

DISTRICT COURT, WATER DIVISION 4 MONTROSE COUNTY JUSTICE CENTER 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401	DATE FILED: March 13, 2017 2:09 PM CASE NUMBER: 2016CW3066
<b>CONCERNING THE APPLICATION FOR          WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD,</b>  <b>IN FOURTH OF JULY CREEK, A NATURAL          STREAM;</b>  <b>IN THE UPPER GUNNISON WATERSHED,</b>  <b>IN GUNNISON, &amp; HINSDALE COUNTIES,          COLORADO.</b>	<b>^ COURT USE          ONLY ^</b>
	Case No.: 2016CW3066  Div. 4
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE          REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT</b>	

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 October 24, 2016. The Water Court for Water Division 4 referred the Application to the Water Referee for Water Division 4, 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 4, and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, and Ruling of the Referee, and Judgment and Decree 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. (2016), on January 4, 2017. No response to the Summary of Consultation was required. The Referee has given the Summary of Consultation due consideration.
6. Name of water right: Fourth of July Creek Instream Flow Water Right.
7. Legal Description: The Fourth of July Creek Instream Flow Water Right is located in the natural stream channel of Fourth of July Creek from its headwaters to the Carris Thompson Ditch headgate, a distance of approximately 6.0 miles. A map depicting the approximate location of the Fourth of July Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
  - A. Upstream Terminus: Fourth of July Creek headwaters in the vicinity of:
    1. UTM: Northing: 4223472.28; Easting: 307162.58 (NAD 1983 Zone 13 North)
    2. Lat/Long: latitude 38° 8' 18.69"N and longitude 107° 12' 1.47"W

- B. Downstream Terminus: Carris Thompson Ditch headgate at:
1. UTM: Northing: 4225851.27; Easting: 299652.37 (NAD 1983 Zone 13 North)
  2. Lat/Long: latitude 38° 9' 29.93"N and longitude 107° 17' 12.17"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: Fourth of July Creek, tributary to Lake Fork, tributary to Gunnison River, tributary to Colorado 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 1.1 cfs (4/1 - 7/31), and 0.6 cfs (8/1 - 3/31), absolute.
11. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.

### **CONCLUSIONS OF LAW**

12. 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 4 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. 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 required in the Application and is therefore entitled to a decree approving the requested water rights.

### **RULING OF THE REFEREE**

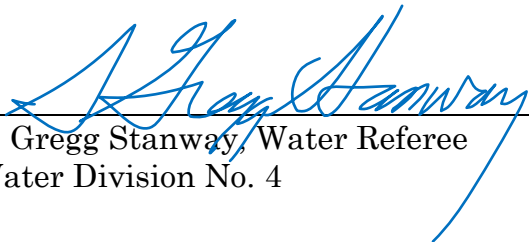
16. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee by this reference.
17. The application is granted, and a decree in the amount of 1.1 cfs (4/1 – 7/31), and 0.6 cfs (8/1 – 3/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of Fourth of July 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 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 and the State Engineer.

Dated this 16<sup>th</sup> day of February, 2017.

BY THE REFEREE:

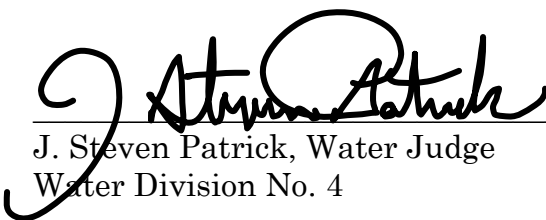
  
\_\_\_\_\_  
S. Gregg Stanway, Water Referee  
Water Division No. 4

**JUDGMENT AND DECREE OF THE WATER COURT**

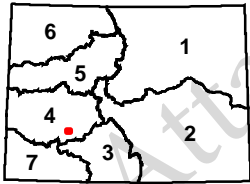
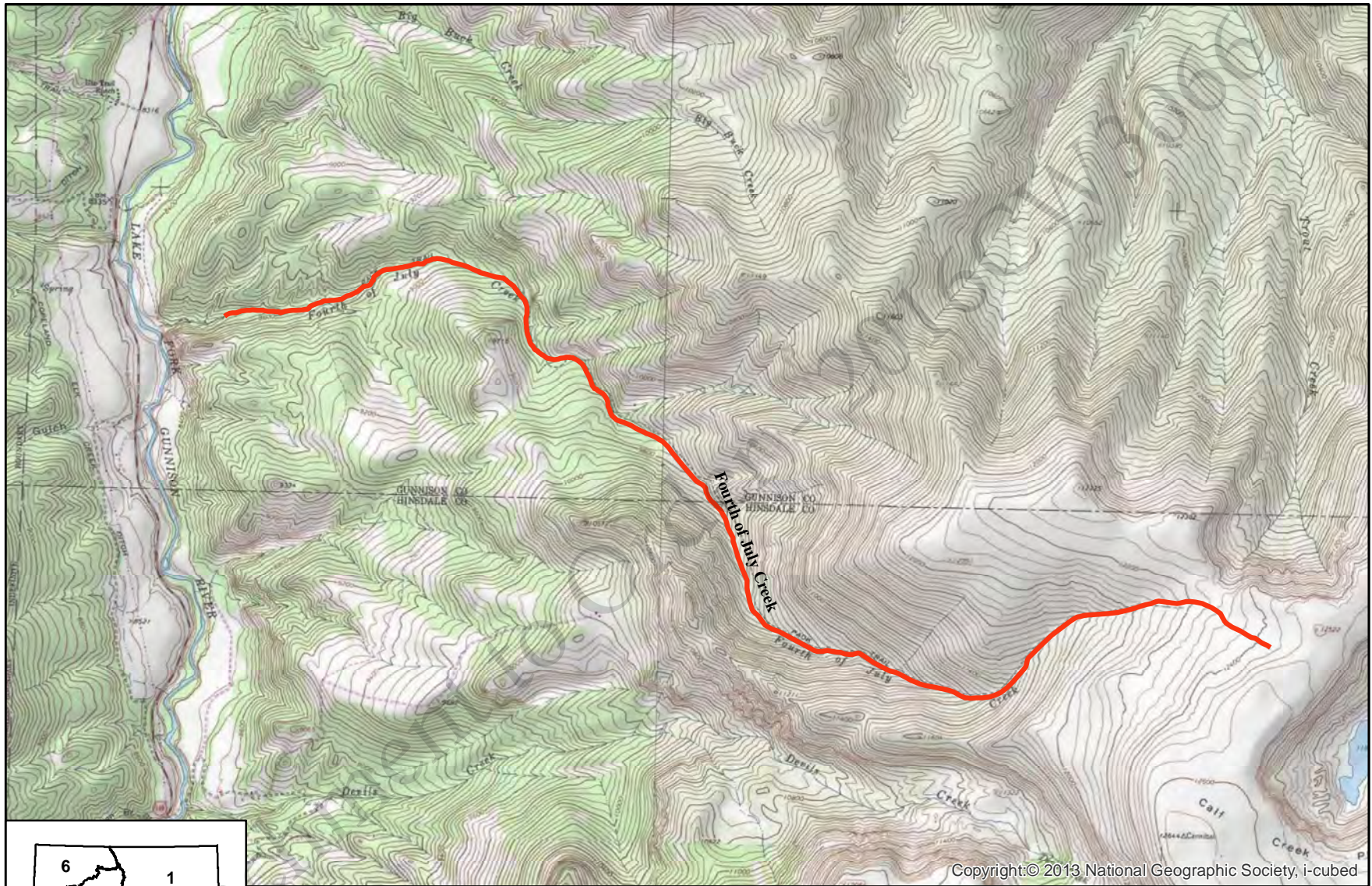
No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

Dated this 13<sup>th</sup> day of March, 2017.

BY THE COURT:

  
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J. Steven Patrick, Water Judge  
Water Division No. 4





**Exhibit 1**  
**Fourth of July Creek - Instream Flow Reach**  
**Water Division 4**

0 0.375 0.75 1.5  
Miles

