

<b>DISTRICT COURT, WATER DIVISION NO. 2, COLORADO</b>  501 North Elizabeth Street, Suite 116 Pueblo, CO 81003	DATE FILED: July 25, 2022 8:45 AM CASE NUMBER: 2021CW3077
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  COLORADO WATER CONSERVATION BOARD,  IN EAST FORK ARKANSAS RIVER, A NATURAL STREAM;  IN THE ARKANSAS RIVER HEADWATERS WATERSHED,  IN LAKE COUNTY, COLORADO	<div data-bbox="1042 420 1427 730"> <b>▲ COURT USE ONLY ▲</b> </div> <div data-bbox="1042 730 1427 940">         Case No. 2021CW3077           Div. 2       </div>
<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 13, 2021. 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.

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 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: A Statement of Opposition was filed by City of Aurora on February 16, 2022. No other 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 filed a Summary of Consultation Report pursuant to section 37-92-302(4), C.R.S, on April 13, 2022. The Referee has given the Division Engineer's Consultation Report due consideration.
6. Name of water right: East Fork Arkansas River Instream Flow Water Right, WDID 1103097.
7. Legal Description: The East Fork Arkansas River Instream Flow Water Right is located in the natural stream channel of the East Fork Arkansas River from its headwaters to the confluence with Chalk Creek, a distance of approximately 6.46 miles.<sup>1</sup> A map depicting the approximate location of the East Fork Arkansas River Instream Flow Water Right reach is attached as **Exhibit 1**.
  - A. Upstream Terminus: The headwaters of East Fork Arkansas River in the vicinity of:

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<sup>1</sup> The WDID number for the East Fork Arkansas River Instream Flow Water Right is 1103097. The WDID number represents the water district (WD) and the identification number (ID) assigned to a structure or water right within that water district.

1. UTM: Northing: 4353749.78; Easting: 399540.97 (NAD 1983 Zone 13 North)
2. Lat/Long: Latitude 39° 19' 38.40"N; Longitude 106° 9' 55.87"W
- B. Downstream Terminus: The confluence with Chalk Creek at:
  1. UTM: Northing: 4356126.94; Easting: 394793.07 (NAD 1983 Zone 13 North)
  2. Lat/Long: Latitude 39° 20' 53.46"N; Longitude 106° 13' 15.47"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: East Fork Arkansas River, tributary to Arkansas River
9. A. Date of initiation of appropriation: March 10, 2021.  
B. How appropriation was initiated: Appropriation and beneficial use occurred on March 10, 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: March 10, 2021.
10. Amount of water claimed: Instream flow of 0.25 cfs (12/16 - 04/30), 7.0 cfs (05/01 - 07/31), 2.8 cfs (08/01 - 09/20), and 0.7 cfs (09/21 - 12/15), 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 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.

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.

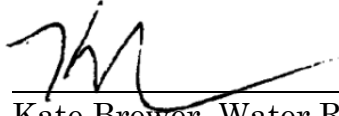
#### **RULING OF REFEREE**

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 flows of 0.25 cfs (12/16 - 04/30), 7.0 cfs (05/01 - 07/31), 2.8 cfs (08/01 - 09/20), and 0.7 cfs (09/21 - 12/15), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of the East Fork Arkansas River from its headwaters to the confluence with Chalk Creek, as described in paragraph 7 above. The appropriation date for this water right is March 10, 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 2 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: July 1, 2022.

BY THE REFEREE:



Kate Brewer, Water Referee  
Water Division No. 2, State of Colorado



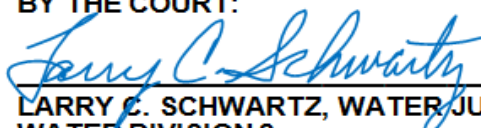
## JUDGMENT AND DECREE OF THE WATER COURT

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.

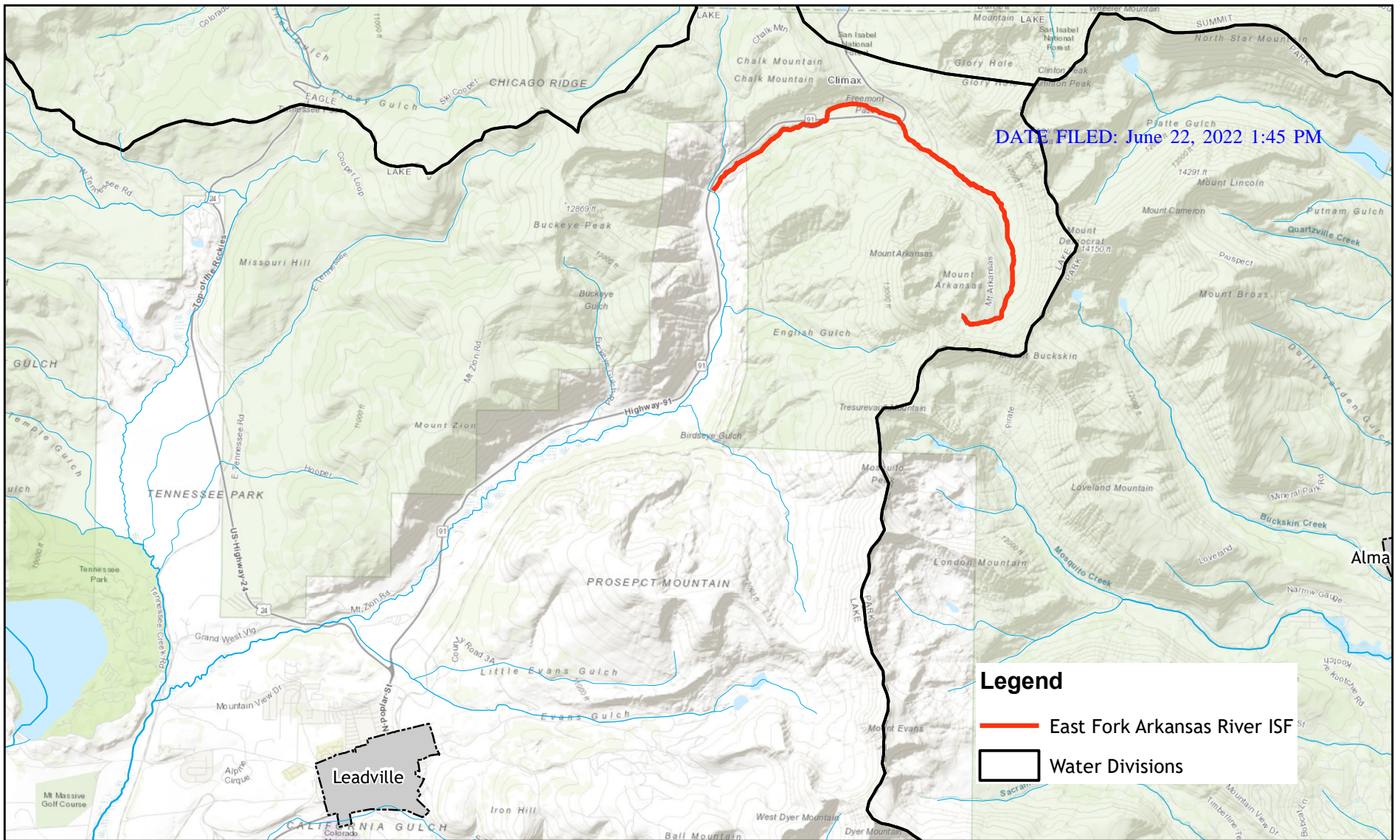
DATED: July 25, 2022



BY THE COURT:

  
LARRY C. SCHWARTZ, WATER JUDGE  
WATER DIVISION 2





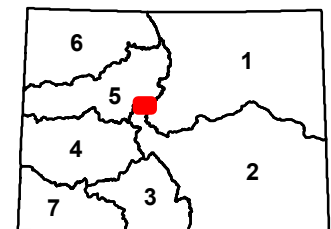
**COLORADO**  
**Colorado Water Conservation Board**

Department of Natural Resources

**EXHIBIT #1**

East Fork Arkansas River ISF  
 Division 2

0 1.25 2.5 5 Miles



<p><b>DISTRICT COURT, WATER DIVISION NO. 2, COLORADO</b> 501 North Elizabeth Street, Suite 116 Pueblo, CO 81003</p>		<p>DATE FILED: June 6, 2022 1:03 PM FILING ID: F37EFBCE16E0D CASE NUMBER: 2021CW3077</p>
<p><b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b></p> <p>COLORADO WATER CONSERVATION BOARD,  IN EAST FORK ARKANSAS RIVER, A NATURAL STREAM;  IN THE ARKANSAS RIVER HEADWATERS WATERSHED,  IN LAKE COUNTY, COLORADO</p>		<p>^ COURT USE ONLY ^</p>
<p><b>Attorneys for the Colorado Water Conservation Board:</b> PHILIP J. WEISER, Attorney General MARC D. SARMIENTO, Assistant Attorney General Attorney Reg. #46322* Natural Resources and Environment Section Office of the Colorado Attorney General 1300 Broadway, 7<sup>th</sup> Floor Denver, CO 80203: Telephone: (720) 508-6429 Email: <a href="mailto:marc.sarmiento@coag.gov">marc.sarmiento@coag.gov</a> *Counsel of Record</p> <p><b>Attorney for the City of Aurora:</b> Hamre, Rodriguez, Ostrander &amp; Dingess, P.C. John M. Dingess, #12239 3600 S. Yosemite St., Suite 500 Denver, CO 80237 Telephone: (303) 779-0200 Email: <a href="mailto:jdingess@hrodllaw.com">jdingess@hrodllaw.com</a></p>		<p>Case No.: 2021CW3077</p> <p>Div. 2</p>
<p><b>STIPULATION BETWEEN THE COLORADO WATER CONSERVATION BOARD AND OPPOSER, CITY OF AURORA</b></p>		



Applicant, the Colorado Water Conservation Board ("CWCB"), and Opposer, the City of Aurora ("Aurora"), hereby stipulate and agree as follows:

1. Aurora consents to the entry of the proposed Findings of Fact, Conclusions of Law, Ruling of Referee, Judgment and Decree of the Water Court, dated May 31, 2022, and attached hereto as Exhibit A ("Proposed Ruling").
2. The CWCB recognizes the Proposed Ruling does not provide any rights for the CWCB's use of transbasin waters flowing through Chalk Creek placed therein pursuant to existing rights of the Fremont Pass Ditch Company.
3. This stipulation is entered into by way of compromise and settlement of this litigation. Any agreements or terms and conditions herein are due solely to the unique circumstances of this case and the resulting stipulation. This stipulation shall not establish any precedent and shall not be construed as a commitment to include any specific findings of fact, conclusions of law, or specific engineering methodologies or administrative practices in future stipulations.
4. This stipulation shall bind and benefit the signatories to the stipulation and will be binding upon and benefit their heirs, assigns, and successors in interest.
5. Each party hereto shall bear its own costs and attorney fees.
6. The CWCB shall file a motion requesting the Court to enter an order approving this stipulation. Aurora does not oppose said motion.
7. This stipulation shall be enforceable as an agreement between the parties or as an order of the Court.

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Dated this 6th day of June, 2022.

PHILIP WEISER  
Attorney General

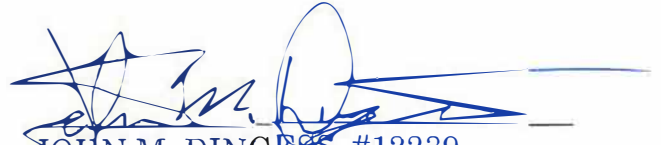


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MARC D. SARMIENTO, #46322\*  
Assistant Attorney General  
Colorado Department of Law  
\*Counsel of Record

ATTORNEY FOR THE COLORADO  
WATER CONSERVATION BOARD

HAMRE, RODRIGUEZ,  
OSTRANDER & DINGESS, P.C.



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JOHN M. DINGESS, #12239  
3600 S. Yosemite St., Suite 500  
Denver, CO 80237

ATTORNEY FOR CITY OF  
AURORA

<b>DISTRICT COURT, WATER DIVISION NO. 2, COLORADO</b>  501 North Elizabeth Street, Suite 116 Pueblo, CO 81003	<b>Exhibit A</b> <b>05-31-2022</b>  <b>▲ COURT USE ONLY ▲</b>	
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  COLORADO WATER CONSERVATION BOARD,  IN EAST FORK ARKANSAS RIVER, A NATURAL STREAM;  IN THE ARKANSAS RIVER HEADWATERS WATERSHED,  IN LAKE COUNTY, COLORADO		
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT</b>		

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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 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: A Statement of Opposition was filed by City of Aurora on February 16, 2022. No other 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 filed a Summary of Consultation Report pursuant to section 37-92-302(4), C.R.S, on April 13, 2022. The Referee has given the Division Engineer's Consultation Report due consideration.
6. Name of water right: East Fork Arkansas River Instream Flow Water Right.
7. Legal Description: The East Fork Arkansas River Instream Flow Water Right is located in the natural stream channel of the East Fork Arkansas River from its headwaters to the confluence with Chalk Creek, a distance of approximately 6.46 miles.<sup>1</sup> A map depicting the approximate location of the East Fork Arkansas River Instream Flow Water Right reach is attached as **Exhibit 1.**

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<sup>1</sup> The WDID number for the East Fork Arkansas River Instream Flow Water Right is 1103097. The WDID number represents the water district (WD) and the identification number (ID) assigned to a structure or water right within that water district.

- A. Upstream Terminus: The headwaters of East Fork Arkansas River in the vicinity of:
    - 1. UTM: Northing: 4353749.78; Easting: 399540.97 (NAD 1983 Zone 13 North)
    - 2. Lat/Long: Latitude 39° 19' 38.40"N; Longitude 106° 9' 55.87"W
  - B. Downstream Terminus: The confluence with Chalk Creek at:
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    - 2. Lat/Long: Latitude 39° 20' 53.46"N; Longitude 106° 13' 15.47"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: East Fork Arkansas River, tributary to Arkansas River
  - 9. A. Date of initiation of appropriation: March 10, 2021.
    - B. How appropriation was initiated: Appropriation and beneficial use occurred on March 10, 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: March 10, 2021.
  - 10. Amount of water claimed: Instream flow of 0.25 cfs (12/16 - 04/30), 7.0 cfs (05/01 - 07/31), 2.8 cfs (08/01 - 09/20), and 0.7 cfs (09/21 - 12/15), 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 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.
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 flows of 0.25 cfs (12/16 - 04/30), 7.0 cfs (05/01 - 07/31), 2.8 cfs (08/01 - 09/20), and 0.7 cfs (09/21 - 12/15), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of the East Fork Arkansas River from its headwaters to the confluence with Chalk Creek, as described in paragraph 7 above. The appropriation date for this water right is March 10, 2021.

*Findings of Fact, Conclusions of Law, Ruling of the Referee,  
and Judgment and Decree of the Water Court  
Case No. 21CW3077  
Page 4 of 6*



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 2 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: \_\_\_\_\_

BY THE REFEREE:

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Kate Brewer, Water Referee  
Water Division No. 2, State of Colorado

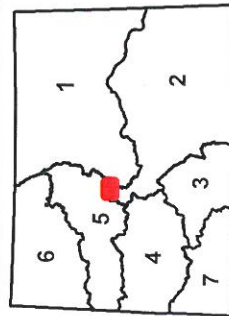
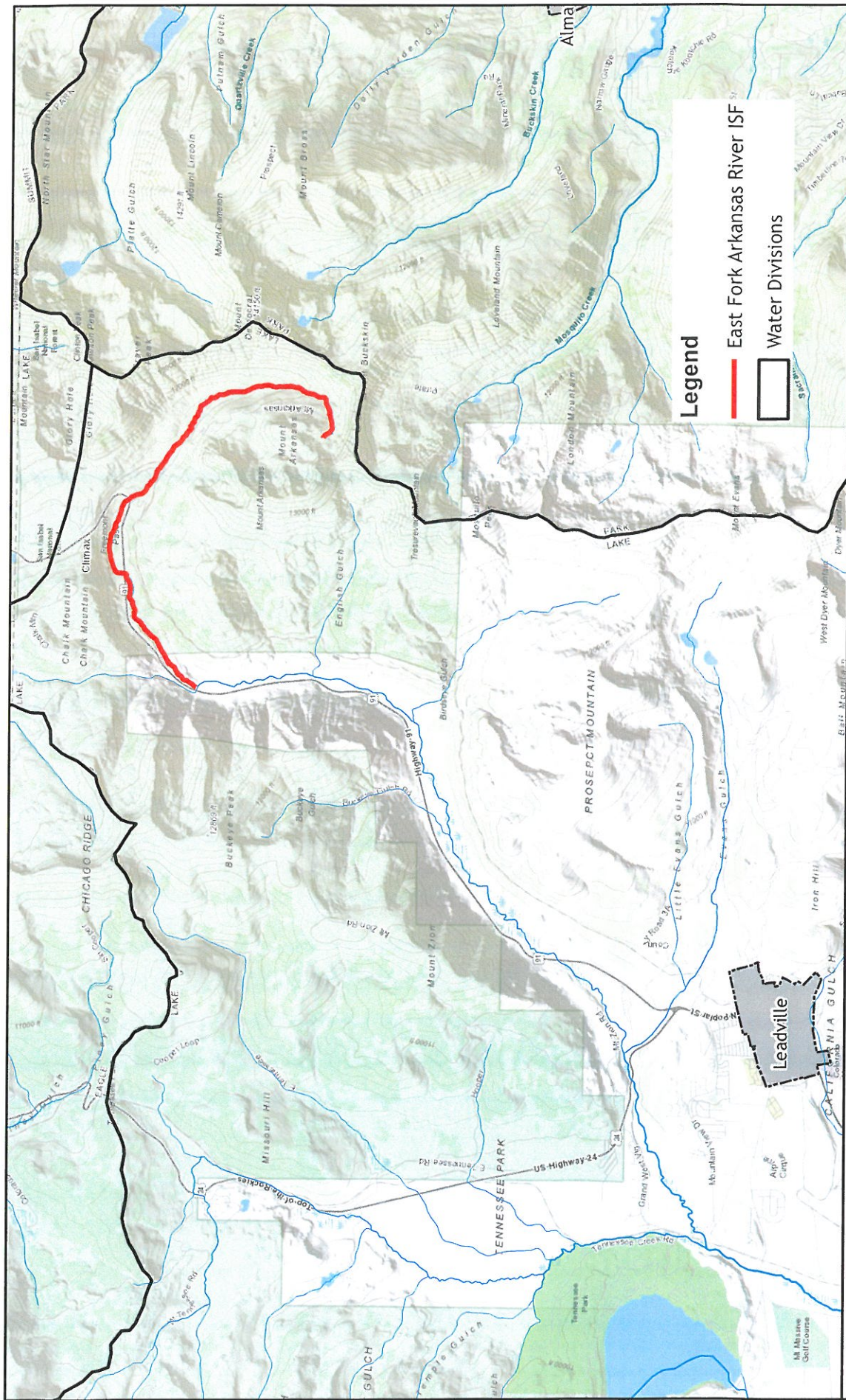
## JUDGMENT AND DECREE OF THE WATER COURT

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.

DATED: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Larry Schwartz  
Water Judge  
Water Division No. 2, State of Colorado



**EXHIBIT #1**  
East Fork Arkansas River ISF  
Division 2

**COLORADO**  
**Colorado Water**  
**Conservation Board**

Department of Natural Resources

