

DISTRICT COURT, WATER DIVISION 2 PUEBLO COUNTY JUDICIAL BUILDING 501 NORTH ELIZABETH STREET, SUITE 116 PUEBLO, CO 81003 (719) 404-8700	DATE FILED: April 29, 2020 10:11 AM CASE NUMBER: 2019CW3069
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN STOUT CREEK, A NATURAL STREAM; IN THE ARKANSAS HEADWATERS WATERSHED, IN FREMONT COUNTY, COLORADO.	▲ COURT USE ONLY ▲
	Case No.: 2019CW3069 Div. 2
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT ADJUDICATING IN STREAM FLOW RIGHT	

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 6, 2019. The Water Court for Water Division 2 referred the Application to the Water Referee for Water Division 2, in accordance with section 37-92-203(7), C.R.S.

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 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 Consultation Report pursuant to section 37-92-302(4), C.R.S., dated March 12, 2020. The Referee has given the Division Engineer's Consultation Report due consideration.

6. Name of water right: Lower Stout Creek Instream Flow Water Right (WDID 1203024).

7. Legal description: The Lower Stout Creek Instream Flow Water Right is located in the natural stream channel of Stout Creek from the Bureau of Land Management (BLM)/U.S. Forest Service (USFS) property boundary to the confluence with an unnamed tributary, a distance of approximately 0.62 miles. A map depicting the approximate location of the Lower Stout Creek Instream Flow Water Right reach is attached as **Exhibit 1**.

A. Upstream terminus: BLM/USFS property boundary at:

1. UTM: Northing: 4248489.60; Easting: 425206.65 (NAD 1983 Zone 13 North)
2. Lat/Long: Latitude 38° 22' 53.33"N; Longitude 105° 51' 22.80"W

B. Downstream terminus: Confluence with an unnamed tributary at:

1. UTM: Northing: 4248935.65; Easting: 426072.66 (NAD 1983 Zone 13 North)
2. Lat/Long: Latitude 38° 23' 8.06"N; Longitude 105° 50' 47.28"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: Stout Creek, tributary to the Arkansas River.
9. 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.
- C. Date applied to beneficial use: January 29, 2019.
10. Amount of water claimed: Instream flow of 3.5 cfs (05/01 - 06/30), 1.5 cfs (07/01 - 08/31), and 0.6 cfs (09/01 - 04/30), absolute.
11. Use of the water: Instream flow to preserve the natural environment to a reasonable degree.
12. Additional remarks: In addition to the water right decreed herein, the CWCB also holds an instream flow water right on Stout Creek decreed in Case No. W-4634, Water Division No. 2, for 4.0 cfs, absolute, year-round, with a decreed reach from Lower Stout Creek Lake to the BLM/USFS property boundary, which is also the upper terminus for the Lower Stout Creek Instream Flow Water Right decreed herein.

CONCLUSIONS OF LAW

13. Incorporation: The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
14. 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.

15. As required under section 37-92-102(3)(c), C.R.S., the CWCB determined that the natural environment will be preserved to a reasonable degree by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the CWCB's water right, if granted; and that such environment can exist without material injury to water rights.

16. The CWCB has fulfilled all legal requirements for a decree for water rights, including sections 37-92-302, 304, and 305, C.R.S.

17. 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

18. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee by this reference.

19. The Application is granted and a decree in the amount of instream flow of 3.5 cfs (05/01 - 06/30), 1.5 cfs (07/01 - 08/31), and 0.6 cfs (09/01 - 04/30), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Stout Creek from the BLM/USFS property boundary to the confluence with an unnamed tributary, described in paragraph 7 above. The appropriation date for this water right is January 29, 2019.

20. 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 this ruling.

21. 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: April 6, 2020.

BY THE REFEREE:



Kate Brewer, Water Referee
Water Division No. 2

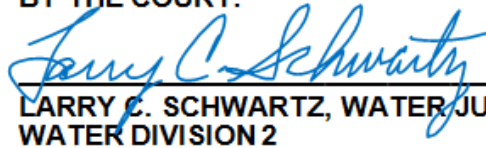
JUDGMENT AND DECREE OF THE WATER COURT

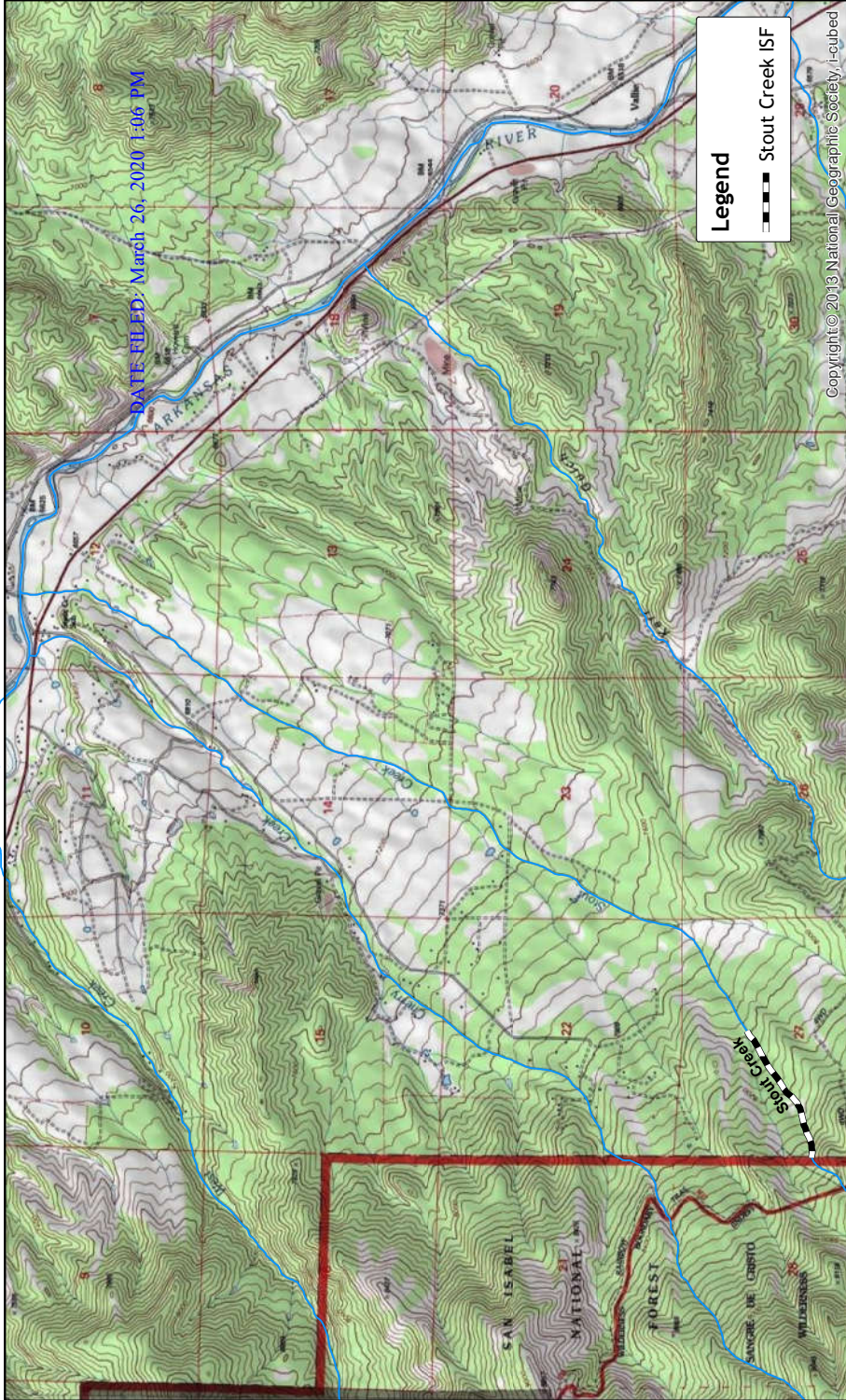
No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

DATED: April 29, 2020



BY THE COURT:


LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2



Legend
— Stout Creek ISF

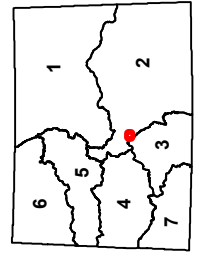


Exhibit 1
Stout Creek ISF
Water Division 2

COLORADO
Colorado Water
Conservation Board
Department of Natural Resources

