

**TRAPPERS CROSSING AT CRESTED BUTTE ASSOCIATION  
MEETING OF THE BOARD OF DIRECTORS  
MINUTES OF MEETING  
JUNE 11, 2020  
10:00 A.M.**

By Zoom:           Debbie Montford  
                      Jim Hopkins  
                      Tom Atkinson  
                      Marcus Lock, Association's legal counsel  
                      Rob Harper, Toad Property Management

Rob called the meeting to order at 10:08 a.m. and confirmed there was a quorum. Debbie made a motion to approve the minutes of the May 18, 2020 meeting. Tom seconded the motion and it was unanimously approved.

Rob explained there would be an Executive Session to discuss matters with the Association's legal counsel and then the meeting would continue after the Executive Session.

At 10:10 a.m. Jim made a motion to go into Executive Session. Tom seconded the motion and it was unanimously approved.

At 10:58 a.m. Jim made a motion to leave Executive Session. Debbie seconded the motion and it was unanimously approved.

Jim made a motion to approve the draft Judgment to the Water Referee put forward by the Association's water attorney, Mark Hamilton. Debbie seconded the motion and it was unanimously approved. A copy of the document is attached to these Minutes for reference.

Tom made a motion to approve and adopt the following Resolution. Debbie seconded the motion and it was unanimously approved.

Resolution: The Board of Directors resolves that the existing Bench Ditch pipeline is an above ground PVC pipeline that has been repeatedly damaged resulting in leaks and poor operational performance. The Board intends to improve the existing pipeline with either an underground pipeline or an appropriate above-ground pipeline that is fusion welded to prevent potential leaks, UV resistant, and resistant to wildlife in order to more effectively utilize the association's water rights and replace this aging infrastructure. A buried pipeline would require access by construction vehicles and equipment to trench, install, and bury the new pipeline. A fusion welded above ground replacement pipeline would at least require vehicular access because of the size and weight of the replacement pipeline and fusion welding. Accordingly, the Board of Directors recognizes that the installation of a replacement pipeline cannot commence until the current dispute regarding vehicle access to the utility easement has been resolved. Subsequent to the resolution of said dispute, the Board of Directors

intends to authorize this installation and replacement on an orderly schedule and consistent with the Association's then current budget so as to avoid substantial special assessments. The Board of Directors resolves that the President of the Board of Directors, is authorized to identify and retain an appropriate contractor to schedule this work consistent with this resolution.

Marcus agreed to research other utilities which might be in the utility easement on Baby Head Hill. Marcus left the meeting.

Jim said he had spoken with Jim Houstoun, a CPA, and said Jim Houstoun was looking for more detail in tracking expenses for the various sections of Trappers Crossing and the owners receiving credits if expenses for a specific area were under budget. Rob confirmed the individual expenses were already tracked and allocated to the relevant subdivision, Trappers Crossing at Wildcat, Trappers Crossing at Crested Butte or Trappers Crossing South and said refunding credits to owners would be difficult to handle, especially in cases of lot sales during the year. Jim explained Jim Houstoun had requested an invoice which had two line items, one stating the general Association annual expense and the other line stating the specific annual expense for Trappers Crossing at Crested Butte. Rob confirmed he would be able to provide an invoice with that information to Jim Houstoun. Jim said Jim Houstoun would be willing to join the Board.

It was agreed the additional improvements either side of the gate on Steve Jenkins lot would be approved by email so all Board members would have the opportunity to comment.

Rob confirmed the Bridge repair contractor had ordered materials and an anticipated start date for the project was August 1, 2020. Rob said he would be meeting with the contractor to discuss timing, traffic control and general management of the project in an attempt to reduce inconvenience to owners.

Rob explained the cash flow analysis indicated it would not be possible to delay the annual invoicing for dues until January to bring the financial year into line with the Bylaws. Rob proposed invoicing owners in August for 7 months of dues and toward the end of 2020 the 2021 Budget, commencing in January 2021, would be adopted and invoices for 2021 would be sent out in January and an option of quarterly billing could be introduced. Debbie suggested owners be given the opportunity to pay a lump sum if they did not want to pay quarterly or sign up for auto pay. Rob said he would ask Marcus Lock to draft a short explanation of the proposed adjustments to the billing cycle. Rob said he would follow up with owners currently in arrears on their 2020 dues.

It was agreed to have an additional board meeting to discuss the annual meeting of the association's members, which would include a vote of the owners on the Scenic Butte request to amend the Covenants and permit Scenic Butte access through Trappers Crossing at Crested Butte onto adjoining land.

The meeting adjourned at 11:33 a.m.

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Rob Harper,  
Toad Property Management, Association Manager

DRAFT

<b>DISTRICT COURT, WATER DIVISION NO. 4, STATE OF COLORADO 1200 N. Grand Ave., Bin A Montrose, CO 81401-3146 (970) 252-4335</b>	
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:  TRAPPERS CROSSING AT CRESTED BUTTE ASSOCIATION, INC.  In Gunnison County, Colorado</b>	
<i>Attorneys of Record:</i> Mark E. Hamilton, Esq., No. 24585 William H. Caile, Esq., No. 32223 C. Tarn Udall, Esq., No. 49638 HOLLAND & HART LLP 600 East Main Street, Suite 104 Aspen, CO 81611-1991 Phone Number: (970) 925-3476 Facsimile: (866) 784-7682 E-mail: mehamilton@hollandhart.com whcaile@hollandhart.com ctudall@hollandhart.com	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <p style="text-align: center;"><b>Case No.</b></p> <p style="text-align: center;"><b>18 CW 3013</b></p> <p style="text-align: center;"><b>(Reference Case Nos.: 97CW133, 89CW219, 04CW050 and 11CW78)</b></p>
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, JUDGMENT AND DECREE</b>	

The above-entitled Application was filed on March 30, 2018. The Application was referred to the Water Referee for Water Division No. 4, 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**

- I. 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:*  
Holland & Hart LLP  
600 E. Main St., Suite 104  
Aspen, CO 81611  
mehamilton@hollandhart.com

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 decrees: 97CW133, 04CW050, 11CW78

(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: SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Sec. 3, T. 14 S., R. 86 W., 6<sup>th</sup> P.M., whence the NW corner of said Sec. 3 bears N. 13°30'W. a distance of 2060 ft., in the amount of 0.022 c.f.s (10 g.p.m.), trib. to Coal Creek.

b. Trapper Spring No. 2: SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 3, T. 14 S., R. 86 W., 6<sup>th</sup> P.M., whence the NW corner of said Sec. 3 bears N. 16°30' W. a distance of 2290 ft., in the amount of 0.022 c.f.s (10 g.p.m.), trib. to Coal Creek.

c. Trapper Spring No. 3: NW¼ SW¼ Sec. 3, T. 14 S., R. 86 W., 6<sup>th</sup> P.M., whence the NW corner of said Sec. 3 bears N. 23°0' W. a distance of 2820 ft., in the amount of 0.022 c.f.s. (10 g.p.m.), trib. to Coal Creek.

d. Trapper Spring No. 4: SE¼ NE¼ Sec. 33, T. 13 S., R. 86 W., 6<sup>th</sup> P.M., whence the NE corner of said Sec. 33 bears N. 10°30' a distance of 2270 ft., in the amount of 0.067 c.f.s. (30 g.p.m.), trib. to the Slate Riv.

e. Trapper Spring No. 5: SE¼ NE¼ Sec. 33, T. 13 S., R. 86 W., 6<sup>th</sup> P.M., whence the NE corner of said Sec. 33 bears N. 16°30' E. a distance of 2120 ft., in the amount of 0.44 c.f.s. (200 g.p.m.), trib. to the Slate Riv.

f. Trapper Spring No. 6: NW¼ NE¼ Sec. 4, T. 14 S., R. 86 W., 6<sup>th</sup> P.M., whence the NE corner of said Sec. 4 bears N. 89°0' E. a distance of 2500 ft., in the amount of 0.022 c.f.s. (10 g.p.m.), trib. to Coal Creek.

g. Trapper Spring No. 7: NE¼ NW¼ Sec. 4, T. 14 S., R. 86 W., 6<sup>th</sup> P.M., whence the NE corner of said Sec. 4 bears N. 89°0' E. a distance of 2910 ft., in the amount of 0.067 c.f.s. (30 g.p.m.), trib. to Coal Creek.

h. Trapper Spring No. 8: NE¼ NW¼ Sec. 4, T. 14 S., R. 86 W., 6<sup>th</sup> P.M., whence the NE corner of said Sec. 4 bears N. 89°0' E. a distance of 3050 ft., in the amount of 0.067 c.f.s. (30 g.p.m.), trib. to Coal Creek.

(3) *Source:* Coal Creek (Trappers Spring Nos. 1, 2, 3, 6, 7, and 8) and/or the Slate Riv. (Trappers Springs Nos. 4 and 5), 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 decrees: 97CW133, 04CW050

(2) *Location:* on the E. bank of Trapper Creek, being the trib. of Coal Creek immediately E. of Wildcat Creek, in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec. 4, T. 14 S., R. 86 W. 6<sup>th</sup> 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., absolute for one annual filling of Bench Pond for recreation; 2.0 c.f.s., conditional, for filling the Bench Pond for augmentation.

(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 decrees:	97CW133, 04CW050, 11CW78

(2) *Location:* the center line of the dam axis is in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 3, T. 14 S., R. 86 W., 6<sup>th</sup> P.M., whence the NW corner of said Sec. 3 bears N. 49°0' W. a distance of 4110 ft.

(3) *Amount:* 9.6 acre feet, absolute, for recreation  
4.4 acre feet, conditional, for recreation  
14.0 acre-feet, conditional, for augmentation  
(total adjudicated capacity is 14.0 acre-feet)

(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. The Application contained an outline of activities and expenditures during the most recent diligence period is included in the Application. The Court finds that such activities demonstrate reasonable diligence toward continued development of the foregoing conditional water rights, provided that, after consultation with the Division Engineer, the Applicant has

agreed to withdraw its request to continue the conditional water storage right for the Bench Pond in excess of 9.6 acre-feet (such that the remaining 4.4 acre-feet decreed conditional to this structure would be cancelled, but 9.6 acre-feet would be made fully absolute per section 7, below).

7. The Application also included claims to make the conditional water storage right for the Bench Pond absolute in the amount of 9.6 acre-feet for augmentation purposes pursuant to C.R.S. §37-92-301(4)(e), such that the water rights decreed to this structure would be made absolute in the amount of 9.6 acre-feet for all decreed purposes, and a corresponding claim to make the conditional surface water right for the Bench Ditch fully absolute in the amount of 2.0 c.f.s. such that the water rights for this structure would be fully absolute to fill the Bench Pond for its decreed uses (recreation and augmentation).

#### CONCLUSIONS OF LAW

8. The statements in the application are true. The application was timely and properly filed in accordance with Colo. Rev. Stat. §§ 3792301(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). The subject water rights are part of an integrated water supply system and augmentation plan for the Trapper's Crossing at Crested Butte residential development. Consequently, in subsequent diligence proceedings, work on any one feature of Applicant's system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of Applicant's water supply system.



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 continued development of all conditionally decreed amounts and uses for the Trappers Spring Nos. 1 through 8, inclusive, the Bench Ditch and the Bench Pond (with the exception that Applicant has withdrawn its claim for reasonable diligence as to any amounts decreed to the Bench Pond in excess of 9.6 acre-feet). Therefore, Applicant's conditional water rights for these structures are hereby continued in full force and effect for all decreed amounts and purposes, with the exception of the conditional water storage right for the Bench Pond, the portion of which in excess of 9.6 acre-feet (4.4 acre-feet) is hereby canceled, and provided that all conditional water rights for the Bench Ditch (in amount of 2.0 c.f.s.) and the Bench Pond (in amount of 9.6 acre-feet) are confirmed as fully absolute per the following Section 18 of this Ruling.

18. With regard to Applicant's claims to make absolute, the court hereby determines that, pursuant to C.R.S. § 37-92-301(4)(3), the conditional water storage right for the Bench Pond has been made fully absolute in the amount of 9.6 acre-feet for all decreed purposes (recreation and augmentation). With regard to the Bench Ditch, which fills the Bench Pond, the court finds, determines and confirms that the original decree for this structure in Case No. 89CW219 described the use of this structure as "to provide one annual filling of the Bench Pond as described hereinafter" and that the Bench Pond "will be used for recreation and augmentation." As such, the Bench Ditch, which is already decreed absolute in the amount of 2.0 c.f.s., does not have approved beneficial uses independent of the water storage rights for the Bench Pond. As such, the Bench Ditch may continue to divert water at a rate of up to 2.0 c.f.s. to fill the Bench Pond for all decreed storage purposes (recreation and augmentation).

19. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the conditional water rights of the Colorado Meadows Well, the transferee shall file with the Division 4 Water Court a notice of transfer that shall state:

- A. The title and case number of this Case No. 18CW3013;
- B. The description of the conditional water right transferred;
- C. The name of the transferor;

- D. The name and mailing address of the transferee, and
- E. A copy of the recorded deed.

The owner of the said conditional water rights shall also notify the Clerk of the Division 4 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or change of address in the case file of this Case No. 18CW3013, the case in which the subject conditional water rights were first confirmed.

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 \_\_\_\_\_ 2020.

BY THE REFEREE:

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S. Gregg Stanway  
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 amounts and uses described above for the Trappers Spring Nos. 1-8, **an Application for a Finding of Reasonable Diligence shall be filed in the month of \_\_\_\_\_, 2026**, unless a determination has been made prior to that date that such conditional rights have been made absolute by reason of the completion of these appropriations, or are otherwise disposed of.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2020.

BY THE COURT:

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Hon. J. Steven Patrick  
Water Judge, Water Division No. 4  
State of Colorado

cc: Hamilton