Creek ISFs, the Existing Elk River ISFs, and/or New ISFs; and (2) the Existing Evaporative Refill Use. However, nothing in this section shall limit enforcement of such a call against any out-of-priority refill not described in this ¶21, including refill to replace any releases for uses such as augmentation.

CPW's Bypass: As part of its operations and management, CPW has historically bypassed water from the outlet of Steamboat Lake, in part to maintain at least 5 cfs in Willow Creek below Steamboat Lake, currently measured at the gage Willow Creek below Steamboat Lake (WILBSLCO). The 5 cfs stream flow rate represents a historical goal mutually accepted by CWCB and CPW. CPW will make its best efforts to continue this practice. Bypasses of out-of-priority inflows shall be in addition to any reservoir release for augmentation or other purposes.

22. The recognition of CPW's Existing Evaporative Refill Use will not interfere with the administration of CWCB's water rights in-priority as against other water rights, and will not constitute a general subordination of the CWCB's ISF water rights to any other junior water rights. While the CWCB's New ISF water rights decreed in this case are subject to the historical practices of CPW under the Existing Evaporative Refill Use, and under section 37-92-102(3)(b), C.R.S., the water rights approved in this decree will be administered subject to the prior appropriation system in relation to all other water rights.
23. The priority herein confirmed was filed in the water court in the year of 2016 and will be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities will be determined by the historical date of appropriation and will not be affected by the date of entry of this decree.
24. The CWCB will install and maintain such measuring devices and keep records as the Division Engineer may require for administration of this right.

IT IS ACCORDINGLY ORDERED that this Ruling will be filed with the water clerk subject to judicial review.

IT IS FURTHER ORDERED that a copy of this Ruling will be filed with the Division Engineer for Water Division 6 and the State Engineer.

DATED this 17th day of July, 2018.

BY THE REFEREE:

/s/ Daniel R. Birch

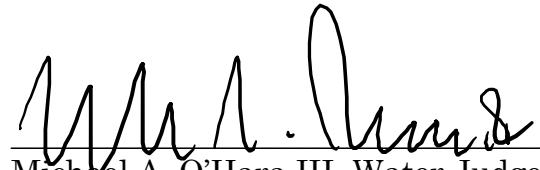
Daniel R. Birch, Water Referee
Water Division 6, State of Colorado

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 7th day of October, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Michael A. O'Hara III", is written over a horizontal line.

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

