

DISTRICT COURT, WATER DIVISION 4 MONTROSE COUNTY JUSTICE CENTER 1200 N. GRAND AVE. BIN A MONTROSE, CO 81401 TELEPHONE: (970) 252-4336	DATE FILED: July 26, 2021 CASE NUMBER: 2020CW3072
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>COLORADO WATER CONSERVATION BOARD,</b>  <b>IN KELSO CREEK, A NATURAL STREAM;</b>  <b>IN THE LOWER GUNNISON WATERSHED,</b>  <b>IN MESA COUNTY, COLORADO.</b>	<b>▲ COURT USE ONLY ▲</b>
	Case No.: 2020CW3072  Div. 4
<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 October 28, 2020. The Water Court for Water Division 4 referred the Application to the Water Referee for Water Division 4 on January 5, 2021, 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: A Statement of Opposition was filed by Mika Ag Corp., a Colorado corporation d/b/a Escalante Land & Cattle Corp. on December 22, 2020. 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 for Water Division 4 filed a Summary of Consultation under section 37-92-302(4), C.R.S., dated January 13, 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: Kelso Creek Instream Flow ("ISF") Water Right.
7. Legal Description: The Kelso Creek ISF Water Right is located in the natural stream channel of Kelso Creek from its headwaters to the confluence with Bear Gulch, a distance of approximately 9.89 miles. A map depicting the approximate location of the Kelso Creek ISF Water Right reach is attached as **Exhibit 1**.
  - A. Upstream Terminus: Kelso Creek headwaters in the vicinity of:
    1. UTM: Northing: 4271192.67; Easting: 185287.30 (NAD 1983 Zone 13 North)
    2. Lat/Long: Latitude 38° 32' 0.61"N; Longitude 108° 36' 37.12"W
    3. PLSS: Section 1, Township 49 North, Range 16 West NM PM 410' East of the West Section Line, 247' North of the South Section Line

- B. Downstream Terminus: Confluence with Bear Gulch at:
1. UTM: Northing: 4276621.43; Easting: 197851.54 (NAD 1983 Zone 13 North)
  2. Lat/Long: Latitude 38° 35' 12.09"N; Longitude 108° 28' 7.59"W
  3. PLSS: Section 19, Township 50 North, Range 14 West NM PM 1036' West of the East Section Line, 1354' South of the North 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 in this application were derived from CWCB GIS using 2005 PLSS data from the U.S. Bureau of Land Management's Geographic Coordinate Database.
8. Source: Kelso Creek, tributary to Escalante Creek, 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 0.85 cfs (09/01 - 03/31), and 2.4 cfs (04/01 - 08/31), absolute.
11. Use of the Water: Instream flow uses to preserve the natural environment to a reasonable degree.

## TERMS AND CONDITIONS

12. Under section 37-92-102(3)(b), C.R.S. (2020), this ISF appropriation shall be subject to the present uses or exchanges of water being made by other water users, under appropriation or practices in existence on the date of this appropriation, whether or not previously confirmed by court order or decree including, without limitation, livestock water uses by Opposer, Mika Ag Corp (Escalante Ranch) on U.S. National Forest allotments along and above the ISF reach covered by this decree.

### **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).
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 is granted and a decree in the amount of a decree in the amount of Instream flow of 0.85 cfs (09/01 - 03/31), and 2.4 cfs (04/01 - 08/31), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Kelso Creek from its headwaters to the confluence with Bear Gulch, described in paragraph 7 above. The appropriation date for this water right is January 27, 2020.


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: July 1, 2021

BY THE WATER REFEREE:



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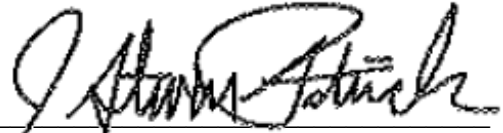
S. Gregg Stanway, Water Referee  
Water Division 4, State of Colorado

## JUDGMENT AND DECREE OF THE WATER COURT

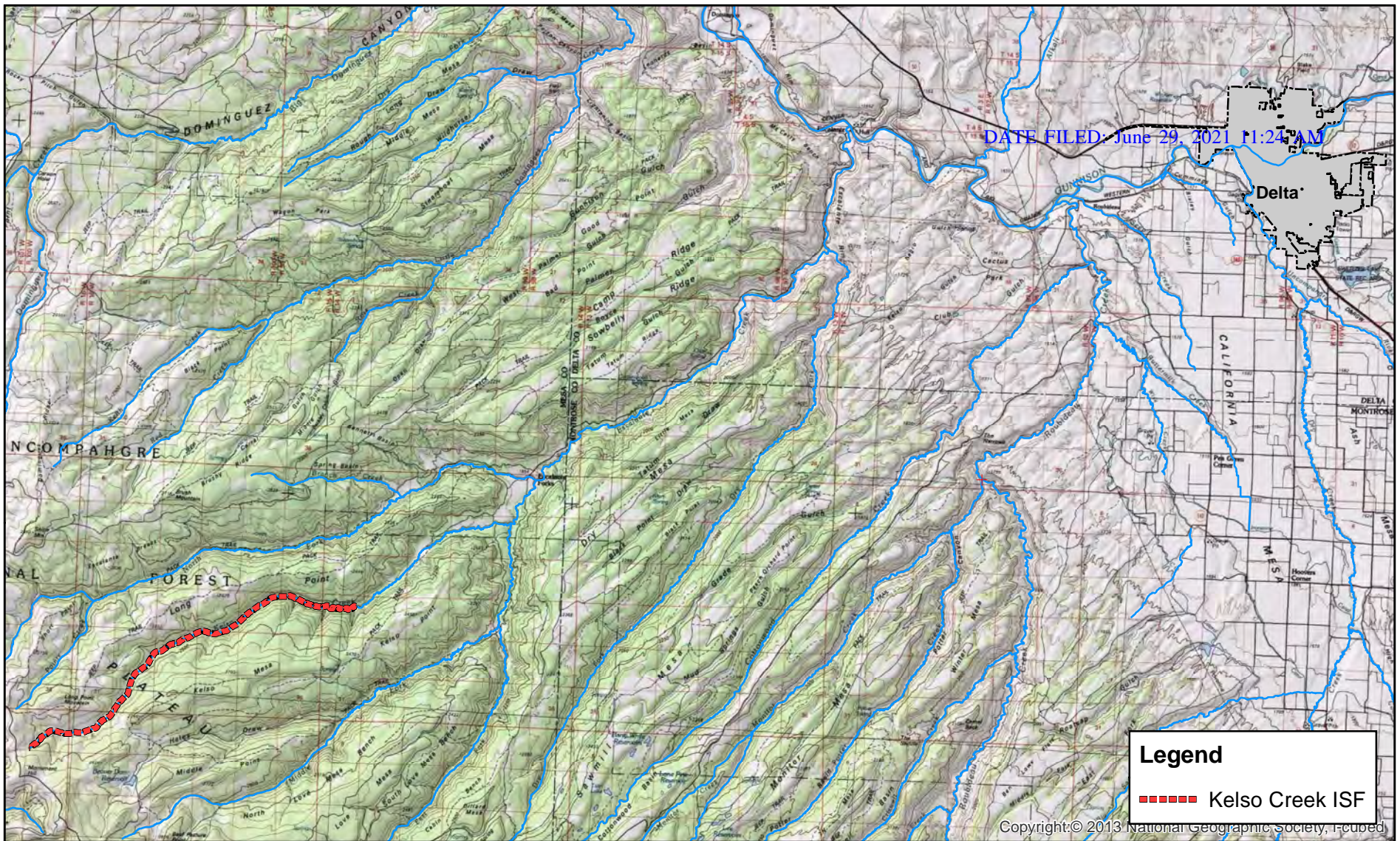
No protest was filed in this matter. The foregoing Ruling of the Referee is confirmed and approved and is made the Judgment and Decree of this Court.

BY THE COURT:

DATED July 26, 2021

A handwritten signature in black ink, appearing to read "J. Steven Patrick", written over a horizontal line.

J. Steven Patrick, Water Judge  
Water Division 4, State of Colorado



**Legend**

■■■■■ Kelso Creek ISF

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

Exhibit #1  
 Kelso Creek ISF  
 Water Division 4

