

DISTRICT COURT, WATER DIVISION 4 MONTROSE COUNTY JUSTICE CENTER 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401 TELEPHONE: (970) 252-4336	DATE FILED: April 5, 2021 CASE NUMBER: 2020CW3079	
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD,</b>  <b>IN CEMENT CREEK, A NATURAL STREAM (INCREASE);</b>  <b>IN THE EAST-TAYLOR WATERSHED,</b>  <b>IN GUNNISON COUNTY, COLORADO.</b>		<b>▲ COURT USE ONLY ▲</b>
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT</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 November 12, 2020. The Water Court for Water Division 4 referred the Application to the Water Referee for Water Division 4 in accordance with section 37-92-203(7), C.R.S. (2020).

The Water 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 4, 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  
(303) 866-3441
3. Notice and Jurisdiction: All notices of this matter required under section 37-92-302(3) C.R.S. (2020), 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 in this matter, and the time for filing Statements of Opposition has expired.
5. Summary of Consultation: The Division Engineer for Water Division 4 filed a Summary of Consultation under section 37-92-302(4), C.R.S., dated February 3, 2021. No response was required to the Summary of Consultation. The Water Referee has given the Summary of Consultation due consideration.
6. Name of Water Right: Cement Creek Instream Flow ("ISF") Water Right (Increase).
7. Legal Description: The Cement Creek ISF Water Right (Increase) is located in the natural stream channel of Cement Creek from its headwaters to the confluence with East River, a distance of approximately 17.35 miles. A map depicting the approximate location of the Cement Creek ISF Water Right (Increase) reach is attached as **Exhibit 1**.
  - A. Upstream Terminus: Cement Creek headwaters in the vicinity of:
    1. UTM: Northing: 4314893.95; Easting: 346437.58 (NAD 1983 Zone 13 North)
    2. Lat/Long: Latitude 38° 58' 10.45"N; Longitude 106° 46' 21.31"W
    3. PLSS: Section 33, Township 12 South, Range 84 W 6<sup>th</sup> PM 1506' West of the East Section Line, 543' South of the North Section Line

B. Downstream Terminus: Confluence with East River at:

1. UTM: Northing: 4296619.14; Easting: 336739.49 (NAD 1983 Zone 13 North)
2. Lat/Long: Latitude 38° 48' 11.59"N; Longitude 106° 52' 48.48"W
3. PLSS: Section 27, Township 14 South, Range 85 West 6<sup>th</sup> PM 2089' East of the West Section Line, 1163 North of the South Section Line

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 and PLSS coordinates are provided as cross-reference locations only. The UTM, Lat/Long, and PLSS locations for the upstream and downstream termini were derived from CWCB GIS using the National Hydrography Dataset (NHD). The PLSS locations were derived from CWCB GIS using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database.

For purposes of administration the Division Engineer uses map viewer to determine PLSS locations. Typically, the difference in locations between these programs is minimal but in this case the Section was different for the Upstream Terminus. For administration purposes the legal descriptions shall be as set forth below in order that the relative locations are consistent with other water rights:

The termini are located within the 6<sup>th</sup> P.M. as follows:

Structure	Easting* (m)	Northing* (m)	¼ ¼	Section	Twn	Range	Ft. from Sec. Line	Ft. from Sec. Line
Upper Terminus	346437.58	4314893.95	SW SE	28	12S	84W	35 from South	2,300 from East
Lower Terminus	336739.49	4296619.14	SE SW	27	14S	85W	825 from South	2,415 from West

\*-NAD 83, Zone 13N.

8. Source: Cement Creek, tributary to East River, tributary to Gunnison River, tributary to Colorado River.

9. A. Date of initiation of appropriation: January 27, 2020.
- B. How appropriation was initiated: Appropriation and beneficial use occurred on January 27, 2020, by the action of the CWCB under sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2020).
- C. Date applied to beneficial use: January 27, 2020.
10. Amount of water claimed: Instream flow of 3 cfs (04/15 - 07/10), absolute.
11. Use of the Water: Instream flow uses to preserve the natural environment to a reasonable degree.
12. Remarks: The CWCB has an existing ISF water right on Cement Creek from its headwaters to the confluence with the East River, in the amount of 10.0 cfs (01/01 – 12/31), decreed in Case No. 80CW0103, with an appropriation date of 3/17/1980. The flow rate of the Cement Creek ISF Water Right (Increase) decreed herein is in addition to the flow rate of the Cement Creek ISF water right decreed in Case No. 80CW0103.

### 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 Water Division 4 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. (2020).
15. 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). 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. 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**


17. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee by this reference.
18. The Application for the Cement Creek ISF Water Right (Increase) is granted and a decree in the amount of 3 cfs (04/15 - 07/10), absolute, in the natural stream channel of Cement Creek in the reach between the upstream and downstream termini described in paragraph 7(A)–(B) above is hereby entered to preserve the natural environment to a reasonable degree. The appropriation date for this water right is January 27, 2020. The flow rate of the Cement Creek ISF Water Right (Increase) decreed herein is in addition to the flow rate of the Cement Creek ISF water right decreed in Case No. 80CW0103.
19. The priority herein confirmed was filed in the Water Court in the year of 2020 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.
20. The CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer for Water Division 4 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 4 and the State Engineer.

DATED: March 11, 2021

BY THE WATER REFEREE:

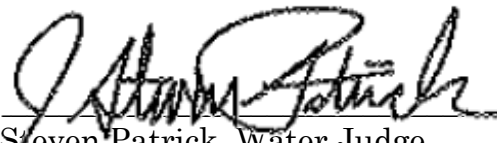
  
S. Gregg Stanway, Water Referee  
Water Division 4, State of Colorado

**JUDGMENT AND DECREE OF THE WATER COURT**

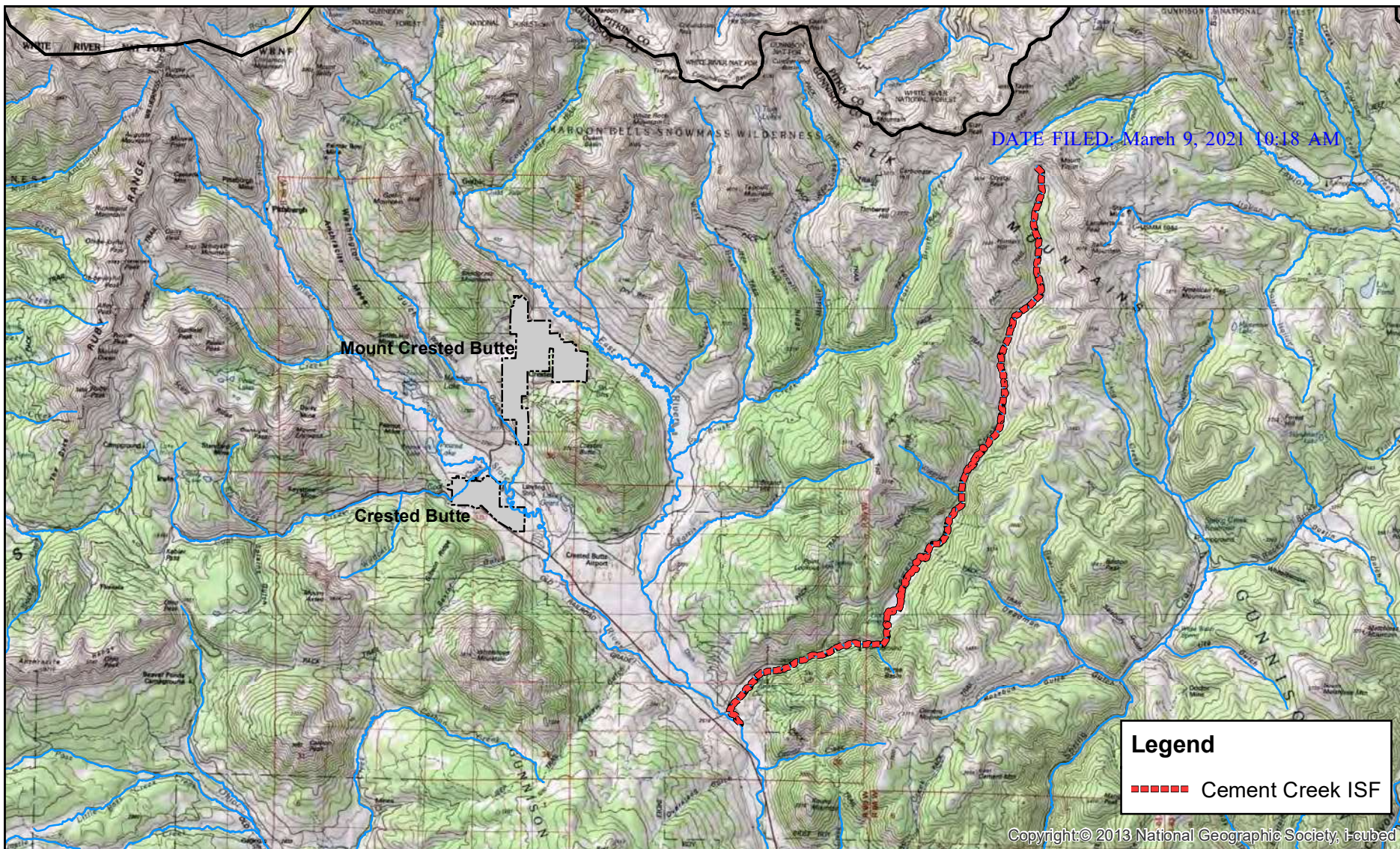
No protest was filed in this matter. The foregoing Ruling of the Referee is confirmed and approved and is made the Judgment and Decree of this Court.

BY THE COURT:

DATED April 5, 2021

  
J. Steven Patrick, Water Judge





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

Exhibit #1  
 Cement Creek ISF Water Right (Increase)  
 Water Division 4

0 1.75 3.5 7 Miles

