

|  |   |
|--|---|
| District Court, Water Division 3, State of Colorado<br>Court Address: 8955 Independence Way, Alamosa, CO 81101<br>Phone Number: (719) 589-4996   | DATE FILED: May 26, 2020 10:28 AM<br>CASE NUMBER: 2019CW3012  |
| <b>In the Matter of the Application for Water Rights of:</b><br><br><b>COLORADO WATER CONSERVATION BOARD,</b><br><br><b>in CARNERO CREEK, a natural stream;</b><br><br><b>in the SAGUACHE watershed</b><br><br><b>In Saguache County</b> | <div style="text-align: center;">▲ COURT USE ONLY ▲</div> <hr/> Case Number:<br>2019CW3012<br><br>Div.: 2 Ctrm: |
| JUDGMENT AND DECREE  |   |

The Court finds that no protest has been filed to the Findings and Ruling of the Referee in this case within the time provided by law and that said Findings and Ruling of the Referee should be confirmed, approved and adopted.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Findings and Ruling of the Referee entered herein on April 30, 2020 is incorporated herein by reference and confirmed, approved and adopted as the Judgment of this Court.

May 26, 2020  
 DONE this \_\_\_\_ day of May, 2020.

BY THE COURT




---

Michael Gonzales  
 Water Judge  
 Water Division No. 3

|   |  |
|---|--|
| DISTRICT COURT, WATER DIVISION 3<br>ALAMOSA CO. COURTHOUSE<br>8955 INDEPENDENCE WAY<br>ALAMOSA, CO 81101<br>(719) 589-4996  | DATE FILED: April 30, 2020 10:00 AM<br>CASE NUMBER: 2019CW3012 |
| <b>CONCERNING THE APPLICATION FOR<br/>WATER RIGHTS OF:</b><br><br><b>COLORADO WATER CONSERVATION BOARD,<br/><br/>IN CARNERO CREEK, A NATURAL STREAM;<br/><br/>IN THE SAGUACHE WATERSHED,<br/><br/>IN SAGUACHE COUNTY, COLORADO.</b> | <b>▲ COURT USE<br/>ONLY ▲</b>                                  |
|   | Case No.: 2019CW3012<br><br>Div. 3                             |
| <b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RULING OF THE<br/>REFEREE</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 September 30, 2019. The Water Court for Water Division 3 referred the Application to the Water Referee for Water Division 3, 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 3, 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. Name & Address of Applicant:  
 Colorado Water Conservation Board (“CWCB”)
   
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. Statements of Opposition: No Statements of Opposition were filed. The time for filing statements of opposition has expired.
5. Summary of Consultation: The Division Engineer filed a Summary of Consultation pursuant to section 37-92-302(4), C.R.S., on January 7, 2020. The CWCB submitted a response to the Summary of Consultation on February 14, 2020. The Referee has given the Summary of Consultation due consideration.
6. Name of Water Right: Carnero Creek Instream Flow Water Right.
7. Legal Description: The Carnero Creek Instream Flow Water Right is located in the natural stream channel of Carnero Creek from the confluence of the South Fork & Middle Fork Carnero Creeks to the confluence with the Mogotas Arroyo, a distance of approximately 9.81 miles. A map depicting the approximate location of the Carnero Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
  - A. Upstream Terminus: Confluence South Fork & Middle Fork Carnero Creeks at:
    1. UTM: Northing: 4196212.69; Easting: 377513.93 (NAD 1983 Zone 13 North)
    2. Lat/Long: Latitude 37° 54' 18.75"N; Longitude 106° 23' 35.79"W
  - B. Downstream Terminus: Confluence Mogotas Arroyo at:
    1. UTM: Northing: 4190411.28; Easting: 387851.17 (NAD 1983 Zone 13 North)
    2. Lat/Long: Latitude 37° 51' 15.35"N; Longitude 106° 16' 29.34"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: Carnero Creek.
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. (2019).  
C. Date applied to beneficial use: January 29, 2019.
10. Amount of water claimed: Instream flow of 2.2 (12/01 - 02/29), and 2.6 (03/01 - 11/30), absolute.
11. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.
12. Terms and Conditions - S&T Farms, LLC ("S&T")
  - A. S&T owns water rights in the Omnibus Ditch, decreed in Case No. 1110, District Court, County of Saguache, that it diverts at a headgate located approximately at UTM North: 4190387 UTM East: 388140, which is below the lower terminus of the Carnero Creek instream flow ("Carnero Creek ISF") right. S&T may subsequently desire to change water rights in the Omnibus Ditch to allow diversion at an upstream location(s) within the Carnero Creek ISF reach on the S&T property, including, without limitation, the Holland Ditch, Biehl Ditch, Cascias Ditch, Wilson Ditch, or Suzanna Ditch.
  - B. If S&T files a change of water right to allow for diversion of the Omnibus Ditch water right at upstream alternate points within the Carnero Creek ISF reach, including, without limitation, at the Holland, Biehl, Cascias, Wilson, or Suzanna Ditches, the CWCB may file a statement of opposition solely for the purpose of ensuring compliance with this stipulation, as long as the change of water right claim and resulting decree: (1) requires S&T to maintain at least 5 cfs of the Omnibus Ditch water right in Carnero Creek that can solely be diverted at the Omnibus Ditch headgate and not at any upstream alternate points within the Carnero Creek ISF reach, including, without limitation, at the Holland,

Biehl, Cascias, Wilson, or Suzanna Ditches, (2) requires the foregoing 5 cfs to be measured at the Omnibus Ditch headgate or in Carnero Creek at the location of the Omnibus Ditch headgate, depending on whether S&T is diverting the 5 cfs at the Omnibus Ditch headgate, and (3) prohibits S&T from calling for the changed water right at any point of diversion except the Omnibus Ditch headgate when 5 cfs or less is present in Carnero Creek as measured at the Omnibus Ditch headgate or in Carnero Creek at the location of the Omnibus Ditch headgate, in order to ensure there is at least 5 cfs in Carnero Creek.

- C. In the event S&T files for a change of water right for the Omnibus Ditch, or the Water Court enters a ruling or decree, that is not consistent with the terms and conditions referenced above, the CWCB may file a statement of opposition, protest, or motion to amend the decree, as applicable, without the above-referenced limitation in paragraph 12.B. herein which restricts the CWCB to filing solely for the purpose of ensuring compliance with the stipulation.
- D. CWCB shall not assert the Carnero Creek ISF as a basis for opposing any relocation by S&T of any existing headgate on Carnero Creek, provided such relocation is consistent with § 37-86-111, C.R.S.

## **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 Division 3 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.
- 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. (2020).
- 15. 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**

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

17. The application is granted and a decree in the amount of 2.2 (12/01 - 02/29), and 2.6 (03/01 - 11/30), absolute, is hereby entered for instream flow to preserve the natural environment to a reasonable degree in the natural stream channel of Carnero Creek from the confluence of the South Fork & Middle Fork Carnero Creeks to the confluence with the Mogotas Arroyo, described in paragraph 7 above. The appropriation date for this water right is January 29, 2019.

18. The priority herein confirmed was filed in the water court in the year of 2018 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.

19. 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 1 and the State Engineer.

DATED: April 30, 2020.

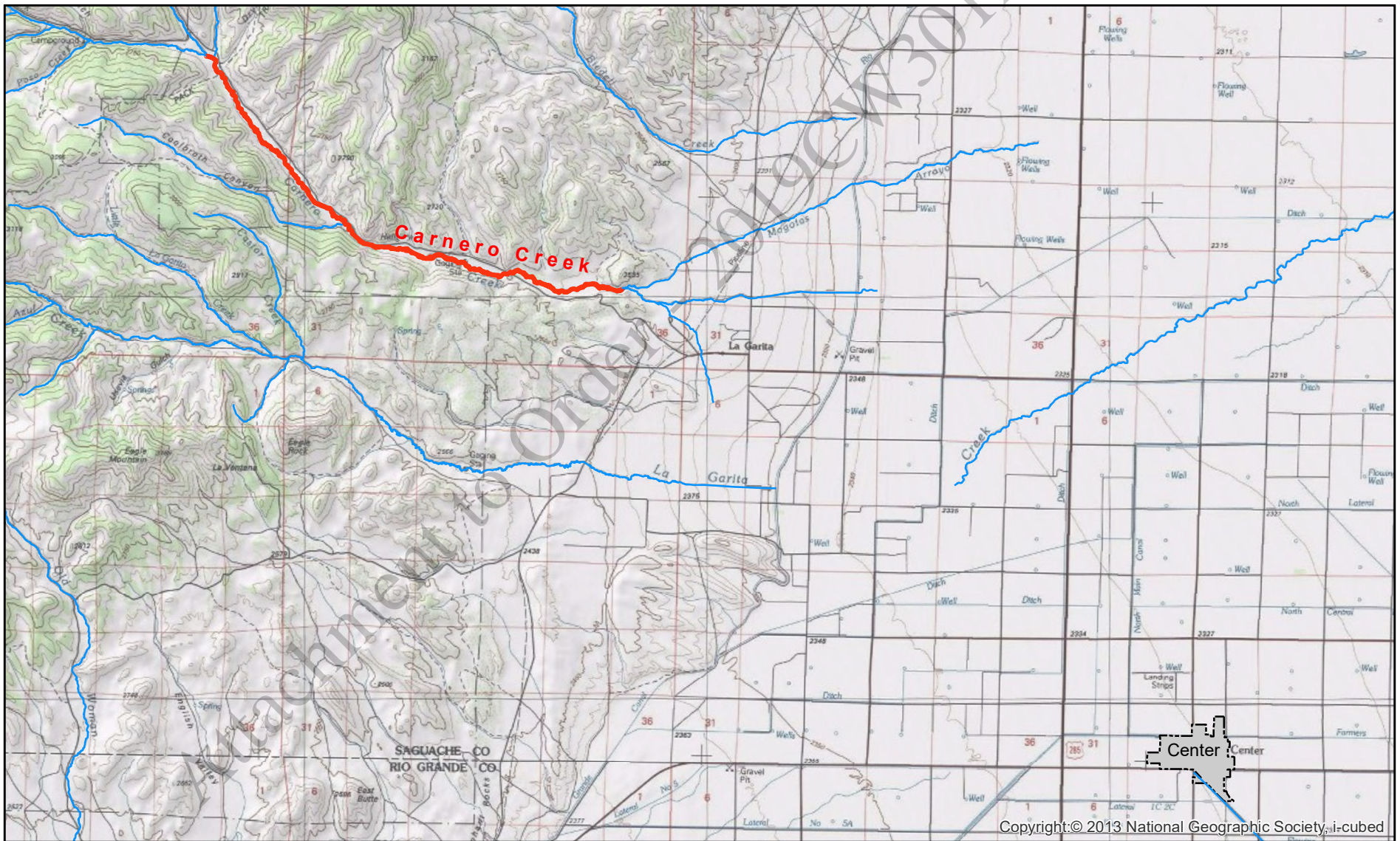
BY THE REFEREE:



---

Nicolas Sarmiento, Water Referee  
Water Division 3, State of Colorado





**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

Exhibit 1  
Carnero Creek ISF  
Water Division 3

0 1.25 2.5 5 Miles

