

DISTRICT COURT, WATER DIVISION 2 STATE OF COLORADO 501 North Elizabeth Street, Suite 116 Pueblo, Colorado 81003	DATE FILED: May 14, 2020 10:55 AM CASE NUMBER: 2019CW3077
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN BAKER CREEK, A NATURAL STREAM; IN THE HUERFANO WATERSHED, IN HUERFANO COUNTY, COLORADO.	<div style="text-align: center;"> ▲ COURT USE ONLY ▲ </div> <div style="text-align: center;"> Case No. 19CW3077 </div>
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT FOR INSTREAM FLOW WATER 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 December 12, 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. (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 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 under section 37-92-302(3) C.R.S. (2019), 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: No statements of opposition were filed in this matter. The time for filing statements of opposition has expired.
4. Summary of Consultation: The Division Engineer filed a Summary of Consultation under section 37-92-302(4), C.R.S. (2019), dated April 15, 2020. No response was required to the Summary of Consultation. The Referee has given the Summary due consideration.
5. Name of Water Right: Baker Creek Instream Flow Water Right (WDID 1603005).
6. Legal Description: The Baker Creek Instream Flow Water Right is located in the natural stream channel of Baker Creek from its headwaters to the U.S. Forest Service property boundary, a distance of approximately 2.13 miles. A map depicting the approximate location of the Baker Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
 - A. Upstream Terminus: Baker Creek headwaters in the vicinity of:
 1. UTM: Northing: 4134666.58; Easting: 485496.58 (NAD 1983 Zone 13 North)
 2. Lat/Long: Latitude 37° 21' 30.95"N; Longitude 105° 09' 49.59"W
 - B. Downstream Terminus: U.S. Forest Service property boundary at:
 1. UTM: Northing: 4133589.16; Easting: 488637.74 (NAD 1983 Zone 13 North)
 2. Lat/Long: Latitude 37° 20' 56.15"N; Longitude 105° 07' 41.84"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).

7. Source: Baker Creek, tributary to the Cucharas River, tributary to the Huerfano River, tributary to the Arkansas River.
8. Appropriation Date: January 29, 2019.
 - A. 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).
 - B. Date applied to beneficial use: January 29, 2019.
9. Amount of water: Instream flow of 2.1 cfs (05/01 - 06/30), 1.3 cfs (07/01 - 08/31), 0.5 cfs (09/01 - 03/31), and 1.0 cfs (04/01 - 04/30), 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 Water 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. Legal Requirements: 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.

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 THE 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 for the Baker Creek Instream Flow Water Right is granted and a decree in the amount of 2.1 cfs (05/01 - 06/30), 1.3 cfs (07/01 - 08/31), 0.5 cfs (09/01 - 03/31), and 1.0 cfs (04/01 - 04/30) absolute, for the reach between the upstream and downstream termini described in paragraph 6(A)-(B) above is hereby entered to preserve the natural environment to a reasonable degree. The appropriation date for this water right is January 29, 2019.
17. The priority herein confirmed was filed in the water court in the year of 2019 and will be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities will be determined by the historical date of appropriation and will not be affected by the date of entry of this decree.
18. The CWCB will install and maintain such measuring devices and keep records as the Division Engineer may require for administration of this right.

IT IS ACCORDINGLY ORDERED that this Ruling will be filed with the water clerk subject to judicial review.

IT IS FURTHER ORDERED that a copy of this Ruling will be filed with the Division Engineer for Water Division 2 and the State Engineer.

DATED this 22nd day of April, 2020.

BY THE REFEREE:



Kate Brewer, Water Referee
Water Division 2, State of Colorado

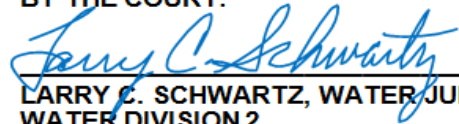
JUDGMENT AND DECREE OF THE WATER COURT

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

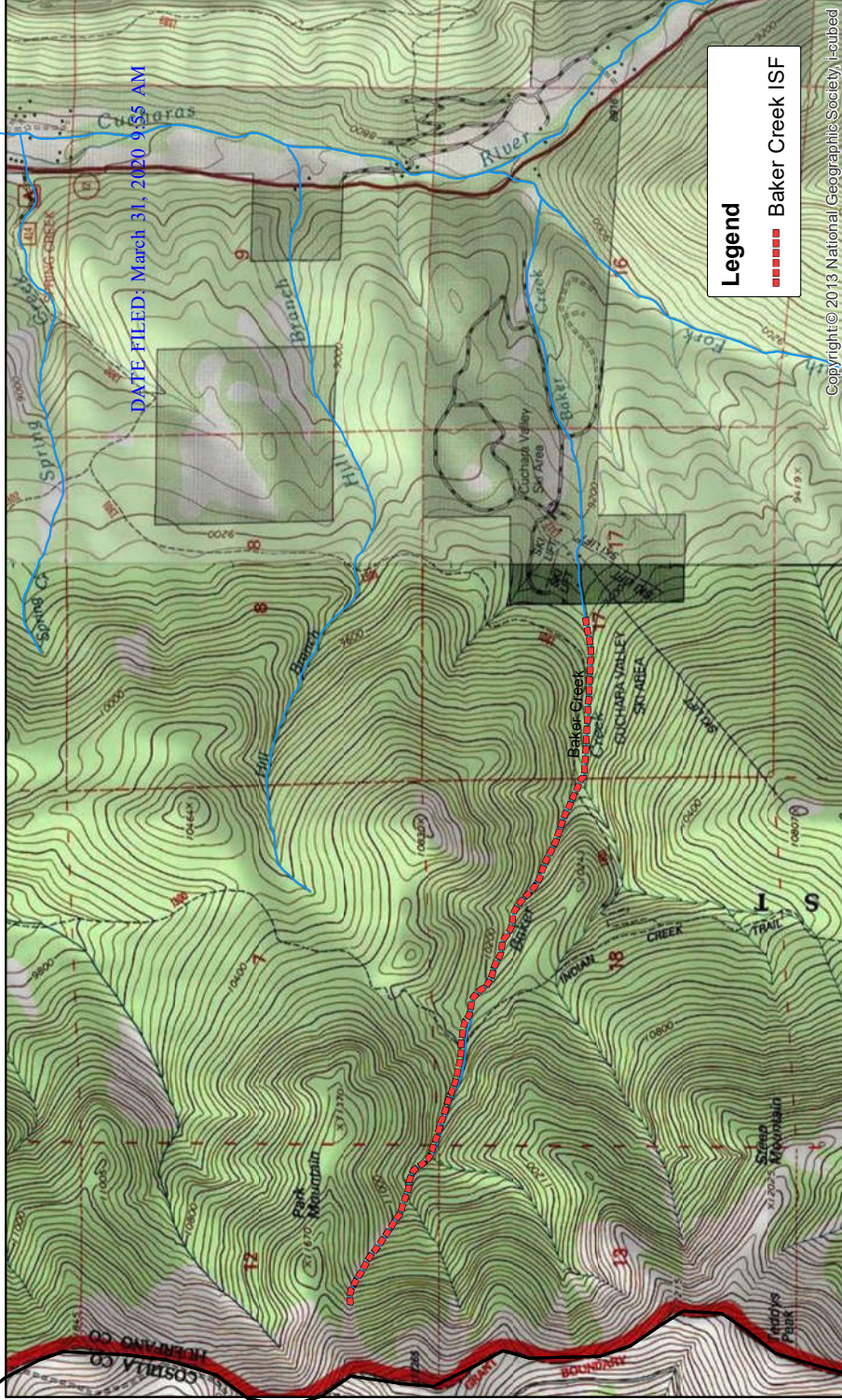
DATED this 14th day of May, 2020.



BY THE COURT:



LARRY C. SCHWARTZ, WATER JUDGE
WATER DIVISION 2



DATE FILED: March 31, 2020 9:55 AM

Legend
■■■■■ Baker Creek ISF

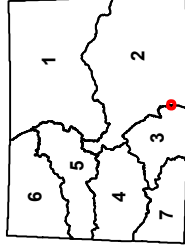


Exhibit 1
Baker Creek ISF
Water Division 2

COLORADO
Colorado Water
Conservation Board
Department of Natural Resources

