

DISTRICT COURT, WATER DIVISION 6 STATE OF COLORADO 1955 Shield Dr., Unit 200 Steamboat Springs, Colorado 80487	DATE FILED: October 7, 2017 CASE NUMBER: 2016CW3040 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN YELLOW CREEK, A NATURAL STREAM; IN THE WHITE RIVER WATERSHED, IN RIO BLANCO COUNTY, COLORADO.	
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 November 28, 2016. 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. (2016).

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 name and address of Applicant:
Colorado Water Conservation Board
1313 Sherman Street, Suite 718
Denver, CO 80203
(303) 866-3441
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: TerraCarta Energy Resources, LLC, ("TCER") filed a statement of opposition in this matter. The time for filing additional statements of opposition has expired.
4. Stipulations: In resolution of the opposition of TCER, CWCB and TCER entered into a stipulation dated August 8, 2017, the terms of which are incorporated herein by this reference.
5. Summary of Consultation: The Division Engineer filed a Report of the Division Engineer pursuant to section 37-92-302(4), C.R.S. (2016) dated April 3, 2017. Applicant responded to the Report of the Division Engineer on April 5, 2017. The Referee has given the Report and Applicant's response due consideration.
6. Name of Water Rights: Yellow Creek (Upper) Instream Flow Water Right, Yellow Creek (Lower) Instream Flow Water Right.
7. Legal Description: Both Yellow Creek ISF water rights are located in the natural stream channel of Yellow Creek. Each segment is described individually below.
 - A. Yellow Creek (Upper) ISF Water Right is located in the natural stream channel of Yellow Creek from the confluence with Barcus Creek to the confluence with Lambert Springs, a distance of approximately 3.66 miles. A map depicting the approximate location of the Yellow Creek (Upper) ISF Water Right reach is attached as **Exhibit 1**.

1. Upstream Terminus: Confluence with Barcus Creek at:
 - a. UTM: Northing: 4446251.97; Easting: 213556.69 (NAD 1983 Zone 13 North)
 - b. Lat/Long: latitude 40° 07' 4.17"N and longitude 108° 21' 40.23"W
 2. Downstream Terminus: Confluence with Lambert Springs at:
 - a. UTM: Northing: 4449129.57; Easting: 211572.39 (NAD 1983 Zone 13 North)
 - b. Lat/Long: latitude 40° 08' 34.90"N and longitude 108° 23' 8.54"W
- B. Yellow Creek (Lower) ISF Water Right is located in the natural stream channel of Yellow Creek from the confluence with Lambert Springs to the confluence with the White River, a distance of approximately 3.45 miles. A map depicting the approximate location of the Yellow Creek (Lower) ISF Water Right reach is attached as **Exhibit 2**.
1. Upstream Terminus: Confluence with Lambert Springs at:
 - a. UTM: Northing: 4449129.57; Easting: 211572.39 (NAD 1983 Zone 13 North)
 - b. Lat/Long: latitude 40° 08' 34.90"N and longitude 108° 23' 8.54"W
 2. Downstream Terminus: Confluence with the White River at:
 - a. UTM: Northing: 4452477.49; Easting: 210214.46 (NAD 1983 Zone 13 North)
 - b. Lat/Long: latitude 40° 10' 21.61"N and longitude 108° 24' 11.25"W

- B. 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: The source of both water rights is Yellow Creek, tributary to the White River.
9. A. Date of initiation of appropriation: January 26, 2016.
- B. How appropriation was initiated: Appropriation and beneficial use of both Yellow Creek (Upper) and Yellow Creek (Lower) ISF Water Rights occurred on January 26, 2016, 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. (2016).
- C. Date applied to beneficial use: January 26, 2016 for both ISF water rights.
10. Amount of water claimed:
- A. Yellow Creek (Upper) ISF: Instream flow of 0.82 cfs (3/1 - 6/15), and 0.4 cfs (6/16 - 2/29), absolute.
- B. Yellow Creek (Lower) ISF: Instream flow of 1.8 cfs (3/1 - 6/15), and 1.2 cfs (6/16 - 2/29), absolute.
11. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.

CONCLUSIONS OF LAW

12. Incorporation: The foregoing Findings of Fact are incorporated herein to the extent they constitute Conclusions of Law.

13. 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. (2016).
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. (2016).
15. 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

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 amounts of 0.82 cfs (3/1 - 6/15) and 0.4 cfs (6/16 - 2/29), absolute, for the Yellow Creek (Upper) ISF, and 1.8 cfs (3/1 - 6/15) and 1.2 cfs (6/16 - 2/29), absolute, for the Yellow Creek (Lower) ISF is hereby entered to preserve the natural environment to a reasonable degree in the reaches of Yellow Creek between the upstream and downstream termini described in paragraph 7 above. The appropriation date for these water rights is January 26, 2016.
18. The priority herein confirmed was filed in the water court in the year of 2016 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.
19. These water rights are subject to the following terms and conditions:

- A. The CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of these rights.
- B. Any call placed by the CWCB for either of the water rights confirmed in this case will be based on a stream gage or other measurements approved by the Division Engineer that can be used to determine that the flow of the stream within the respective reaches of the Yellow Creek (Upper) Instream Flow Water Right or the Yellow Creek (Lower) Instream Flow Water Right has fallen below the instream flow rates confirmed in this case.
- C. The claimed instream flow segments of Yellow Creek are primarily spring fed. Above these segments, the creek contains intermittent dry sections. Due to the intermittent hydrologic connectivity of surface flows, surface diversions upstream of the designated instream flow segments on Yellow Creek rarely have a direct relationship to the flow rate within the instream flow segments. Consequently, the Division Engineer shall enforce any future call by the CWCB against junior surface rights upstream of the instream flow segments only if the Division Engineer or his or her staff has, through field verification, first determined that such a priority call on upstream surface water rights would make water available to the CWCB's instream flow reaches. Moreover, such call shall only be enforced during the period that the stream flows are sufficient to ensure that any curtailment order would make water available to the instream flow water rights. The hydrologic characterization of the creek set forth above shall govern the administration of the claimed Yellow Creek instream flows by the State and Division Engineer, and any change of water rights or plan for augmentation involving diversions upstream of the claimed instream flows.
- D. Pursuant to an Agreement between Mountain Water LLC, a Delaware limited liability company authorized to transact business in Colorado, and the Colorado Water Conservation Board, an agency of the State of Colorado ("CWCB"), dated March 31, 2016, the CWCB agreed (1) to waive any claim for delivery to Yellow Creek of any water required to replace depletions associated with well pumping pursuant to the provisions of the decree entered by the District Court in and for Water

Division No. 5 in Case No. 88CW420 on August 13, 1991, and any amendments or modifications of the 88CW420 Decree, except for those amendments or modifications of the 88CW420 decree that (a) provide for construction of wells outside the areas designated on Appendix B of the 88CW420 Decree, or (b) seek to enlarge the pumping flow rate specified in Paragraph 56.a(2) of the 88CW420 Decree greater than 1600 acre feet per year, and (2) that the water rights decreed in Case No. 98CW315 by the District Court in and for Water Division No. 5 in Case No. 98CW315 are senior to the water rights claimed by the CWCB, and the CWCB waives any claim for delivery to Yellow Creek of any water pursuant to said water rights, and (3) the CWCB waives any right to file a statement of opposition or otherwise oppose any application for finding of reasonable diligence in the development of said conditional water rights. The waivers by the CWCB include, but are not limited to, (1) any right to call for water to be replaced to Yellow Creek, (2) any right to request or demand enforcement of the provisions of the 88CW420 Decree with respect to the replacement of water to Yellow Creek, and (3) any and all legal or equitable right to require or demand replacements of depletions to Yellow Creek associated with the operation of the 88CW420 Decree. The CWCB's waiver does not extend to any application filed by Mountain Water to amend or modify the 88CW420 decree to (a) provide for construction of wells outside the areas designated on Appendix B of the 88CW420 Decree, or (b) seek to enlarge the pumping flow rate specified in Paragraph 56.a(2) of the 88CW420 Decree greater than 1600 acre feet per year. The Court approves the Agreement between Mountain Water LLC and the CWCB and the terms and conditions of this paragraph shall constitute an additional limitation on the water rights decreed herein. This provision shall inure to the benefit of all successors and assigns of Mountain Water LLC, and shall bind the CWCB and its successors and assigns.

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 for Water Division 6 and the State Engineer.

DATED this 12th day of August, 2017.

BY THE REFEREE:

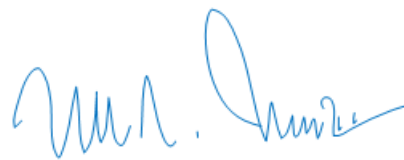
/s/ Daniel R. Birch
Daniel R. Birch, Water Referee
Water Division 6, State of Colorado

JUDGMENT AND DECREE OF THE WATER COURT

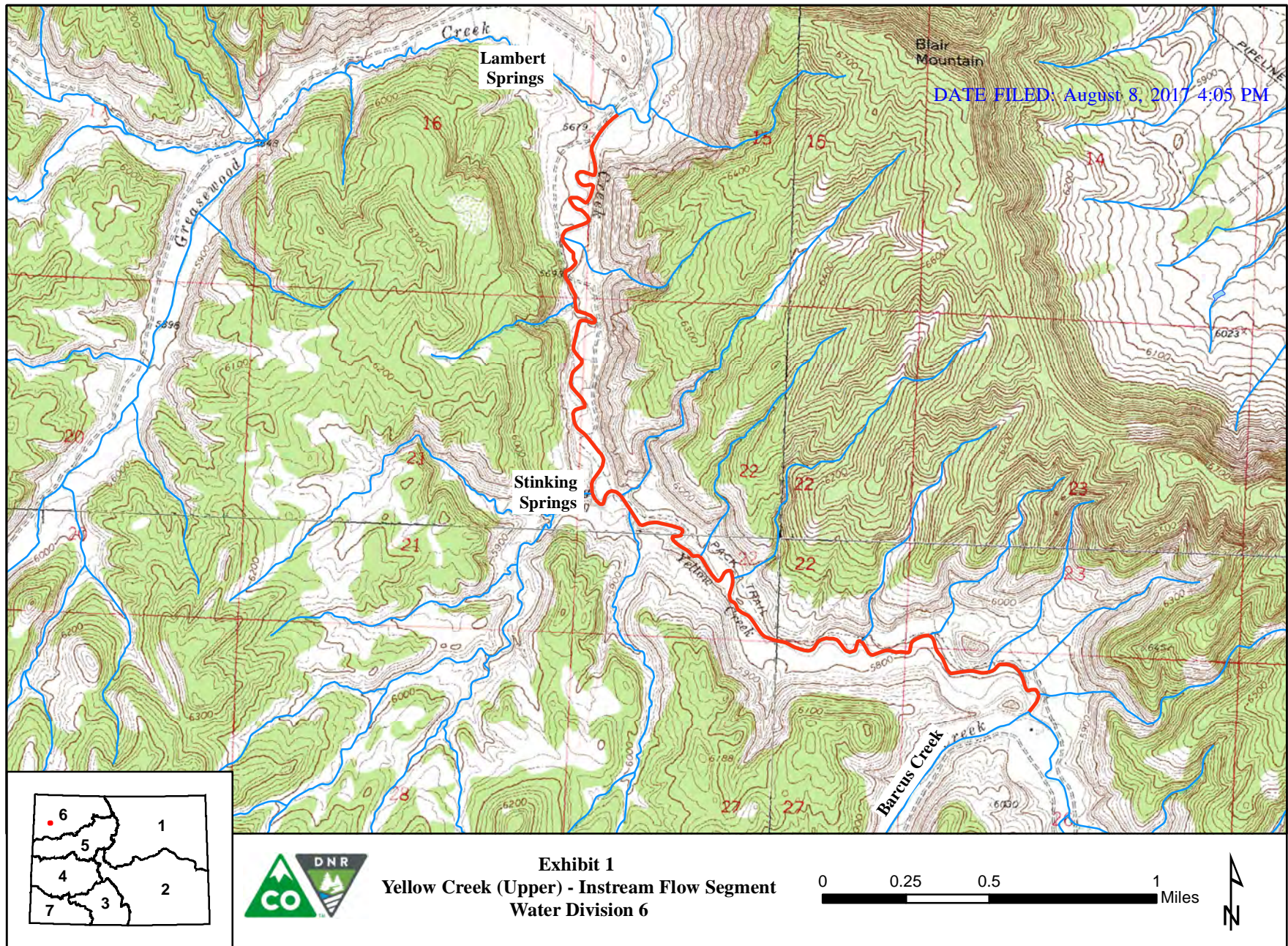
No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the Judgment and Decree of this Court.

DATED this 7th day of October, 2017.

BY THE COURT:



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



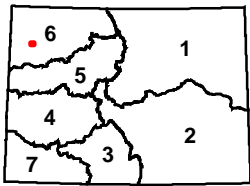
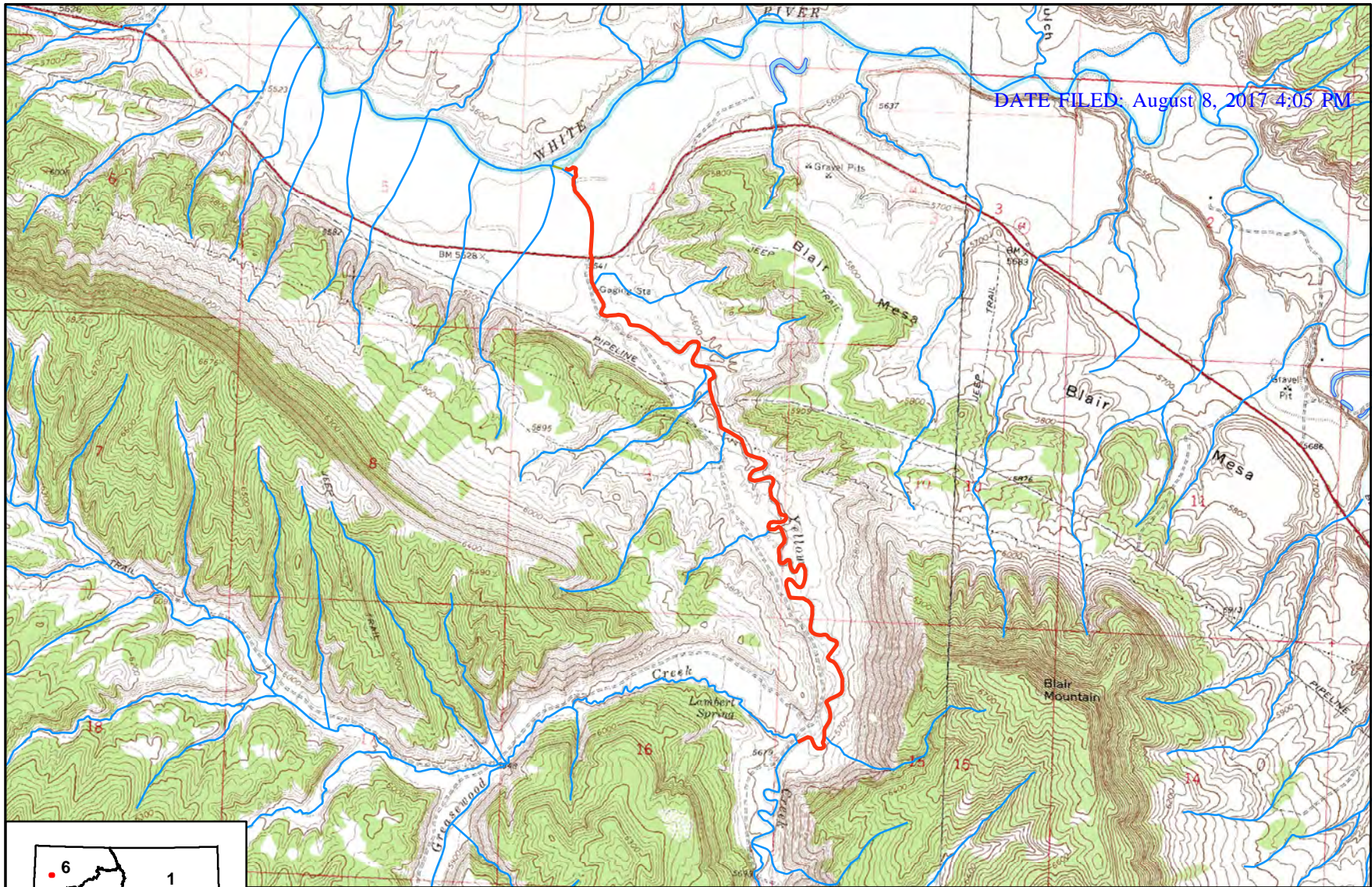


Exhibit 2
Yellow Creek (Lower) - Instream Flow Segment
Water Division 6

0 0.25 0.5 1 Miles

