


DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8th Street, Ste. 104, Glenwood Springs, CO, 81601	DATE FILED: August 28, 2014 11:58 AM CASE NUMBER: 2011CW144
In the Interest of: COLORADO WATER CONSERVATION BOARD	<div style="text-align: center;">△ COURT USE ONLY △</div> <div>Case Number: 2011CW144 Division: E Courtroom:</div>
Decree: Findings of Fact, Conclusions of Law, Judgment and Decree of the Water Court	

The motion/proposed order attached hereto: GRANTED WITH AMENDMENTS.

With respect to the Court's investigations referenced on page 1, the Court clarifies that the Court has reviewed and considered the summary of consultation filed by gthe Division Engineeer, and the Court's review of gthe record includes the pertinent portions of gthe CWCB's record of proceedings filed on March 11, 2014.

The references on page 5 to "this Ruling" are corrected to "this Decree."

Issue Date: 8/28/2014



JAMES BERKLEY BOYD
District Court Judge

DISTRICT COURT, WATER DIVISION 5 STATE OF COLORADO, GARFIELD COUNTY COURTHOUSE 109 8TH STREET, SUITE 104 GLENWOOD SPRINGS, CO 81601	<div style="text-align: center;">COURT USE ONLY</div>
<p>Concerning the Application for Water Rights of:</p> <p>COLORADO WATER CONSERVATION BOARD, IN UNNAMED TRIBUTARY TO MUDDY CREEK, A NATURAL STREAM, IN THE COLORADO HEADWATERS WATERSHED, IN GRAND & ROUTT COUNTIES, COLORADO.</p>	
	<p>Case No.: 2011CW144</p> <p>Div. 5</p>
<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT</p>	

This matter comes before the Water Court 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 October 28, 2011. The Application was thereafter referred to the Water Referee for Water Division 5, by the Water Court for Water Division 5, in accordance with 37-92-101, C.R.S (2013). On November 20, 2012, the Referee re-referred the Application to the Water Judge.

The Water Judge, 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, Judgment and Decree 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 721
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. Objectors: A Statement of Opposition was filed by Peak Ranch, Inc., and the time for filing additional 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. (2012) dated January 23, 2012, and the Court has given it due consideration.
6. Name of natural stream: Unnamed tributary to Muddy Creek tributary to the Colorado River.
7. Location: The natural stream channel from the headwaters extending to the confluence with Muddy Creek being a distance of approximately 1.88 miles. This segment can be located on the Lake Agnes and Walton Peak U.S.G.S. quadrangles. The Universal Transverse Mercator (UTM) and geographical descriptions (e.g. confluences) of the upstream and downstream termini are provided as the decree locations. The Public Land Survey System (PLSS) and Lat/Long coordinates are provided as cross-reference locations only.
 - a) Upstream Terminus = Headwaters in the Vicinity of

UTM: Northing: 4465463.59 Easting: 360014.95 (NAD 1983 Zone 13 North)

PLSS: SW 1/4 of the SW 1/4 of Section 12, Township 4 North, Range 83 West of the 6th PM, at a point 924' East of the West Section Line, 488' North of the South Section Line of said Section 12.

Lat/Long: latitude 40° 19' 40.72"N and longitude 106° 38' 52.14"W

- b) Downstream Terminus = Confluence with Muddy Creek at

UTM: Northing: 4465716.61 Easting: 362657.98 (NAD 1983 Zone 13 North)

PLSS: NE 1/4 of the NE 1/4 of Section 7, Township 4 North, Range 82 West of the 6th PM, at a point 948' East of the West Section Line, 511' South of the North Section Line of said Section 7.

Lat/Long: latitude 40° 19' 50.51"N and longitude 106° 37' 0.37"W

8. Metadata for Locations:

- a) The UTM and Lat/Long locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD).
- b) The PLSS locations in this decree were derived from CWCB GIS using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database.

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

10. Date of Appropriation: Appropriation and beneficial use occurred on January 25, 2011 by the action of the CWCB under the provisions of sections 37-92-102(3) and (4) and 37-92-103(3), (4), and (10), C.R.S. (2013).

11. Amount of water claimed: Instream flow of 1.25 cfs (April 15 – June 30), 0.4 cfs (July 1 – August 15), 0.2 cfs (August 16 – October 31), 0.1 cfs (November 1 – March 31) and 0.4 cfs (April 1 – April 14), absolute.

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, 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 as required under sections 37-92-203 and 302, C.R.S. (2013).

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. (2013).
15. Burden of Proof: The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water rights required in the Application and is therefore entitled to a decree approving the requested water rights.

DECREE OF THE WATER COURT

16. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Judgment and Decree of the Court by this reference.
17. The application is granted and a decree in the amount of 1.25 cfs (April 15 – June 30), 0.4 cfs (July 1 – August 15), 0.2 cfs (August 16 – October 31), 0.1 cfs (November 1 – March 31) and 0.4 cfs (April 1 – April 14), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of the Unnamed Tributary to Muddy Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 25, 2011.
18. The priority herein awarded was filed in the water court in the year of 2011 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. The Applicant 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 _____ day of _____, 2014.

BY THE COURT:

James J. Boyd
Water Judge
Water Division No. 5
State of Colorado