

DISTRICT COURT, WATER DIVISION 2 PUEBLO JUDICIAL BUILDING 501 NORTH ELIZABETH STREET, SUITE 116 PUEBLO, CO 81003	DATE FILED: December 19, 2018 4:41 PM CASE NUMBER: 2017CW3065
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN APISHAPA RIVER, A NATURAL STREAM; IN THE APISHAPA WATERSHED, IN LAS ANIMAS COUNTY, COLORADO	^ COURT USE ONLY ^
	Case No.: 2017CW3065 Div. 2
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT	

This matter comes before the Water Referee by application of the Colorado Water Conservation Board ("CWCB") for water rights to preserve the natural environment to a reasonable degree. The application was filed on December 5, 2017. The Water Court for Water Division 2 referred the application to the Water Referee for Water Division 2, in accordance with section 37-92-203(7), C.R.S. (2017).

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 2, 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. Name & Address of Applicant:
 Colorado Water Conservation Board
 1313 Sherman Street, Suite 718
 Denver, CO 80203

2. 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.

3. Statements of Opposition: A Statement of Opposition was filed by *pro se* opposers Gonzales Ditch Co. and Lucero Ditch Co. on February 20, 2018. No other Statements of Opposition were filed. The time for filing Statements of Opposition has expired. The Opposers participated in the initial Status Conference in this case but did not participate in any other Status Conferences held in this case. Additionally, Opposers did not provide comments regarding the proposed decree as ordered in the Case Management Plan or the October 9, 2018 Minute Order. The Opposers' Statement of Opposition is dismissed for lack of participation.

4. Summary of Consultation: The Division Engineer for Water Division 2 filed a Summary of Consultation pursuant to section 37-92-302(4), C.R.S. (2017), on April 16, 2018. The CWCB filed a response to the Summary of Consultation on May 17, 2018. The Referee has given the Summary of Consultation due consideration.

5. Name of water right: Apishapa River Instream Flow Water Right. (WDID 1803001)

6. Legal Description: The Apishapa River Instream Flow Water Right is located in the natural stream channel of the Apishapa River from its headwaters to the confluence with Herlick Canyon, a distance of approximately 4.52 miles. A map depicting the approximate location of the Apishapa River Instream Flow Water Right reach is attached as **Exhibit 1**.

A. Upstream Terminus: Apishapa River Headwaters in the vicinity of:

1. UTM: Northing: 4134067.69; Easting: 498440.80 (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 37° 21' 11.92"N and longitude 105° 1' 3.38"W

B. Downstream Terminus: Confluence with Herlick Canyon:

1. UTM: Northing: 4131036.76 Easting: 504368.80 (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 37° 19' 33.54"N and longitude 104° 57' 2.48"W

C. The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the legal description for the decree

*Findings of Fact, Conclusions of Law, Ruling of the Referee,
and Judgment and Decree of the Water Court*

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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).

7. Source: Apishapa River, tributary to the Arkansas River.
 - 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.
8. Amount of water claimed: Instream flow of 0.5 cfs (09/01 – 04/30), 2.9 cfs (05/01 – 06/30), and 1.1 cfs (07/01 – 08/31), absolute.
9. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.

CONCLUSIONS OF LAW

10. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
11. Notice and Jurisdiction: The Water Court for Division 2 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).
12. The CWCB has fulfilled all legal requirements for a decree for water rights including sections 37-92-102, 302, 304 and 305, C.R.S. (2017).
13. Burden of Proof: The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water rights requested in the application and is therefore entitled to a decree approving the requested water rights.

RULING OF THE REFEREE

14. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of Referee by this reference.

15. The application is granted and a decree in the amount of: Instream flow of 0.5 cfs (09/01 – 04/30), 2.9 cfs (05/01 – 06/30), and 1.1 cfs (07/01 – 08/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of the Apishapa River from its headwaters to the confluence with Herlick Canyon, as described above. The appropriation date for this water right is January 24, 2017.

16. 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.

17. The CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer for Water Division 2 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 26th day of November, 2018.

BY THE REFEREE:

Mardell R. DiDomenico



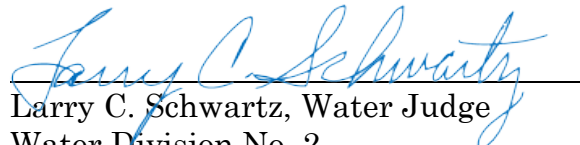
Mardell R. DiDomenico, Water Referee
Water Division No. 2

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: December 19, 2018

BY THE COURT:


Larry C. Schwartz, Water Judge
Water Division No. 2

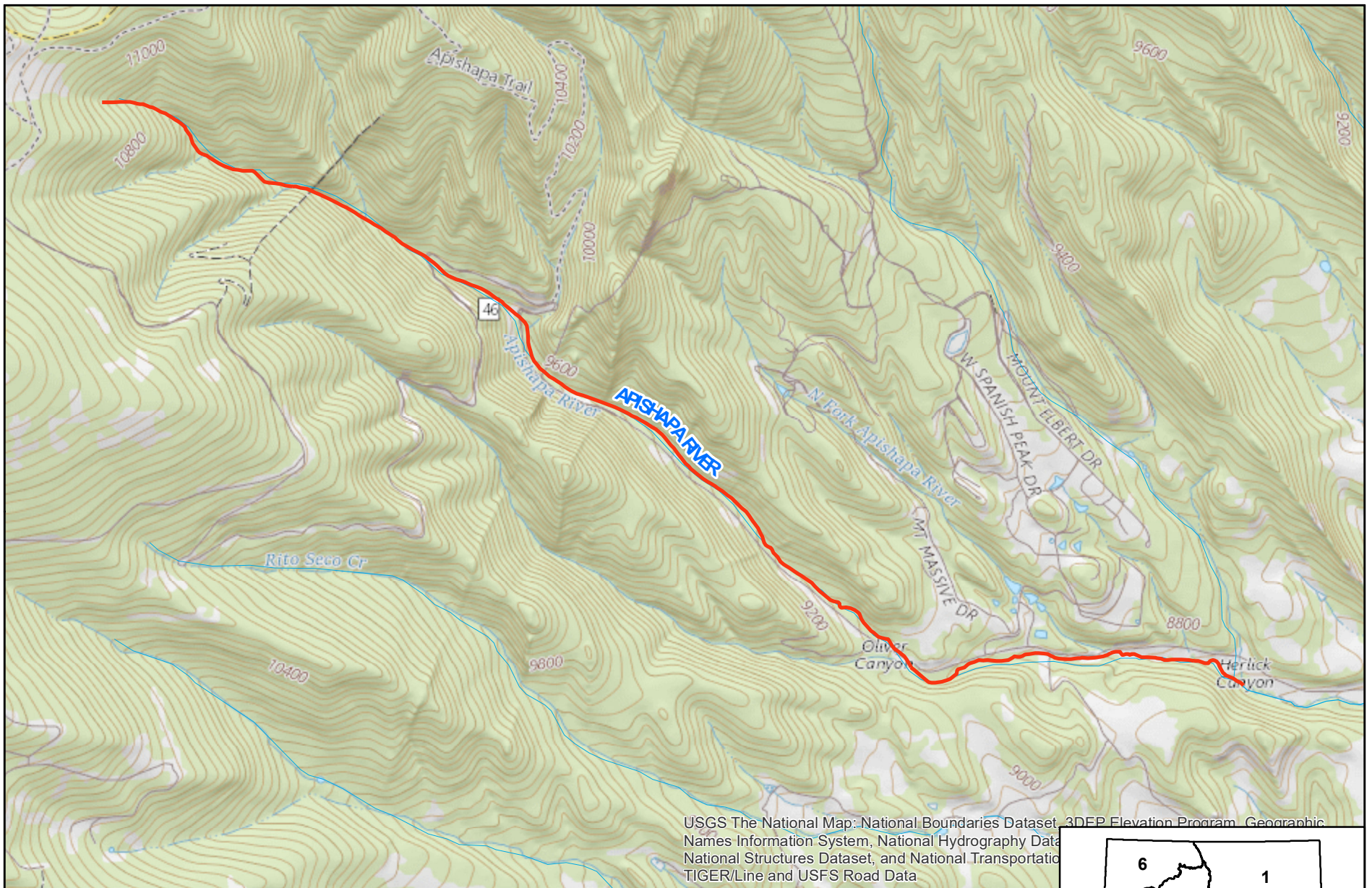


Exhibit 1
Apishapa River - Instream Flow Reach
Water Division 2

0 0.25 0.5 1 Miles

