

DISTRICT COURT, WATER DIVISION NO. 4, STATE OF COLORADO 1200 N. Grand Ave., Bin A Montrose, CO 81401-3146 (970) 252-4335	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: TRAPPERS CROSSING AT CRESTED BUTTE ASSOCIATION, INC. In Gunnison County, Colorado	1 COURT USE ONLY 1
<i>Applicant's Attorney of Record:</i> Mark E. Hamilton, Esq., No. 24585 CALOIA, HOUP & HAMILTON, P.C. 1204 Grand Avenue Glenwood Springs, CO 81601 (970) 945-6067 – phone (970) 945-6292 – fax mham@sopris.net	Case No. 04CW050 (Reference Case Nos.: 97CW133 and 89CW219)
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

The above-entitled Application was filed on March 31, 2005. The 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, Colo. Rev. Stat. (1973), known as the Water Rights Determination and Administration Act of 1969. The undersigned Referee, having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having become fully advised with respect to the subject matter in the Application, does hereby make the following Findings of Fact, Conclusions of Law and Ruling as the Referee in this matter:

FINDINGS OF FACT

1. The name, address, and telephone number of Applicant are:

Trappers Crossing at Crested Butte Association, Inc.
P.O. Box 3748
Crested Butte, CO 81224

With copy to:
Mark E. Hamilton, Esq.
CALOIA, HOUP & HAMILTON, P.C.
1204 Grand Avenue
Glenwood Springs, CO 81601
(970) 945-6067
mham@sopris.net

2. Timely and adequate notice of the filing of this Application was given as required by law.

3. No Statements of Opposition were filed in this matter. The time for filing Statements of Opposition has expired.
4. The Application requests findings of reasonable diligence for the following conditional water rights:

Trappers Spring Nos. 1-8
Bench Ditch
Bench Pond

5. These structures are further described as follows:

A. Trappers Spring Nos. 1-8

(1) *Previous decrees:*

Court:	District Court, Water Div. 4
Case No.:	89CW219
Decree Date:	08/08/1991
Subsequent decree:	97CW133

(2) *Locations, amounts and sources:* the points of diversion and quantities conditionally decreed for diversion at each of the eight Trappers Springs are as follows:

- a. Trapper Spring No. 1: SW¹/₄ NW¹/₄ of Sec. 3, T. 14 S., R. 86 W., 6th P.M., whence the NW corner of said Sec. 3 bears N. 13°30'W. a distance of 2060 ft., in the amount of 10 g.p.m., trib. to Coal Creek.
- b. Trapper Spring No. 2: SW¹/₄ NW¹/₄ Sec. 3, T. 14 S., R. 86 W., 6th P.M., whence the NW corner of said Sec. 3 bears N. 16°30' W. a distance of 2290 ft., in the amount of 10 g.p.m., trib. to Coal Creek.
- c. Trapper Spring No. 3: NW¹/₄ SW¹/₄ Sec. 3, T. 14 S., R. 86 W., 6th P.M., whence the NW corner of said Sec. 3 bears N. 23°0' W. a distance of 2820 ft., in the amount of 10 g.p.m., trib. to Coal Creek.
- d. Trapper Spring No. 4: SE¹/₄ NE¹/₄ Sec. 33, T. 13 S., R. 86 W., 6th P.M., whence the NE corner of said Sec. 33 bears N.

10°30' a distance of 2270 ft., in the amount of 30 g.p.m., trib. to the Slate Riv.

- e. Trapper Spring No. 5: SE¹/₄ NE¹/₄ Sec. 33, T. 13 S., R. 86 W., 6th P.M., whence the NE corner of said Sec. 33 bears N. 16°30' E. a distance of 2120 ft., in the amount of 200 g.p.m., trib. to the Slate Riv.
- f. Trapper Spring No. 6: NW¹/₄ NE¹/₄ Sec. 4, T. 14 S., R. 86 W., 6th P.M., whence the NE corner of said Sec. 4 bears N. 89°0' E. a distance of 2500 ft., in the amount of 10 g.p.m., trib. to Coal Creek.
- g. Trapper Spring No. 7: NE¹/₄ NW¹/₄ Sec. 4, T. 14 S., R. 86 W., 6th P.M., whence the NE corner of said Sec. 4 bears N. 89°0' E. a distance of 2910 ft., in the amount of 30 g.p.m., trib. to Coal Creek.
- h. Trapper Spring No. 8: NE¹/₄ NW¹/₄ Sec. 4, T. 14 S., R. 86 W., 6th P.M., whence the NE corner of said Sec. 4 bears N. 89°0' E. a distance of 3050 ft., in the amount of 30 g.p.m., trib. to Coal Creek.

(3) *Source:* Coal Creek and/or the Slate Riv., which are both trib. to the East Riv., which is a trib. of the Gunnison River.

(4) *Approp. date:* Sept. 9, 1989

(5) *Uses:* domestic, irrigation

B. Bench Ditch

(1) *Previous decrees:*

Court:	District Court, Water Div. 4
Case No.:	89CW219
Decree Date:	08/08/1991
Subsequent decree:	97CW133

(2) *Location:* on the E. bank of Trapper Creek, being the trib. of Coal Creek immediately E. of Wildcat Creek, in the SE¹/₄ SE¹/₄ of Sec. 4,

T. 14 S., R. 86 W. 6th P.M., whence the NE corner of said Sec. 4 bears N. 16°30' E. a distance of 4300 ft.

- (3) *Amount:* 2.0 c.f.s., conditional
- (4) *Source:* Trapper Creek, a trib. of Coal Creek immediately E. of Wildcat Creek, which is not trib. to Wildcat Creek.
- (5) *Uses:* filling Bench Pond for recreation and augmentation
- (6) *Approp. date:* Sept. 9, 1989

C. Bench Pond

- (1) *Previous decrees:*

Court:	District Court, Water Div. 4
Case No.:	89CW219
Decree Date:	08/08/1991
Subsequent decree:	97CW133

- (2) *Location:* the center line of the dam axis is in the NW¹/₄ SE¹/₄ Sec. 3, T. 14 S., R. 86 W., 6th P.M., whence the NW corner of said Sec. 3 bears N. 49°0' W. a distance of 4110 ft.
- (3) *Amount:* 14 acre-feet, conditional
- (4) *Source:* Bench Ditch, Trapper Creek, a trib. of Coal Creek immediately E. of Wildcat Creek, which is not trib. to Wildcat Creek.
- (5) *Uses:* recreation and augmentation
- (6) *Approp. date:* Sept. 9, 1989

6. Outline of activities during the most recent diligence period:

The subject conditional water rights are all part of a plan for augmentation that is intended to supply 80 residential lots within the Trappers Crossing developments with a legal and physical year-round water supply. This plan for augmentation was originally approved along with these conditional water rights in Case No. 89CW219, Water Division 4. As set forth below, these conditional water rights were recently transferred to the Trappers Crossing at Crested Butte Association, Inc., the

homeowners association for the 80 residential lots within the Trappers Crossing development.

On April 30, 2001, the developer of Trappers Crossing initiated Case No. 01CW066 for the purpose of amending the plan for augmentation to conform to the actual number of lots platted within Trappers Crossing. The application in 01CW066 also requested abandonment of the conditional water right decreed for the Trappers Pond in Case No. 89CW219. A decree entered in Case No. 01CW066 on November 12, 2001 approving these changes.

Since that time, the developer of Trappers Crossing has also amended the documentation required to facilitate the dry-up of 6.16 acres of historically irrigated lands under the Halazon Ditch to support the augmentation plan for Trappers Crossing. An Amended Dry-Up Exchange Covenant was entered into by Trappers Crossing, Ltd. and the Town of Crested Butte on May 20, 2003, and a copy of this agreement was recorded in the Office of the Gunnison County Clerk & Recorder on May 28, 2003, Reception No. 530973.

Since acquiring title to these conditional water rights in May 2003, the applicant has continued to take substantial steps toward full utilization of these rights. The Bench Pond is filled with diversions from the Bench Ditch into a pipeline in the amount of up to 2.0 c.f.s. Such water has been utilized by residents of Trappers Crossing for recreational purposes, including fishing and boating. The applicant has requested that 8.0 acre-feet of water decreed for storage in the Bench Pond be made absolute for recreation purposes. The Applicant has also requested that the Bench Ditch be made absolute in the amount of 2.0 c.f.s. for the purpose of filling the Bench Pond.

7. The Court finds that the activities described in the above Paragraph 6 demonstrate reasonable diligence toward continued development of the subject conditional water rights and that the Bench Pond and the Bench Ditch should be made absolute in the amounts and for the purposes requested.

CONCLUSIONS OF LAW

8. The statements in the application are true. The application was timely and properly filed in accordance with Colo. Rev. Stat. §§ 37-92-301(4)(a).
9. The application filed herein is complete, covering all applicable matters required under Colo. Rev. Stat. §§ 37-92-302.
10. All notices required by law have been given, and no further notice need be given.

11. The Court has jurisdiction of this matter and of all persons, whether they have appeared or not. Colo. Rev. Stat. §§ 37-92-301(2) and -303(1).
12. This Court has authority to grant the finding of reasonable diligence requested in the application. Colo. Rev. Stat. §§ 37-92-301(2), -302 and -303(1).
13. The measure of diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. Colo. Rev. Stat. § 37-92-301(4)(b).
14. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system Colo. Rev. Stat. § 37-92-301(4)(b).
15. The Water Court may consider all relevant factors in determining whether the holder of a conditional water right has exercised reasonable diligence in the development of the appropriation. *Trans County Water Inc., v. Central Colorado Water Conservancy Dist.*, 727 P.2d 60 (Colo. 1986).

RULING OF THE REFEREE

16. The foregoing Findings of Fact and Conclusions of Law are incorporated as if fully set forth herein.
17. Applicant has demonstrated reasonable diligence in the development of the Trappers Spring Nos. 1 through 8, inclusive. Therefore, Applicant's conditional water rights Trappers Spring Nos. 1 through 8, inclusive, are hereby continued in full force and effect for all decreed amounts and purposes.
18. Applicant has also applied 2.0 c.f.s. diverted through the Bench Ditch to beneficial use for one annual filling of the Bench Pond. The conditional water right for the Bench Ditch is hereby made absolute in this amount for this purpose. Since Applicant has demonstrated reasonable diligence as to other conditional uses and amounts from this structure, all other conditionally decreed amounts (2.0 c.f.s.) and uses (filling pond for augmentation) for the Bench Ditch are hereby continued in full force and effect.
19. Applicant has also stored 8.0 acre-feet in the Bench Pond for beneficial use for recreation. The conditional water right for the Bench Pond is hereby made absolute in this amount for this purpose. Since Applicant has demonstrated reasonable diligence as to other conditional uses (augmentation) and amounts (14.0 acre-feet)

from this structure, all other conditionally decreed amounts and uses for the Bench Pond are hereby continued in full force and effect.

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 appropriate Division Engineer and the State Engineer.

DATED this ____ day of _____, 2005.

BY THE REFEREE:

Water Referee, Water Division No. 4
State of Colorado

JUDGMENT AND DECREE

No protest was filed in this matter, and accordingly the foregoing Ruling is confirmed and approved, and is made the Judgment and Decree of this Court. Should Applicant desire to maintain the right to develop the conditional water rights described above, **an Application for a Finding of Reasonable Diligence shall be filed in the month of _____, 2011**, unless a determination has been made prior to that date that such conditional rights have been made absolute by reason of the completion of the appropriation, or is otherwise disposed of.

SO ORDERED this ____ day of _____, 2005.

BY THE COURT:

Water Judge, Water Division No. 4
State of Colorado