

DISTRICT COURT, WATER DIVISION NO. 6, STATE OF COLORADO Routt County Justice Center 1955 Shield Drive, Unit 200 Steamboat Springs, CO 80487 (970) 879-5020 <i>telephone</i>	DATE FILED: January 7, 2021 CASE NUMBER: 2014CW3043
CONCERNING THE APPLICATION FOR WATER RIGHTS OF The RIO BLANCO WATER CONSERVANCY DISTRICT, a Colorado Water Conservancy District In the White River or its Tributaries In RIO BLANCO COUNTY, COLORADO	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 2014CW3043
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT AND DECREE OF THE WATER COURT	

The above-entitled Application was filed on December 29, 2014 (referred to herein as the “Application”). This matter was referred to the Water Referee on December 30, 2014 for Water Division No. 6, State of Colorado, by the Water Judge of said Court in accordance with Article 92 of Chapter 37, C.R.S. 1973, known as The Water Right Determination and Administration Act of 1969. On December 4, 2015, the Water Referee at his discretion re-referred the matter back to the Water Judge, however, the Water Judge acted as the Referee until October 9, 2019, when the at issue date was set and the matter was put on a trial track.

The Court, having reviewed the files, and having become fully advised with respect to the subject matter of the Application, does hereby make the following determinations in this matter, to-wit:

FINDINGS OF FACT

1. The statements in the Application are true.
2. Name and Address of Applicant:

 Rio Blanco Water Conservancy District
 c/o Alden Vanden Brink, Manager
 2252 East Main Street
 Rangely, Colorado 81648
 E-mail: rbwcd@yahoo.com
 (970) 675-5055
3. Neither the subject water rights nor their sources are located within a designated ground water basin.

4. Timely and adequate notice of the filing of this Application was given as required by law.

5. Statements of Opposition were filed by John W. Savage aka John W. Savage, Jr., Joan L. Savage, Roy E. Savage, Marshall T. Savage and Daniel W. Savage (Savage) on February 9, 2015; Exxon Mobil Corporation (Exxon) on February 25, 2015; United States of America, Department of the Interior, Bureau of Land Management, White River Field Office (BLM) on February 26, 2015; TerraCarta Energy Resources, LLC (TerraCarta) on February 27, 2015 and Oscar S. Wyatt, Jr. (Wyatt) on February 27, 2015. 4 M Ranch, LLC (4MRanch) gave Notice Regarding Name Change of Named Opposer from Wyatt to 4MRanch on April 13, 2016. 4MRanch was substituted as a party for Savage on November 5, 2019. The Colorado Water Conservation Board (CWCB) intervened in the case and the court entered an order approving its intervention on July 13, 2015. The Colorado State Engineer and the Division 6 Engineer (Engineers) intervened in this case and the court entered an order approving their intervention on February 12, 2020. The time for filing Statements of Opposition has expired.

6. Stipulations have been filed and orders approving those Stipulations have been entered by the Court as follows:

- a. Savage March 14, 2016; Order approving same March 20, 2016 (Savage Stipulation). 4MRanch is bound by the Savage Stipulation.
- b. BLM August 26, 2016; Order approving same August 27, 2016.
- c. CWCB March 6, 2017; Order approving same March 13, 2017.
- d. TerraCarta June 27, 2018; Order approving same June 28, 2018.
- e. Exxon November 25, 2019; Order approving same November 29, 2019; Amended Stipulation July 7, 2020; Order approving same July 8, 2020.
- f. 4M withdrew its Statement of Opposition on July 6, 2020.
- g. Engineers January 5, 2021; Order approving same on January 7, 2021.

7. The Division Engineer issued the Summary of Consultation Report in this matter on March 17, 2015, an Additional Written Report on October 4, 2018 and a Second Additional Report on August 2, 2019. *See* C.R.S. § 37-92-302(4). The Water Judge has considered the Summary of Consultation and the two Additional Reports and those issues have been addressed to the satisfaction of the Division Engineer in this Decree.

CLAIM FOR WATER STORAGE RIGHT

8. Name of structure: Wolf Creek Reservoir

9. Legal description for alternative places of storage:

Wolf Creek Off-Channel Dam and Reservoir: The left abutment (looking downstream) of the Wolf Creek Off-Channel Dam is located in the NW¹/₄ of the SW¹/₄ of Section 23, Township 3N., Range 99 W. of the 6th P.M., at a point 1,007 feet east of the west section line of Section 23 and 1,450 feet north of the south section line of Section 23, in Rio Blanco County, Colorado. Maps showing the location of the Wolf Creek Off-Channel Reservoir are attached as Figures 1 and 2.

Wolf Creek Mainstem Dam and Reservoir: The left abutment (looking downstream) of the Wolf Creek Mainstem Dam is located in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 3N., Range 99 W. of the 6th P.M., at a point 390 feet east of the west section line of Section 34 and 3,730 feet north of the south section line of Section 34, in Rio Blanco County, Colorado. Maps showing the location of the Wolf Creek Mainstem Dam and Reservoir are attached as Figures 3 and 4.

10. Sources:

Wolf Creek Off-Channel Dam and Reservoir:

a. White River, diverting up to 400 cfs at the Wolf Creek Reservoir Pump and Pipeline located in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 27, Township 3 N., Range 99 W. 6th P.M., 480 feet west of the east section line of Section 27 and 2,620 feet north of the south section line of Section 27, in Rio Blanco County, Colorado. A map showing the location of the Wolf Creek Reservoir Pump and Pipeline is attached as Figure 1.

b. Natural inflow from Divide Creek, Wolf Creek, Middle Fork Wolf Creek, East Fork Wolf Creek, and Coal Creek, all tributary to the White River.

Wolf Creek Mainstem Dam and Reservoir: White River

11. Date of appropriation: March 31, 2013.

a. How appropriation was initiated: formation of requisite intent to appropriate water coupled with actions manifesting such intent, including but not limited to public discussions and meetings, numerous engineering, planning and feasibility studies, site visits, field surveying, land acquisition, pre-permitting activities, and formal District action to adjudicate water rights.

b. Date water applied to beneficial use: N/A.

12. Amount claimed: 66,720 acre-feet, conditional. Only one of the two alternative places of storage will be utilized and upon making the water right at one location absolute, the alternative place of storage shall be cancelled.

13. Use or Proposed Use: municipal use (including but not limited to domestic, irrigation, commercial, and industrial uses) for the Town of Rangely, augmentation (to augment depletions through a future blanket augmentation plan for water users within the District Boundaries and within the Yellow Jacket Water Conservancy District boundaries pursuant to leases or exchanges of water under C.R.S. § 37-83-106), mitigation of environmental impacts of the Wolf Creek Reservoir project (“Mitigation”), hydroelectric power generation exercised only in conjunction with releases for other decreed beneficial uses, and in-reservoir uses for recreation, piscatorial, and wildlife habitat.

14. Dam and Reservoir Information:

Wolf Creek Off-Channel Dam and Reservoir:

- a. Surface area of high water line: 2,025 acres
- b. Vertical height of dam in feet: 110 feet.
- c. Length of dam in feet: 3,800 feet.
- d. Total capacity of reservoir in acre-feet: 66,720
- e. Active capacity: 66,720 acre-feet Dead storage: None

Wolf Creek Mainstem Dam and Reservoir:

- a. Surface area of high water line: 2,257 acres
- b. Vertical height of dam in feet: 127 feet.
- c. Length of dam in feet: 2500 feet.
- d. Total capacity of reservoir in acre-feet: 66,720 acre-feet
- e. Active capacity: 66,720 acre-feet Dead storage: None

Remarks: Applicant will not construct both reservoirs. Applicant's preferred alternative is the Wolf Creek Off-Channel Dam and Reservoir.

STIPULATED TERMS AND CONDITIONS

15. The following stipulated terms and conditions are incorporated herein:

- a. That the use of stored water by exchange upstream of the outlet works for the reservoir, including augmentation use wherein upstream out-of-priority depletions are replaced with downstream reservoir water, shall be made only after resume notice and a new water court application that includes this augmentation source has been decreed or substitute water supply plan approved by the State and Division Engineer's Office pending a final decree. In the event an administrative exchange is sought by Applicant, Applicant shall give CWCB prior notice of such request for administrative exchange with sufficient time, if possible, for opportunity for the CWCB to propose protective terms and conditions if the exchanges extend through any instream flow reach. Notice shall be via e-mail to the Stream and Lake Protection Section of the CWCB, dnr_cwcbisf@state.co.us, but if this email address is unavailable or email is otherwise ineffective notice shall be sent via

Certified U.S. Mail to: CWCB, Section Chief, Stream and Lake Protection Section,
1313 Sherman Street, Room 719, Denver CO 80203.

- b. In the event the Applicant applies for and is successful in moving any of its existing or acquired water storage rights to either the Wolf Creek Off-Channel Dam and Reservoir or Wolf Creek Mainstem Reservoir Dam and Reservoir, all or a portion of the subject water right decreed herein in the amount and for the uses so moved shall be cancelled, thereby reducing the total amount decreed for the subject water right. However, notwithstanding the forgoing, Applicant may maintain that portion of the water right decreed herein for which Applicant has no similar water uses available from other water rights.
 - i. In the event all other decreed uses for the subject water right are cancelled under this paragraph 15.b except Mitigation, all amounts of the subject water right shall also be cancelled except for that amount of water determined in the future to be necessary for Mitigation.
 - ii. Similarly, in the event the municipal and augmentation uses for the subject water right are cancelled under this paragraph 15.b, the only remaining decreed use for which water may specifically be released from the reservoir is Mitigation. Thus, in this event, the annual amount of water that may be released from the reservoir under the subject water right shall be limited to the amount of water determined in the future to be necessary for Mitigation in approvals for the project.
- c. Pursuant to the January 5, 2021 stipulation between the Applicant and the Engineers, the terms of which are fully incorporated by this reference, the following shall apply to the subject water right decreed herein:
 - i. Annual releases from the reservoir under the subject water right shall be limited to 7,000 acre-feet for municipal and augmentation uses and 20,720 acre-feet for Mitigation, as those uses are described in paragraph 13, above.
 - ii. Up to 20,720 acre-feet of the total decreed amount of 66,720 acre-feet may be used for Mitigation. Water released for Mitigation shall be limited to the amount of water as may be determined in the future to be necessary for that purpose in approvals for the project. Once that determination has been made, the difference between the 20,720 acre-foot amount and the amount determined to be necessary for Mitigation shall be cancelled, thereby reducing the total amount decreed for the subject water right as well as the amount that may be released for Mitigation by that cancelled amount.

CONCLUSIONS OF LAW

16. The foregoing Findings of Fact are fully incorporated herein.
17. Notice of the Application was properly given. The Court has jurisdiction over the Applicant and over all persons or entities who had standing to appear, even though they did not do so.
18. The Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 through -602.
19. Pursuant to C.R.S. § 37-45-118(1)(j), Applicant shall use the water rights claimed herein within its district boundaries, as those boundaries currently exist or may be expanded by inclusion of additional lands pursuant to C.R.S. § 37-45-136. Applicant may also provide water to other areas pursuant to intergovernmental agreement as authorized by C.R.S. § 29-1-203 and C.R.S. § 37-83-106.
20. The subject Application is in accordance with Colorado law. Applicant has fulfilled all legal requirements for entry of a decree in this case.

JUDGMENT AND DECREE OF COURT

21. The foregoing Findings of Fact and Conclusions of Law are incorporated herein by this reference.
22. The Applicant is hereby granted the conditional water rights claimed herein.
23. Should the Applicant desire to maintain the conditional water rights confirmed herein, an Application for Finding of Reasonable Diligence shall be filed by January 31, 2027, unless a determination has been made that such conditional rights have been made absolute by reason of the completion of the appropriation, or is otherwise disposed of.
24. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the conditional water rights decreed herein, the transferee shall file with the Division 6 Water Court a notice of transfer which shall state:
 - a. The title and case number of this Case No. 2014CW3043;
 - b. The description of the conditional water right transferred;
 - c. The name of the transferor;
 - d. The name and mailing address of the transferee; and
 - e. A copy of the recorded deed.

The owner of said conditional water rights shall also notify the Clerk of the Division 6 Water Court of any change in mailing address. The Clerk shall place any notice of transfer or

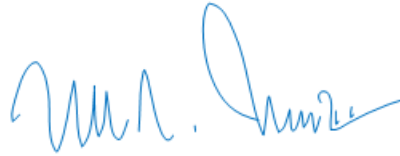
change of address in the case file of this Case No. 2014CW3043 and in the case file (if any) in which the Court first made a finding of reasonable diligence.

It is accordingly ordered that this Judgment and Decree shall be filed with the Water Clerk and shall become effective upon such filing, subject to judicial review pursuant to C.R.S. § 37-92-304, as amended.

It is further ordered that a copy of this Judgment and Decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 6.

DATED this 7th day of January, 2021.

BY THE COURT:



Michael A. O'Hara, III, Water Judge
Water Division 6, State of Colorado

TOWNSHIP 4N
TOWNSHIP 3N

DATE FILED: January 6, 2021 6:08 PM

WATER SURFACE ELEVATION AT THE DAM CREST
(ELEVATION 5597)

RANGE 99W
RANGE 98W

MOFFAT COUNTY
RIO BLANCO COUNTY

PROPOSED SPILLWAY LOCATION

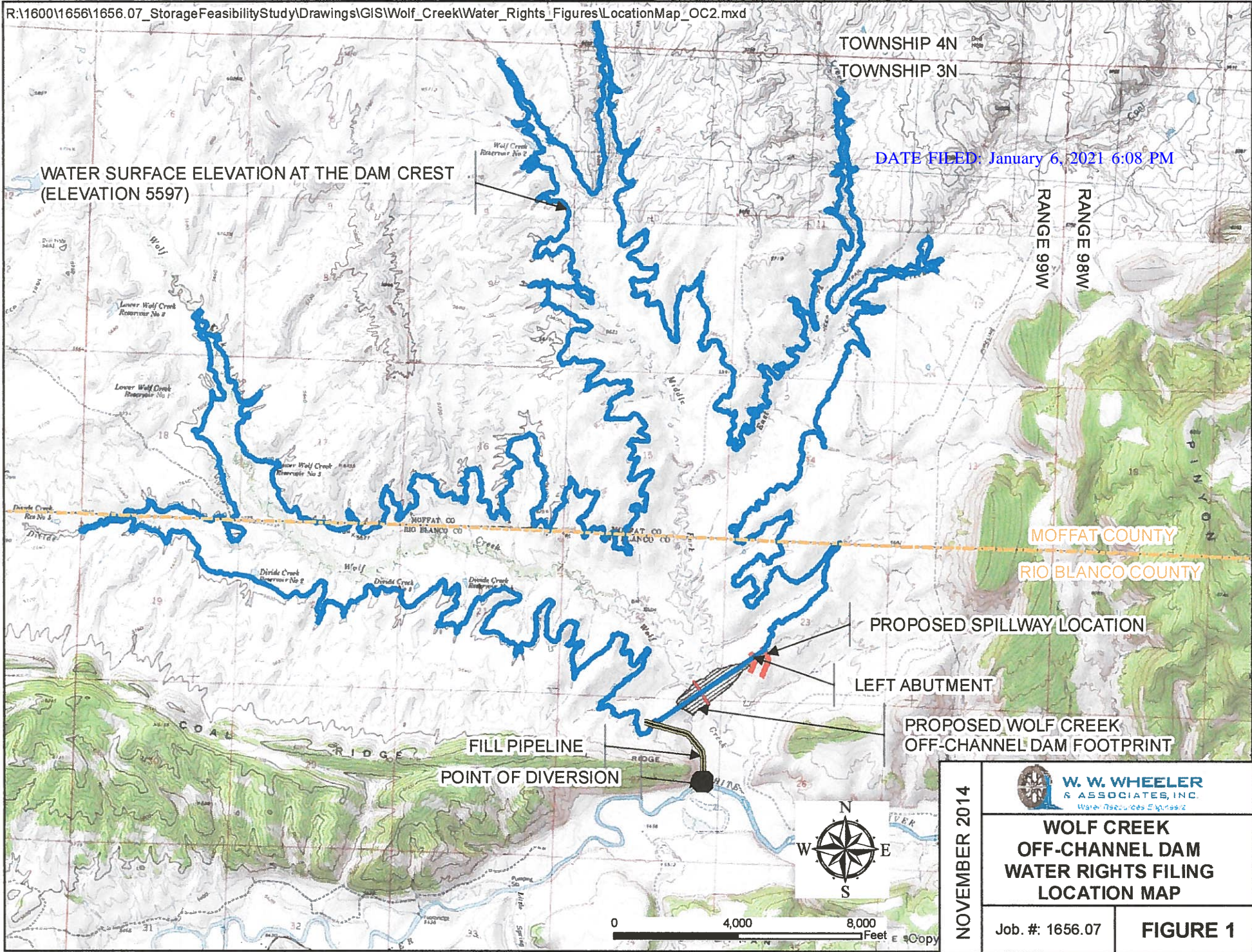
LEFT ABUTMENT

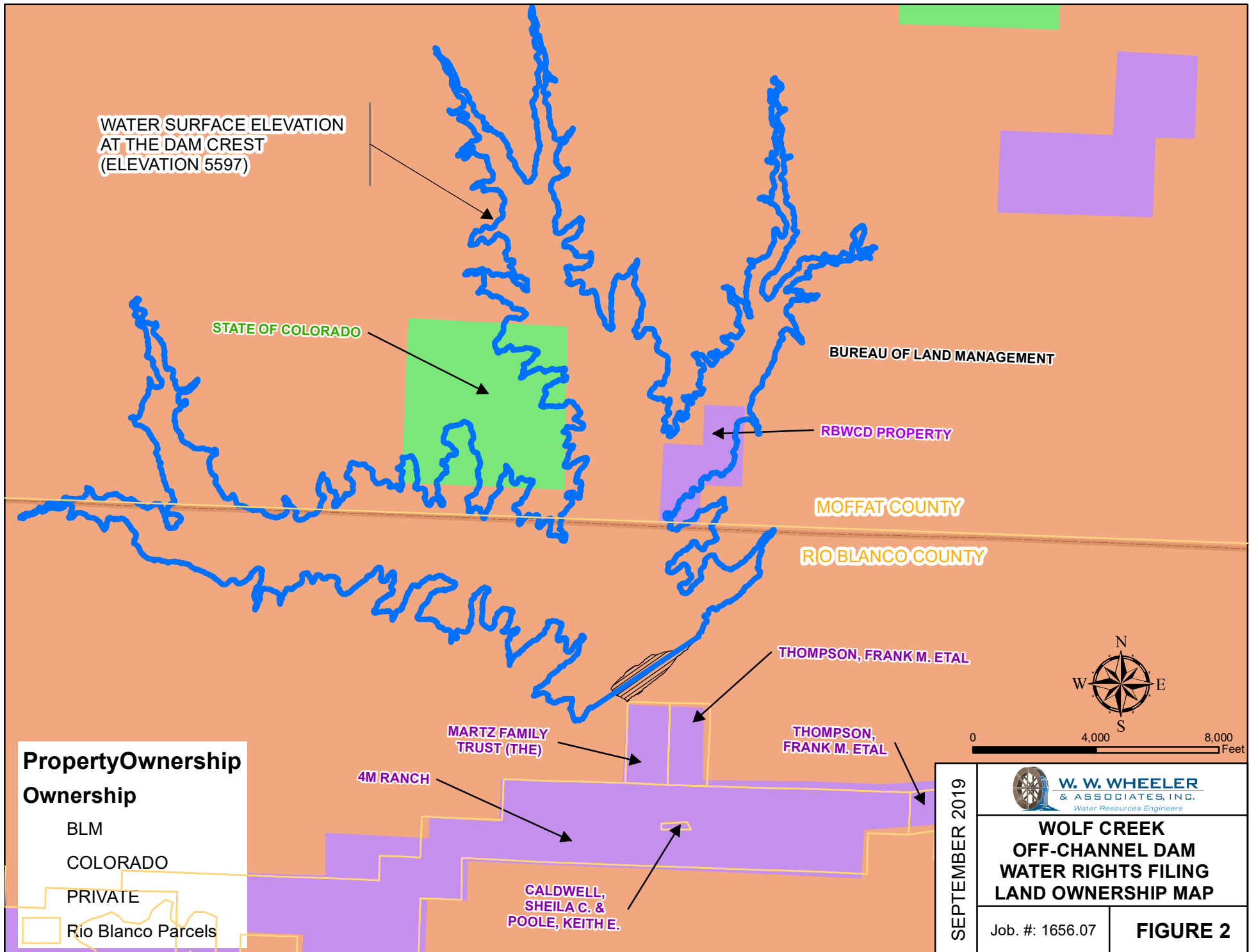
PROPOSED WOLF CREEK
OFF-CHANNEL DAM FOOTPRINT

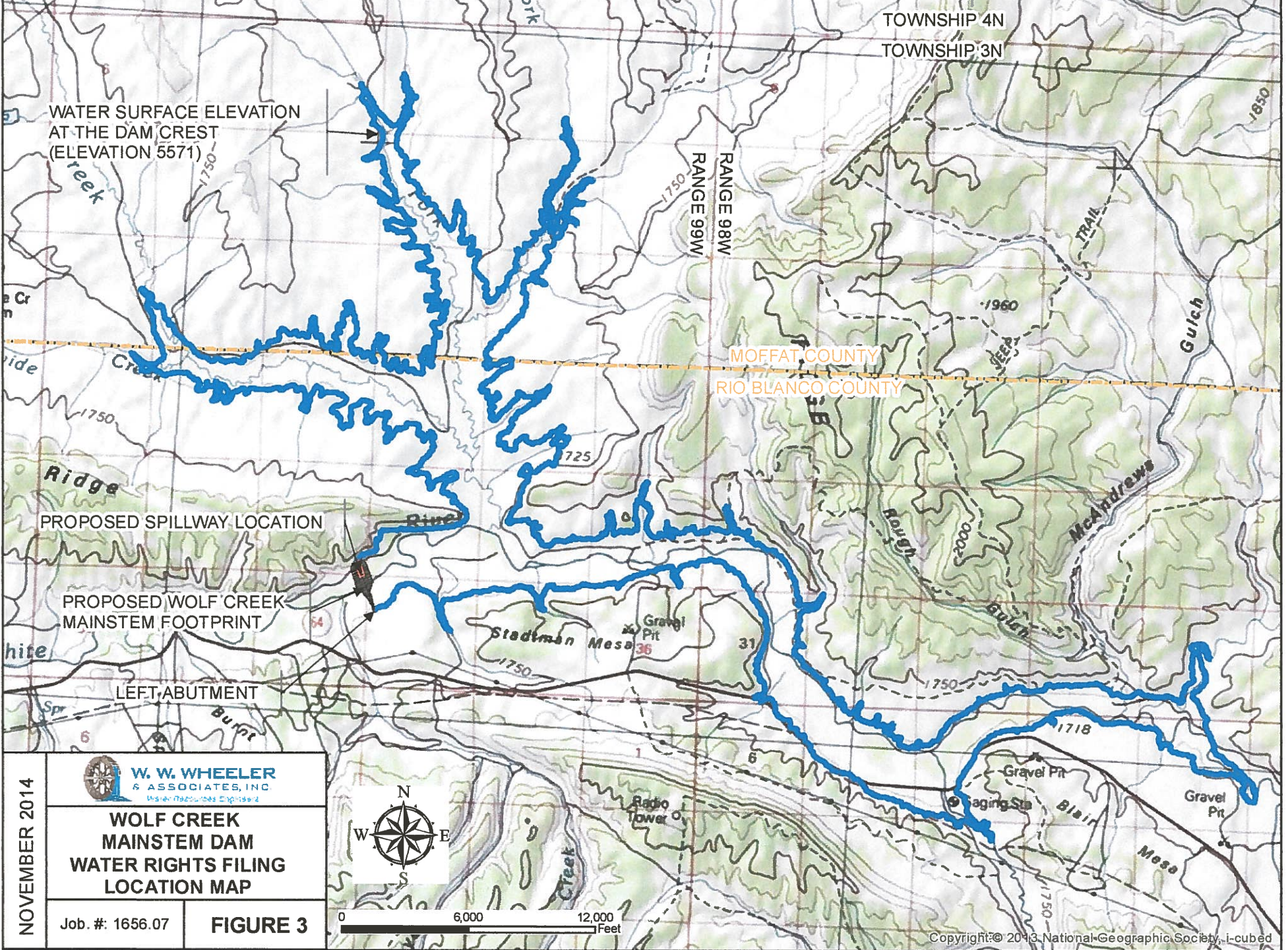
FILL PIPELINE
POINT OF DIVERSION



NOVEMBER 2014	 W. W. WHEELER & ASSOCIATES, INC. <small>Water Resources Engineers</small>	
	WOLF CREEK OFF-CHANNEL DAM WATER RIGHTS FILING LOCATION MAP	
	Job. #: 1656.07	FIGURE 1







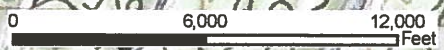
NOVEMBER 2014

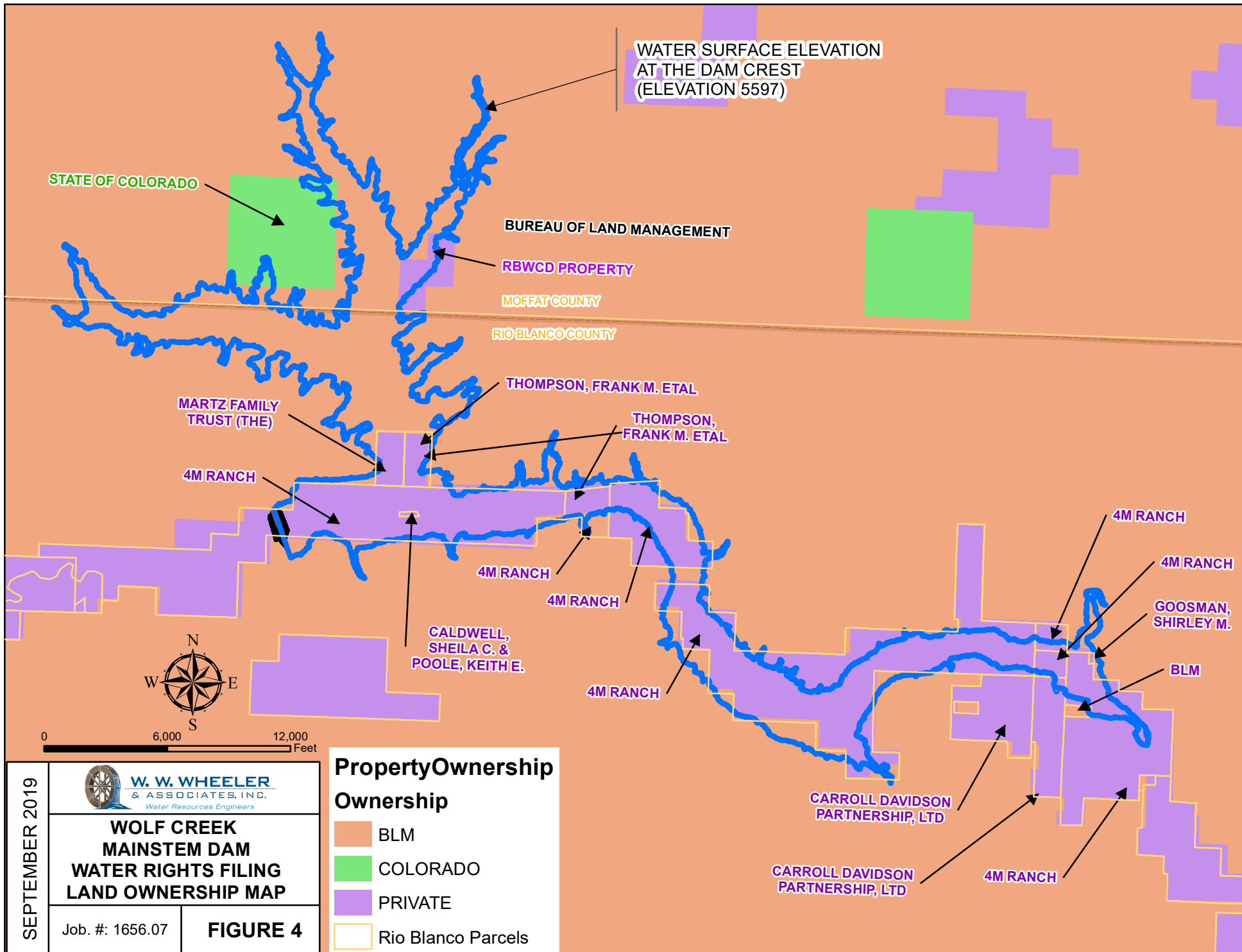


WOLF CREEK MAINSTEM DAM WATER RIGHTS FILING LOCATION MAP

Job. #: 1656.07

FIGURE 3





SEPTEMBER 2019



W. W. WHEELER
& ASSOCIATES, INC.
Water Resources Engineers

**WOLF CREEK
MAINSTEM DAM
WATER RIGHTS FILING
LAND OWNERSHIP MAP**

Job. #: 1656.07

FIGURE 4

PropertyOwnership

Ownership

- BLM
- COLORADO
- PRIVATE
- Rio Blanco Parcels