

DISTRICT COURT, WATER DIVISION 6 STATE OF COLORADO 1955 Shield Dr., Unit 200 Steamboat Springs, Colorado 80487	DATE FILED: October 8, 2018 CASE NUMBER: 2016CW3038 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN PICEANCE CREEK, A NATURAL STREAM; IN THE WHITE RIVER WATERSHED, IN RIO BLANCO COUNTY, COLORADO.	
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 November 28, 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 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. Statements of Opposition: Statements of opposition in this matter were filed by Sam and Cheri Robinson, Encana Oil & Gas (USA) Inc., Puckett Land Company, and TerraCarta Energy Resources, LLC ("TCER"). No other parties filed statements of opposition. The time for filing additional statements of opposition has expired.
 - A. Caerus Piceance LLC was substituted for Encana Oil & Gas (USA) Inc. as an objector by order of the Court dated September 29, 2017.
4. Stipulations: In resolution of the oppositions, CWCB entered into the following stipulations, the terms of which are incorporated herein by this reference:
 - A. Puckett Land Company, dated July 21, 2017.
 - B. TCER, dated August 8, 2017.
 - C. Caerus Piceance, LLC, dated May 28, 2018.
 - D. Sam and Cheri Robinson, dated August 28, 2018.
5. Summary of Consultation: The Division Engineer filed a Report of the Division Engineer pursuant to section 37-92-302(4), C.R.S. (2016) dated April 2, 2017. No response to the Report of the Division Engineer was required. The Referee has given the Report due consideration.
6. Name of Water Right: Piceance Creek Instream Flow Water Right.
7. Legal Description: The Piceance Creek Instream Flow Water Right is located in the natural stream channel of Piceance Creek from the confluence with Dry Fork Piceance Creek to the confluence with the White River, a distance of

Findings of Fact, Conclusions of Law, Ruling of Referee,
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approximately 9.96 miles. A map depicting the approximate location of the Piceance Creek Instream Flow Water Right reach is attached as **Exhibit 1**.

- A. Upstream Terminus: Confluence with Dry Fork Piceance Creek at:
 - 1. UTM: Northing: 4433646.00; Easting: 222937.34 (NAD 1983 Zone 13 North)
 - 2. Lat/Long: latitude 40° 00' 27.26"N and longitude 108° 14' 45.17"W
 - B. Downstream Terminus: Confluence with the White River at:
 - 1. UTM: Northing: 4442727.72; Easting: 223357.83 (NAD 1983 Zone 13 North)
 - 2. Lat/Long: latitude 40° 05' 21.85"N and longitude 108° 14' 41.41"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: Piceance Creek, tributary to the White 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 4 cfs (1/1 - 12/31), absolute.
11. Use of the Water: Instream flow 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 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. 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. (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 is granted, and a decree in the amount of 4 cfs (1/1 - 12/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of Piceance 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 the historical date of appropriation and shall not be affected by the date of entry of this decree.

19. This water right is subject to the following terms and conditions:

- A. The CWCB shall install, operate, and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.
- B. Any calls placed by the CWCB for the water right confirmed in this case ("ISF Right") will be based on measurements by a stream gage or other measurements approved by the Division Engineer that demonstrate that the flow of the stream within the reach of the ISF Right has fallen below the instream flow rate confirmed in this case.
- C. Tributaries of Piceance Creek may contain dry sections due to natural hydrologic variability and/or existing surface water diversions. Due to the intermittent hydrologic connectivity of tributaries to the mainstem, surface diversions on tributaries to Piceance Creek upstream of the designated instream flow segment on Piceance Creek do not, at times, have a direct relationship to the flow rate within the instream flow segment. Consequently, the Division Engineer shall enforce any future call by the CWCB against junior surface rights on tributaries to Piceance Creek upstream of the instream flow segments only if the Division Engineer or his or her staff has, through field verification, first determined that such a priority call on upstream surface water rights located on tributaries to Piceance Creek would make water available to the CWCB's instream flow reaches. Moreover, such call on a tributary shall only be enforced during the period that the tributary stream flows are sufficient to ensure that any curtailment order would make water available to the instream flow water rights on the mainstem. The information set forth above shall govern the administration of the claimed Piceance Creek instream flows by the State and Division Engineer, and any change of water rights or plan for augmentation involving diversions upstream of the claimed instream flows.
- D. For the purposes of Paragraph 19.C above with respect to the Piceance Creek Instream Flow Water Right, use of springs tributary to Piceance Creek shall be administered as surface water rights. "Springs" does not include wells. "Springs" does include both sources unimproved and sources improved with near-surface structures less than 10 feet deep at the natural discharge point that discharge by gravity flow.

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 6 and the State Engineer.

DATED this 31st day of August, 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 8th day of October, 2018.

BY THE COURT:

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

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

DATE FILED: August 30, 2018 9:29 AM

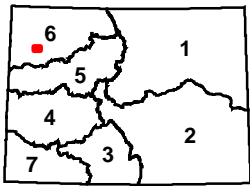


Exhibit 1
Piceance Creek - Instream Flow Reach
Water Division 6

0 0.5 1 2 Miles

