

DISTRICT COURT, WATER DIVISION 4 Montrose County Justice Center 1200 N. Grand Ave., Bin A Montrose, CO 81401	DATE FILED: May 16, 2016 10:50 AM CASE NUMBER: 2015CW3101
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN TERROR CREEK, A NATURAL STREAM, IN THE NORTH FORK GUNNISON RIVER WATERSHED, IN DELTA COUNTY, COLORADO.	^ COURT USE ONLY ^ Case No.: 2015CW3101 Div. 4
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF 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 14, 2015. On March 3, 2016, the Water Court for Water Division 4 referred the Application to the Water Referee for Water Division 4, in accordance with section 37-92-203(7), C.R.S. (2015).

The Referee, having made such investigations as are necessary to determine whether or not the statement in the Application are true, having consulted with the Division Engineer for Water Division 4, and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, and Ruling of the Referee:

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. No Statements of Opposition: No statements of opposition were filed in this matter. The time for filing additional Statements of Opposition has expired.
4. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to section 37-92-302(4), C.R.S. (2015) dated March 7, 2016. No response was required to the Summary of Consultation. The Referee has given the Summary due consideration.
5. Name of Water Rights: Terror Creek (Upper) Instream Flow Water Right, and Terror Creek (Lower) Instream Flow Water Right.
6. Legal Description: Both Terror Creek instream flow ("ISF") water rights are located in the natural stream channel of Terror Creek. Each segment is described individually below.
 - A. Terror Creek (Upper) ISF Water Right is located in the natural stream channel of Terror Creek from the confluence of East and West Terror Creeks to the Terror Ditch headgate, a distance of approximately 1.55 miles. This segment of Terror Creek can be located on the Bowie U.S.G.S. quadrangle. A map depicting the approximate location of the reach of the Terror Creek (Upper) ISF Water Right is attached as **Exhibit 1**.
 1. Upstream Terminus: Confluence East & West Terror Creeks
 - a. UTM: Northing: 4314191.79; Easting: 276880.59 (NAD 1983 Zone 13 North)
 - b. Lat/Long: latitude 38° 56' 53.88"N and longitude 107° 34' 28.65"W
 2. Downstream Terminus: Terror Ditch Headgate
 - a. UTM: Northing: 4311776.78; Easting: 276931.58 (NAD 1983 Zone 13 North)

- b. Lat/Long: latitude 38° 55' 35.66"N and longitude 107° 34' 23.71"W

B. **Terror Creek (Lower) ISF Water Right** is located in the natural stream channel of Terror Creek from the Terror Ditch headgate to the Fire Mountain Canal headgate, a distance of approximately 1.52 miles. This segment of Terror Creek can be located on the Bowie U.S.G.S. quadrangle. A map depicting approximate location of the reach of the Terror Creek (Lower) ISF Water Right is attached as **Exhibit 2**.

1. Upstream Terminus: Terror Ditch Headgate

- a. UTM: Northing: 4311776.78; Easting: 276931.58 (NAD 1983 Zone 13 North)
- b. Lat/Long: latitude 38° 55' 35.66"N and longitude 107° 34' 23.71"W

2. Downstream Terminus: Fire Mountain Canal Headgate

- a. UTM: Northing: 4309509.78; Easting: 277393.55 (NAD 1983 Zone 13 North)
- b. Lat/Long: latitude 38° 54' 22.61"N and longitude 107° 34' 1.89"W

C. The Universal Transverse Mercator (UTM) and geographical descriptions (e.g., confluences) 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).

7. Source: The source of both water rights is Terror Creek, tributary to North Fork Gunnison River, tributary to the Gunnison River.

8. Appropriation:

A. Date of initiation of appropriation: January 26, 2015

- B. How appropriation was initiated: Appropriation and beneficial use of both Terror Creek (Upper) and Terror Creek (Lower) ISF Water Rights occurred on January 26, 2015, 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. (2015). On September 15, 2015, the CWCB confirmed the appropriation and made the findings required in section 37-92-102(3)(c), C.R.S. for both water rights.
- C. Date applied to beneficial use: January 26, 2015
9. Amount of water claimed:
- A. Terror Creek (Upper) ISF: Instream flow of 4.8 cfs (April 1 to September 30) and 1.5 cfs (October 1 to March 31), absolute.
- B. Terror Creek (Lower) ISF: Instream flow of 4.2 cfs (April 1 to May 31), absolute.
10. Use of the Water: Instream flow uses to preserve the natural environment to a reasonable degree.

CONCLUSIONS OF LAW

11. Incorporation: The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
12. Notice and Jurisdiction: The Water Court for Water Division 4 has jurisdiction over the subject matter of these proceedings and over all persons, owners of property and water rights that may be affected hereby, whether or no 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. (2015).
13. Legal Requirements: The CWCB has fulfilled all legal requirements for a decree for water rights, including sections 37-9-302, 304 and 305, C.R.S. (2015).

14. 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 REFEREE

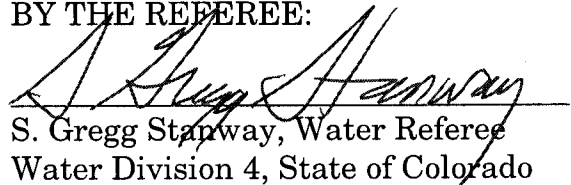
15. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee by this reference.
16. The Application is granted and a decree in the following amounts, Terror Creek (Upper) ISF: Instream flow of 4.8 cfs (April 1 to September 30) and 1.5 cfs (October 1 to March 31), absolute, and Terror Creek (Lower) ISF: Instream flow of 4.2 cfs (April 1 to May 31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the reaches of Terror Creek between the upstream and downstream termini described in paragraph 6 above. The appropriation date for this water right is January 26, 2015.
17. The priority herein confirmed was filed in the water court in the year of 2015 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.
18. 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 for Water Division 4 and the State Engineer.

DATED this 21st day of April, 2016.

BY THE REFEREE:

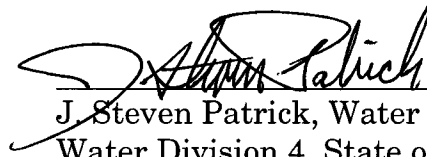

S. Gregg Stanway, Water Referee
Water Division 4, State of Colorado

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 16th day of May, 2016.

BY THE COURT:


J. Steven Patrick, Water Judge
Water Division 4, State of Colorado

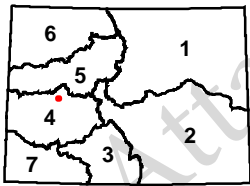
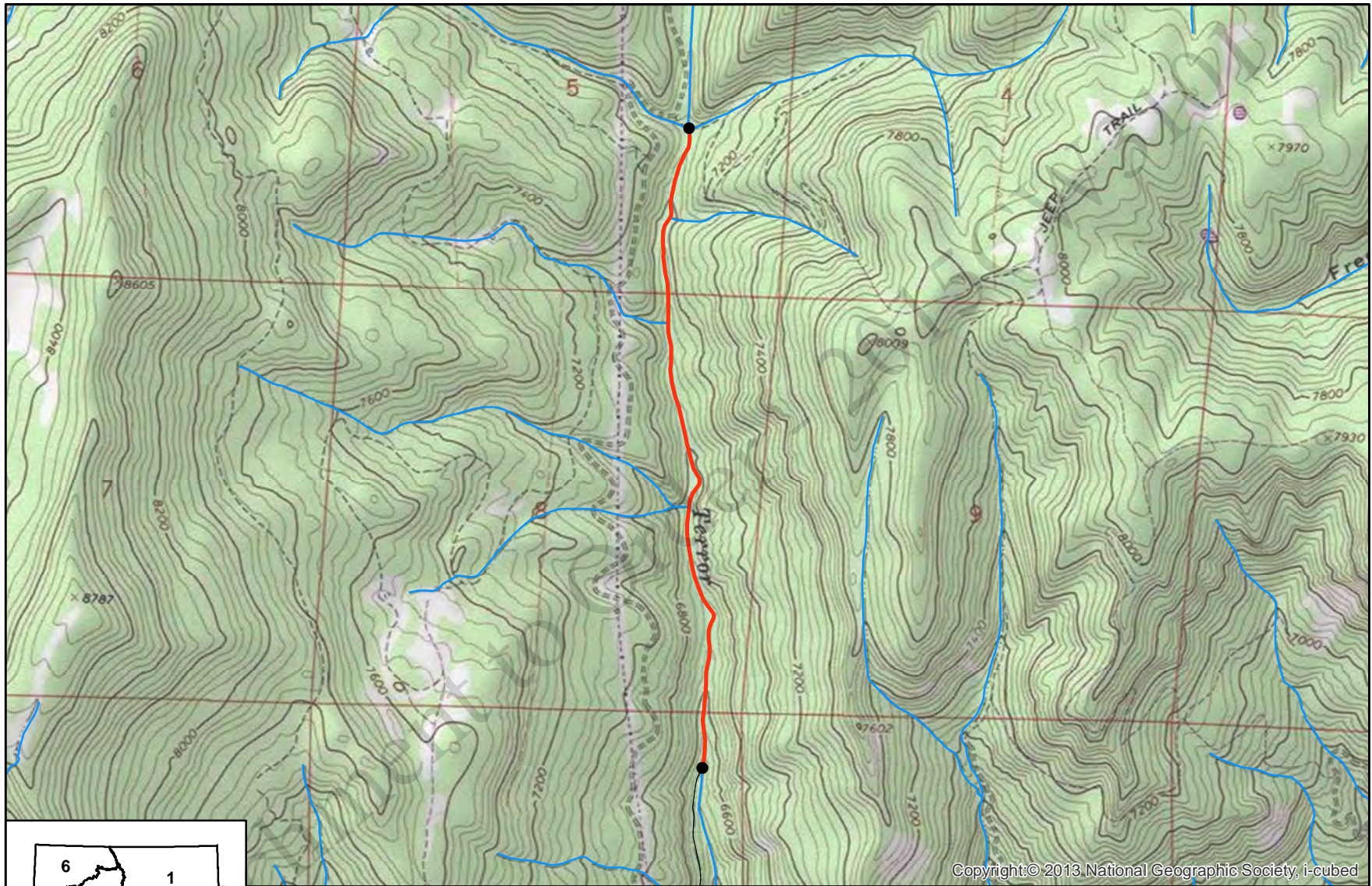


Exhibit #1
Case No. 15CW3101
Terror Creek (Upper) ISF

0 0.5 1 Miles



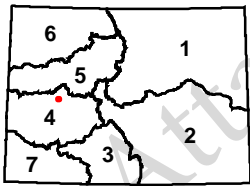
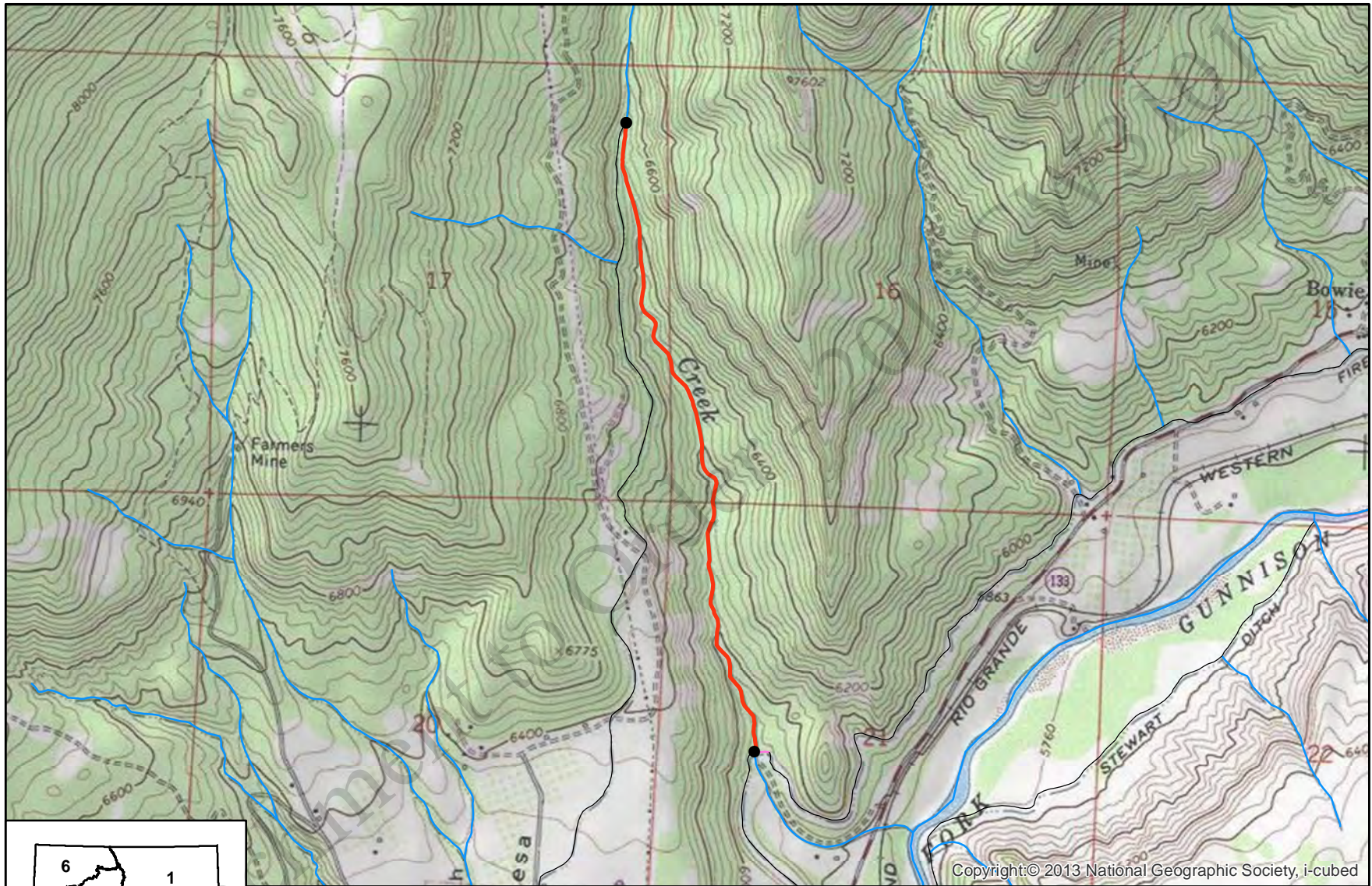


Exhibit #2
Case No. 15CW3101
Terror Creek (Lower) ISF

0 0.5 1 Miles

