



Granted

The moving party is hereby ORDERED to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

James B. Boyd
District Court Judge
Date of Order attached

District Court
Water Division 5, State of Colorado
Court Address:

109 Eighth Street, Room 104
Glenwood Springs, CO. 81601

CONCERNING THE APPLICATION FOR WATER RIGHTS OF

THE COLORADO WATER CONSERVATION BOARD,

IN EAGLE COUNTY, COLORADO

▲ **COURT USE ONLY** ▲

Case No.: 07CW227

Div.: 5

DECREE OF THE WATER COURT

The above-captioned application was referred to the Water Referee for Water Division No. 5, State of Colorado, by the Water Judge of said Court in accordance with Article 92, Chapter 37, of the Colorado Revised Statutes, known as the Water Right Determination and Administration Act of 1969. The application was re-referred to the Water Judge on September 14, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Name and Address of the Applicant:
 Colorado Water Conservation Board
 1313 Sherman Street, Room 721
 Denver, Colorado 80203

2. Application: The Colorado Water Conservation Board ("CWCB") filed the Application in this case on December 26, 2007. The CWCB is represented in this matter by Susan J. Schneider, First Assistant Attorney General, 1525 Sherman Street, 5th Floor, Denver, Colorado 80203. The Court hereby finds that the application is complete, covering all matters required by law, and that the statements in the application are true.

3. Jurisdiction: Timely and adequate notice of the Application was given in the manner required by law. C.R.S. §37-92-302. This Court has jurisdiction over the subject matter of these proceedings and over all persons affected thereby, whether they have appeared or not. None of the water rights or structures involved herein is located within a designated ground water basin.

4. Opposition: Timely statements of opposition were filed by the Colorado Water Trust, Diamond S. Ranch, Inc., and the Town of Eagle. No other statements of opposition to the Application have been filed, and the time for filing such statements has expired.
5. Stipulations: All of the objectors have stipulated to the entry of this Decree.
6. Background: Applicant, the CWCB, acquired the Hat Creek Ditch water right from the Colorado Water Trust by means of an acquisition agreement in 2007. The CWCB's application proposes to change the use of the Hat Creek Ditch to allow the rights to be used for instream flow purposes exclusively by CWCB, pursuant to C.R.S. section 37-92-102(3), to preserve the natural environment to a reasonable degree on the reach of Hat Creek from the headgate of the Hat Creek Ditch down to East Brush Creek, and on East Brush Creek to the confluence with Brush Creek. The Colorado Water Trust has retained the right to bring about beneficial use of the historical consumptive use associated with the Hat Creek Ditch water right below the confluence of East Brush Creek and Brush Creek pursuant to C.R.S. §37-92-102(3).

The CWCB holds existing instream flow water rights on Hat Creek and East Brush Creek, as follows:

**Table 1
Existing Instream Flow Water Rights**

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
5-87CW271	Hat Creek	2(5/1-9/30 1(10/1-4/30)	10/2/1987	Eagle	Eagle
5-77W3627	East Brush Creek	7(5/1-9/30 4(10/1-4/30)	7/27/1977	Eagle	Eagle

7. Description of the Subject Water Right:
 - A. Name of Structure: Hat Creek Ditch.
 - B. Original Decree: July 17, 1916, Civil Action No. 673, by the District Court in and for Eagle County, Colorado.
 - C. Decreed Point of Diversion: On the south bank of Hat Creek at a point whence the Southwest ¼ corner of Section 22, Township 6 South, Range 83 West of the 6th P.M., bears South 67° 45' East 1,200 ft., in Eagle County, Colorado. The decreed point of diversion appears to be incorrect; however the actual location of the diversion has not changed and is therefore *res judicata*. The original decree is not changed herein, but rather the actual location for the diversion point is provided in this decree.
 - D. Actual Point of Diversion: UTM, Zone 13, NAD 83, Easting 354853, Northing 4374878 (meters).
 - E. Source: Hat Creek, tributary to East Brush Creek, tributary to Brush Creek, tributary to the Eagle River.
 - F. Appropriation Date: March 6, 1914.

G. Amount: 2.0 cfs, absolute.

8. Historical Use: The Hat Creek Ditch water right was historically diverted at the Hat Creek Ditch headgate for use to irrigate approximately 22 acres of land adjacent to East Brush Creek. The location of the land irrigated via the Hat Creek Ditch indicates that the irrigation return flows accrued to East Brush Creek, with the water diverted through the Ditch being nearly 100% depletive to Hat Creek. The Court finds that the transferable historical consumptive use associated with the Hat Creek Ditch water right is 18.2 acre feet per year, distributed as follows:

Table 2
Hat Creek Ditch Historical Consumptive Use (in acre feet)

Month	HCU (AF)
May	2.5
June	5.8
July	4.8
August	2.7
September	2.4

9. Change: Because the historical diversions by the Hat Creek Ditch water right were fully consumptive as to Hat Creek, the amount changed to instream flow purposes on Hat Creek is based on historical diversions. Because return flows from this use benefitted East Brush Creek, the amount changed to instream flow purposes within East Brush Creek is based on the historical consumptive use associated with the right.
- A. The use of the Hat Creek Ditch water right is changed from irrigation uses to instream flow use exclusively by the CWCB, pursuant to C.R.S. section 37-92-102(3), in Hat Creek and East Brush Creek. Water under this change of use will be beneficially used to supplement existing decreed instream flow water rights on Hat Creek and East Brush Creek up to their respective decreed amounts.
 - B. The CWCB will not divert the Hat Creek Ditch water right, but will use the rights to preserve the natural environment to a reasonable degree within segments of Hat Creek and East Brush Creek located downstream of the Hat Creek Ditch headgate, as is more fully described below.
 - C. The CWCB will use the Hat Creek Ditch water right as summarized below and in Table 3 for instream flow purposes on the following stream reaches:
 - i. Hat Creek: The reach of Hat Creek from the headgate of the Hat Creek Ditch, downstream approximately 0.48 miles to the confluence with East Brush Creek.
 - ii. East Brush Creek: The reach of East Brush Creek from the confluence with Hat Creek downstream approximately 4.7 miles to the confluence with Brush Creek.

Table 3

Flow Amounts Claimed for Changed Water Right (in c.f.s)

Month	Hat Creek	East Brush Creek	
		Average	Maximum
May	0.77	0.04	0.11
June	2.0	0.10	0.20
July	2.0	0.08	0.15
August	2.0	0.04	0.10
September	2.0	0.04	0.11

10. Locations: The ditch diversion point and stream confluences along with the UTM coordinates are provided as the decree locations. PLSS and Lat/Long are provided as cross-reference locations for administrative purposes only.
- A. Hat Creek ISF Reach Upper Terminus: Hat Creek Ditch diversion point on Hat Creek
 - UTM: Zone 13, NAD 83, Easting 354853, Northing 4374878 (meters).
 - PLSS: SE SW Section 22, Township 6 South, Range 83 West of the 6th PM, at a point 1275 feet east of the west section line and 149 feet north of the south section line.
 - Lat/Long: Latitude 39deg 30' 40.63"N and Longitude 106deg 41' 18.21"W.
 - B. Hat Creek ISF Reach Lower Terminus: Hat Creek Confluence with East Brush Creek
 - UTM: Zone 13, NAD 83, Easting 355010, Northing 4375575 (meters).
 - PLSS: NE SW Section 22, Township 6 South, Range 83 West of the 6th PM, at a point 1748 feet east of the west section line and 2450 feet north of the south section line.
 - Lat/Long: Latitude 39deg 31' 3.33"N and Longitude 106deg 41' 12.12"W.
 - C. East Brush Creek ISF Reach Upper Terminus: Hat Creek Confluence with East Brush Creek
 - UTM: Zone 13, NAD 83, Easting 355010, Northing 4375575 (meters).
 - PLSS: NE SW Section 22, Township 6 South, Range 83 West of the 6th PM, at a point 1748 feet east of the west section line and 2450 feet north of the south section line.
 - Lat/Long: Latitude 39deg 31' 3.33"N and Longitude 106deg 41' 12.12"W.
 - D. East Brush Creek ISF Reach Lower Terminus: East Brush Creek Confluence with Brush Creek
 - UTM: Zone 13, NAD 83, Easting 349148, Northing 4378277.

PLSS: SW SW Section 7, Township 6 South, Range 83 West of the 6th PM, at a point 298 feet east of the west section line and 447 feet north of the south section line.

Lat/Long: Latitude 39deg 32' 27.31"N and Longitude 106deg 45' 19.79"W.

11. Metadata for Locations:

- A. The UTM, PLSS and Lat/Long locations for the upper and lower termini were derived using the National Hydrography Dataset (NHD). This dataset is used in CWCB's geographic information system.
- B. The Public Land Survey System (PLSS) locations in this decree were derived using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database. This database is used in CWCB's geographic information system.

TERMS AND CONDITIONS

- 12. The CWCB will have the right to use the full diversion amount of the Hat Creek Ditch water rights for instream flow purposes in the reach of Hat Creek located downstream of the Hat Creek Ditch headgate down to the confluence with East Brush Creek, and the historical consumptive use portion of the Hat Creek Ditch water right for instream flow purposes in the reach of East Brush Creek from the confluence with Hat Creek down to the confluence with Brush Creek.
- 13. The Hat Creek Ditch water right shall no longer be used to irrigate the approximately 22 acres described above in paragraph 7. The 22 acres will no longer be irrigated.
- 14. The CWCB will install measuring devices as required by the State and Division Engineer.
- 15. The Colorado Water Trust, or its assigns, may bring about beneficial use of the historical consumptive use of the subject water rights downstream of the instream flow reach on East Brush Creek as fully consumable reusable water by law. The downstream use will be subject to such terms and conditions as decreed by the water court upon subsequent application to prevent injury to vested water rights and decreed conditional water rights. The historical consumptive use associated with the Hat Creek Ditch water right decreed herein will be binding in any such adjudication.

RULING AND DECREE

- 16. The foregoing paragraphs are hereby fully incorporated and made a part of this Decree. The Court finds that the CWCB has satisfied all necessary legal prerequisites and hereby rules that the change of water right described above is hereby granted. The Court further rules that under the terms and conditions set forth above, there will be no injury to any owner of or person entitled to use water under a vested water right or a decreed conditional water right as a result of the Decree entered herein, and that the subject water rights will be administrable.
- 17. **The application is granted and a decree is hereby entered** changing the use of the Hat Creek Ditch water right from irrigation uses to instream flow use, in Hat

Creek and East Brush Creek to preserve the natural environment to a reasonable degree through the stream segments described above. Water under this change of use will be beneficially used to supplement the CWCB's existing decreed instream flow water rights on Hat Creek and East Brush Creek.

It is **ORDERED** that a copy of this Decree shall be filed with the Division Engineer and the State Engineer.

DATED this _____ day of _____, 2012.

BY THE COURT

Hon. James Boyd, Water Judge
Water Division No. 5, Colorado

This document constitutes a ruling of the court and should be treated as such.

Court: CO Garfield County District Court 9th JD

Judge: James B Boyd

Current Date: Apr 12, 2012

Case Number: 2007CW227

Case Name: In the interest of: COLORADO WATER CONSERVATION BOARD