

DISTRICT COURT, WATER DIVISION 6 ROUTT COUNTY JUSTICE CENTER 1955 SHIELD DRIVE, UNIT 200 STEAMBOAT SPRINGS, CO 80487	DATE FILED: June 29, 2018 CASE NUMBER: 2017CW3031
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD,</b>  <b>IN ELKHEAD CREEK, A NATURAL STREAM;</b>  <b>IN THE UPPER YAMPA WATERSHED,</b>  <b>IN ROUTT COUNTY, COLORADO.</b>	<b>▲ COURT USE ONLY ▲</b>
	Case No.: 2017CW3031  Div. 6
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT</b>	

THIS MATTER comes before the Water Judge 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 October 23, 2017. On October 24, 2017, the Water Court for Water Division 6 referred the Application to the Water Referee for Water Division 6, in accordance with section 37-92-203(7), C.R.S. (2017). The Water Referee re-referred the Application to the Water Judge on February 9, 2018.

The Water Judge, having made such investigations as are necessary to determine whether or not the statements in the Application are true and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, Judgment and Decree of the Water Court 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 ("CWCB")  
 1313 Sherman Street, Suite 718

Denver, CO 80203  
(303) 866-3441

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: The City of Craig, Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise, and Tri State Generation and Transmission Association, Inc., filed statements of opposition in this case.
5. Stipulations: CWCB and the City of Craig entered into a stipulation dated May 29, 2018. CWCB and the Colorado River Water Conservation District, acting by and through its Colorado River Water Projects Enterprise, entered into a stipulation dated May 29, 2018. CWCB and Tri State Generation and Transmission Association, Inc., entered into a stipulation dated May 29, 2018.
6. Summary of Consultation: The Division Engineer filed a Report of the Division Engineer under section 37-92-302(4), C.R.S. (2017) dated February 19, 2018. No Response to the Summary of Consultation was required. The Water Judge has given the Summary of Consultation due consideration.
7. Name of water right: Elkhead Creek Instream Flow Water Rights.
8. **Legal Description**: Both Elkhead Creek ("ISF") water rights are located in the natural stream channel of Elkhead Creek. Each segment is described individually below.
  - A. **Elkhead Creek (Upper) ISF Water Right** is located in the natural stream channel of Elkhead Creek from the confluence with First Creek to the confluence with North Fork Elkhead Creek, a distance of approximately 10.94 miles. A map depicting the approximate location of the Elkhead Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
    1. Upstream Terminus: Confluence First Creek:

- a. UTM: Northing: 4511465.47; Easting: 317014.14 (NAD 1983 Zone 13 North)
    - b. Lat/Long: latitude 40° 44' 2.00"N and longitude 107° 10' 1.00"W
  2. Downstream Terminus: Confluence North Fork Elkhead Creek:
    - a. UTM: Northing: 4504451.45 Easting: 306665.08 (NAD 1983 Zone 13 North)
    - b. Lat/Long: latitude 40° 40' 6.00"N and longitude 107° 17' 14.00"W
- B. **Elkhead Creek (Lower) ISF Water Right** is located in the natural stream channel of Elkhead Creek from the confluence with North Fork Elkhead Creek to the location of USGS Gage # 09246200, a distance of approximately 15.83 miles. A map depicting the approximate location of the Elkhead Creek Instream Flow Water Right reach is attached as **Exhibit 2**.
1. Upstream Terminus: Confluence NF Elkhead Creek:
    - a. UTM: Northing: 4504451.45; Easting: 306665.08 (NAD 1983 Zone 13 North)
    - b. Lat/Long: latitude 40° 40' 6.00"N and longitude 107° 17' 14.00"W
  2. Downstream Terminus: USGS Gage # 09246200:
    - a. UTM: Northing: 4496025.75 Easting: 303600.63 (NAD 1983 Zone 13 North)
    - b. Lat/Long: latitude 40° 35' 30.23"N and longitude 107° 19' 15.25"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).

9. Source: The source of both water rights is Elkhead Creek, tributary to Yampa River, tributary to Green River.
10. A. Date of initiation of appropriation: January 24, 2017.  
B. How appropriation was initiated: Appropriation and beneficial use of both Elkhead Creek (Upper) and Elkhead Creek (Lower) ISF water rights occurred on January 24, 2017, by the action of the CWCB under 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.
11. Amount of water claimed:
  - a. Elkhead Creek (Upper) ISF: Instream flow of 4.4 cfs (10/16 - 03/31), 14 cfs (04/01 - 07/15), 7 cfs (07/16 - 07/31), and 3 cfs (08/01 - 10/15), absolute.
  - b. Elkhead Creek (Lower) ISF: Instream flow of 6.4 cfs (10/01 - 02/29), 10 cfs (03/01 - 03/15), 24 cfs (03/16 - 06/30), 10 cfs (07/01 - 07/15), and 2.5 cfs (07/16 - 09/30), absolute.
12. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.

### **TERMS AND CONDITIONS**

13. The CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of these water rights.
14. The CWCB has determined that the natural environment will be preserved to a reasonable degree by ensuring that the lower terminus of the Lower Elkhead Creek ISF is located at the location of the Long Gulch gage existing as of the May 3, 2017. This location is above the ordinary high water mark of the existing Elkhead Creek Reservoir as well as the ordinary high water

mark of a contemplated expansion of Elkhead Creek Reservoir, and will therefore not impair the ability of the River District, Craig, and/or Tri-State to expand the Elkhead Creek Reservoir or to use it for flood control purposes.

15. Under the CWCB's Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, Rule 7., the CWCB "may file a Statement of Opposition to inundations if it determines that the ISF right or the natural environment will be adversely affected by the inundation. (Emphasis added). The CWCB has determined, and this Court finds, that the proposed Lower Elkhead Creek ISF water right will not be injured and that the natural environment will be preserved to a reasonable degree notwithstanding any potential inundation that may occur due to flood-surge from Elkhead Creek Reservoir or flood-surge from a contemplated expansion. Such potential inundation does not constitute injury because the natural environment will only be inundated temporarily during the flood event.
16. The CWCB is hereby exercising its discretion under section 37-92-102(4)(a), C.R.S. (2017) to "adopt conditions attached to an appropriation" and to "enter into stipulations for decrees or other forms of contractual agreements, including enforcement agreements, that it determines will preserve the natural environment to a reasonable degree."
17. Pursuant to C.R.S. § 37-92-102(3)(b), this ISF appropriation shall be subject to the present uses or exchanges of water being made by other water users, pursuant to appropriation or practices in existence on the date of this appropriation, whether or not previously confirmed by court order or decree.

### **CONCLUSIONS OF LAW**

18. Incorporation: The foregoing Findings of Fact are incorporated herein to the extent they constitute Conclusions of Law.
19. Notice and Jurisdiction: The Water Court for Water Division 6 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).


20. Legal Requirements: 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).
21. 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.

### **JUDGMENT AND DECREE OF THE WATER COURT**

22. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Judgement and Decree of the Water Court by this reference.
23. The Application is granted, and a decree in the amounts of 4.4 cfs (10/16 - 03/31), absolute, 14 cfs (04/01 - 07/15), absolute, 7 cfs (07/16 - 07/31), absolute, and 3 cfs (08/01 - 10/15), absolute, for the reach of the Elkhead Creek (Upper) ISF described in paragraph 8(A)(1)-(2) above is hereby entered to preserve the natural environmental to a reasonable degree. The appropriation date for this water right is June 24, 2017.
24. The Application is granted, and a decree in the amounts of 6.4 cfs (10/01 - 02/29), absolute, 10 cfs (03/01 - 03/15), absolute, 24 cfs (03/16 - 06/30), absolute, 10 cfs (07/01 - 07/15), absolute, and 2.5 cfs (07/16 - 09/30), absolute, for the reach of the Elkhead Creek (Lower) ISF described in paragraph 8(B)(1)-(2) above is hereby entered to preserve the natural environmental to a reasonable degree. The appropriation date for this water right is June 24, 2017.
25. 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 the historical date of appropriation and shall not be affected by the date of entry of this decree.
26. A copy of this Findings of Facts, Conclusions of Law, Judgment and Decree of the Water Court shall be filed with the Division Engineer for Water Division 6 and the State Engineer.

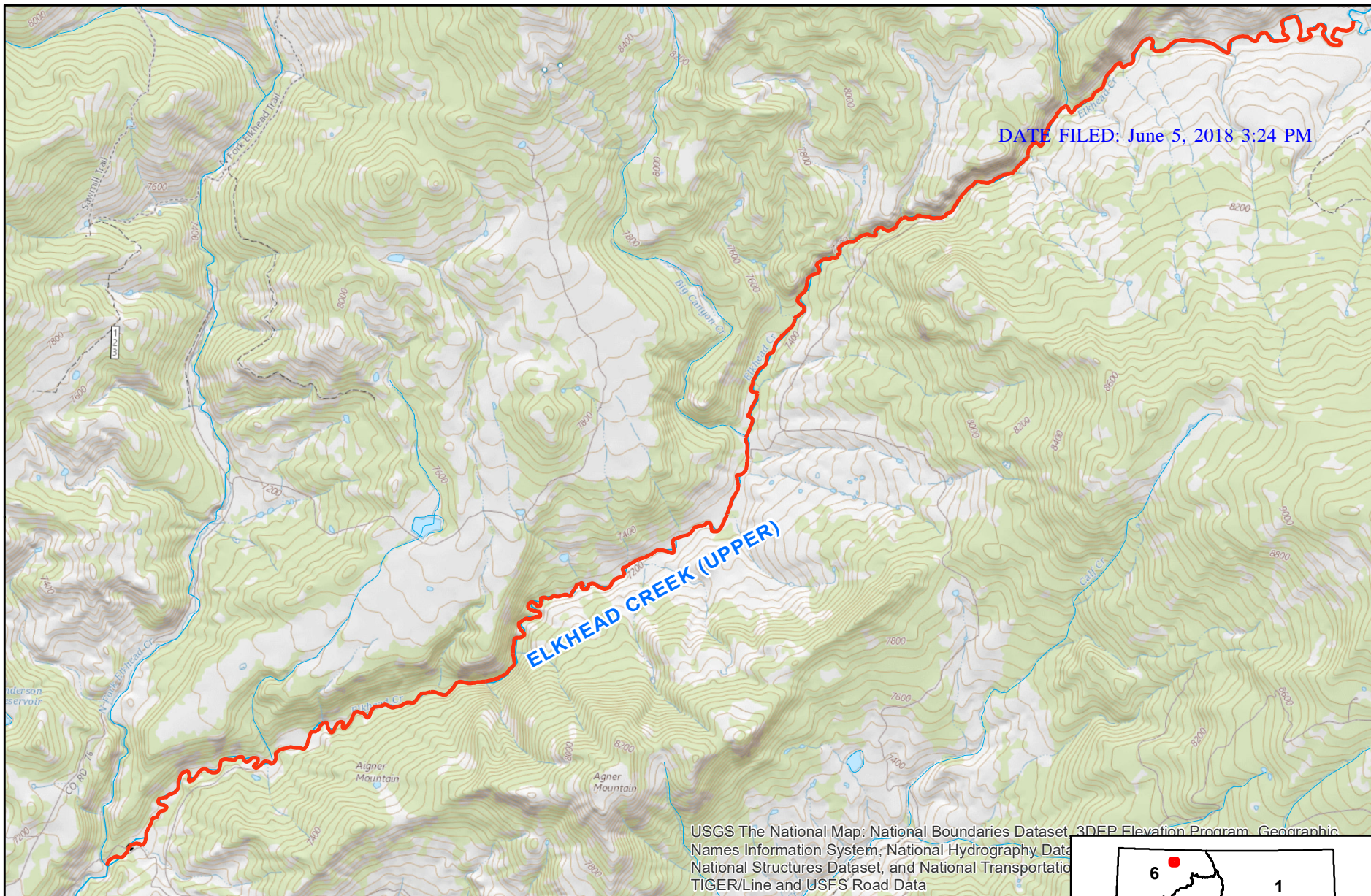
DATED this 29<sup>th</sup> day of June, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to read "M. A. O'Hara, III", written over a horizontal line.

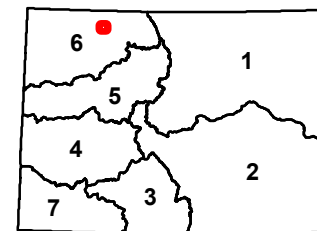
Michael A. O'Hara, III, Water Judge  
Water Division 6, State of Colorado



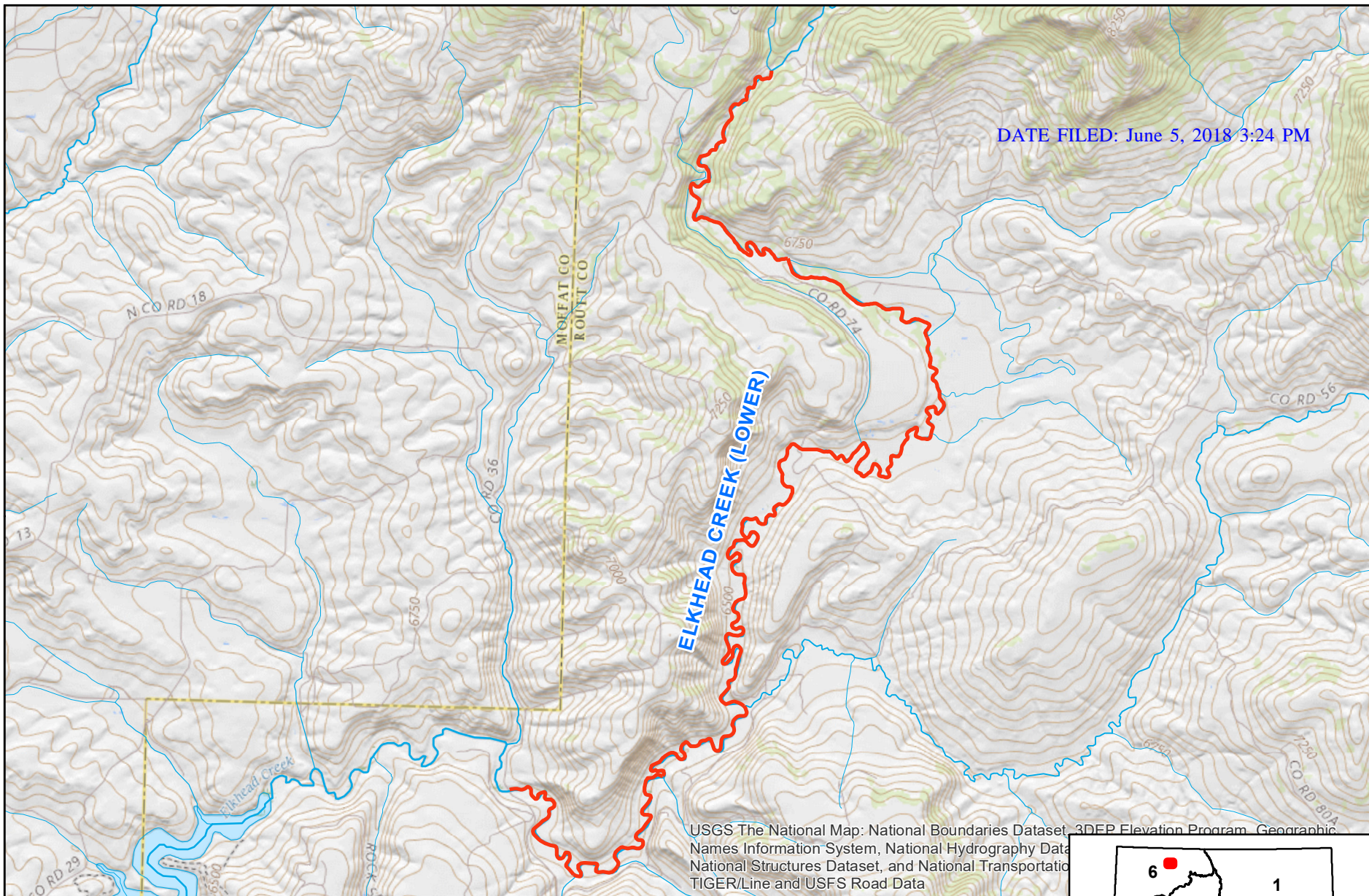


**Exhibit 1**  
**Elkhead Creek (Upper) - Instream Flow Reach**  
**Water Division 6**

0 0.375 0.75 1.5 Miles







**Exhibit 2**  
**Elkhead Creek (Lower) - Instream Flow Reach**  
**Water Division 6**

0 0.5 1 2 Miles

