

Summary

This application (attached) seeks to make absolute a Recreational In-Channel Diversion (RICD) on the Gunnison River located in Gunnison County, CO originally decreed in Case No. 4-02CW38.

The Upper Gunnison River Water Conservancy District's white water course is located on the Gunnison River just downstream from the town of Gunnison. The reach of the existing white water course is shown on the map attached and includes approximately 6 control structures. This RICD is decreed to operate as indicated below:

Time Period	Amount (cfs)
May 1 – 15	535
May 16 – 31	875
June 1 – 30	1200
July 1 – 15	975
July 16 – 31	500
August 1 – 15	400
August 16 – 31	325
September 1 – 15	300
September 16 – 30	275

The Upper Gunnison River Water Conservancy District has claimed that all of the flows (above) conditionally decreed for the RICD are absolute based on flows through the course and recreational use of the structures since the original decree was entered.

CWCB Appropriations

The CWCB does not hold instream flow (ISF) water rights that could be injured by this RICD.

Basis for Statement of Opposition

The CWCB would like to ensure that the Applicant has provided proper evidence to support its claim to make the RICD water right decreed in Case No. 4-12CW4 absolute. Improper perfection of this RICD may affect Colorado's ability to promote maximum utilization of the waters of the State.

Other Objectors

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

Staff Recommendation

The Staff requests that the Board ratify the attached Statement of Opposition (SOP) that was filed by Staff and the Attorney General's Office in this case.

Attachments:

Application and Map

SOP

DISTRICT COURT,
WATER DIVISION 4, COLORADO
1200 N. Grand Avenue, Bin A
Montrose, CO 81401

**CONCERNING THE APPLICATION FOR
WATER RIGHTS OF UPPER GUNNISON
RIVER WATER CONSERVANCY
DISTRICT**

in Gunnison County.

Attorney for Applicant:

John H. McClow, General Counsel
Upper Gunnison River
Water Conservancy District
Attorney Registration No. 6185
210 West Spencer, Suite B
Gunnison, CO 81230
Telephone: 970.641.6065
Facsimile: 970.641.1162
E-mail: jmcclow@ugrwd.org

▲ COURT USE ONLY ▲

Case Number: 12 CW _____
(Ref No. 02CW038)

APPLICATION TO MAKE ABSOLUTE

1. Name, address, telephone number of Applicant:

Upper Gunnison River Water Conservancy District
Attention: Frank J. Kugel, General Manager
210 West Spencer, Suite B
Gunnison, CO 81230
Telephone: 970.641.6065

(hereafter referred to as the District).

Direct all pleadings to:

John H. McCLOW, General Counsel
Upper Gunnison River Water Conservancy District
210 West Spencer, Suite B
Gunnison, CO 81230

2. Name of Structure: Gunnison River Whitewater Course (the Course).

3. Conditional Water Right:

(a) Date of original Decree: January 12, 2006; Case No. 02CW038, Water Division 4.

(b) Legal description of location of structures: The Course is located within the channel of the Gunnison River, downstream of U. S. Highway 50 West of the City of Gunnison in Sections 2 and 3, Township 49 North, Range 1 West of the New Mexico Principal Meridian, County of Gunnison, State of Colorado. The location of the six structures which constitute the Course as built are as follows:

Structure 1: A "V" dam located within the channel of the Gunnison River located North 6 degrees East, a distance of 1,040 feet from the Southwest corner of Section 2.

Structure 2: Double offset deflectors located at points within the channel of the Gunnison River located North 4 degrees West a distance of 640 feet from the Southeast corner of Section 3.

Structure 3: Double offset deflectors located at points within the channel of the Gunnison River located North 15 degrees West a distance of 530 feet from the Southeast corner of Section 3.

Structure 4: Double offset deflectors located at points within the channel of the Gunnison River located North 35 degrees West a distance of 480 feet from the Southeast corner of Section 3.

Structure 5: A "U" dam located within the channel of the Gunnison River located North 56 degrees West a distance of 550 feet from the Southeast corner of Section 3.

Structure 6: A "U" dam located within the channel of the Gunnison River located North 65 degrees West a distance of 700 feet form the Southeast corner of Section 3.

The length of the Course is approximately one-quarter mile. A map showing the location of the Course is attached to this Application as *EXHIBIT A*. In accordance with the terms of the original Decree, the District has verified the precise locations of the structures as built and in place on the date of this Application. The descriptions above reflect modifications to the locations described in original Decree resulting from such verification. All structures remain within the stream reach described in the original Decree.

(c) Source of water: Gunnison River.

(d) Appropriation date: October 20, 1998. Amount: The following amounts are conditionally decreed to each of the structures that constitute the Course for each of the following semi-monthly periods:

May 1-15	May 16-31	June 1-15	June 16-30	July 1-15	July 16-31	August 1-15	August 16-31	Sept 1-15	Sept 16-30
535 c.f.s.	875 c.f.s.	1200 c.f.s.	1200 c.f.s.	975 c.f.s.	500 c.f.s.	400 c.f.s.	325 c.f.s.	300 c.f.s.	270 c.f.s.

(e) Uses: Recreational boating including, but not limited to, kayaking, rafting, and canoeing.

4. In support of the claim to make the water right absolute, the District submits the following:

(a) The six structures described in paragraph 3 above have been constructed, maintained and used for recreational boating purposes since the original Decree was entered by the Water Court.

(b) All of the flows conditionally decreed to the structures that constitute the Course are claimed absolute based upon flows through the Course and recreational use of the structures since the original Decree was entered. Based upon flows measured at the Gunnison River at Gunnison gage, adjusted for West Branch diversions, flows that met or exceeded the amounts decreed to the Course occurred for the number of days shown in the following table:

Year	May 1-15	May 16-31	June 1-15	June 16-30	July 1-15	July 16-31	August 1-15	August 16-31	Sept 1-15	Sept 16-30
2006	15	16	15	2	5	16	15	16	15	15
2007	15	16	15	5	0	16	15	16	12	15
2008	15	16	15	15	15	16	15	16	15	15
2009	15	16	15	15	14	16	15	16	15	15
2010	3	10	15	7	0	8	15	16	15	5
2011	11	16	15	15	15	16	15	16	15	15

(c) Water was applied to beneficial use within the Course in the decreed amounts during each semi-monthly period described in paragraph 3.(d) above in each year from 2006 through 2011. Documentation of recreational boating use of the Course during the period May1 through September 30 during the years 2006-2011 includes the following:

(i) Under contract with the District, Colorado Land Water Specialists collected use and flow data at the Course on at least two days during each semi-monthly period from May 1 through September 30 during 2006, 2007, and 2008 and recorded and photographed recreational boating use of the Course with flows equal to or greater than the decreed amounts.

(ii) The Gunnison River Festival, a four-day event featuring several kayak events, a Community River Parade, Raft Paddle Race, Raft Rodeo, River Board and SUP, Hooligan Race, Downriver Race, Enduro, and Family Float events has been conducted on the Course each year from 2006 through 2011.

(iii) Scenic River Tours, Inc., an adventure company based in Gunnison, carried an estimated 2,500 clients per season through the Course in rafts and kayaks each year from 2006 through 2011. Other adventure companies report similar use of the Course during that period.

(iv) Local adventure companies and the Western State College Wilderness Pursuits program have utilized the Course each Summer since 2006 for kayak classes.

5. Name and address of the owners of the land on which structures are located:
Gunnison County, Colorado, c/o County Manager, 200 East Virginia, Gunnison, CO 81230.

Dated this 30th day of January, 2012.

Upper Gunnison River Water Conservancy District



By: John H. McClow, General Counsel

VERIFICATION AND ACKNOWLEDGMENT

[illegible]

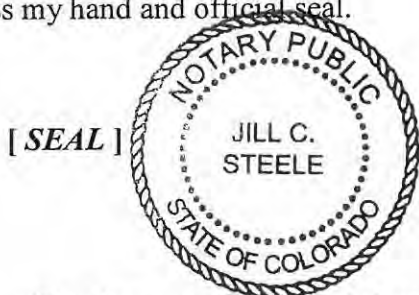
I, Frank J. Kugel, General Manager of the Upper Gunnison River Water Conservancy District, being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and verify its contents to the best of my knowledge, information, and belief.

Frank J. Kugel

The foregoing instrument was acknowledged before me in the County of Gunnison, State of Colorado, this 30th day of January, 2012.

My commission expires: 3-27-2012

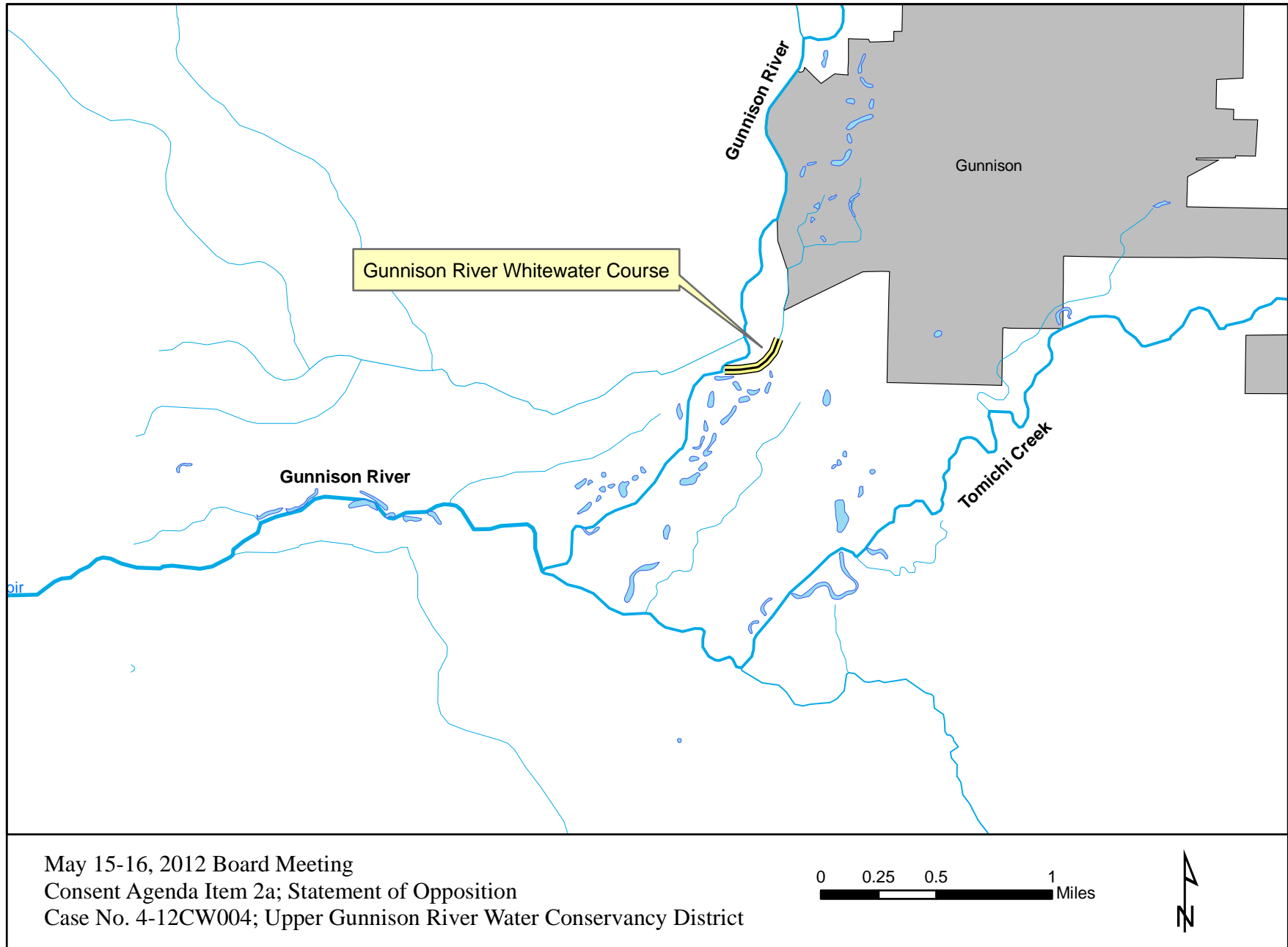
Witness my hand and official seal.



Lisa C. Steele
Notary Public

*This document was filed electronically pursuant to Rule 121 § 1-26, C.R.C.P.
A signed original is on file at the office of Upper Gunnison River Water Conservancy District.*

Map of Gunnison River Whitewater Course



DISTRICT COURT, WATER DIVISION 4, COLORADO 1200 N. Grand Avenue, Bin A Montrose, CO 81401	EFILED Document CO Montrose County District Court 7th JD Filing Date: Mar 28 2012 10:43AM MDT Filing ID: 43344408 Review Clerk: Darleen Cappannokeep
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT IN GUNNISON COUNTY, COLORADO	▲ COURT USE ONLY ▲
Attorneys for the Colorado Water Conservation Board: JOHN W. SUTHERS, Attorney General SUSAN J. SCHNEIDER, First Assistant Attorney General* 1525 Sherman Street, 7 th Floor Denver, CO 80203 Telephone: (303) 866-5046 Email: susan.schneider@state.co.us Registration Number: 19961 *Counsel of Record	Case No. 12CW04 Water Division 4
<p style="text-align: center;">STATEMENT OF OPPOSITION OF THE</p> <p style="text-align: center;">COLORADO WATER CONSERVATION BOARD</p>	

1. Name of objector: Colorado Water Conservation Board (“CWCB”)

Mailing address: 1313 Sherman Street, Room 721
Denver, CO 80203
2. Name of structure: Gunnison River Whitewater Course (the Course).
3. State facts why application for water rights should not be granted or why it should be granted only in part or on certain conditions:
 - a. The CWCB would like to ensure that the Applicant has provided proper evidence to support its claim to make the RICD water right decreed in Case No. 12CW4 absolute. Improper perfection of this RICD may affect Colorado’s ability to promote maximum utilization of the waters of the State.

- b. The CWCB is unable to determine from the application whether additional grounds for opposition exist, and therefore reserves the right to assert other grounds for opposition as they become known.
- 4. This statement of opposition is continuing in nature and is intended to apply to any and all future amendments to the original application.

Dated this 28th day of March, 2012.

JOHN W. SUTHERS
Attorney General


*E-Filed pursuant to C.R.C.P. Rule 121 § 1-26.
A duly signed original is on file with the Office of the
Attorney General for the State of Colorado*

/S/ Susan Schneider

SUSAN SCHNEIDER, #19961
First Assistant Attorney General
Natural Resources and Environment Section
Attorneys for Colorado Water Conservation Board
Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March 2012, I caused a true and complete copy of the foregoing **STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD** to be served electronically via LexisNexis File & Serve to each of the following:

 <u>Party</u>	<u>Party Type</u>	<u>Attorney</u>	<u>Firm</u>
COLORADO DIVISION OF WATER RESOURCES	State Engineer	State Water Engineer, Colorado	State Engineers Office
DIVISION 4 WATER ENGINEER	Division Engineer	Water Engineer, Division 4	Division 4 Engineer
UPPER GUNNISON RIVER WATER CONSERVANCY	Applicant	McClow, John Hawkins	Upper Gunnison River Water Conservancy District

Filed pursuant to C.R.C.P. Rule 121 § 1-26.

A duly signed original is on file with the Office of the Attorney General for the State of Colorado.

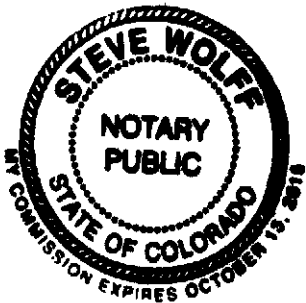
/s/ Lou Leone

CITY AND COUNTY OF DENVER

I, Jennifer L. Gimbel, Director, Colorado Water Conservation Board, being duly sworn hereby state that I have read the foregoing statement of opposition, and that the contents are true to the best of my knowledge.

Colorado Water Conservation Board

Subscribed and sworn to before me in the City and County of Denver, State of Colorado,
this 26 day of March, 2012.



NOTARY PUBLIC

My Commission expires:

10/13/2015