

DISTRICT COURT, WATER DIVISION 6 ROUTT COUNTY, COLORADO 1955 SHIELD DRIVE, UNIT 200 STEAMBOAT SPRINGS, COLORADO 80487	DATE FILED: November 5, 2016 CASE NUMBER: 2015CW3052
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD, IN ELKHEAD CREEK, A NATURAL STREAM, IN THE UPPER YAMPA WATERSHED,</b>  <b>IN ROUTT COUNTY, COLORADO.</b>	<b>▲COURT USE ONLY▲</b>
	Case No. 2015CW3052  Division: 6
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF REFEREE, 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 December 29, 2015. The Water Court for Water Division 6 referred the Application to the Water Referee for Water Division 6, in accordance with section 37-92-101, C.R.S. (2015).

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 6, and being fully advised in the premises, does hereby make 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. The name and address of Applicant:  
 Colorado Water Conservation Board  
 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. Opposers: No statements of opposition were filed and the time for filing additional 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. (2015), dated June 1, 2016. The CWCB was not required to respond to the Summary of Consultation and the Referee has given the Summary due consideration.
6. Name of water right: Elkhead Creek Instream Flow Water Right.
7. Legal Description: The Elkhead Creek Instream Flow Water Right is located in the natural stream channel of Elkhead Creek from the lower terminus of ISF case #06CW34 to the confluence with First Creek, a distance of approximately 3.68 miles. This segment of Elkhead Creek can be located on the Bear Ears Peak and Quaker Mountain U.S.G.S. quadrangles. A map of the Elkhead Creek Instream Flow Water Right reach is attached as Exhibit 1.
  - A. Upstream Terminus: Lower Terminus of ISF Case #06CW34
    1. UTM: Northing: 4513311.00 Easting: 319905.48 (NAD 1983 Zone 13 North)
    2. Lat/Long: latitude 40° 45' 3.78"N and longitude 107° 07' 59.93"W
  - B. Downstream Terminus: Confluence First Creek
    1. UTM: Northing: 4511465.47 Easting: 317014.14 (NAD 1983 Zone 13 North)
    2. Lat/Long: latitude 40° 44' 1.67"N and longitude 107° 10' 1.2"W
  - C. The Universal Transverse Mercator (UTM) and geographical descriptions (e.g., confluences) 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: Elkhead Creek, tributary to the Yampa River.
9. A. Date of initiation of appropriation: January 26, 2015.  
B. How appropriation was initiated: Appropriation and beneficial use occurred on January 26, 2015, 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. (2015).  
C. Date applied to beneficial use: January 26, 2015.
10. Amount of water claimed: Instream flow of 7.6 cfs (4/1-6/30), 4.1 cfs (7/1-7/31), and 1.7 cfs (8/1-3/31), absolute.
11. Use of the Water: Instream flow uses 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 6 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. (2015).
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. (2015).
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 7.6 cfs (4/1-6/30), 4.1 cfs (7/1-7/31), and 1.7 cfs (8/1-3/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reach of Elkhead Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for this water right is January 26, 2015.

18. The priority herein confirmed was filed in the water court in the year of 2015 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 15<sup>th</sup> day of July, 2016.

BY THE REFEREE:

/s/ Daniel R. Birch

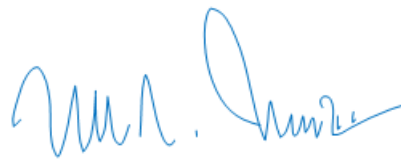
Daniel R. Birch, Water Referee  
Water Division No. 6

### **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 5<sup>th</sup> day of November, 2016.

BY THE COURT:



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Michael A. O'Hara III, Water Judge  
Water Division No. 6, State of Colorado

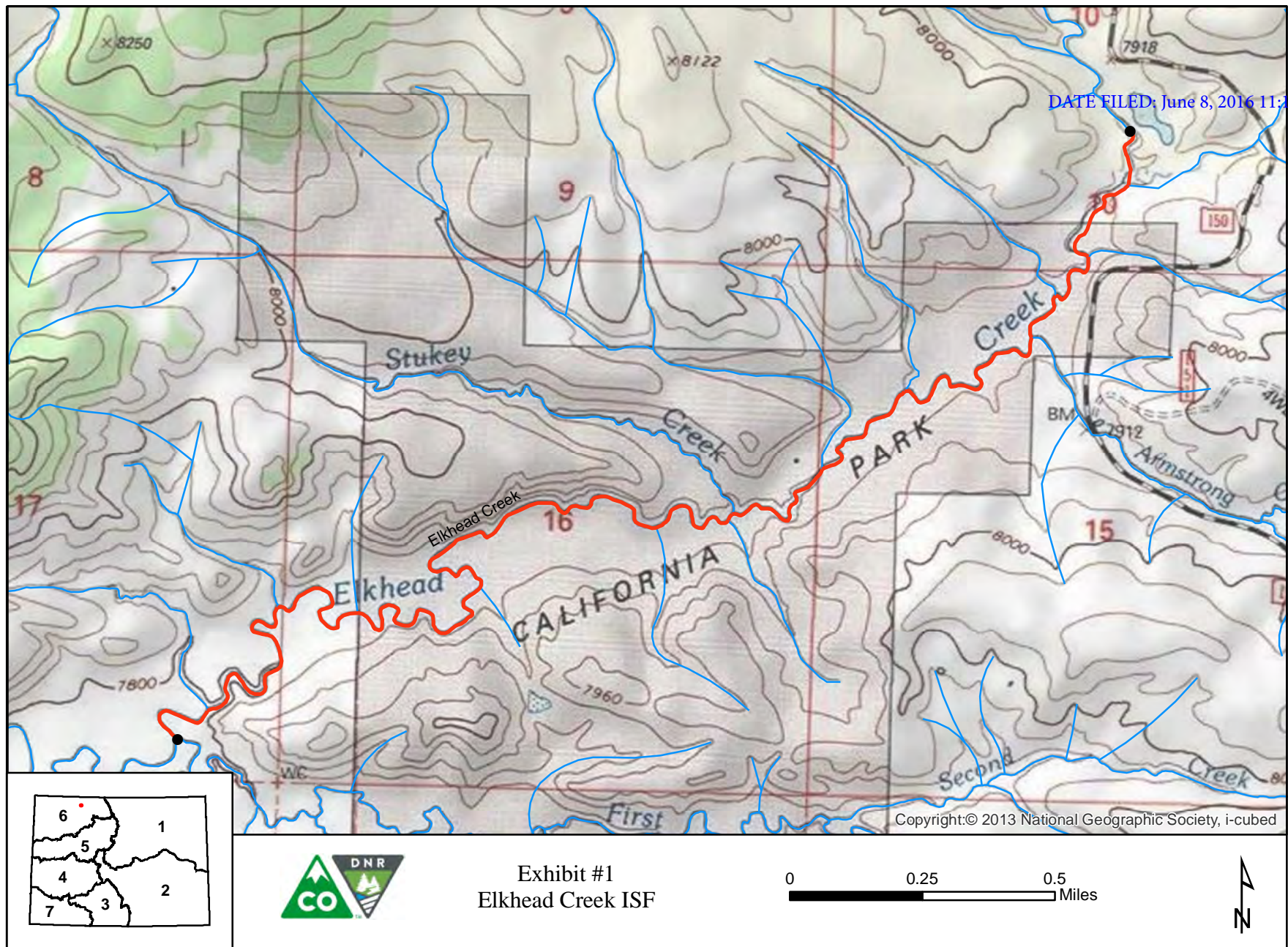


Exhibit #1  
Elkhead Creek ISF