

DISTRICT COURT, WATER DIVISION 2, COLORADO, PUEBLO JUDICIAL BUILDING 501 NORTH ELIZABETH STREET, SUITE 116 PUEBLO, CO 81003 (719) 404-8700	DATE FILED: April 21, 2020 7:47 PM CASE NUMBER: 2019CW3064
<b>Concerning the Application for Water Rights of:</b>  <b>COLORADO WATER CONSERVATION BOARD</b> In Bonnett Creek, a Natural Stream,  In the Huerfano Watershed  <b>IN THE ARKANSAS RIVER OR ITS TRIBUTARIES          IN HUERFANO COUNTY, COLORADO</b>	<b>▲ COURT USE ONLY ▲</b>
	Case No. 2019CW3064  Courtroom:
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE,          AND JUDGMENT AND DECREE OF THE WATER COURT          FOR IN STREAM FLOW RIGHT</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 October 1, 2019. The Water Court for Water Division 2 referred the Application to the Water Referee for Water Division 2, in accordance with section 37-92-101, C.R.S. (2019).

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. The statements in the Application, filed on October 1, 2019, are true.

2. The name and address of Applicant:

Colorado Water Conservation Board  
1313 Sherman Street, Suite 718  
Denver, CO 80203

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. Opposers: No statements of opposition were filed and the time for filing additional statements of opposition has expired.

5. Summary of Consultation: The Division Engineer filed a Report of the Division Engineer pursuant to section 37-92-302(4), C.R.S. (2020), dated February 13, 2020. The Referee has given the Report of the Division Engineer due consideration.

6. Name of water right: Bonnett Creek Instream Flow Water Right (WDID 1603004).

7. Legal Description: The Bonnett Creek Instream Flow Water Right is located in the natural stream channel of Bonnett Creek from its headwaters to the confluence with the Cucharas River, a distance of approximately 4.05 miles. A map depicting the approximate location of the Bonnett Creek Instream Flow Water Right reach is attached as **Exhibit 1**.

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

1. UTM: Northing: 4138962.59; Easting: 486695.74; (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 37° 23' 50.42" N; and longitude 105° 09' 1.12" W;

B. Downstream Terminus: Confluence with the Cucharas River at approximately:

1. UTM: Northing: 4137528.63; Easting: 491728.78; (NAD 1983 Zone 13 North)
2. Lat/Long: latitude 37° 23' 4.10" N; and longitude 105° 05' 36.36" W;

- C. The Universal Transverse Mercator (UTM) of the upstream and downstream termini will be used as the decreed legal description for the Bonnett Creek Instream Flow Water Right. 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: Bonnett Creek, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River.
- A. Date of initiation of appropriation: January 29, 2019.
- B. How appropriation was initiated: Appropriation and beneficial use occurred on January 29, 2019, 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. (2019).
- C. Date applied to beneficial use: January 29, 2019.
9. Amount of water claimed: Instream flow of 0.4 c.f.s. (09/01-03/31); 1.0 c.f.s. (04/01-06/30); and 0.55 c.f.s. (07/01-08/31), absolute.
10. Use of the Water: Instream flow 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 Division 2 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 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. (2019).
13. The CWCB has fulfilled all legal requirements for a decree for water rights including sections 37-92-302, 304 and 305, C.R.S. (2019).
14. Burden of Proof: The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water rights required 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 for instream flow in the amount of 0.4 c.f.s. (09/01-03/31); 1.0 c.f.s. (04/01-06/30); and 0.55 c.f.s. (07/01-08/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Bonnett Creek from its headwaters to the confluence with the Cucharas River, described in paragraph 7 above. The appropriation date for this water right is January 29, 2019. The preservation of the natural environment can exist without material injury to water rights. C.R.S. § 37-92-102(3)(c).

17. The priority herein confirmed was filed in the Water Court in the year of 2019 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.

18. 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 of the Referee shall be filed with the water clerk subject to judicial review.

It is further **ORDERED** that a copy of this Ruling of the Referee shall be filed with the Division Engineer for Water Division 2 and the State Engineer.

DATED: March 30, 2020

BY THE REFEREE:



Kate Brewer, Water Referee  
Water Division No. 2

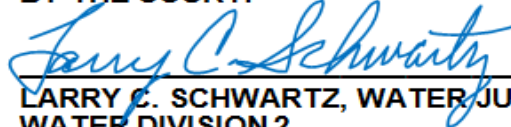
## JUDGMENT AND DECREE OF THE WATER COURT

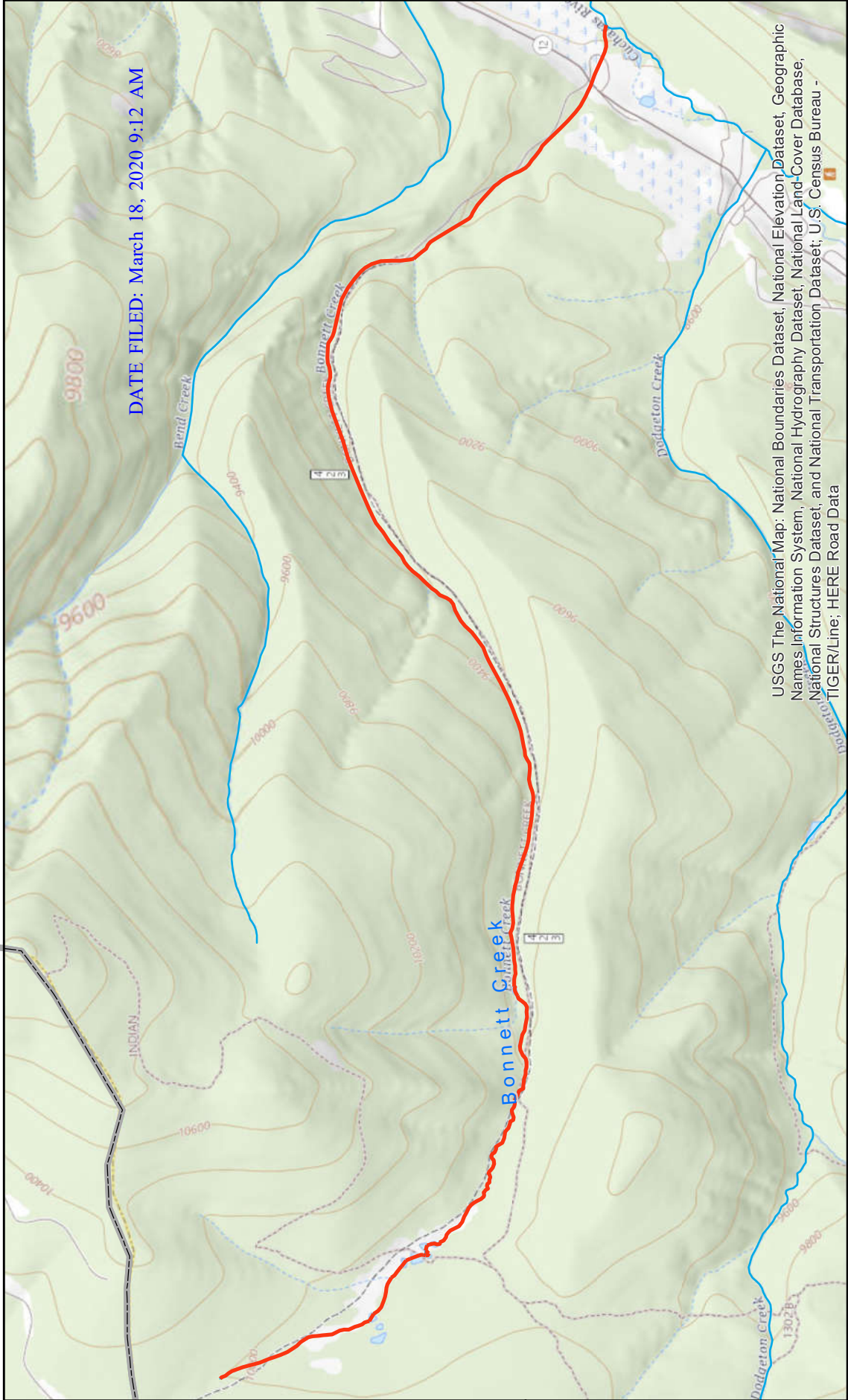
No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

DATED: April 21, 2020



BY THE COURT:

  
LARRY C. SCHWARTZ, WATER JUDGE  
WATER DIVISION 2



DATE FILED: March 18, 2020 9:12 AM

USGS The National Map: National Boundaries Dataset, National Elevation Dataset, Geographic Names Information System, National Hydrography Dataset, National Land-Cover Database, National Structures Dataset, and National Transportation Dataset; U.S. Census Bureau - TIGER/Line; HERE Road Data

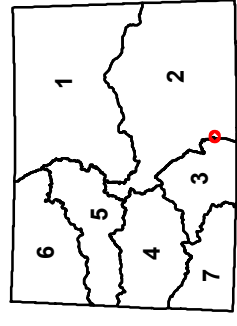


Exhibit 1  
Bonnett Creek ISF  
Water Division 2

**COLORADO**  
Colorado Water  
Conservation Board  
Department of Natural Resources

