

### **Summary**

This application (attached) seeks surface water rights for two Recreational In-Channel Diversions (RICDs) on the Colorado River located in Grand County. Note, that this is the first application for RICDs since the new RICD legislation, Senate Bill 06-037, took effect.

The first RICD that Grand County is seeking is for the Hot Sulphur Springs Whitewater Park, which will be located in and on the Colorado River in Pioneer Park near the Town of Hot Sulphur Springs, Colorado. The reach of the RICD for the Hot Sulphur Springs Whitewater Park is shown on the first map attached. The Hot Sulphur Springs Whitewater Park will include at least two control structures in the area identified on the map. This RICD is proposed to operate from April 1<sup>st</sup> to October 15<sup>th</sup> of each year at a rate up to 900 cfs.

The second RICD that Grand County is seeking is for the Gore Canyon Whitewater Park which will be located in and on the Colorado River below Big Gore Canyon. The reach of the RICD for the Gore Canyon Whitewater Park is shown on the second map attached. The Gore Canyon Whitewater Park will include at least two control structures in the area identified on the map. This RICD is proposed to operate from April 1<sup>st</sup> to October 15<sup>th</sup> of each year at a rate up to 2,500 cfs.

### **CWCB Appropriations**

The CWCB holds the following instream flow (ISF) water rights that could be injured by this application:

<b>CWCB Case No.</b>	<b>Stream/Lake</b>	<b>Amount (cfs)</b>	<b>Approp. Date</b>	<b>Watershed</b>	<b>Counties</b>
5-80CW447	Colorado River	90 (1/1 – 12/31)	7/8/1980	Colorado Headwaters	Grand
5-80CW446	Colorado River	135 (1/1 – 12/31)	7/8/1980	Colorado Headwaters	Grand

Additionally, the CWCB will be considering, at a future date, the following recommended ISF that could be impacted by this application:

<b>Recommender</b>	<b>Stream/Lake</b>	<b>Amount (cfs)</b>	<b>Approp. Date</b>	<b>Watershed</b>	<b>Counties</b>
CDOW et. al.	Colorado River	TBD	TBD	Colorado Headwaters	Grand & Eagle

CDOW = Colorado Department of Wildlife  
TBD = To be determined

**Basis for Statement of Opposition**

The Applicant's proposed RICDs may materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements.

The CWCB is concerned whether the flow rate of the Applicant's proposed RICDs, in the amounts claimed, would promote maximum utilization of the waters of the State.

The Applicant's proposed RICDs may not meet the statutory definition of a RICD which requires that the Applicant claim only the minimum stream flow, that the flow be used for a reasonable recreation experience in and on the water, and that the flow be diverted, captured, controlled, and placed to beneficial use.

The Applicant must be required to demonstrate that there will be demand for a reasonable recreation experience for the days following Labor Day through October 15<sup>th</sup>.

Finally, the Applicant's proposed RICDs may cause material injury to existing ISF water rights.

**Other Objectors**

The Staff is not aware of other objectors in the case at this time.

**Staff Recommendation**

The Staff requests that the Board authorize the Staff and the Attorney General's Office to file a SOP in this case.

Attachments:  
Application  
Maps

DISTRICT COURT, WATER DIVISION 5, COLORADO 109 8 <sup>th</sup> Street, Suite 104 Glenwood Springs, CO 81601	FILED Document CO Garfield County District Court 9th JD Filing Date: Dec 28 2010 11:45AM MST Filing ID: 35080527 Review Clerk: Kathy Hall  ▲ Court Use Only ▲
<b>CONCERNING THE APPLICATION FOR          WATER RIGHTS OF THE BOARD OF          COMMISSIONERS FOR THE COUNTY OF          GRAND, COLORADO IN GRAND COUNTY,          COLORADO</b>	
David C. Taussig, #16606 Mitra M. Pemberton, #37833 Matthew L. Merrill, #37918 WHITE & JANKOWSKI, LLP 511 Sixteenth Street, #500 Denver, Colorado 80202 Tele: (303) 595-9441 Fax: (303) 825-5632 <a href="mailto:Davet@white-jankowski.com">Davet@white-jankowski.com</a> <a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.com</a> <a href="mailto:matthewm@white-jankowski.com">matthewm@white-jankowski.com</a>	Case No.: 2010CW <u>298</u>
<b>APPLICATION FOR SURFACE WATER RIGHTS FOR RECREATIONAL          IN-CHANNEL DIVERSIONS</b>	

**1. Name, address and telephone number of applicant:**

Board of Commissioners for the County of Grand, State of Colorado  
 c/o Lurline Underbrink Curran, County Manager  
 P.O. Box 264  
 Hot Sulphur Springs, CO 80451  
 (970) 725-3347

Please send copies of all pleadings to:

David C. Taussig, Mitra M. Pemberton, Matthew L. Merrill  
 White & Jankowski, LLP  
 511 Sixteenth Street, #500  
 Denver, CO 80202

**2. Introduction:** As part of its ongoing effort to improve water-based recreational and economic opportunities for its citizens and the general public, the Board of County

Commissioners for the County of Grand, State of Colorado ("Grand County" or "Applicant") is applying for confirmation of conditional water rights associated with two whitewater parks in and on the Colorado River: the Hot Sulphur Springs Whitewater Park and the Gore Canyon Whitewater Park.

3. **Names of Structures:** Hot Sulphur Springs Whitewater Park and Gore Canyon Whitewater Park.

4. **Surface Water Right for Recreational In-Channel Diversion: Hot Sulphur Springs Whitewater Park.**

a. **Legal Description:** The Hot Sulphur Springs Whitewater Park will be located in and on the Colorado River in Pioneer Park near the Town of Hot Sulphur Springs, Colorado in part of the S½ of the SE¼ of Section 3, T. 1 N., R. 78 W., 6<sup>th</sup> P.M. The project boundaries for the Hot Sulphur Springs Whitewater Park are shown on the map attached as Exhibit A. The Hot Sulphur Springs Whitewater Park will include at least two control structures in the area identified on Exhibit A.

b. **Source:** Colorado River.

c. **Date of Appropriation:** December 21, 2010.

d. **How appropriation was initiated:** By formation of the requisite intent to appropriate combined with actions manifesting and providing notice of that intent, including but not limited to, the Applicant's Resolution No. 2010-12-33, December 21, 2010 and Resolution No. 2010-12-41, dated December 28, 2010, public meetings, posting notice of the appropriation at the Hot Sulphur Springs Whitewater Park, and the filing of this application.

e. **Date Water Applied to Beneficial Use:** Not applicable. This claim is for a conditional water right.

f. **Amounts Claimed (Conditional):**

Season	Flows
April 1 – October 15	Not to exceed 900 cfs

Applicant hereby reserves the right and gives notice to all interested parties that it will further refine the time periods and flow rates for the Hot Sulphur Springs Whitewater Park and provide such information to the CWCB and Objectors, but Applicant's water rights associated with the Hot Sulphur Springs Whitewater Park will not exceed the above-listed flow rate nor extend beyond the season listed.

- g. **Use:** All recreational uses in and on the Colorado River including without limitation, boating, rafting, kayaking, tubing, floating, canoeing, paddling, and all other non-motorized recreational uses.

**5. Surface Water Right for Recreational In-Channel Diversion: Gore Canyon Whitewater Park**

- a. **Legal Description:** The Gore Canyon Whitewater Park will be located in and on the Colorado River below Big Gore Canyon in parts of the W½ of Section 7, T. 1 S., R. 81 W., 6<sup>th</sup> P.M. and the E½ of Section 12, T. 1 S., R. 82 W., 6<sup>th</sup> P.M. The project boundaries for the Gore Canyon Whitewater Park are shown on the map attached as Exhibit B. The Gore Canyon Whitewater Park will include at least two control structures in the area identified on Exhibit B.
- b. **Source:** Colorado River.
- c. **Date of Appropriation:** December 21, 2010.
- d. **How appropriation was initiated:** By formation of the requisite intent to appropriate combined with actions manifesting and providing notice of that intent, including but not limited to, the Applicant's Resolution No. 2010-12-33, dated December 21, 2010 and Resolution No. 2010-12-41, dated December 28, 2010, public meetings, posting notice of the appropriation at the Gore Canyon Whitewater Park, and the filing of this application.
- e. **Date Water Applied to Beneficial Use:** Not applicable. This claim is for a conditional water right.
- f. **Amounts Claimed (Conditional):**

Season	Flows
April 1 – October 15	Not to exceed 2,500 cfs

Applicant hereby reserves the right and gives notice to all interested parties that it will further refine the time periods and flow rates for the Gore Canyon Whitewater Park and provide such information to the CWCB and Objectors, but Applicant's water rights associated with the Gore Canyon Whitewater Park will not exceed the above-listed flow rate nor extend beyond the season listed.

- g. **Use:** All recreational uses in and on the Colorado River including without limitation, boating, rafting, kayaking, tubing, floating, canoeing, paddling, and all other non-motorized recreational uses.

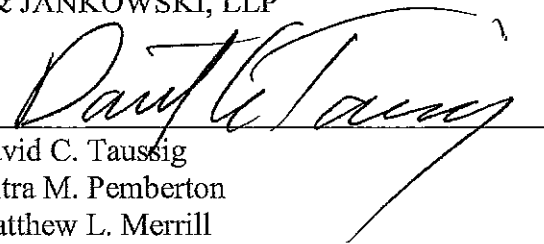
**6. General Remarks:**

- a. On information and belief and based upon the Grand County Assessor records, the names and addresses of owners of land upon which the Whitewater Parks will be located are:
  - i. Gore Canyon Whitewater Park: Bureau of Land Management, Kremmling Field Office, 2103 E. Park Avenue, P.O. Box 68, Kremmling, Colorado 80459.
  - ii. Hot Sulphur Springs Whitewater Park: Town of Hot Sulphur Springs, 513 Aspen St, Box 116, Hot Sulphur Springs, Colorado 80451.
- b. This application is made pursuant to, *inter alia*, Colo. Const. Art. XVI, § 5 Art. XVI, § 6, and C.R.S. §§ 37-92-101, et seq. Pursuant to C.R.S. § 37-92-102(5), within 30 days of filing this application, Applicant will submit a copy of the application to Colorado Water Conservation Board for review.

Respectfully submitted this 28<sup>th</sup> day of December, 2010.

WHITE & JANKOWSKI, LLP

By: \*S/

  
\*David C. Taussig  
Mitra M. Pemberton  
Matthew L. Merrill

Efiled per C.R.C.P. 121

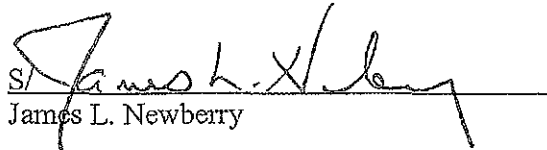
Duly signed copy on file at White & Jankowski, LLP

ATTORNEYS FOR BOARD OF COUNTY  
COMMISSIONERS FOR GRAND COUNTY,  
COLORADO

VERIFICATION

STATE OF COLORADO )  
 )  
COUNTY OF GRAND ) SS

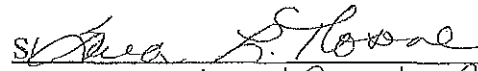
I, James L. Newberry, Chairman for the Board of County Commissioners for the County of Grand, State of Colorado state under oath that I have read this Application and verify its content.

  
James L. Newberry

E-filed per C.R.C.P. 121  
Duly signed original on file at White & Jankowski, LLP

Subscribed under oath before me on December 28, 2010

My commission expires: n/a

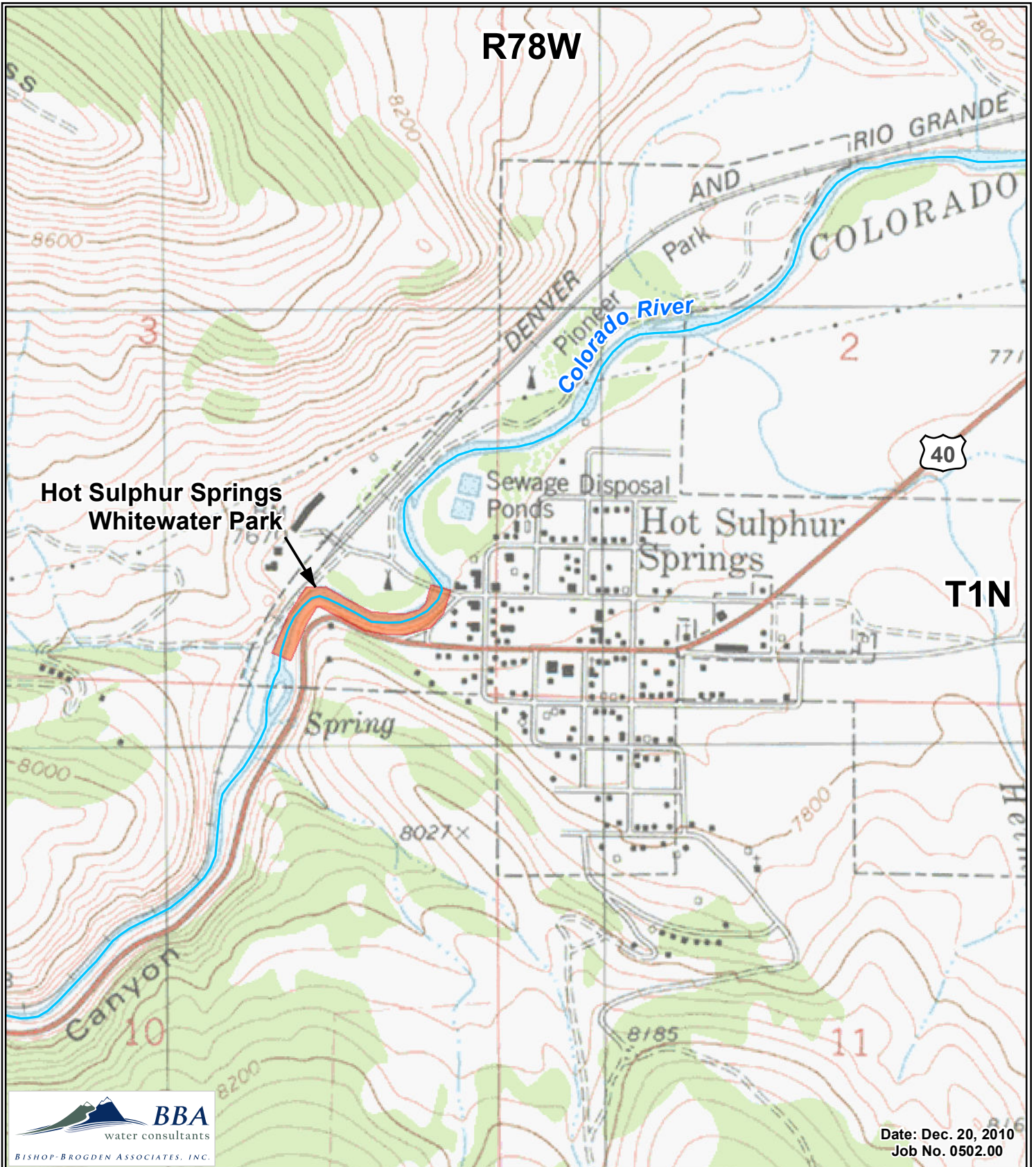
  
Notary Public Grand County Clerk + Recorder

E-filed per C.R.C.P. 121  
Duly signed original on file at White & Jankowski, LLP

Address: P.O. Box 120  
Hot Sulphur Springs, CO  
80451



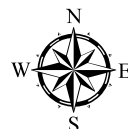
R78W



**Legend**

- Whitewater Park
- Project Area
- Township & Range

**Exhibit A**  
**Hot Sulphur Springs**  
**Whitewater Park**



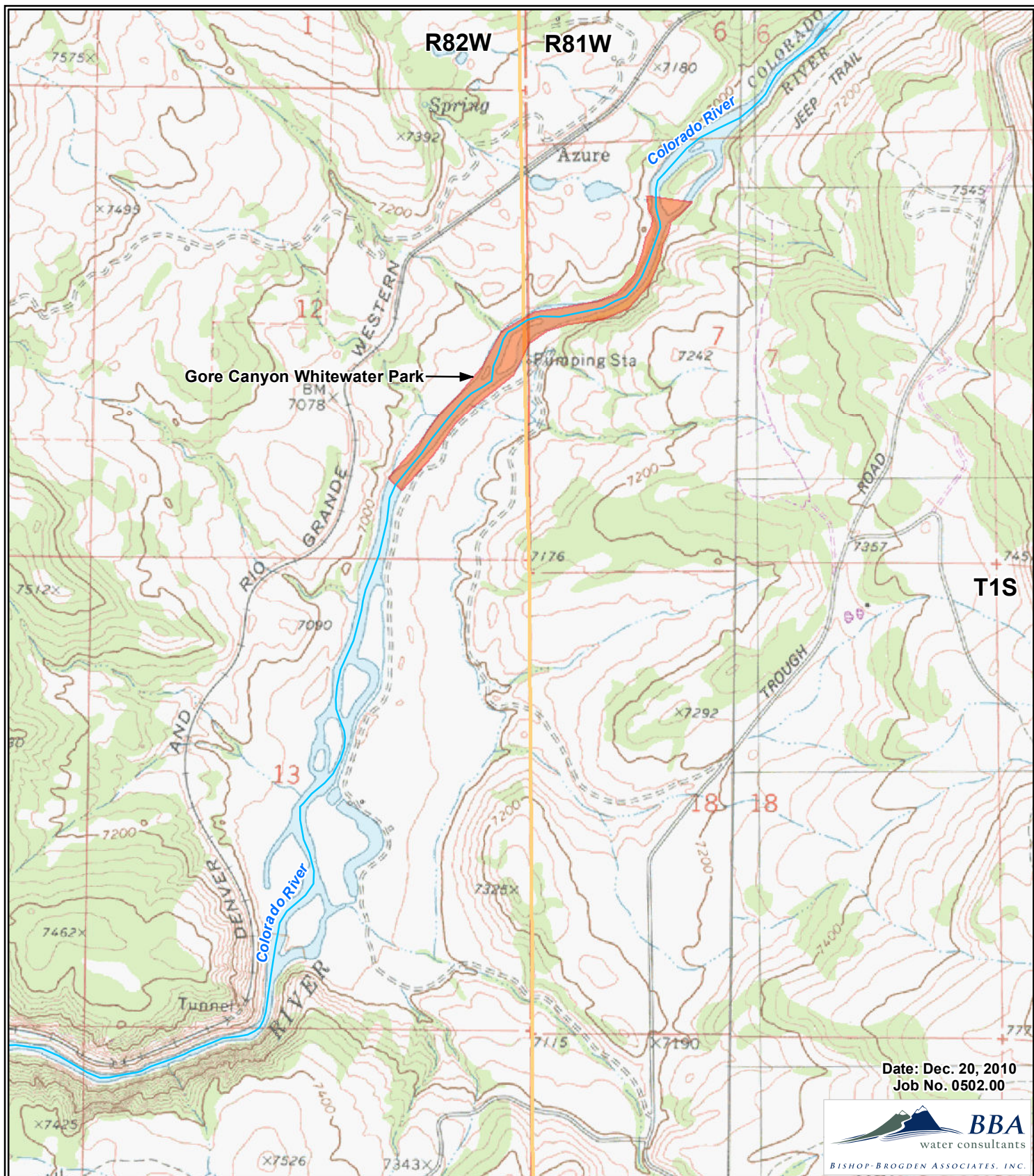
1 inch = 1,000 feet

0 500 1,000 Feet

**Overview Map**







#### Legend

- Whitewater Park Project Area
- Township & Range

## Exhibit B Gore Canyon Whitewater Park

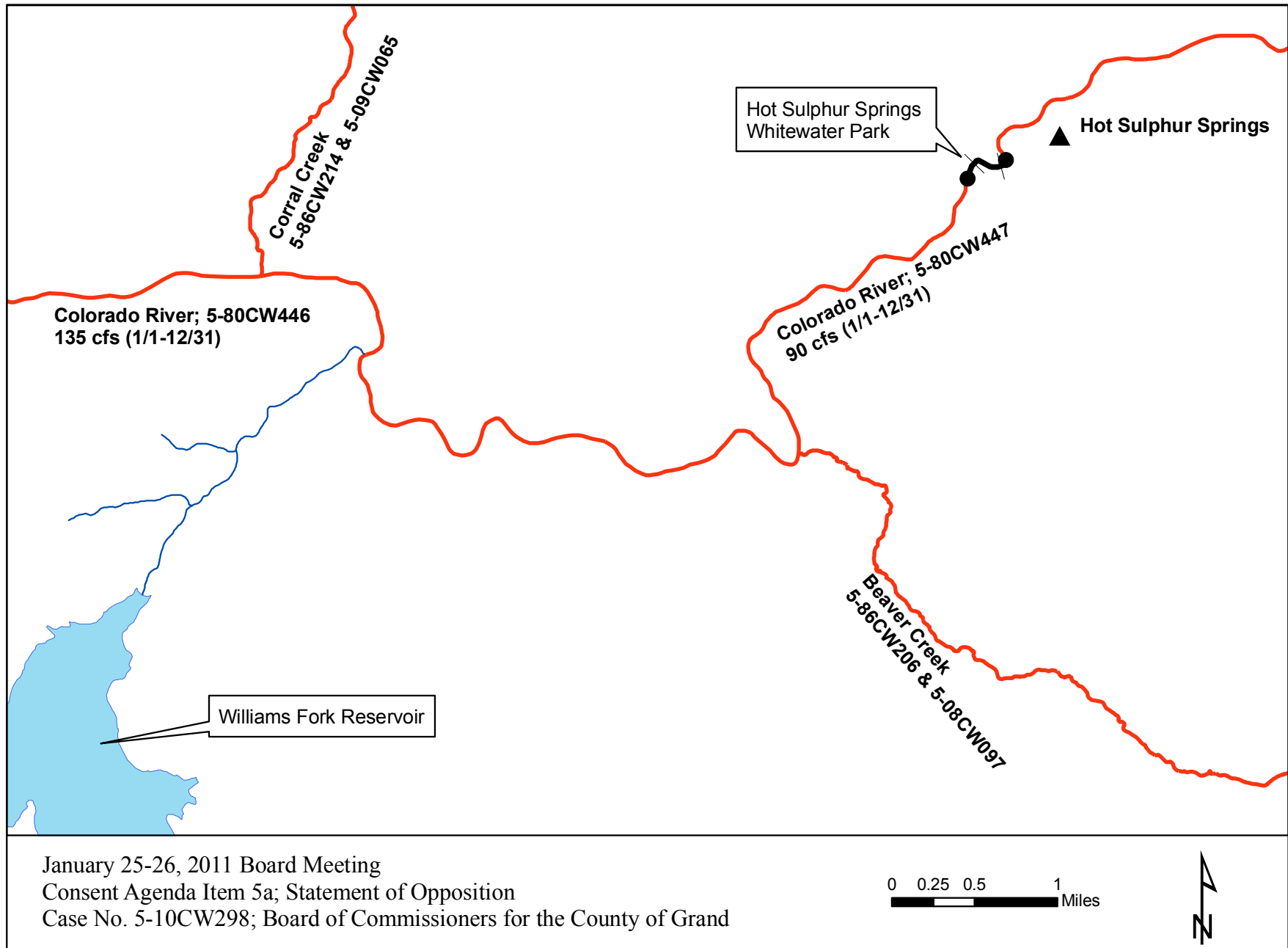


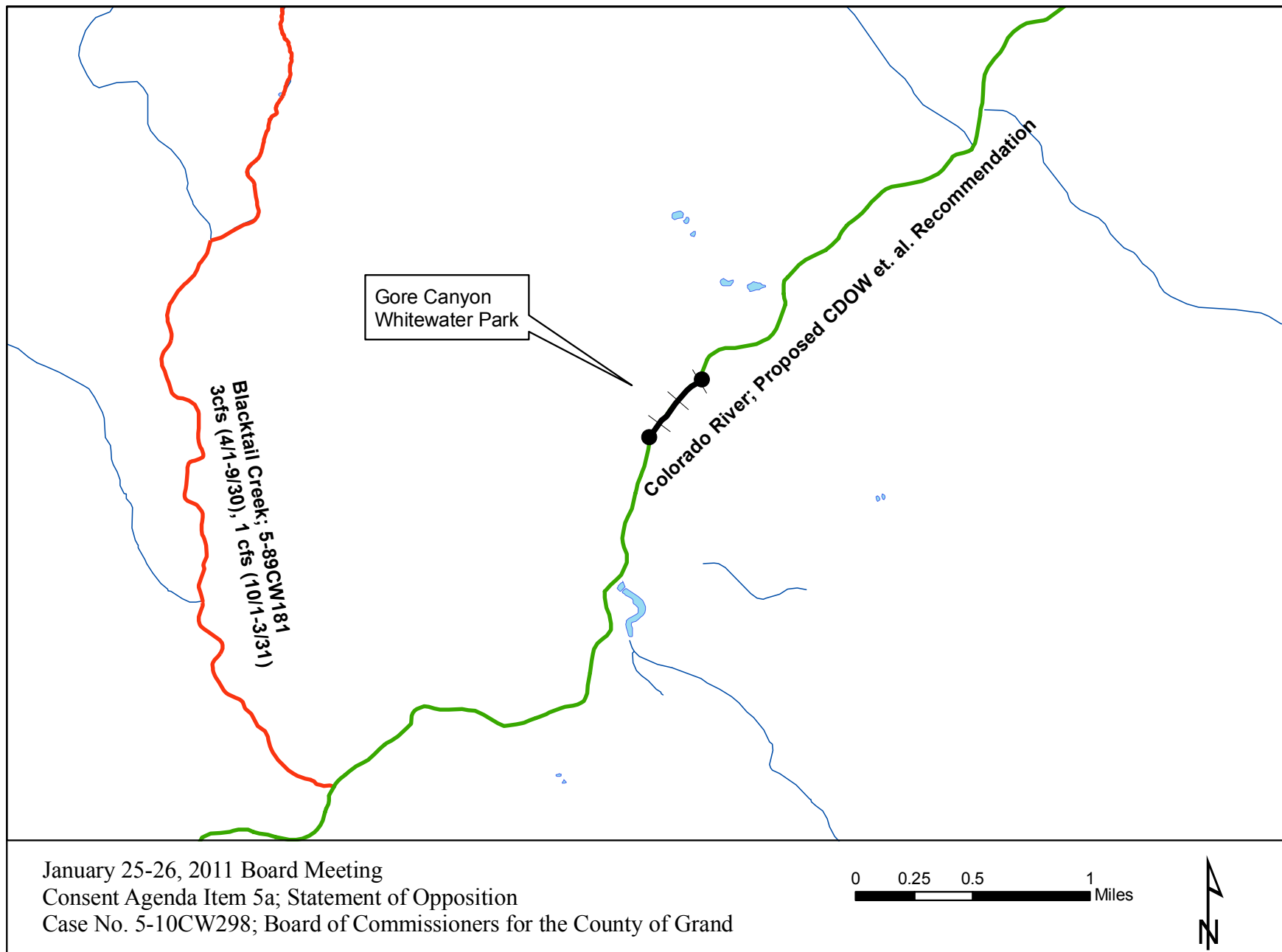
1 inch = 1,500 feet

0 750 1,500 Feet

#### Overview Map









### **Summary**

This application (attached) seeks surface water rights for two Recreational In-Channel Diversions (RICDs) on the Roaring Fork River, tributary to the Colorado River, located in Pitkin County. Note, that this is the second application, following Grand County's, for RICDs since the new RICD legislation, Senate Bill 06-037, took effect.

Pitkin County is seeking two RICDs for the Pitkin County River Park Project, which will be located in and on the Roaring Fork River, just above its confluence with the Frying Pan River, adjacent to the Town of Basalt, Colorado. The Pitkin County River Park Project will consist of two control structure units, the "Upper Structure Unit" and the "Lower Structure Unit". Each structure unit will have its own water right and the combined reach between the two RICDs is shown on the map attached. Each RICD is proposed to operate from April 1<sup>st</sup> to Labor Day of each year. Pitkin County is seeking a flow rate up to 1,500 cfs for the Upper Structure Unit and a flow rate up to 2,000 cfs for the Lower Structure Unit.

### **CWCB Appropriations**

The CWCB holds the following instream flow (ISF) water rights that could be injured by this application:

<b>CWCB Case No.</b>	<b>Stream/Lake</b>	<b>Amount (cfs)</b>	<b>Approp. Date</b>	<b>Watershed</b>	<b>Counties</b>
5-85CW646	Roaring Fork River	30 (10/1-3/31) 55 (4/1-9/30)	11/8/1985	Roaring Fork	Eagle & Pitkin
5-85CW639	Roaring Fork River	75 (10/1-3/31) 145 (4/1-9/30)	11/8/1985	Roaring Fork	Eagle, Garfield & Pitkin

### **Basis for Statement of Opposition (SOP)**

The Applicant's proposed RICDs may materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements.

The CWCB is concerned whether the Applicant's proposed RICDs, in the amounts claimed, would promote maximum utilization of the waters of the State.

The Applicant's proposed RICDs may not meet the statutory definition of a RICD which requires that the Applicant claim only the minimum stream flow, that the flow be used for a reasonable recreation experience in and on the water, and that the flow be diverted, captured, controlled, and placed to beneficial use.

Finally, the Applicant's proposed RICDs may cause material injury to existing ISF water rights.

**Other Objectors**

The Staff is not aware of other objectors in the case at this time.

**Staff Recommendation**

The Staff requests that the Board authorize the Staff and the Attorney General's Office to file a SOP in this case.

Attachments:

Application

Map

~~CO Garfield County District Court 9th JD~~

Filing ID: 35131615

# APPLICATION FOR SURFACE WATER RIGHT APPROPRIATIONS FOR RECREATIONAL IN-CHANNEL DIVERSION

2. Introduction: This application seeks two conditional recreational in-channel diversion (“RICD”) water right appropriations for the Pitkin County River Park Project, which consists of two in-channel diversion and control structures that divert, capture, possess, and/or control the flow of the Roaring Fork River in its natural course to create reasonable recreation experiences in and on the water for all non-motorized boating and related recreational uses as described more fully below.

3. Name of structures: The Pitkin County River Park Project is comprised of two control structure units: (1) the Pitkin County River Park Project Upper Control Structures ("Upper Structure Unit") and (2) the Pitkin County River Park Project Lower Control Structures ("Lower Structure Unit").
4. Description of conditional water right appropriations:
  - A. Location of structures: The Pitkin County River Park Project will be located on the Roaring Fork River downstream of the Highway 82 Upper Bypass Bridge, upstream of the confluence of the Fryingpan and Roaring Fork Rivers, within the channel of the Roaring Fork River in Sections 17 and 18, Township 8 South, Range 86 West of the 6<sup>th</sup> P.M., Pitkin County, Colorado. The Pitkin County River Park Project will consist of two structure units within the Roaring Fork River. This application seeks two RICD water right appropriations, one for each of the two structure units, each of which will, by design, control, concentrate and direct the stream flows between the upper and lower extent of that structure units, independent of the other structure units, for the beneficial uses described below. A map depicting the upstream and downstream extent of the Pitkin County River Park Project, within which both structure units will be constructed, is attached as **Exhibit A**. Each of the two structure units will be constructed in the channel of the Roaring Fork River between the following two points:
    - i. The Pitkin County River Park Project Upstream Extent will be located in the SW¼ of the NW¼ of Section 17, Township 8 South, Range 86 West, 6<sup>th</sup> P.M., Pitkin County, Colorado, at a point 320 feet from the west section line and 1480 feet from the north section line of said Section 17.
    - ii. The Pitkin County River Park Project Downstream Extent will be located in the NE¼ of the NE¼ of Section 18, Township 8 South, Range 86 West, 6<sup>th</sup> P.M., Pitkin County, Colorado, at a point 265 feet from the east section line and 560 feet from the north section line of said Section 18.

The precise location of the two structure units and related water right appropriations, upon construction, may be located within this stretch of the Roaring Fork River. Provided that the structure unit locations remain within the stream reach described above, the actual locations will be described in the decree entered herein, identified by upper and lower control structures for each of the two structure units, or, if such decree is entered before construction of any or all of the structures, in subsequent applications for diligence or to make absolute the water rights claimed herein.



- B. Source: Roaring Fork River, tributary to the Colorado River.
- C. Appropriation:
- i. Date of appropriation: July 13, 2007.
  - ii. How appropriation was initiated: Engineering, field work, planning, considerations and decisions of the Board of County Commissioners, and posting notice of the appropriations.
  - iii. Date water first applied to beneficial use: Not applicable.
- D. Amounts claimed: Applicant claims two RICD water right appropriations for the following time periods and amounts, **CONDITIONAL**, as follows:
- i. **Upstream Structure Units**: Between April 1 and Labor Day of each year, this RICD water right appropriation will not exceed 1,500 cfs.
  - ii. **Downstream Structure Units**: Between April 1 and Labor Day of each year, this RICD water right appropriation will not exceed 2,000 cfs.
  - iii. Pitkin County hereby reserves the right to refine time periods and flow rates associated with either or both of the RICD water right appropriations claimed in this application. The RICD water right appropriations will not extend beyond the time periods listed above nor exceed the flow rates listed above for each RICD water right appropriations. Because any refinement in time periods and flow rates would constitute a reduction in the claims, the above constitutes notice to all interested parties.
  - iv. The above amounts are claimed as conditional. However, Pitkin County reserves the right to seek these amounts as absolute to the extent that the Pitkin County River Park Project or individual Structure units are constructed and flows are placed to beneficial use prior to the date of entry of a decree in this case.
- E. Beneficial use: Recreational uses including all beneficial uses associated with RICD water rights as permitted under Colorado Law as may be later changed or amended, including but not limited to non-motorized boating including kayaking, canoeing, rafting, tubing, floating, and paddling.

5. Name and address of owner of land upon which any new diversion structure or modification to any existing diversion structure is or will be constructed:

Town of Basalt  
Tom Smith, County Attorney  
600 E. Hopkins  
Aspen, CO 81611  
970-925-2600

Tom Kinney, Town of Basalt Water Rights Counsel  
201 Main Street #301  
Carbondale, CO 81623-2216  
970-963-3900

Fredrick S. Arbaney Trust  
Josephine Arbaney, Trustee  
252 Cottonwood Drive  
Basalt, CO 81621

Applicant  
c/o John M. Ely, Pitkin County Attorney  
530 East Main Street, Third Floor  
Aspen, Colorado 81611  
(970) 920-5190

WHEREFORE, Applicants respectfully request this Court enter a decree granting the two conditional recreational in-channel diversion water right appropriations claimed in this application for the Pitkin County River Park and granting such other relief as may be appropriate.

Respectfully submitted this 30<sup>th</sup> day of December, 2010.

MOSES, WITTEMYER, HARRISON AND  
WOODRUFF, P.C.

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

Timothy J. Beaton, #10403  
Aaron S. Ladd, #41165

ATTORNEYS FOR APPLICANT, BOARD  
OF COUNTY COMMISSIONERS OF  
PITKIN COUNTY, COLORADO

*E-FILED PURSUANT TO C.R.C.P. 121 Duly signed original on file at the law offices of  
Moses, Wittemyer, Harrison and Woodruff, P.C.*

## Board of County Commissioners of Pitkin County, Colorado

Case No. 10CW 305

Page 6

VERIFICATION

STATE OF COLORADO )

Garfield ) ss.  
COUNTY OF PITKIN )

James F. Pearce, being first duly sworn upon oath, deposes and says that he is the water rights consultant, for applicant herein, that he has read the foregoing Application for Surface Water Right Appropriations for Recreational In-Channel Diversion, knows the contents thereof, and that the same is true to the best of his knowledge and belief.

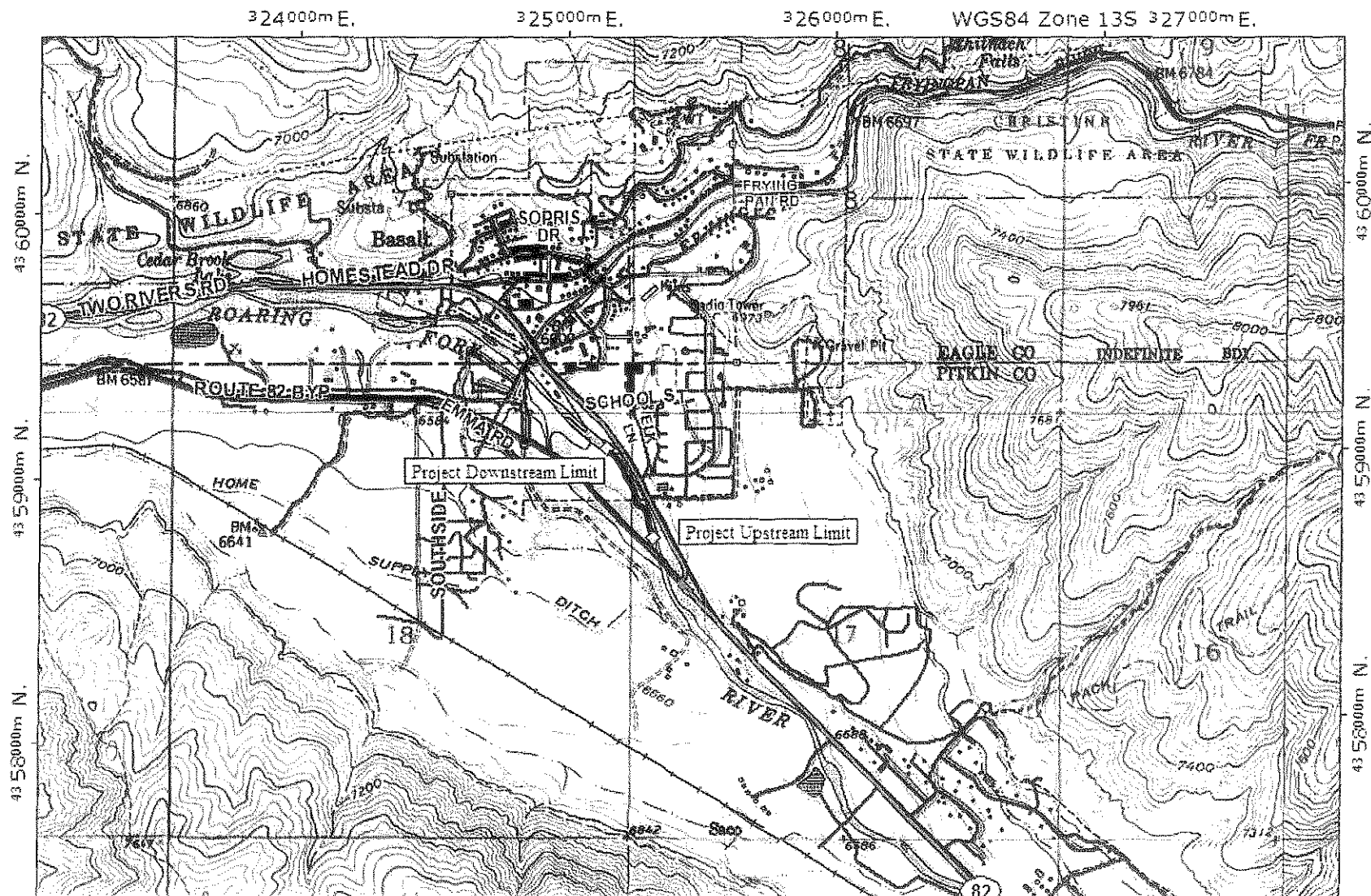
James F. Pearce  
James F. Pearce

SUBSCRIBED AND SWORN to before me this 30<sup>th</sup> day of December, 2010.  
Witness my hand and official seal.

My commission expires: \_\_\_\_\_  
My Commission Expires  
05/16/2014

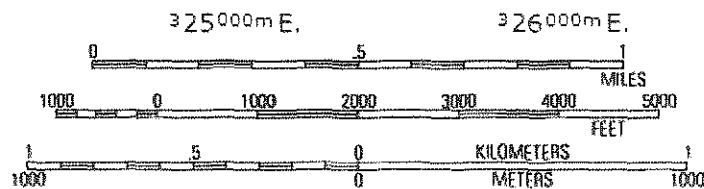


Cath  
Notary Public



323000m E. 324000m E. 325000m E. 326000m E. WGS84 Zone 13S 327000m E.

Exhibit A - Location of Pitkin County River Park RICD Water Rights  
12/29/2010



TN MN  
10 1/2°  
12/29/10







