

DISTRICT COURT, WATER DIVISION 3 ALAMOSA CO. COURTHOUSE 8955 INDEPENDENCE WAY, ALAMOSA, CO 81101 (719) 589-4996	DATE FILED: September 15, 2019 2:28 PM CASE NUMBER: 2018CW3014
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN MINERS CREEK, A NATURAL STREAM; IN THE SAGUACHE WATERSHED, IN SAGUACHE COUNTY, COLORADO.	^ COURT USE ONLY ^
	Case No.: 2018CW3014 Div. CJ-1
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT	

THIS MATTER comes before the Water Judge on the Findings of Fact, Conclusions of Law and Ruling of the Referee that was entered on August 12, 2019, and on the Petition for Correction of Clerical Error filed by the Applicant on August 13, 2019. The clerical error was contained in the first paragraph of the Findings of Fact, Conclusions of Law and Ruling of the Referee (which was the proposed Ruling filed by the Applicant) where it indicated the Application was filed on October 19, 2017; the correct date was October 15, 2018. Except for the request to correct the Ruling, no protest has been filed to the Findings and Ruling of the Referee in this case within the time provided by law and, therefore, the Court finds that said Findings and Ruling of the Referee should be confirmed, approved and adopted with the correction as follows:

This matter was before the Water Referee on the 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 15, 2018. The Water Court for Water Division 3 referred the Application to the Water Referee for Water Division 3, in accordance with section 37-92-203(7), C.R.S. (2018).

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 3, and being fully advised in the premises, does hereby made 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. Name & Address of Applicant:
Colorado Water Conservation Board ("CWCB")
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. Statements of Opposition. No Statements of Opposition were filed. The time for filing 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. (2017), on July 8, 2019. The CWCB submitted a response to the Summary of Consultation on July 19, 2019. The Referee has given the Summary of Consultation and the CWCB's Response due consideration.
6. Name of Water Right. Miners Creek Instream Flow Water Right.
7. Legal Description: The Miners Creek Instream Flow Water Right is located in the natural stream channel of Miners Creek from its headwaters to the confluence with Prong Creek, a distance of approximately 4.35 miles. A map depicting the approximate location of the Miners Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
 - A. Upstream Terminus: Miners Creek headwaters in the vicinity of:
 1. UTM: Northing: 4200135.10; Easting: 361754.34 (NAD 1983 Zone 13 North)
 2. Lat/Long: latitude 37° 56' 17.84"N and longitude 106° 34' 23.64"W
 - B. Downstream Terminus: Confluence with Prong Creek at:
 1. UTM: Northing: 4201747.81 Easting: 367461.17 (NAD 1983 Zone 13 North)
 2. Lat/Long: latitude 37° 57' 13.21"N and longitude 106° 30' 30.99"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: Miners Creek, tributary to Prong Creek, tributary to South Fork Carnero Creek, tributary to Carnero Creek.
9. A. Date of initiation of appropriation: January 22, 2018.
B. How appropriation was initiated: Appropriation and beneficial use occurred on January 22, 2018, 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. (2018).
C. Date applied to beneficial use: January 22, 2018.
10. Amount of water claimed: Instream flow of 0.56 cfs (09/01 - 04/30), and 1.0 cfs (05/01 - 08/31), 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 Division 3 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. (2018).
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. (2018).
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.

RULING OF REFEREE

16. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of Referee by this reference.
17. The application is granted and a decree in the amount of 0.56 cfs (09/01 - 04/30), and 1.0 cfs (05/01 - 08/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Miners Creek from its headwaters to

*Findings of Fact, Conclusions of Law, Ruling of Referee,
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the confluence with Prong Creek, described in paragraph 7 above. The appropriation date for this water right is January 22, 2018.

18. The priority herein confirmed was filed in the water court in the year of 2018 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 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 3 and the State Engineer.

JUDGMENT AND DECREE OF WATER JUDGE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Findings and Ruling of the Referee originally entered herein on August 12, 2019, and now corrected for a clerical error as explained above, is incorporated herein by reference and confirmed, approved and adopted as the Judgment of this Court.

DONE this _15th_ day of _September __, _2019_.

BY THE COURT:



Pattie P. Swift
Water Judge
Water Division No. 3