

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. (2017), on February 7, 2018. No response to the Summary of Consultation was required. The Referee has given the Summary of Consultation due consideration.
6. Name of water right: Brush Creek Instream Flow Water Right.
7. Legal Description: The Brush Creek Instream Flow Water Right is located in the natural stream channel of Brush Creek from the confluence of Middle and East Brush Creeks to the confluence with West Brush Creek a distance of approximately 2.32 miles. A map depicting the approximate location of the Brush Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
 - A. Upstream Terminus: Confluence of Middle and East Brush Creeks:
 1. UTM: Northing: 4308647.90; Easting: 339317.46 (NAD 1983 Zone 13 North)
 2. Lat/Long: latitude 38° 54' 43.00"N and longitude 106° 51' 12.00"W
 - B. Downstream Terminus: Confluence with West Brush Creek:
 1. UTM: Northing: 4307385.91 Easting: 336872.42 (NAD 1983 Zone 13 North)

2. Lat/Long: latitude 38° 54' 1.00"N and longitude 106° 52' 52.00"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: Brush Creek, tributary to East River, tributary to Gunnison River, tributary to Colorado River..
9. A. Date of initiation of appropriation: January 24, 2017.
- B. How appropriation was initiated: Appropriation and beneficial use occurred on January 24, 2017, 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. (2017).
- C. Date applied to beneficial use: January 24, 2017.
10. Amount of water claimed: Instream flow of 1.7 cfs (01/01 - 04/14), 1 cfs (04/15 - 04/30), 8 cfs (05/01 - 08/31), 5 cfs (09/01 - 09/30), 8 cfs (10/01 - 10/15), and 2.7 cfs (10/16 - 12/31), 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. (2017).

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. (2017).
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 1.7 cfs (01/01 - 04/14), 1 cfs (04/15 - 04/30), 8 cfs (05/01 - 08/31), 5 cfs (09/01 - 09/30), 8 cfs (10/01 - 10/15), and 2.7 cfs (10/16 - 12/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Brush Creek from the confluence of Middle and East Brush Creeks to the confluence with West Brush Creek described in paragraph 7 above. The appropriation date for this water right is January 24, 2017.

The CWCB has an existing instream flow water right on Brush Creek from the confluence of Middle and East Brush Creeks to the confluence with West Brush Creek, in the amount of 5.0 cfs (10/1-4/30) and 8.0 cfs (5/1-9/30), decreed in Case No. 83CW0236 with an appropriation date of June 3, 1982. The flow rates sought herein are in addition to the amount of the existing instream flow water right.

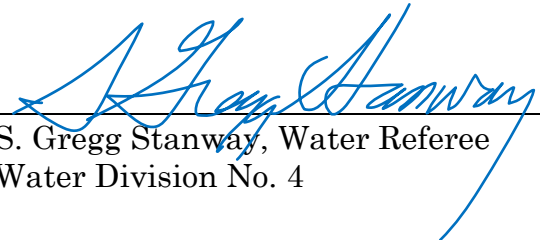
18. The priority herein confirmed was filed in the water court in the year of 2017 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical date of appropriation and not affected by the date of entry 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 8th day of March, 2018.

BY THE REFEREE:



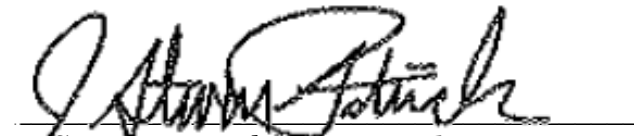
S. Gregg Stanway, Water Referee
Water Division No. 4

JUDGMENT AND DECREE OF THE WATER COURT

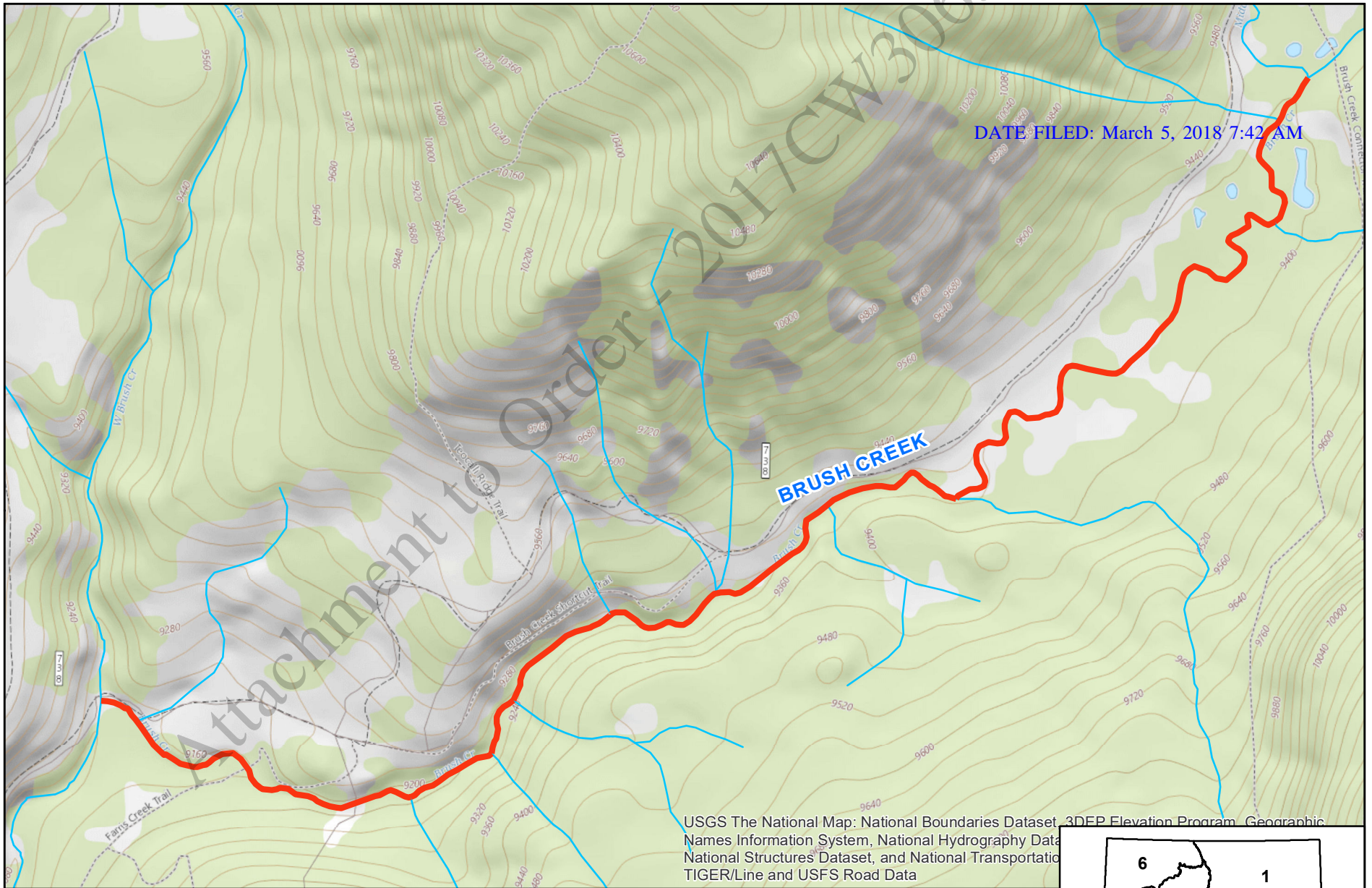
No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

BY THE COURT:

DATED April 2, 2018



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



USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Data, National Structures Dataset, and National Transportation TIGER/Line and USFS Road Data



Exhibit 1
Brush Creek - Instream Flow Reach
Water Division 4

0 0.1 0.2 0.4 Miles

