

DISTRICT COURT, WATER DIVISION 2 STATE OF COLORADO PUEBLO COUNTY JUDICIAL BUILDING 501 NORTH ELIZABETH STREET, SUITE 116 PUEBLO, CO 81003 (719) 404-8700	DATE FILED: September 22, 2021 1:25 PM CASE NUMBER: 2020CW3063
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN IOWA GULCH, A NATURAL STREAM; IN THE ARKANSAS HEADWATERS WATERSHED, IN LAKE COUNTY, COLORADO.	▲ COURT USE ONLY ▲
	Case No.: 2020CW3063 Div. 2
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT ADJUDICATING INSTREAM FLOW RIGHT	

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 29, 2020. 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. (2020).

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 Resurrection Mining Company ("Resurrection"). No other 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 February 11, 2021. The Referee has given the Division Engineer's Consultation Report due consideration.
6. Name of water right: Iowa Gulch Instream Flow ("ISF") Water Right.
7. Legal Description: The Iowa Gulch ISF Water Right is located in the natural stream channel of Iowa Gulch from its headwaters to a point at the upstream side of the Iowa Gulch Intake impoundment, a distance of approximately 3.34 miles. A map depicting the approximate location of the Iowa Gulch ISF Water Right reach is attached as **Exhibit 1**.
 - A. Upstream Terminus: Iowa Gulch headwaters in the vicinity of:
 1. UTM: Northing: 4343774.07; Easting: 398270.52 (NAD 1983 Zone 13 North)
 2. Lat/Long: Latitude 39° 14' 14.33"N; Longitude 106° 10' 43.49"W
 3. PLSS: Section 25, Township 9 South, Range 79 West 6th PM 472' East of the West Section Line, 2358' North of the South Section Line
 - B. Downstream Terminus: a point at the upstream side of the Iowa Gulch Intake impoundment:

1. UTM: Northing: 4342484.87; Easting: 394665.80 (NAD 1983 Zone 13 North)
 2. Lat/Long: Latitude 39° 13' 30.99"N; Longitude 106° 13' 13.09"W
 3. PLSS: Section 33, Township 9 South, Range 79 West 6th PM 766' West of the East Section Line, 1932' 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: Iowa Gulch, tributary to Arkansas 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 pursuant to sections 37-92-102(3) and (4) and 37-92-103(3), (4) and (10), C.R.S. (2019).
C. Date applied to beneficial use: January 27, 2020.
 10. Amount of water claimed: Instream flow of 1.7 cfs (05/01 - 09/15), and 1 cfs (09/16 - 04/30), absolute.
 11. Terms and Conditions with the Parkville Water District:
A. The CWCB recognizes that the Iowa Ditch and the Iowa Branch of the Blow Ditch, originally decreed in Civil Action No. 1856 on September 10, 1904, with an appropriation date of July 10, 1860, of which a total of 11.737 cfs were changed to divert at the Iowa Gulch Intake in Consolidated Case Nos. 88CW58 and 95CW6 by the District Court in and for Water Division 2, are valid existing water rights that may be

diverted at the Iowa Gulch Intake and are senior to the subject instream flow water right decreed herein.

- B. If, due to naturally occurring circumstances outside the control of Parkville, changes to the natural channel of Iowa Gulch occur or repairs to the Iowa Gulch Intake or related infrastructure are needed so that it becomes necessary to move the Iowa Gulch Intake point of diversion in any direction, and such relocation is otherwise consistent with C.R.S. § 37-86-111, the instream flow appropriation sought herein shall not be relied upon in any way to prohibit or condition any such move of the point of diversion and related diversion infrastructure or to require a change of water right associated with any move of the point of diversion.
12. Resurrection owns and has contractual rights in water rights and property in Iowa Gulch downstream of the Iowa Gulch ISF Water Right. The Iowa Gulch ISF Water Right is not intended to, and will not, interfere with Resurrection's current operations.
13. Use of the water: Instream flow to preserve the natural environment to a reasonable degree.
14. WDID: The Iowa Gulch ISF Water Right is identified by the Division of Water Resources as WDID 1103096.

CONCLUSIONS OF LAW

15. Incorporation: The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
16. 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.
17. 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.

18. The CWCB has fulfilled all legal requirements for a decree for water rights, including sections 37-92-302, -304, and -305, C.R.S.
19. 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

20. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee by this reference.
21. The Application is granted and a decree in the amount of instream flow of 1.7 cfs (05/01 - 09/15), and 1 cfs (09/16 - 04/30), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Iowa Gulch from its headwaters to a point at the upstream side of the Iowa Gulch Intake impoundment, described in paragraph 7 above. The appropriation date for this water right is January 27, 2020.
22. 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 this ruling.
23. 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: August 30, 2021.

BY THE REFEREE:



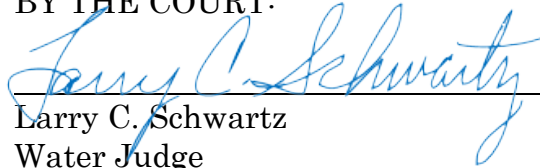
Kate Brewer, Water Referee
Water Division No. 2

JUDGMENT AND DECREE OF THE WATER COURT

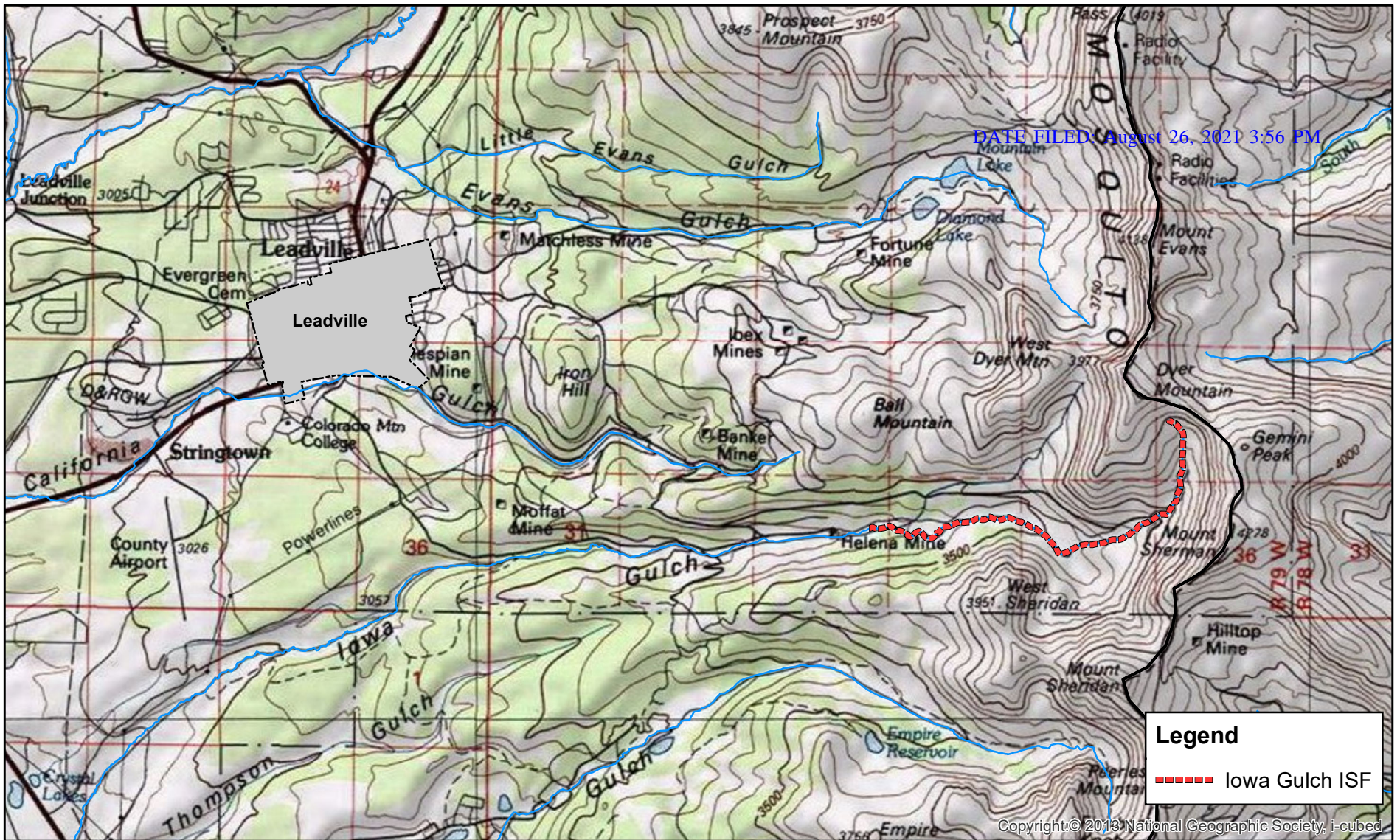
No protest was filed in this matter. The foregoing Ruling is confirmed and approved and is made the judgment and decree of this Court.

DATED: September 22, 2021

BY THE COURT:



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



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

Exhibit #1
 Iowa Gulch ISF
 Water Division 2

0 0.5 1 2 Miles

