

DISTRICT COURT, WATER DIVISION NO. 6, COLORADO 1955 SHIELD DR., UNIT 200 STEAMBOAT SPRINGS, CO 80487 TELEPHONE: (970) 879-5020	DATE FILED: June 29, 2020 CASE NUMBER: 2019CW3011
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN MARVINE CREEK, A NATURAL STREAM; IN THE UPPER WHITE WATERSHED, IN RIO BLANCO COUNTY, COLORADO.	^ COURT USE ONLY ^
	Case No.: 2019CW3011 Div. 6
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT 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 a water right to preserve the natural environment to a reasonable degree. The Application was filed on June 25, 2019. The Water Court for Water Division 6 referred the Application to the Water Referee for Water Division 6, 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 6, 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 Summary of Consultation pursuant to section 37-92-302(4), C.R.S. (2019), dated December 6, 2019. No response to the Report of the Division Engineer was required. The Referee has given the Summary of Consultation due consideration.
6. Name of water right: Marvine Creek Instream Flow Water Right.
7. Legal Description: The Marvine Creek Instream Flow Water Right is located in the natural stream channel of Marvine Creek from the outlet of Lower Marvine Lake to the confluence with West Marvine Creek, a distance of approximately 7.1 miles. A map depicting the approximate location of the Marvine Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
 - A. Upstream Terminus: Outlet of Lower Marvine Lake at:
 1. UTM: Northing: 4424055.13; Easting: 296243.96 (NAD 1983 Zone 13 North)
 2. Lat/Long: Latitude 39° 56' 31.58"N; Longitude 107° 23' 5.62"W
 - B. Downstream Terminus: Confluence with West Marvine Creek at:
 1. UTM: Northing: 4432955.16; Easting: 291464.01 (NAD 1983 Zone 13 North)
 2. Lat/Long: Latitude 40° 01' 15.81"N; Longitude 107° 26' 37.13"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: Marvine Creek, tributary to the North Fork White River, tributary to the White 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. (2018).
C. Date applied to beneficial use: January 29, 2019.
- 10. Amount of water claimed: Instream flow of 5.9 cfs (11/01 - 03/31), and 13.1 cfs (04/01 - 10/31), absolute.
- 11. Use of the Water: Instream flow to preserve the natural environment to a reasonable degree.

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 6 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).
- 14. 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).

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 5.9 cfs (11/01 - 03/31), and 13.1 cfs (04/01 - 10/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Marvine Creek from the outlet of Lower Marvine Lake to the confluence with West Marvine Creek, 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 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.

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 and the State Engineer.

DATED: March 6, 2020.

BY THE REFEREE:

/s/ Daniel R. Birch

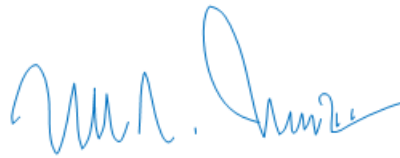
Daniel R. Birch, Water Referee
Water Division No. 6

JUDGMENT AND DECREE OF THE WATER COURT

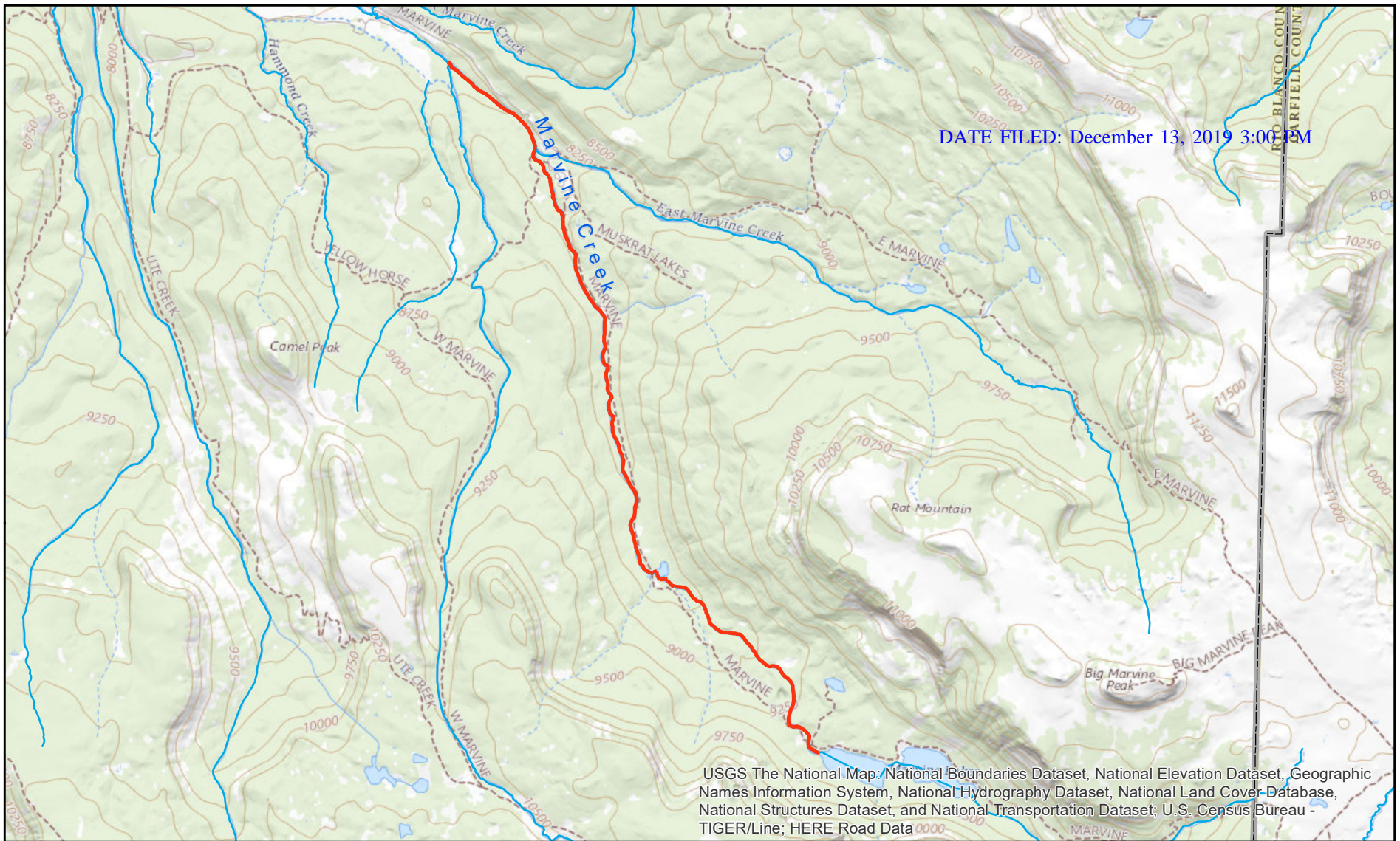
No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

DATED: June 29, 2020

BY THE COURT:



Michael A. O'Hara III, Water Judge
Water Division No. 6, State of Colorado



COLORADO
Colorado Water
Conservation Board

Department of Natural Resources

Exhibit 1
 Marvine Creek ISF
 Water Division 6

0 0.75 1.5 3
 Miles

