

DISTRICT COURT, WATER DIVISION 4 MONTROSE COUNTY JUSTICE CENTER 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401	DATE FILED: April 11, 2022 4:10 PM CASE NUMBER: 2021CW3066
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD,</b> <b>IN ELK CREEK, A NATURAL STREAM;</b> <b>IN THE EAST-TAYLOR WATERSHED,</b> <b>IN GUNNISON COUNTY, COLORADO</b>	<b>^ COURT USE ONLY ^</b>
	Case No.: 2021CW3066  Div. 4
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT ADJUDICATING INSTREAM FLOW RIGHT</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 December 17, 2022. 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.

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 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
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., on March 2, 2022. The Referee has given the Division Engineer's Consultation Report due consideration.
6. Name of water right: Elk Creek Instream Flow ("ISF") Water Right.
7. Legal Description: The Elk Creek Instream Flow Water Right is located in the natural stream channel of Elk Creek from its headwaters to the confluence with Coal Creek, a distance of approximately 2.66 miles. A map depicting the approximate location of the Elk Creek Instream Flow Water Right reach is attached as Exhibit 1.
  - A. Upstream Terminus: headwaters of Elk Creek in the vicinity of:
    1. UTM: Northing: 4306042.49; Easting: 320535.44 (NAD 1983 Zone 13 North)
    2. Lat/Long: Latitude 38° 53' 5.76"N; Longitude 107° 04' 8.73"W
    3. PLSS: SE1/4, NW1/4, Section 36, Township 13 South, Range 87 West 6<sup>th</sup> PM.
  - B. Downstream Terminus: the confluence with Coal Creek at:
    1. UTM: Northing: 4302804.98; Easting: 321286.22 (NAD 1983 Zone 13 North)

2. Lat/Long: Latitude 38° 51' 21.35"N; Longitude 107° 03' 34.56"W
3. PLSS: NE1/4, NE1/4, Section 12, Township 14 South, Range 87 West 6<sup>th</sup> PM.
- 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 in this decree were derived from CWCB GIS using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database.
8. Source: Elk Creek, tributary to Coal Creek, tributary to Slate River, tributary to East River, tributary to Gunnison River, tributary to Colorado River.
9. A. Date of initiation of appropriation: January 25, 2021.  
B. How appropriation was initiated: Appropriation and beneficial use occurred on January 25, 2021, 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 25, 2021.
10. Amount of water claimed: Instream flow of 0.2 cfs (08/16 - 04/30), 1.5 cfs (05/01 - 07/10), and 0.65 cfs (07/11 - 08/15), 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 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.

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. 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.
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 the Referee by this reference.
17. The Application is granted and a decree in the amount of instream flow of 0.2 cfs (08/16 - 04/30), 1.5 cfs (05/01 - 07/10), and 0.65 cfs (07/11 - 08/15), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Elk Creek from its headwaters to the confluence with Coal Creek, described in paragraph 7 above. The appropriation date for this water right is January 25, 2021.
18. The priority herein confirmed was filed in the Water Court in the year of 2021 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.
19. 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 2 and the State Engineer.

DATED: March 17, 2022

BY THE REFEREE:



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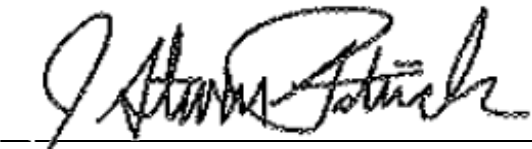
S. Gregg Stanway, Water Referee  
Water Division No. 4, State of Colorado

### 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.

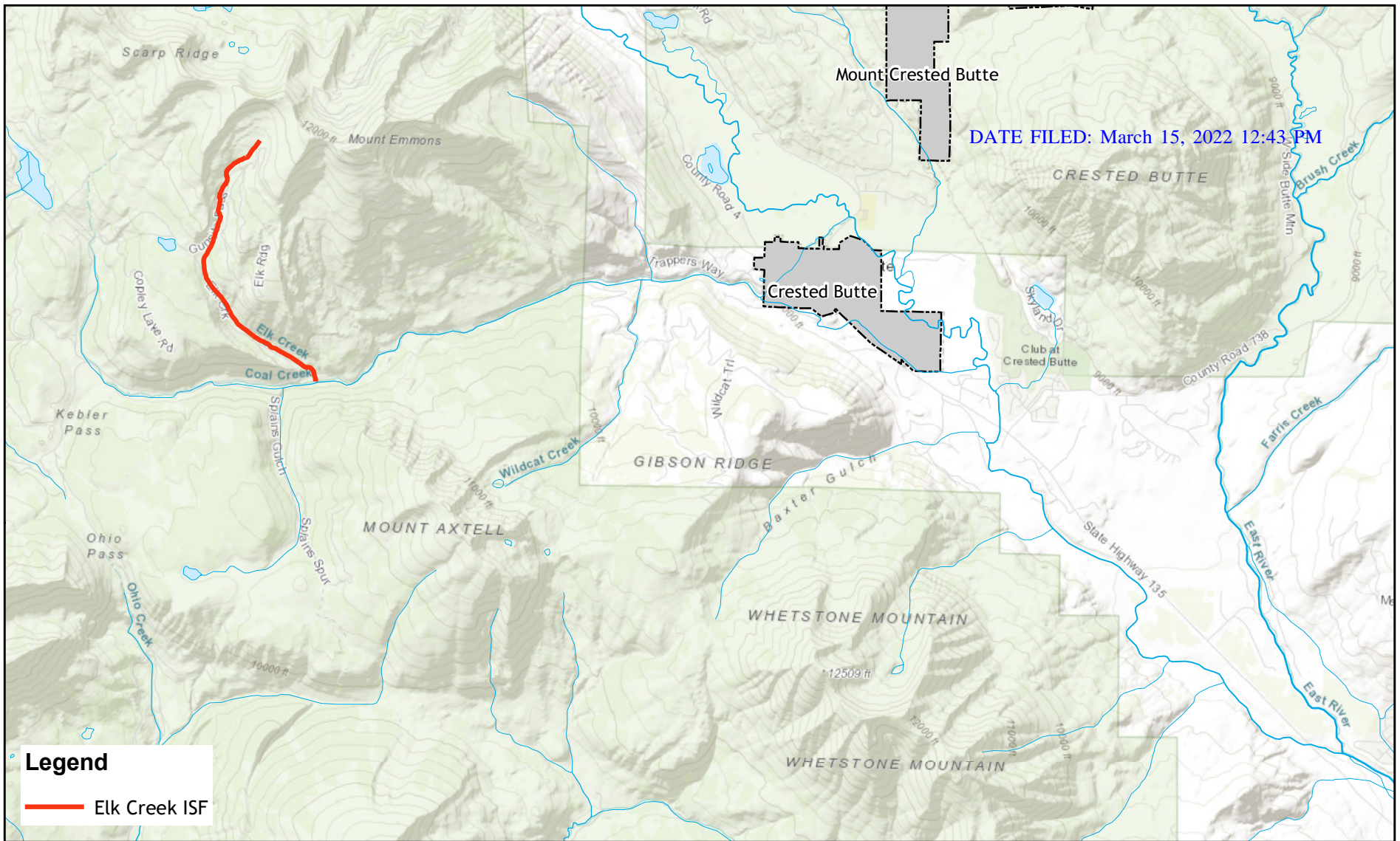
BY THE COURT:

DATED April 11, 2022



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J. Steven Patrick  
Water Judge  
Water Division No. 4, State of Colorado



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

**EXHIBIT #1**  
Elk Creek ISF  
Division 4

0 0.75 1.5 3 Miles

