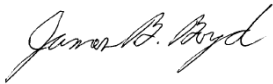


DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8th Street, Ste. 104, Glenwood Springs, CO, 81601	DATE FILED: June 16, 2019 4:16 PM CASE NUMBER: 2018CW3198
In the Interest of: COLORADO WATER CONSERVATION BOARD	<p style="text-align: center;">△ COURT USE ONLY △</p> <p>Case Number: 2018CW3198 Division: E Courtroom:</p>
Decree: Decree of the Water Court	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 6/16/2019



JAMES BERKLEY BOYD
District Court Judge

DISTRICT COURT, WATER DIVISION 5 GARFIELD CO. COURTHOUSE 109 8TH STREET, STE. 104 GLENNWOOD SPRINGS, CO 81601 (970) 928-3065	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: COLORADO WATER CONSERVATION BOARD, IN ABRAMS CREEK, A NATURAL STREAM (INCREASE); IN THE EAGLE RIVER WATERSHED, IN EAGLE COUNTY, COLORADO.	▲ COURT USE ONLY ▲
	Case No.: 2018CW3198 Div. 5
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, AND JUDGMENT AND DECREE OF THE WATER COURT	

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 5, 2018. The Water Court for Water Division 5 referred the Application to the Water Referee for Water Division 5 on December 5, 2018, in accordance with section 37-92-203(7), C.R.S. (2018).

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 5, 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. Name & 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. Statements of Opposition: No Statements of Opposition were filed. The time for filing statements of opposition has expired.
5. Summary of Consultation: The Division Engineer for Water Division 5 filed a Summary of Consultation pursuant to section 37-92-302(4), C.R.S. (2018), on April 9, 2019. The CWCB filed a Response to the Summary of Consultation on April 11, 2019. The Water Referee has given the Summary of Consultation and Response due consideration.
6. Name of Water Right: Abrams Creek Instream Flow Water Right.
7. Legal Description: The Abrams Creek Instream Flow Water Right is located in the natural stream channel of Abrams Creek from its headwaters to the Mrs. Paye Ditch headgate, a distance of approximately 3.95 miles. A map depicting the approximate location of the Abrams Creek Instream Flow Water Right reach is attached as **Exhibit 1**.
- 7.1. Upstream Terminus: Abrams Creek headwaters in the vicinity of:
- 7.1.1. UTM: Northing: 4383025.55; Easting: 339836.18 (NAD 1983 Zone 13 North)
- 7.1.2. Lat/Long: latitude 39° 34' 55.18"N and longitude 106° 51' 53.84"W
- 7.2. Downstream Terminus: Mrs. Paye Ditch headgate at:
- 7.2.1. UTM: Northing: 4387351.32; Easting: 343811.41 (NAD 1983 Zone 13 North)
- 7.2.2. Lat/Long: latitude 39° 37' 18.07"N and longitude 106° 49' 10.95"W

- 7.3. 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: Abrams Creek, tributary to Brush Creek, tributary to the Eagle River, tributary to the Colorado River.
9. Details of Appropriation:
- 9.1. Date of initiation of appropriation: January 22, 2018.
- 9.2. How appropriation was initiated: Appropriation and beneficial use occurred on January 22, 2018, 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. (2018).
- 9.3. Date applied to beneficial use: January 22, 2018.
10. Amount of water claimed: Instream flow of 0.75 cfs (05/01 – 09/30), absolute.
11. The CWCB has an existing instream flow water right on Abrams Creek from its headwaters in the SE1/4 SE1/4 of Section 25, T. 5 S., R. 85 W., 6th P.M., to a diversion located in SE1/4 SW1/4 of Section 9, T. 5 S., R. 85 W. 6th PM, in the amount of 0.50 cfs (1/1 – 12/31), decreed in Case No. 80CW118 with an appropriation date of March 17, 1980. The flow rates sought herein are in addition to the amount of the existing instream flow water right.
12. Abrams Creek Project:
- 12.1. The instream flow water right sought herein benefits from and helps preserve improved Abrams Creek flows achieved through implementation of a project called the Abrams Creek project. The Abrams Creek project is an irrigation delivery efficiency project by which portions of the J.P.O. Ditch (which includes the consolidated J.P.O. No. 1 Ditch and J.P.O. No. 2 Ditch) are piped to reduce losses, and the owner of the J.P.O. Ditch, Buckhorn Valley Metropolitan District (“Buckhorn”), agrees to reduce diversions and leave certain flows in Abrams Creek, as further described in and subject to

the conditions of an agreement between the District and Trout Unlimited (“TU”) dated June 28, 2016 (“TU Agreement”). The CWCB contributed significant funding to the Abrams Creek project.

12.2. To help ensure the instream flow water right sought herein benefits from the Abrams Creek project, and does not impair that project, the CWCB agrees to the following conditions:

12.2.1. The CWCB recognizes that the water rights decreed to the J.P.O. No. 2 Ditch in Civil Action 548 (1.0 cfs for irrigation under a June 3, 1908 appropriation), Civil Action 841 (2.0 cfs for irrigation and domestic under an April 1, 1916 appropriation) and Case No. 2016 CW3173 (up to 3.0 cfs to fill and refill Buckhorn Pond No. 1), are senior to the subject instream flow appropriation sought herein.

12.2.2. Modifications to infrastructure may be needed in the future to accommodate operation of the Abrams Creek project, including the fish screen on the diversion structure. CWCB hereby recognizes the benefits of the Abrams Creek project and agrees it shall not use its Abrams Creek instream flow water right sought herein to prevent infrastructure modifications or operations which Buckhorn and TU agree are necessary to effectuate the TU Agreement.

12.2.3. If, due to naturally occurring circumstances outside the control of Buckhorn, changes to the natural channel of Abrams Creek occur or repairs to the J.P.O. No. 2 Ditch and headgate are needed and it becomes physically necessary to move the J.P.O. No. 2 Ditch diversion point, whether upstream or downstream, the instream flow water right sought herein shall not be relied upon in any way to prohibit or condition any such move of the diversion point or to require a change of water right associated with any move of the diversion point, so long as: (1) the diversions at the relocated J.P.O. No. 2 Ditch diversion point continue to be subject to the TU Agreement; (2) the relocation is consistent with said Agreement; and (3) Buckhorn will not divert the water rights decreed to the J.P.O. No. 2 Ditch when there is 1.25 cfs or less in Abrams Creek at the relocated point of diversion for the J.P.O. No. 2 Ditch headgate.

13. Use of Water: Instream flow to preserve the natural environment to a reasonable degree.

CONCLUSIONS OF LAW

14. The foregoing Findings of Fact are incorporated herein to the extent they constitute conclusions of law.
15. Notice and Jurisdiction: The Water Court for Division 5 has jurisdiction over the subject matter of these proceedings and over all persons and 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. (2018).
16. The CWCB has fulfilled all legal requirements for a decree for water rights including sections 37-92-302, 304, and 305, C.R.S. (2018).
17. 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 THE REFEREE

18. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Ruling of the Referee by this reference.
19. The Application is granted, and a decree in the amount of 0.75 cfs (05/01 – 09/30), absolute, is hereby entered to preserve the natural environment to a reasonable degree in the natural stream channel of Abrams Creek from its headwaters to the Mrs. Paye Ditch headgate, as described in paragraph 7 above, and subject to the conditions in paragraph 12 above. The appropriation date for this water right is January 22, 2018.
20. The priority herein confirmed was filed in the Water Court for Division 5 in the year of 2018 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.
21. The CWCB shall install and maintain such measuring devices and keep such records as the Division Engineer for Water Division 5 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 5 and the State Engineer.

DATED: May 21, 2019.

BY THE REFEREE

A handwritten signature in black ink, appearing to read 'Susan M. Ryan', written over a faint diagonal watermark that says 'Attachment to Order 2018CW3198'.

Susan M. Ryan, Water Referee
Division 5, Water Court

JUDGMENT AND DECREE OF THE WATER COURT

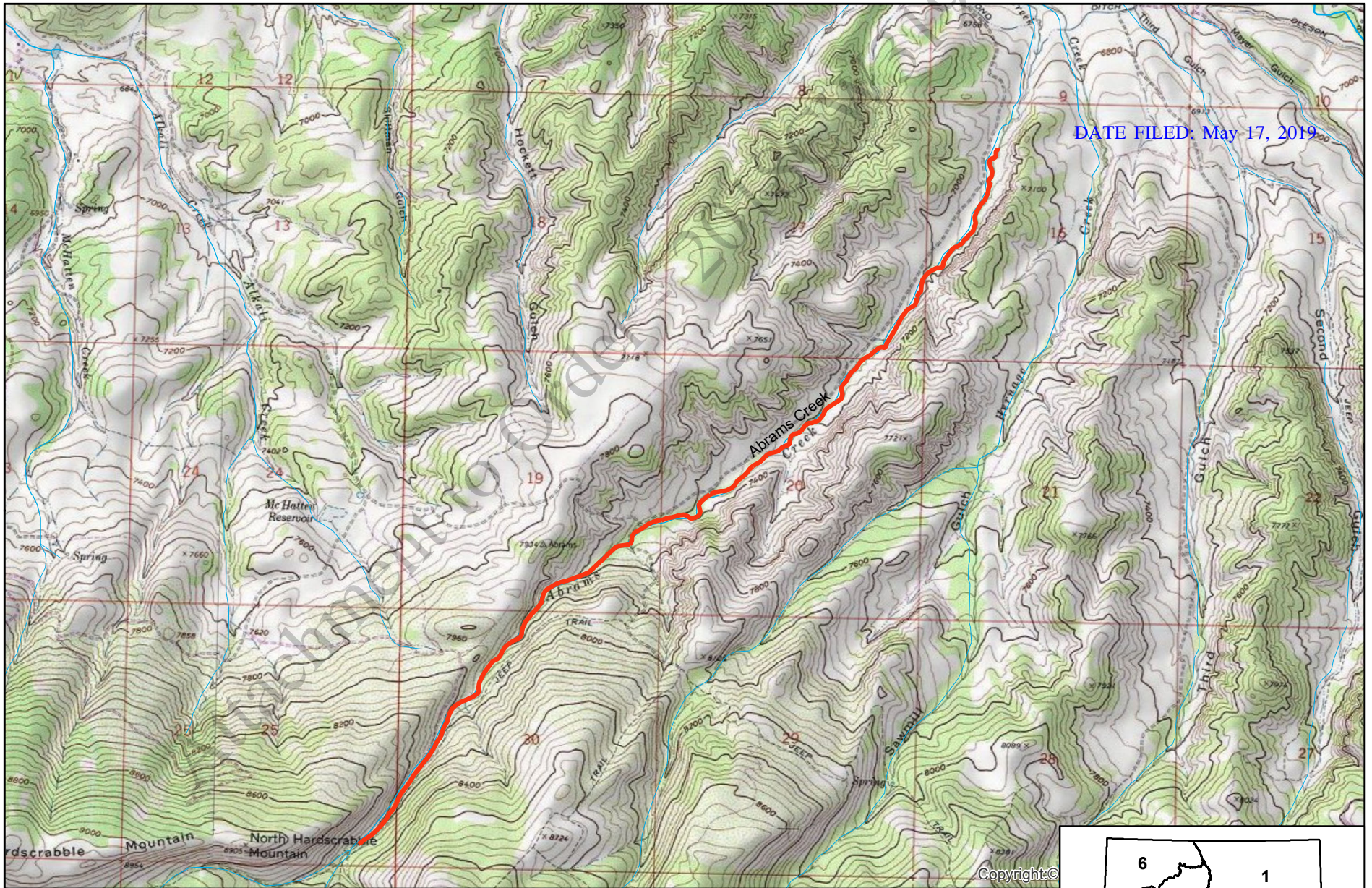
No protest was filed in this matter. The foregoing Ruling of the Referee is confirmed and approved and is made the judgment and decree of this Court.

DATED: _____

BY THE COURT:

James B. Boyd, Water Judge
Water Division No. 5

Attachment to Order - 2018CW3198



DATE FILED: May 17, 2019

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Exhibit 1
Abrams Creek ISF
Water Division 5

