

# STATE OF COLORADO

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## Colorado Water Conservation Board

### Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Ted Kowalski, Chief  
Suzanne Sellers  
Interstate, Federal & Water Information Section

DATE: November 1, 2012

SUBJECT: **Agenda Item 29, November 13-14, 2012 Board Meeting**  
Interstate, Federal & Water Information Section –  
Board of Commissioners for the County of Grand's Recreational In-Channel  
Diversion (RICD) Application in Case No. 5-10CW298

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John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

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### Background

Grand County is seeking two Recreational In-Channel Diversions (RICDs) on the Colorado River. 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, CO. This RICD is proposed to operate from April 10<sup>th</sup> to August 2<sup>nd</sup> of each year at a rate up to 850 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 near Kremmling, CO. This RICD is proposed to operate from April 5<sup>th</sup> to October 15<sup>th</sup> of each year at a rate up to 1,500 cfs.

After deliberation in a public meeting held on March 21, 2012, the Board made the attached Comprehensive Findings of Fact about the proposed RICDs, which were subsequently provided to the Division 5 water court.

Staff has conducted negotiations with the Applicant, and together with the Applicant, developed a proposed stipulation and decree (attached). In addition, the Applicant has entered into stipulations with the following parties as of October 29, 2012:

- Bureau of Land Management
- Denver Water
- Town of Kremmling
- Middle Park Water Conservancy District
- Grand County Water and Sanitation District
- Winter Park Water and Sanitation District
- Cornerstone Winter Park Holding LLC, Byers Peak Properties, LLC, C. Clark Lipscomb & Meredith C. Lipscomb

- Granby Realty Holdings LLC
- Grand County Mutual Ditch & Reservoir Company
- Colorado River Water Conservation District

Trout Unlimited withdrew its Statement of Opposition. The following parties remain in the case as of October 29, 2012:

- Board of County Commissioners of Pitkin County
- Board of County Commissioners for the County of Summit
- CNL Income Granby LLC
- Homestake Partners, being the Cities of Aurora and Colorado Springs, through the Homestake Steering Committee
- Northern Colorado Water Conservancy District and the Municipal Subdistrict, Northern Colorado Water Conservancy District
- State and Division Engineers
- Town of Fraser
- Town of Winter Park
- Winter Park Recreational Association
- Climax Molybdenum Company

**Staff Recommendation**

The Staff recommends that the Board discuss the proposed stipulation and decree with Board and Attorney General Staff during the Executive Session under Agenda Item 9 and subsequently take appropriate actions under Agenda Item 29.

Colorado Water Conservation Board's Comprehensive Findings of Fact  
Board of Commissioners for the County of Grand  
Case No. 5-10CW298  
March 21, 2012

- I. Considering the specific amounts and activities as claimed in the application and proposed decree, and after deliberation in a public meeting held on March 21, 2012, the Board makes the following findings about the proposed Recreational In-Channel Diversions (RICDs):
- a. The Board must consider whether the adjudication and administration of a RICD would materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements. The Board makes the finding that there remains unallocated Colorado River apportionment available for consumptive beneficial use within Colorado. The Board also finds that the adjudication and administration of the two proposed RICDs, for the flow amounts and time periods summarized below, would not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements but could have an impact on the manner, cost, and timing of such development:

<b>Period</b>		<b>Flow Rate (cfs)</b>
<b>Hot Sulphur Springs Whitewater Park</b>		
Glory Hole/Hot Pocket	Apr 10 – May 20	250
	May 21 – July 4	850
	July 5 – Aug 2	250
<b>Gore Canyon Whitewater Park</b>		
Inspiration Point /Launch Counter	Apr 5 – Apr 28	860
	Apr 29 – July 22	1,500
	July 23 – Oct 15	860

The Board makes the following findings about the two proposed RICDs for the flow amounts claimed:

- i. There remains unappropriated water that Colorado could place to consumptive beneficial use upstream of the proposed RICD reaches. The RICDs could impair Colorado's ability to fully develop and place to consumptive beneficial use Colorado's compact entitlements under the Colorado River compact, the Upper Colorado River Basin compact, and the associated "Law of the River" upstream of the proposed RICDs. However, affects on upstream compact development are significantly reduced because the Applicant seeks to limit the flow rates sought as summarized below. The Applicant is seeking more than 50% of the total average historic volume of stream flows for each RICD, and sections 37-92-305(13)(f)(II)&(III), C.R.S. (2010) require that a RICD be limited to only three time periods and each time period be limited to one flow rate. The statute further requires that the proposed decree include language such that the Applicant will not impose a call if the call will produce at least 85% of the flow rate sought. § 37-92-305(13)(f)(I). Additionally, Grand

County has agreed to only place a call for the RICD water rights when such a call will produce flows at the decreed control structures between 6:00 am and 8:00 pm. These limitations reduce the ability and the frequency of a call by the proposed RICDs. Furthermore, Grand County has included the following terms and conditions to further reduce the RICDs ability to call, as well as reduce the RICDs impact on upstream compact development:

*“21.c. Case No. 2011CW21 (Div. 5). Grand County shall not place a call for water for the Hot Sulphur Springs Whitewater Park water rights when a call would impair Denver Water’s exchanges sought in Case No. 11CW21 from Dillon Reservoir to Williams Fork Reservoir at a rate of 148 cfs and up to 6,095 acre-feet annually, and to the existing points of diversion on the Fraser River and Williams Fork Diversion Projects at a rate of 56 cfs and up to 8,747 acre-feet annually.”*

*“45.a. Pursuant to § 37-92-103(10.3), there shall be a presumption that there will not be material injury to this RICD from subsequent appropriations or changes of water rights if the effect on this RICD caused by such appropriations or changes does not exceed one-tenth of one percent of the lowest decreed rate of flow (0.25 cfs for the Hot Sulphur Springs Whitewater Park and 0.86 cfs for the Gore Canyon Whitewater Park) for this RICD as measured at the RICD and the cumulative effects on this RICD caused by such appropriations or changes do not exceed two percent of the lowest decreed rate of flow (5 cfs for the Hot Sulphur Springs Whitewater Park and 17.2 cfs for the Gore Canyon Whitewater Park) for this RICD measured at the RICD.”*

*“45.c. In addition to the no call provisions in paragraphs 21.c and 45.g, Grand County reserves the right not to call the RICD Water Rights, within the sole discretion of Grand County, as against future water rights up to the first 3,000 acre-feet of depletions per year, applied to all water users in the order of their priority.”*

*“45.d. Grand County shall not use the RICD Water Rights as a basis to oppose any future application in the Division 5 water court that proposes future development of the waters of the Colorado River or its tributaries upstream of the Grand County whitewater parks where the diversion, beneficial use(s) and return flows occur upstream of either Grand County whitewater park, and the contemplated diversion is less than 1,000 acre-feet each year. Such water rights may, however, be subject to curtailment by a call for water under the RICD Water Rights.”*

*“45.g. Case No. 2011CW152 (Div. 5). Grand County shall not place a call for water under the RICD Water Rights, specifically the Calling Rates*

of Flow in paragraphs 15 and 28, when such a call would impair the storage and substitution of up to of 1,375 acre feet in Gross Reservoir, storage of up to 2,500 acre feet in Williams Fork Reservoir, and exchanges of up to 3,500 acre feet into Green Mountain Reservoir and Wolford Mountain Reservoir, as contemplated by the application in Case No. 2011CW152.”

Given these terms and conditions, the Board finds that the RICDs will not materially impair the ability of the State of Colorado to consumptively use its compact entitlements.

- ii. In the case of compact curtailment under the “Law of the River”, it may be necessary to exchange water through the proposed RICD reaches in order for the beneficiaries of post-compact water rights to realize necessary beneficial use of water yielded from pre-compact water rights or other water sources not affected by compact administration. Such exchanges would be necessary for Colorado to place to consumptive beneficial use its compact entitlements. To address this factor, the Board finds that the following condition would be an acceptable provision for a proposed decree:

“45.b During any period identified by the Upper Colorado River Commission in a finding issued pursuant to Article VIII(d)(8) of the Upper Colorado River Basin Compact of 1948 for curtailment of Colorado River basin water uses within Colorado, which the State of Colorado has agreed to implement in a manner that impacts water diversions within Water Division 5, these RICD water rights will be administered in accordance with the compact curtailment rules adopted by the State of Colorado or other rules promulgated by the State Engineer pursuant to C.R.S. §37-80-104 and §37-92-501 that are then in effect. If no such compact curtailment rules are then in effect, these RICDs will not call for water during the period of any such compact curtailment, but shall otherwise be administered in accordance with this decree and Colorado law.”

- iii. The Board finds that the distances of the proposed RICDs to the State line are considerable, which demonstrates that the location of the RICDs will have a reduced impact on Colorado's ability to develop its compact entitlements.
- iv. The proposed RICDs are potentially in close proximity to suitable upstream points of diversion and upstream storage (Granby, Fraser, Lake Granby, Grand Lake, Windy Gap, Colorado Big Thompson Project, etc.) that may be utilized by those who would place the water to consumptive beneficial use. However; given the limitations, terms and conditions described in paragraphs I.a.i and I.a.ii above, the Board finds that the proposed RICDs do not

materially impair the ability of the State of Colorado to consumptively use its compact entitlements.

- v. The existence of suitable downstream points of diversion for consumptive beneficial use before the water leaves the state serves as a factual basis for the Board to determine that the RICDs should be granted under this factor. There are numerous potential downstream diversions and potential storage reservoirs that could be used so that the State of Colorado may fully develop and place to consumptive beneficial use its compact entitlements.
  - vi. Exchange opportunities within the state may be adversely impacted by the existence of the proposed RICDs. Additionally, the Colorado River basin is over-appropriated, or "water critical" during a portion of the proposed RICD season. However, the impact from the proposed RICDs on existing water rights and users will only be incremental. Additionally, the Board finds that these impacts will be mitigated by the limitations, terms and conditions described in paragraphs I.a.i and I.a.ii above. Therefore, the Board finds that the proposed RICDs will not materially impair Colorado's ability to fully develop and place to consumptive beneficial use its compact entitlements.
- b. The Board must consider whether the exercise of the proposed RICDs would cause material injury to existing instream flow (ISF) water rights. The Board makes the following findings about the proposed RICDs regarding the potential of material injury to existing ISF water rights:

- i. As summarized below, there are two existing and one pending ISF water rights held by the CWCB in or directly downstream of the proposed RICD reaches. The nature and extent of these ISF water rights do not serve as a basis to recommend denial of the proposed RICD application.

<b>CWCB Case No.</b>	<b>Stream</b>	<b>Amount (cfs)</b>	<b>Approp. Date</b>	<b>RICD Reach</b>
5-80CW447	Colorado River	90 (1/1 – 12/31)	7/8/1980	Hot Sulphur Springs
5-80CW446	Colorado River	135 (1/1 – 12/31)	7/8/1980	Downstream of Hot Sulphur Springs
5-11CW159 (pending)	Colorado River	500 (9/16 – 5/14) 600 (5/15 – 7/31) 750 (8/1 – 9/15)	7/12/2011	Gore Canyon

- ii. Should the proposed RICDs be constructed, the Board finds that the proposed RICDs could affect the natural environment that the ISF water rights protect during the construction and maintenance process unless the Applicant consults

with the Colorado Division of Parks and Wildlife (CPW) before and during construction and maintenance of the RICD structures and CPW finds that these actions will not injure the natural environment that the ISF water rights protect.

- c. The Board must determine whether the adjudication and administration of the proposed RICDs, in the amounts claimed, would promote maximum utilization of the waters of the State. The Board makes the following findings about the proposed RICDs regarding maximum utilization of waters of the State:
  - i. The Board finds that there are probable future upstream junior appropriations for direct diversion or storage (Granby, Fraser, Lake Granby, Grand Lake, Windy Gap, Colorado Big Thompson Project, etc.) that may be adversely affected. However, the Board finds that these impacts will be significantly reduced by the limitations, terms and conditions described in paragraphs I.a.i and I.a.ii above. Given these terms and conditions, the Board finds that there should be adequate opportunity to allow upstream junior appropriations for direct diversion and storage and the proposed RICDs will promote maximum utilization of the waters of the State.
  - ii. The Board finds that the proposed RICD appropriations for the flow amounts sought and the time periods specified, will promote maximum utilization. The proposed RICDs may impact future changes, transfers, or exchanges of water rights from points of diversion or storage downstream of the RICDs to points upstream of the RICDs. However, the Board finds that these impacts will be significantly reduced by the limitations, terms and conditions described in paragraphs I.a.i and I.a.ii above. Given these terms and conditions, the Board finds that there is adequate opportunity to allow future changes, transfers, and exchanges of water from points located downstream of the proposed RICDs to points located within or upstream of the proposed RICDs.
  - iii. The Board finds that the proposed RICD appropriations promote maximum utilization of Colorado's water resources because the Applicant has proposed a reasonable means to use, divert, capture and control the water for the RICDs so as to minimize their call upon the river and avoid waste as described in paragraphs I.a.i and I.a.ii above.
  - iv. Based on numerous emails provided by the Applicant, the Board finds that there is a reasonable demand for the recreational activities sought for the time periods and flow rates claimed in the application and summarized above.
  - v. The Board finds that the application has appropriate limitations upon the time of day and the time of year during which the proposed RICDs would be exercised; thus promoting maximum utilization of waters of the State.
  - vi. The depths and individual flow rates of the proposed RICDs promote maximum utilization for the flow amounts sought for the individual time periods.

- vii. The frequency and duration of the requested amounts of water for the proposed RICDs for the requested periods promote maximum utilization of waters of the State.
- viii. The relationship of the requested individual RICD flow rates to the historic appropriated and unappropriated flow rates for each time period requested demonstrate that the proposed RICDs will promote maximum utilization of Colorado's water resources.
- ix. The application meets the elements of the definition of a RICD, as defined in section 37-92-103(10.3). The application has been filed by a county government, the Applicant has shown that the water will be beneficially used at the maximum flow rates claimed, and has provided evidence that there is a demand for a reasonable recreational experience on additional days past Labor Day. In addition, the Applicant has shown that water will be beneficially used at the claimed minimum "non-calling" flow rates.
- x. The requested RICDs conserve and efficiently use the available stream flow, and therefore promote maximum utilization of Colorado's water resources.
- xi. The RICDs will work together with existing and/or future uses within the State of Colorado to promote maximum utilization of waters of the State.
- xii. The Applicant has included descriptions of each recreational opportunity sought at each flow amount sought. The Board finds that the Applicant is seeking flow rates that are the minimum amount necessary to provide for the reasonable recreational experiences sought.
- xiii. The Board finds that unappropriated native flows exist in the proposed RICD stream reaches during the periods claimed, and the percentage of unappropriated flows claimed by the proposed RICDs, indicate that the proposed RICDs will promote maximum utilization of waters of the State.



DISTRICT COURT, WATER DIVISION 5, COLORADO 109 8 <sup>th</sup> Street, Suite 104 Glenwood Springs, CO 81601	<div style="text-align: center;">▲ Court Use Only ▲</div>	
<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 davet@white-jankowski.com mitrap@white-jankowski.com matthewm@white-jankowski.com  JOHN W. SUTHERS, Attorney General SCOTT STEINBRECHER, # 36957 Assistant Attorney General SUSAN J. SCHNEIDER, #19961 First Assistant Attorney General 1525 Sherman Street, 5th Floor Denver, Colorado 80203 Tele: (303) 866-5017 and 866-5046 scott.steinbrecher@state.co.us susan.schneider@state.co.us	Case No.: 2010CW298	
<div style="text-align: center;"><b>STIPULATION BETWEEN GRAND COUNTY AND  THE COLORADO WATER CONSERVATION BOARD</b></div>		


Applicant Board of Commissioners for the County of Grand, Colorado (“Grand County” or “Applicant”), and Opposer Colorado Water Conservation Board (“CWCB”), by and through their undersigned attorneys, stipulate and agree as follows:

1. CWCB agrees to entry of a decree in this case that is no less restrictive than the proposed decree (Version No. 5 dated September 20, 2012) that is attached to this stipulation as Exhibit A (“Proposed Decree”) and incorporated by this reference.
2. CWCB may continue to monitor this case and to receive copies of filings with the Court, but is not required to submit further disclosures or to meet further deadlines in this case.
3. CWCB will not oppose entry of any decree that is consistent with this stipulation. CWCB shall remain a party in this case and reserves the right to participate in any future proceedings in this case, including trial, in order to enforce the terms of this stipulation and defend against terms and conditions inconsistent with this stipulation, and to defend the Colorado Water Conservation Board’s Comprehensive Findings of Fact, Board of Commissioners for the County of Grand, Case No. 5-10CW298, March 21, 2012.
4. Subject to the Colorado River Cooperative Agreement (“CRCA”) among Grand County, Denver Water and other West Slope Signatories, Grand County and the CWCB agree to negotiate in good faith concerning the mutual benefits of operations and opportunities to provide water to the RICD Water Rights and to any future Upper Colorado River Cooperative Project as defined in the CRCA: “A water supply project located on the West Slope, agreed to by Denver Water and the West Slope Signatories to this Agreement, and designed to produce water for use on the East and West Slopes, including at least 20,000 acre-feet of average annual diversions for use on the East Slope.”
5. CWCB will timely review any decree entered as a ruling of the Referee or final decree by the Court in this case and will assert any objection they have to that decree as inconsistent with this stipulation before the applicable deadline for protest or objection has expired.
6. The RICD Water Rights decreed in this case are part of a compromise and settlement, involve unique circumstances and shall not establish any precedent for any future RICD applications.
7. This stipulation shall bind Grand County and CWCB and their successors and assigns.
8. Grand County and CWCB will each bear their own costs and fees, including attorneys’ fees in this case.
9. Grand County and CWCB agree that if this stipulation is approved by the Water Court, agreements made in this stipulation shall be enforceable by them either as an agreement or as an order of the Water Court. CWCB consents to a motion by Grand County requesting that the Water Court approve this stipulation.
10. Grand County and CWCB represent and affirm that the signatories to this stipulation are legally authorized to bind the parties in this matter.

Dated: \_\_\_\_\_.

WHITE & JANKOWSKI, LLP

John W. Suthers, ATTORNEY GENERAL

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

By: \*S/  
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*Filed per Rule 121. Duly signed copy on file at White & Jankowski, LLP*

DISTRICT COURT, WATER DIVISION 5, COLORADO 109 8 <sup>th</sup> Street, Suite 104 Glenwood Springs, CO 81601	Version 5 September 20, 2012
CONCERNING THE APPLICATION FOR WATER RIGHTS OF  <b>THE BOARD OF COMMISSIONERS FOR THE COUNTY OF GRAND, COLORADO</b>  IN GRAND COUNTY, COLORADO	CRE 408 DOCUMENT  ▲ Court Use Only ▲  Case No.: 2010CW298
<b>DRAFT FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT, AND DECREE OF THE WATER COURT</b>	

THIS MATTER came before the Court on the application of the Board of Commissioners for the County of Grand, Colorado (“Grand County” or “Applicant”) for Recreational In-Channel Diversions (“RICD”) water rights. The Court, having considered the pleadings, evidence and arguments presented and the stipulations of the parties, and being fully advised in the premises, hereby finds, concludes, rules, adjudges and decrees as follows.

### **FINDINGS OF FACT**

1. Name and Address of Applicant. The name of the Applicant is the Board of Commissioners for the County of Grand, State of Colorado, P.O. Box 264, Hot Sulphur Springs, CO 80451, *with a copy to* David C. Taussig, White & Jankowski, LLP, 511 Sixteenth Street, Suite 500, Denver, Colorado, 80202.
2. Notice and Jurisdiction. The application herein was filed on December 28, 2010. All notices of the application and the amendment were given in the manner required by law and the Court has jurisdiction over the subject matter of this proceeding and over all persons and property affected hereby, regardless of whether those persons or owners of property have appeared. The water and lands which are the subject of this decree are not located in a designated groundwater basin.
3. Statements of Opposition. Statements of opposition to the application were timely filed by 24 parties, and 1 party intervened by unopposed motion as described below:
  - a. Board of County Commissioners of Pitkin County;
  - b. Board of County Commissioners for the County of Summit;
  - c. CNL Income Granby LLC;

- d. Colorado Water Conservation Board (“CWCB”);
  - e. Colorado River Water Conservation District;
  - f. Cornerstone Winter Park Holdings LLC, Byers Peak Properties, LLC, C. Clark Lipscomb & Meredith C. Lipscomb (collective statement of opposition);
  - g. Denver Water;
  - h. Granby Realty Holdings LLC;
  - i. Grand County Water and Sanitation District;
  - j. Grand County Mutual Ditch and Reservoir Company;
  - k. Homestake Partners, being the Cities of Aurora and Colorado Springs, through the Homestake Steering Committee;
  - l. Middle Park Water Conservancy District;
  - m. Northern Colorado Water Conservancy District and the Municipal Subdistrict, Northern Colorado Water Conservancy District;
  - n. State and Division Engineers;
  - o. Town of Fraser;
  - p. Town of Kremmling;
  - q. Town of Winter Park;
  - r. Trout Unlimited;
  - s. United States of America, Department of the Interior, Bureau of Land Management, Kremmling Field Office;
  - t. Winter Park Recreational Association; and
  - u. Winter Park Water and Sanitation District.
  - v. Climax Molybdenum Company filed an unopposed motion to intervene on May 26, 2011 and its statement of opposition was accepted by order dated October 7, 2011.
4. No Summary of Consultation. The Division Engineer entered the case as an objector and did not prepare a summary of consultation.

5. Stipulations. Applicant has entered into stipulations with the following parties on the basis that these parties would not oppose entry of a decree at least as protective of their rights as the version attached to each such stipulation:
- a. Bureau of Land Management in a Stipulation dated January 5, 2012 and an Order approving the same entered January 5, 2012;
  - b. Denver Water in a Stipulation dated May 5, 2012 and an Order approving the same entered May 17, 2012;
  - c. Town of Kremmling in a Stipulation dated July 25, 2012 and an Order approving the same entered July 26, 2012;
  - d. Middle Park Water Conservancy District in a Stipulation dated July 25, 2012 and an Order approving the same entered July 26, 2012;
  - e. Grand County Water and Sanitation District in a Stipulation dated July 25, 2012 and an Order approving the same entered July 26, 2012;
  - f. Winter park Water and Sanitation District in a Stipulation dated August 13, 2012 and an Order approving the same entered August 14, 2012;
  - g. Cornerstone Winter Park Holding LLC, Byers Peak properties, LLC, C. Clark Lipscomb & Meredith C. Lipscomb in a Stipulation dated August 21, 2012 and an Order approving the same entered August 24, 2012;
  - h. Granby Realty Holdings LLC in a Stipulation dated August 27, 2012 and an Order approving the same entered August 31, 2012;
  - i. Grand County Mutual Ditch & Reservoir Company in a Stipulation dated August 30, 2012 and an Order approving the same on August 31, 2012;
  - j. Colorado River Water Conservation District in a Stipulation dated September 18, 2012 and an Order dated\_\_\_\_\_;

Trout Unlimited withdrew its Statement of Opposition in a Withdrawal of Statement of Opposition dated July 3, 2012, and the Court entered an Order approving the same on July 10, 2012.

6. Referral. Grand County's application was referred to the Water Referee.
7. Notice to CWCB and CWCB Findings. Pursuant to C.R.S. § 37-92-102(5), Grand County transmitted a copy of its application in this case to the CWCB on January 25, 2011. The CWCB considered Grand County's application at a public meeting on March 21, 2012 in Denver, Colorado. The CWCB submitted its findings to the Court on March 28, 2012. The Court has considered the CWCB's findings.

8. Description of Applicant. Grand County’s mission, in part, is “to provide a natural and social environment suitable for a variety of commercial, recreational, and personal pursuits in which people can live, work, play, grow up, and grow old.” Water based recreation is an important component of Grand County’s economy, and the County actively works to protect and develop water resources within its boundaries to support recreation and other uses. Grand County filed the application in this case to develop new non-motorized recreational boating opportunities on the main stem of the Colorado River.
9. Summary of the Application. The Applicant seeks 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. The general locations of these parks are shown on Exhibit A. At each park, Grand County has designed and plans to install two structures in the Colorado River to create whitewater hydraulic features for non-motorized recreation use. Each of the four structures will divert and control the flow of the main stem of the Colorado River between specific points and will create different recreational experiences at different rates of flow. Grand County seeks separate water rights for each of the whitewater parks, and collectively these water rights are referred to as “RICD Water Rights” in this decree.
10. Intended Recreational Experiences. Although any recreational use of water may occur at Grand County’s whitewater parks, the intended recreational experiences that form the basis of Grand County’s appropriation involve freestyle whitewater recreation. Grand County seeks recreational experiences for multiple ability levels, and has designed its structures and appropriations to appeal to different ability levels depending on the location, time period, and flow rate. These different difficulties of navigating and playing in a whitewater feature are analogous to different difficulties of ski or snowboard trails, and Grand County has designated the experiences it seeks using the same terminology as those trails: green for beginner, blue for intermediate, black for advanced, and double black for expert.

### **Hot Sulphur Springs Whitewater Park**

11. Introduction. Grand County has appropriated conditional water rights for the Hot Sulphur Springs Whitewater Park. The elements of appropriation and terms and conditions for operation of these water rights are as follows.
12. Location. 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.. Grand County, Colorado. The Hot Sulphur Springs Whitewater Park is designed with two structures that will each control and divert the flow of the Colorado River to create a hydraulic feature. The upstream structure and associated whitewater feature are named the “Glory Hole” and the downstream structure and associated whitewater feature are named the “Hot Pocket.” A map showing the approximate upstream and downstream extent of the Hot Sulphur Springs Whitewater Park and the structure locations is attached as Exhibit B.

- a. The Glory Hole structure will be located in and across the Colorado River in the SE¼ of Section 3, T. 1 N., R. 78 W., 6<sup>th</sup> P.M., Grand County, Colorado. The left abutment of the Glory Hole structure will be located in the SE¼ SE¼ of said Section 3, whence the SE corner of said Section 3 bears S 53° 39” E, 880 feet.
  - b. The Hot Pocket structure will be located in and across the Colorado River in the SE¼ of Section 3, T. 1 N., R. 78 W., 6<sup>th</sup> P.M., Grand County, Colorado. The left abutment of the Hot Pocket structure will be located in the SE¼ SE¼ of said Section 3, whence the SE corner of said Section 3 bears S 61° 20” E, 1,426 feet.
13. Source. Colorado River.
14. Date of Appropriation. December 21, 2010. See paragraph 38 for initiation of appropriation.
15. Calling Rates of Flow. As a matter of compromise and settlement with the CWCB, Grand County has defined “calling” rates of flow for the Hot Sulphur Springs Whitewater Park water rights in this paragraph 15, and “non-calling” beneficial use of the Hot Sulphur Springs Whitewater Park water rights described below in paragraph 16. Grand County may place a call for water for the calling rates of flow in this paragraph subject to the terms of this decree. The following calling rates of flow for the Hot Sulphur Springs Whitewater Park water rights, expressed in cubic feet per second (“cfs”), are CONDITIONAL:

<b>Flow Schedule for Calling Rates of Flow for Hot Sulphur Springs Whitewater Park Water Rights</b>			
<u>Period</u>	<u>Flow Rate</u>	<u>Experience</u>	<u>85% of Flow Rate</u>
April 10 – May 20	250 cfs	Blue	212.5 cfs
May 21 – July 4	850 cfs	Black (Hot Pocket) / Blue (Glory Hole)	722.5 cfs
July 5 – Aug 2	250 cfs	Blue	212.5 cfs

After considering all of the factors bearing on the reasonableness of Grand County’s claims, including the flow needed to accomplish the claimed recreational experiences listed above, benefits to the community, the intent of the appropriator, stream size and characteristics, and total stream flow available at the control structures during the periods listed above, the Court finds that the flow rates listed in the table above are the minimum amounts necessary to serve Grand County’s intended reasonable recreation experiences.



16. Non-Calling Beneficial Use. The Court finds that beneficial recreational in-channel uses may occur at the Hot Sulphur Springs Whitewater Park and there is a demand for reasonable recreation experiences at flow rates between 90 cfs up to 850 cfs between April 1 and October 15. With water that Grand County makes available to the Colorado River for recreational use at the Hot Sulphur Springs Whitewater Park under other water rights decreed for recreational use, Grand County shall have the ability to deliver and protect such water to increase otherwise existing flows to achieve flows between 90 cfs and 850 cfs for recreational use between April 1 and October 15, but Grand County shall not have the right to place a call for water at the Hot Sulphur Springs Whitewater Park except as identified in the schedule in paragraph 15, and subject to the terms of this Decree. The delivery of water by Grand County under such other water rights shall be administered by the Division Engineer consistent with this decree and any other decrees for such water rights.
17. Uses. 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.
18. Minimum Flow Rates. The minimum amounts necessary to serve Grand County's intended reasonable recreation experiences are listed in paragraph 15 above. As contemplated by section 37-92-305(13)(d) and described in paragraph 16 above, the Court finds that the beneficial uses listed in paragraph 17 may occur at flow rates below those necessary for the intended recreational experiences. However, the Court finds that below 90 cfs, there is no longer any beneficial use of water at the Hot Sulphur Springs Whitewater Park.
19. Volume of Appropriation. Pursuant to C.R.S. § 37-92-305(13)(e), the Court finds that the total volume of water appropriated for the Hot Sulphur Springs Whitewater Park water rights is 110,385 acre-feet according to the calculation prescribed by the statute. The Court notes that, pursuant to the time of day term and condition in paragraph 21.b below, the actual appropriated volumes are 42% less than the statutory calculation. Nevertheless, the volume calculated pursuant to statute exceeds 50% of the sum of the total average historical volume of water passing the park between April 10 and August 2. The volume of the appropriation is non-consumptive.
20. Appropriate Stream Reach. The Glory Hole and Hot Pocket are located near a reach of the Colorado River that is used by non-motorized boaters. These structures are located to create new recreational opportunities, especially for beginning and intermediate boaters, adjacent to an existing park in Hot Sulphur Springs. The river channel at each of the two structure locations is suitable for creation of the new whitewater features claimed by Grand County. The Court finds that the Glory Hole and Hot Pocket structures are located in an appropriate stream reach.

21. Terms and Conditions.

- a. Grand County shall only call for water to satisfy the Hot Sulphur Springs Whitewater Park water rights in accordance with the schedule in paragraph 15 above. The State Engineer shall not administer a call for these water rights unless the curtailment of junior water rights would result in at least 85% of the flow rate for the applicable time period at the calling structure.
- b. The hours of operation of the Hot Sulphur Springs Whitewater Park are 6:00 a.m. to 8:00 p.m.
- c. *Case No. 2011CW21 (Div. 5).* Grand County shall not place a call for water for the Hot Sulphur Springs Whitewater Park water rights when a call would impair Denver Water's exchanges sought in Case No. 11CW21 from Dillon Reservoir to Williams Fork Reservoir at a rate of 148 cfs and up to 6,095 acre-feet annually, and to the existing points of diversion on the Fraser River and Williams Fork Diversion Projects at a rate of 56 cfs and up to 8,747 acre-feet annually.
- d. Initially, the Hot Sulphur Springs Whitewater Park may be administered using the existing stream gauge on the Colorado River at Hot Sulphur Springs (Station ID #09034500) with due consideration for any return flows or other inflows accruing to the stream below the gauge and above the park, as reasonably approved by the Division Engineer. If that gauge is not operating, then back-up administration may be done using the existing Colorado River at Windy Gap near Granby gauge (ID #09034250) with due consideration for any return flows or other inflows accruing to the stream below the gauge and above the park, as reasonably approved by the Division Engineer. See also paragraph 63 for measuring devices.
- e. Grand County shall not place a call for water for the Hot Sulphur Springs Whitewater Park water rights if a call would adversely impact Denver Water's replacement and exchange operations from Williams Fork Reservoir to the Fraser River Diversion Project under Civil Action Nos. 657 and 1430 (Div. 5).

22. Land Ownership. The land where the Glory Hole and Hot Pocket structures are to be located is owned by the Town of Hot Sulphur Springs. Grand County provided notice of its application in this case to the Town of Hot Sulphur Springs in compliance with C.R.S. § 37-92-302(2)(b). Grand County shall not construct the Glory Hole and Hot Pocket structures until it obtains permission from the Town of Hot Sulphur Springs.

23. Access. The Glory Hole and Hot Pocket structures are to be located on the Colorado River at Pioneer Park in the Town of Hot Sulphur Springs. There is existing public access to the river and a parking lot at this location. Grand County may work with the Town of Hot Sulphur Springs to improve this access or construct additional access pursuant to the terms and conditions in paragraph 22 above.

**Gore Canyon Whitewater Park**

24. Introduction. Grand County has appropriated conditional water rights for the Gore Canyon Whitewater Park. The elements of appropriation and terms and conditions for operation of these water rights are as follows.
25. Location. 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., Grand County, Colorado. The Gore Canyon Whitewater Park is designed with two structures that will each control and divert the flow of the Colorado River to create hydraulic features. The upstream structure and associated whitewater feature are named “Inspiration Point” and the downstream structure and associated whitewater features are named the “Launch Counter.” A map showing the upstream and downstream extent of the Gore Canyon Whitewater Park is attached as Exhibit C.
- a. The Inspiration Point structure will be located in the W½ of Section 7, T. 1 S., R. 81 W., 6<sup>th</sup> P.M., Grand County, Colorado. The right abutment of the Inspiration Point structure will be located in the NE¼ NW¼ of said Section 7, whence the NW corner of said Section 7 bears N 56° 11” W, 1,742 feet.
- b. The Launch Counter structure will be located in the E½ of Section 12, T. 1 S., R. 82 W., 6<sup>th</sup> P.M., Grand County, Colorado. The left abutment of the Launch Counter structure will be located in the NE¼ SE¼ of said Section 12, whence the SE corner of said Section 12 bears S 15° 41” E, 1,948 feet.
26. Source. Colorado River.
27. Date of Appropriation. December 21, 2010. See paragraph 38 for initiation of appropriation.
28. Calling Rates of Flow. As a matter of compromise and settlement with the CWCB, Grand County has defined “calling” rates of flow for the Gore Canyon Whitewater Park water rights in this paragraph 28, and “non-calling” beneficial use of the Gore Canyon Whitewater Park water rights described below in paragraph 29. Grand County may place a call for water for the calling rates of flow in this paragraph subject to the terms of this decree. The following calling rates of flow for the Gore Canyon Whitewater Park water rights expressed in cfs are CONDITIONAL:

<b>Flow Schedule for Calling Rates of Flow for Gore Canyon Whitewater Park Water Rights</b>			
<u>Period</u>	<u>Flow Rate</u>	<u>Experience</u>	<u>85% of Flow Rate</u>
April 5 –	860	Blue	731 cfs

April 28			
April 29 – July 22	1500	Black (Launch Counter) / Double Black (Inspiration Point)	1275 cfs
July 23 – Oct. 15	860	Blue	731 cfs

After considering all of the factors bearing on the reasonableness of Grand County’s claims, including the flow needed to accomplish the claimed recreational experiences listed above, benefits to the community, the intent of the appropriator, stream size and characteristics, and total stream flow available at the control structures during the periods listed above, the Court finds that the flow rates listed in the table above are the minimum amounts necessary to serve Grand County’s intended reasonable recreation experiences.

29. Non-Calling Beneficial Use. The Court finds that beneficial in-channel recreational use of water may occur and there is a demand for reasonable recreation experiences at the Gore Canyon Whitewater Park at flow rates between 500 cfs up to 2,500 cfs between April 1 and October 15. With water that Grand County makes available to the Colorado River for recreational use at the Gore Canyon Whitewater Park under other water rights decreed for recreational use, Grand County shall have the ability to deliver and protect such water to increase otherwise existing flows to achieve flows between 500 cfs and 2,500 cfs for recreational use between April 1 and October 15, but Grand County shall not have the right to place a call for water at the Gore Canyon Whitewater Park except as identified in the schedule in paragraph 28, and as limited by the terms of this Decree. The delivery of water by Grand County under such other water rights shall be administered by the Division Engineer consistent with this decree and any other decrees for such water rights.
30. Uses. 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, for both structures.
31. Extended Recreation Season. The Court finds that there is demand for a reasonable recreation experience at the Gore Canyon Whitewater Park between Labor Day and October 15. Without limiting the foregoing finding, the Court finds that non-motorized boating already occurs in the area of the two planned structures at the Gore Canyon Whitewater Park between Labor Day and October 15 and that there is demand for a continuing reasonable recreation experience on the Colorado River at this location during the period from Labor Day to October 15.
32. Minimum Flow Rates. The minimum amounts necessary to serve Grand County’s intended reasonable recreation experiences are listed in paragraph 28 above. As contemplated by section 37-92-305(13)(d) and described in paragraph 29 above, the

Court finds that the beneficial uses listed in paragraph 30 may occur at flow rates below those necessary for the intended recreational experiences. However, the Court finds that below a flow rate of 500 cfs, there is no longer any beneficial use of water at the Gore Canyon Whitewater Park.

33. Volume of Appropriations. Pursuant to C.R.S. § 37-92-305(13)(e), the Court finds that the total volume of water appropriated for the Gore Canyon Whitewater Park water rights is 438,055 acre-feet according to the calculation prescribed by the statute. The Court notes that, pursuant to the time of day term and condition in paragraph 35.b below, the actual appropriated volumes are 42% less than the statutory calculation. Nevertheless, the volume calculated pursuant to statute exceeds 50% of the sum of the total average historical volume of water passing the park between April 5 and October 15. The volume of the appropriation is non-consumptive.
34. Appropriate Stream Reach. The Inspiration Point and Launch Counter structures are located in a reach of the Colorado River that is already frequently used by non-motorized boaters. These structures are located to create new recreational opportunities near the bottom of Gore Canyon and near an existing access road, parking facilities, and boat launch. Finally, the river channel at each of the two structure locations is suitable for creation of the new whitewater features claimed by Grand County. The Court finds that the Inspiration Point and Launch Counter structures are located in an appropriate stream reach.
35. Terms and Conditions.
  - a. Grand County shall only call for water to satisfy the Gore Canyon Whitewater Park water rights in accordance with the schedule in paragraph 28 above. The State Engineer shall not administer a call for these water rights unless the curtailment of junior water rights would result in at least 85% of the flow rate for the applicable time period at the calling structure.
  - b. The hours of operation of the Gore Canyon Whitewater Park are 6:00 a.m. to 8:00 p.m. Subject to the terms of this decree, Grand County may place a call for the RICD Water Rights at any time, provided the call will produce water to the calling RICD Water Right during the hours of operation.
  - c. Initially, the Gore Canyon Whitewater Park may be administered using the existing Colorado River near Kremmling, Colorado gauge (ID# 09058000), with due consideration for any return flows or other inflows accruing to the stream below the gauge and above the park, as reasonably approved by the Division Engineer. See also paragraph 63 for measuring devices.
36. Land Ownership. The land where the Inspiration Point and Launch Counter are to be located is owned and managed by the United States Department of the Interior, Bureau of Land Management ("BLM"). Grand County provided notice of its application in this

case to the BLM in compliance with C.R.S. § 37-92-302(2)(b). Grand County shall follow the appropriate permitting and/or other appropriate processes under federal statutes and regulations at the time it develops the Inspiration Point and Launch Counter structures.

37. Access. There is existing public access to the Colorado River and a parking lot at the location of the Gore Canyon Whitewater Park. Grand County may work with the BLM to improve this access or construct additional access pursuant to the process described in paragraph 36 above.

### **Additional Findings of Fact**

38. Initiation of Appropriations. Grand County initiated the appropriations for the RICD Water Rights by forming the intent to appropriate combined with overt actions manifesting and providing notice of that intent. Specifically, Grand County adopted Resolution No. 2010-12-33 memorializing its intent to appropriate and posted notice of its intent at both the Hot Sulphur Springs and Gore Canyon Whitewater parks on December 21, 2010. Grand County provided further confirmation and notice of its intent by, inter alia, adopting Resolution No. 2010-12-41, dated December 28, 2010, describing its intent in various public meetings, and filing the application in this case.
39. Confirmation of Appropriations. Grand County has completed the “first step” in the appropriation of its RICD Water Rights by showing the requisite intent to appropriate combined with an open, physical demonstration of that intent and the Court confirms the conditional appropriation of the RICD Water Rights.
40. Diligence. Since the date of appropriation, Grand County has continually exercised reasonable diligence in the development of its RICD Water Rights. Specific activities undertaken by Grand County include detailed design work on the four structures described above, hydrologic investigations at the whitewater park locations, and the prosecution of the application in this case.
41. Availability of Unappropriated Water. The Court finds that there is sufficient unappropriated water available in the Colorado River on sufficiently frequent occasions that there is a substantial probability Grand County can and will complete the appropriations of the RICD Water Rights.
42. Can and Will. The Court finds that, under all the facts and circumstances, there is a substantial probability Grand County can and will complete the appropriations of its RICD Water Rights within a reasonable time.
43. No injury. The appropriation of the RICD Water Rights will not cause material injury to any other water rights so long as they are operated pursuant to the terms and conditions of this decree.

44. Additional Findings Pursuant to C.R.S. § 37-92-305(13).

- a. The RICD Water Rights decreed herein will not materially impair the ability of the State of Colorado (“State”) to fully develop and place to consumptive beneficial use its compact entitlements. The RICD Water Rights are non-consumptive and are located more than 200 river miles upstream of the location where the Colorado River flows into Utah. Because of their location and non-consumptive nature, the RICD Water Rights do not preclude other water development opportunities to use any remaining portion of Colorado’s entitlement to waters of the Colorado River.
- b. The adjudication and administration of the water rights decreed herein will promote maximum utilization of waters of the State. The RICD Water Rights will not impact downstream development of new water projects because the RICD Water Rights are non-consumptive. The terms and conditions in this decree, including but not limited to those in paragraph 45 and 21.c, will allow for additional water to be developed upstream of the RICD Water Rights. Finally, the Court finds that non-motorized boating on the Colorado River provides substantial economic benefit to Grand County and Colorado and the non-consumptive use of water for the RICD Water Rights is consistent with maximum utilization of the waters of the Colorado River.
- c. The RICD Water Rights decreed herein control water and place it to the intended beneficial uses via a reasonably efficient means of diversion without waste.
- d. The CWCB appropriated an instream flow water right through the reach of the river where the Glory Hole and Hot Pocket structures are to be located for 90 cfs, which was decreed in Case No. 80CW447 (Div. 5). The CWCB has filed an application for an instream flow water right through the reach of the river where the Inspiration Point and Launch Counter structures are to be located for 500 cfs (September 16 – May 14), 600 cfs (May 15 – July 31) and 750 cfs (August 1 – September 15) in pending Case No. 11CW159 (Div. 5). Grand County has designed control structures to integrate with the natural environment, including enhancements to fish habitat. The Applicant will consult with the Division of Parks and Wildlife and the CWCB before and during any construction or repair of the RICD so that the construction activities will not impact the natural environment that the instream flow water rights seek to protect. As a result, the RICD Water Rights decreed herein will not cause material injury to instream flow water rights appropriated pursuant to C.R.S. § 37-92-102(3) and (4).

45. Additional Terms and Conditions:

- a. Pursuant to § 37-92-103(10.3), there shall be a presumption that there will not be material injury to this RICD from subsequent appropriations or changes of water rights if the effect on this RICD caused by such appropriations or changes does

not exceed one-tenth of one percent of the lowest decreed rate of flow (0.25 cfs for the Hot Sulphur Springs Whitewater Park and 0.86 cfs for the Gore Canyon Whitewater Park) for this RICD as measured at the RICD and the cumulative effects on this RICD caused by such appropriations or changes do not exceed two percent of the lowest decreed rate of flow (5 cfs for the Hot Sulphur Springs Whitewater Park and 17.2 cfs for the Gore Canyon Whitewater Park) for this RICD measured at the RICD.

- b. During any period identified by the Upper Colorado River Commission in a finding issued pursuant to Article VIII(d)(8) of the Upper Colorado River Basin Compact of 1948 for curtailment of Colorado River basin water uses within Colorado, which the State of Colorado has agreed to implement in a manner that impacts water diversions within Water Division 5, these RICD water rights will be administered in accordance with the compact curtailment rules adopted by the State of Colorado or other rules promulgated by the State Engineer pursuant to C.R.S. §37-80-104 and §37-92-501 that are then in effect. If no such compact curtailment rules are then in effect, this RICD will not call for water during the period of any such compact curtailment, but shall otherwise be administered in accordance with this decree and Colorado law.
- c. In addition to the no call provisions in paragraphs 21.c and 45.g, Grand County reserves the right not to call the RICD Water Rights, within the sole discretion of Grand County, as against future water rights up to the first 3,000 acre-feet of depletions per year, applied to all water users in the order of their priority.
- d. Grand County shall not use the RICD Water Rights as a basis to oppose any future application in the Division 5 water court that proposes future development of the waters of the Colorado River or its tributaries upstream of the Grand County whitewater parks where the diversion, beneficial use(s) and return flows occur upstream of either Grand County whitewater park, and the contemplated diversion is less than 1,000 acre-feet each year. Such water rights may, however, be subject to curtailment by a call for water under the RICD Water Rights.
- e. Grand County shall provide final designs for the four control structures described above that are signed and sealed by a professional engineer to the Division Engineer and the Water Court.
- f. For purposes of making the RICD Water Rights absolute, use of a higher calling flow rate at each Whitewater Park will suffice to also make the lower flow rate(s) absolute.
- g. *Case No. 2011CW152 (Div. 5).* Grand County shall not place a call for water under the RICD Water Rights, specifically the Calling Rates of Flow in paragraphs 15 and 28, when such a call would impair the storage and substitution of up to of 1,375 acre feet in Gross Reservoir, storage of up to 2,500 acre feet in



Williams Fork Reservoir, and exchanges of up to 3,500 acre feet into Green Mountain Reservoir and Wolford Mountain Reservoir, as contemplated by the application in Case No. 2011CW152.

- h. The RICD Water Rights do not have the right to “stack” on top of the instream flow water rights identified in paragraph 44.d. For example, if the flows in the Colorado River at the Hot Sulphur Springs Whitewater Park measure 240 cfs on April 15, Grand County shall have the right to call to produce 250 cfs in the Colorado River at the Park, and not to produce 340 cfs (90 cfs + 250 cfs) at the Park.
- i. Grand County shall determine by resolution up to three employees or agents who shall be authorized to place a call for the recreational in-channel water rights approved herein. Grand County shall provide the Division Engineer with a copy of the initial resolution designating the authorized individuals and each subsequent resolution changing the authorized individuals.
- j. The surface water rights confirmed herein shall be subject to the operation of all senior water rights, including appropriative rights of exchange operating through the Hot Sulphur Springs Whitewater Park and Gore Canyon Whitewater Park, including those described in Case Nos. 90CW236 and 97CW290 (Div. 5).
- k. Grand County shall not utilize the RICD Water Rights to place a call against future water rights (including exchanges) upstream of the RICD Water Rights that qualify under the provisions of both paragraph 45.a (rights that do not affect the RICD Water Rights by more than one tenth of one percent of the lowest rate of flow, i.e., 0.25 cfs at the Hot Sulphur Springs Whitewater Park and 0.86 cfs at the Gore Canyon Whitewater Park) and paragraph 45.c.
- l. Grand County will operate the RICD Water Rights with due consideration of its constituents water supply and augmentation needs and with recognition of Middle Park Water Conservancy District and Colorado River Water Conservation District’s statutory obligations for the development of a water supply for use by their joint constituency. Grand County will, at all times, operate the RICD Water Rights in recognition of existing decrees and agreements.
- m.

### **CONCLUSIONS OF LAW**

- 46. Incorporation of Findings of Fact. To the extent they may be deemed to be Conclusions of Law, the foregoing Findings of Fact are incorporated in these Conclusions of Law.
- 47. Consistent with Law. The application is contemplated and authorized by law. *See e.g.*, C.R.S. § 37-92-101 *et seq.*; *id.* at § 103(10.3).

48. Notice and Jurisdiction. Timely and adequate notice of this application was given in the manner required by law and the Court has jurisdiction over the subject matter of this proceeding and over all persons, owners of property, and water rights affected hereby, regardless of whether those persons or water rights have appeared. The application in this matter and the resume publications of the application placed such persons on notice of the relief requested by the application and granted by this Decree.
49. Control Structures. The amounts of water claimed and decreed herein will be controlled in the water's natural course in the Colorado River during the claimed time periods by means of the structures described in paragraphs 12 and 24 above. C.R.S. § 37-92-103(7). Flow rates up to 2,500 cfs will be efficiently controlled, concentrated and diverted, without waste, to create waves, hydraulic holes, large changes in current direction, and whitewater features that are used by kayakers and other boaters for the intended recreational experiences.
50. Diversion and Use. The controlling of the claimed amounts of water during the claimed time periods by the proposed in-channel structures and devices and the use of such water for the intended recreational in-channel boating purposes:
- a. Represents a reasonably efficient practice of diversion and beneficial use, *Alamosa-La Jara Water Users Protection Ass'n v. Gould*, 674 P.2d 914, 934-5 (Colo. 1983); C.R.S. §§ 37-92-102(2)(b), 37-92-103(4) and (7);
  - b. Represents the use of the minimum amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation was lawfully made by Grand County, C.R.S. § 37-92-103(4) and (10.3); and
  - c. Will create opportunities for the intended recreational experiences to occur, at the minimum stream flows needed to provide the identified recreational experiences. C.R.S. § 37-92-103(10.3).
51. Reasonable Recreational Experience. The intended recreation experiences are reasonable. By using the proposed in-channel structures and devices in a reasonably efficient manner to control that amount of water that is reasonable and appropriate to accomplish without waste the intended recreational in-channel non-motorized boating purposes, and thereby providing opportunities for reasonable recreation experiences to occur with the minimum amounts of water for each recreational opportunity, the proposed appropriation of water meets the beneficial use standards historically applied to water rights, which standards, as recognized by Senate Bill 01-216, are also to be applied to "recreational in-channel diversions." See C.R.S. § 37-92-103(4) and (10.3).
52. No Injury to Instream Flow Rights and Flood Control. Decreed instream flow water rights exist in the reach of the Glory Hole and Hot Pocket structures decreed herein. However, exercise of the water rights decreed herein will complement, and will not cause

material injury to, any CWCBC instream flow water rights. Construction of the Glory Hole and Hot Pocket structures will not adversely affect the reach of the stream or the natural environment of the stream that instream flow rights are decreed to protect. The CWCBC maintains no liability for any damages, injury or other issues related to or arising from the control structures. Should the CWCBC's pending instream flow application in Case No. 11CW159 (Div. 5) be decreed, the same conclusions of law shall apply as to those instream flow water rights.

53. Extended Season at Gore Canyon Whitewater Park. There is a demand for reasonable recreational experiences at the Gore Canyon Whitewater Park between Labor Day and October 15. C.R.S. § 37-92-103(10.3).
54. Non-Speculation. The Court concludes, in accordance with C.R.S. § 37-92-103(3), that Grand County has a non-speculative intent to put the RICD Water Rights decreed herein to beneficial use within a reasonable time.
55. Can and Will. The Court concludes, in accordance with C.R.S. § 37-92-305(9)(b), that Grand County's RICD Water Rights are feasible and that Grand County has shown a substantial probability that it will divert and use its RICD Water Rights for the purposes for which they were adjudicated with diligence and within a reasonable time.
56. Reasonable Diligence. The Court concludes that, in accordance with C.R.S. § 37-92-301(4), Grand County has demonstrated reasonable diligence in development of its RICD Water Rights by showing that, since their date of appropriation, Grand County has undertaken a steady application of effort to complete the appropriations in a reasonably expedient and efficient manner taking into account all the facts and circumstances.
57. Non-injury. Grand County can and will be able to divert its RICD Water Rights without injury to owners and users of vested water rights and decreed conditional water rights.
58. Integrated System. The RICD Water Rights are part of integrated system of water rights together with anticipated sources of water from agreements with other water users, and future acquisitions and appropriations to support Grand County's economy, ecology and recreation.

### **JUDGMENT AND DECREE**

59. Incorporation of Findings and Conclusions. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if set forth verbatim.
60. CWCBC Recommendation Considered. The CWCBC submitted its findings of fact and recommendations to the Court on March 28, 2012. The Court has duly considered the findings and recommendations as required by C.R.S. § 37-92-305.

61. Approval of RICD Water Rights. Grand County's application for RICD water rights is hereby confirmed, approved, adjudicated and decreed subject to the terms and conditions herein with an appropriation date of December 21, 2010.
62. Accounting. Applicant shall provide such accounting for the water rights adjudicated herein as reasonable requested by the Division Engineer.
63. Measuring Devices. Applicant shall install adequate measuring devices as may reasonably be required by the Division Engineer pursuant to C.R.S. §37-92-502(5)(a) to administer this decree.
64. Administration by State and Division Engineers. The State Engineer shall administer this decree in accordance with the terms and conditions set forth herein.
65. No Material Injury. The terms and conditions provided for in this ruling and decree are adequate to assure that no material injury to any water users will result from the operation of Grand County's RICD Water Rights.
66. Priority Administration. The water rights and priority granted herein are based on the appropriation date above and the filing of the application in this case in 2010. Said water rights and priority shall be administered as having been filed in 2010 and shall be junior to all water rights granted pursuant to applications filed in previous years. As between all water rights applied for in the same calendar year, priorities shall be determined by historical dates of appropriation and shall not be affected by the date of filing of the Application or the date of entry of this ruling.
67. Reasonable Diligence. The conditional RICD Water Rights decreed herein are continued in full force and effect until the last day of \_\_\_\_\_, \_\_\_\_\_. To maintain these conditional RICD Water Rights, an application for reasonable diligence shall be filed on or before the last day of \_\_\_\_\_, \_\_\_\_\_, or a showing made on or before such date that such conditional water rights have become absolute water rights by reason of the completion of the appropriation.
68. No Precedent. The findings of fact, conclusions of law and decree in this matter were completed as a result of substantial discussions, negotiations, and compromises by, between and among the Applicant and several objectors pertaining to all parts of the findings, conclusions and decree. It is specifically understood and agreed by the parties hereto, and found and concluded by the Court, that the acquiescence of the parties to a stipulated decree under the specific factual and legal circumstances of this contested matter and upon the numerous and interrelated compromises reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, *stare decisis*, *res judicata*, estoppel, laches, or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any other matter, case or dispute, nor shall testimony concerning such acquiescence of any party to a stipulated decree herein be allowed in any other matter, case or dispute.

All parties stipulate and agree that they do not intend the findings, conclusions and decree to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties further stipulate and agree that they each reserve the right to propose or to challenge any legal or factual position in any other matter filed in this or any other court without limitation by these Findings, Conclusions and Decree.

69. The water clerk shall file a copy of this Decree with the Division Engineer for Water Division No. 5 and the State Engineer.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Water Referee, Water Division No. 5

THE COURT finds that no protest was filed in this matter. The foregoing ruling of the Water Referee is confirmed and approved and is hereby made the Judgment and Decree of this Court.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
Water Judge, Water Division 5