

DISTRICT COURT, WATER DIVISION 1 WELD COUNTY COURTHOUSE 901 9TH AVENUE P.O. BOX 2038 GREELEY, CO 80632	DATE FILED: June 29, 2018 8:10 AM CASE NUMBER: 2017CW3180
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD,</b>  <b>IN ROCK CREEK, A NATURAL STREAM;</b>  <b>IN THE SOUTH PLATTE HEADWATERS WATERSHED,</b>  <b>IN PARK COUNTY, COLORADO.</b>	<div data-bbox="1110 787 1352 861" data-label="Text"> <p><b>^ COURT USE ONLY ^</b></p> </div> <div data-bbox="1045 871 1406 907" data-label="Text"> <p>Case No.: 2017CW3180</p> </div>
<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 November 28, 2017. The Water Court for Water Division 1 referred the Application to the Water Referee for Water Division 1 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 1, 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 and Address of Applicant:  
 Colorado Water Conservation Board ("CWCB")  
 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 the City of Aurora, acting by and through its Utility Enterprise ("Aurora"), on January 30, 2018. No other statements of opposition were filed. The time for filing statements of opposition has expired.

4. Stipulations: Applicant and Aurora entered into a stipulation dated May 9, 2018.

5. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to section 37-92-302(4), C.R.S. (2017), on March 6, 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: Rock Creek Instream Flow Water Right.

7. Legal Description: The Rock Creek Instream Flow Water Right is located in the natural stream channel of Rock Creek from its headwaters to a natural falls on Rock Creek just upstream of the United States Forest Service property boundary, a distance of approximately 4.66 miles. A map depicting the approximate location of the Rock Creek Instream Flow Water Right reach is attached as **Exhibit 1**.

A. Upstream Terminus: Rock Creek headwaters in the vicinity of:

1. UTM: Northing: 4363476.91; Easting: 442888.09 (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 39° 25' 8.13"N and longitude 105° 39' 48.53"W

B. Downstream Terminus: Natural falls on Rock Creek just upstream of the United States Forest Service property boundary:

1. UTM: Northing: 4357224.26; Easting: 441520.48 (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 39° 21' 44.99"N and longitude 105° 40' 43.76"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: Rock Creek, tributary to Tarryall Creek, tributary to the South Platte 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 0.9 cfs (09/01 - 04/30), and 3.8 cfs (05/01 - 08/31), 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 1 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. 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).

15. Burden of Proof: The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water right requested in the application and is therefore entitled to a decree approving the requested water right.

### **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 0.9 cfs (09/01 - 04/30), and 3.8 cfs (05/01 - 08/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Rock Creek from its headwaters to a natural falls on Rock Creek just upstream of the United States Forest Service property boundary, described in paragraph 7 above. The appropriation date for this water right is January 24, 2017.

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 the 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.

Date: June 5, 2018

BY THE REFEREE:

A handwritten signature in black ink that reads "John S. Cowan". The signature is fluid and cursive, with the first name "John" being the most prominent.

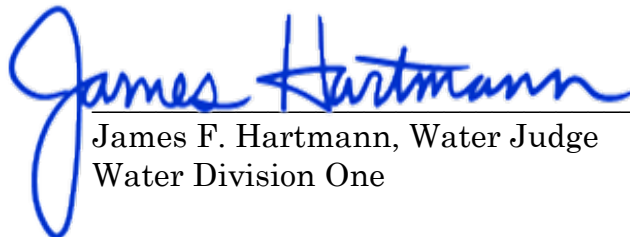
John Cowan, Water Referee  
Water Division One

**JUDGMENT AND DECREE OF THE WATER COURT**

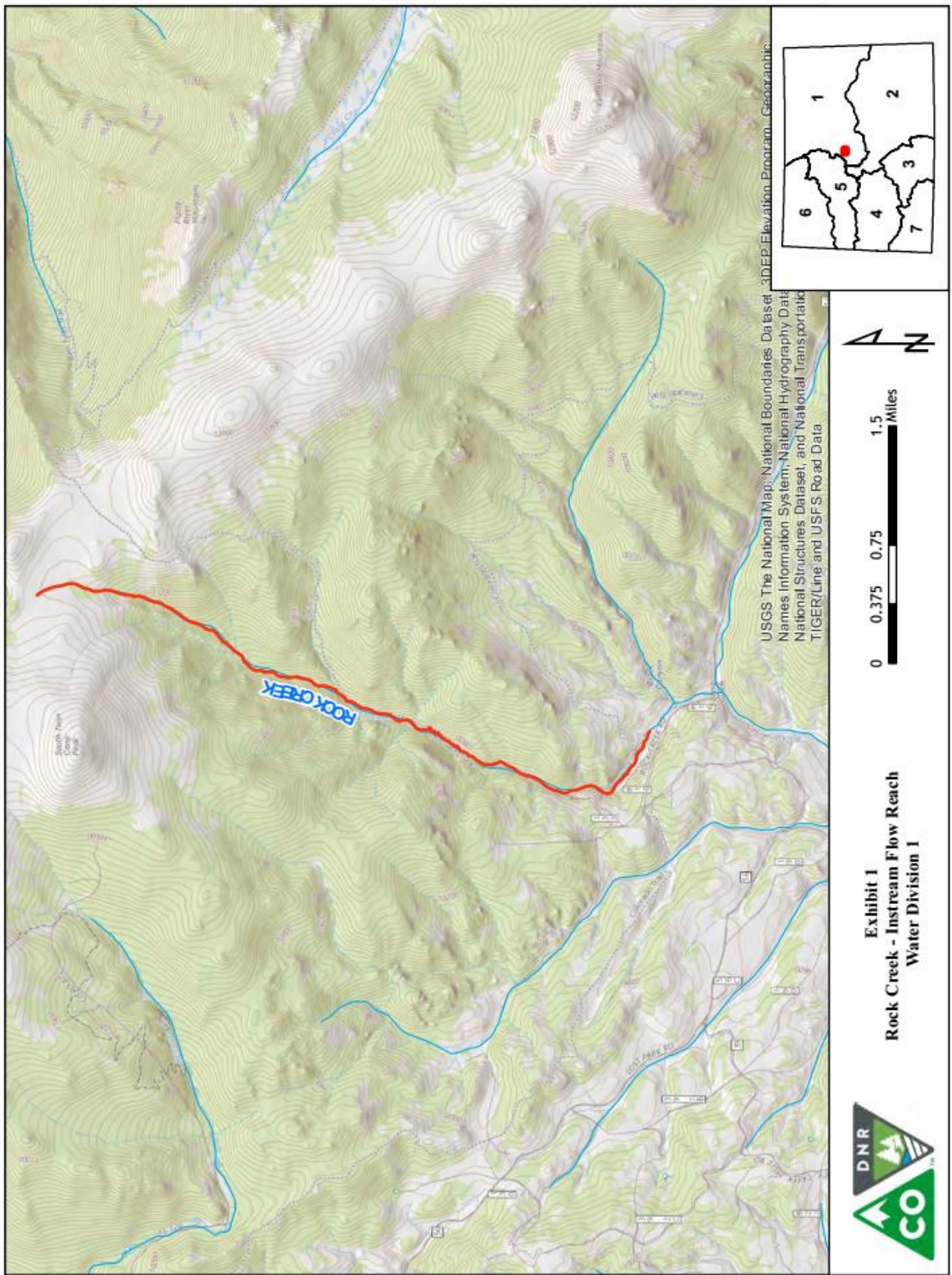
No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

Date: June 29, 2018

BY THE COURT:

A handwritten signature in blue ink that reads "James F. Hartmann". The signature is written in a cursive style and is positioned above a horizontal line.

James F. Hartmann, Water Judge  
Water Division One



CWCB  
 17CW3180

EXHIBIT 1