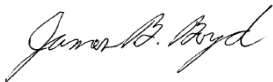


DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8th Street, Ste. 104, Glenwood Springs, CO, 81601	DATE FILED: February 3, 2014 9:37 AM CASE NUMBER: 2006CW77
In the Interest of: CARBONDALE COLORADO, THE TOWN OF	<p style="text-align: center;">⚠ COURT USE ONLY ⚠</p> <p>Case Number: 2006CW77 Division: E Courtroom:</p>
Decree: Decree of the Court	

The motion/proposed order attached hereto: GRANTED.

Any request for a finding of reasonable diligence shall be filed in February 2020.

Issue Date: 2/3/2014



JAMES BERKLEY BOYD
District Court Judge

DISTRICT COURT, WATER DIV. NO. 5, STATE OF COLORADO Court Address: Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601 (970) 947-3861 (970) 945-8756 fax	
CONCERNING THE APPLICATION OF: THE TOWN OF CARBONDALE, in Garfield County, Colorado	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p style="text-align: center;">Case Number: 06CW077</p> <p style="text-align: center;">Water Division: 5</p>
<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, JUDGMENT AND DECREE</p>	

This matter comes before the Court on the application for water rights for a recreational in-channel diversion of the Town of Carbondale, Colorado ("Carbondale") filed on May 2, 2006. The Water Judge referred the Application to the Water Referee for Water Division 5, in accordance with C.R.S. § 37-92-101, *et seq.*, known as the Water Right Determination and Administration Act of 1969.

The Court, having considered the matters raised by the application, including the recommendations of the Colorado Water Conservation Board ("CWCB"), and having made such investigations as are necessary to become fully advised with respect to the subject matter of the application, hereby makes the following Findings of Fact, Conclusions of Law, and Ruling and Decree in this matter.

FINDINGS OF FACT

1. The name and address of the Applicant are:

The Town of Carbondale ("Applicant" or "Carbondale")
511 Colorado Avenue
Carbondale, CO 81623
(970) 963-2733

With copy to:

Mark E. Hamilton, Esq.
HOLLAND & HART LLP
600 E. Main St., Suite 104
Aspen, CO 81611

2. Timely and adequate notice of the application were given as required by statute, and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected hereby, whether they have appeared or not. None of the land or water involved in this application are within the boundaries of a designated groundwater basin.

3. Timely statements of opposition were filed by Stanley and Valerie Koziel, the Colorado River Water Conservation District ("CRWCD"), the Colorado Water Conservation Board ("CWCB"), the Basalt Water Conservancy District ("BWCD"), the State Engineer, the Division Engineer, Southeastern Colorado Water Conservancy District ("Southeastern"), and Colorado Springs Utilities. No other statements of opposition were received. The time for filing statements of opposition has expired.

4. Carbondale has entered into stipulations with CRWCD, CWCB, BWCD, the State and Division Engineers, Southeastern and Colorado Springs Utilities. The Court has reviewed these stipulations and entered orders approving them. The Court finds that this decree is consistent with the terms of the stipulations.

5. Carbondale seeks confirmation of the following described conditional surface water right for recreational in-channel diversion ("RICD") located in the Roaring Fork River for the Carbondale Gateway Boating Park:

- A. *Names of Structures:* Carbondale Gateway Boating Park ("Boating Park"), consisting of five control structures (singly referred to as "Structure ____" and cumulatively referred to as "Structures 1-5").
- B. *Locations:* the Boating Park will be located in the channel of the Roaring Fork River near the intersection of State Highway 82 and State Highway 133. The reach of the Boating Park will be up to approximately 1425 feet in length along a centerline in the river from the invert of the most upstream control structure (Structure 1) to the exit of the most downstream control structure (Structure 5) (hereinafter referred to as the "RICD Reach"). A map depicting the structure locations is attached hereto as Exhibit A. The precise locations of these structures may be somewhat different from the locations described below, provided that they remain within the RICD Reach described in this paragraph and any variation is described in subsequent applications for findings of reasonable diligence or to make absolute these conditional water rights.

The approximate locations of the five control structures are further described as follows:

- i. *Structure 1:* a point on the centerline of the Roaring Fork River in the SE ¼ of the SE ¼ of Section 28, Township 7 South, Range 88 West, 6 P.M., as said section is described by the Geographic Coordinate

Database, located 1334 feet from the South Section Line and 657 feet from the East Section Line, Garfield County.

ii. *Structure 2:* a point on the centerline of the Roaring Fork River in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 28, Township 7 South, Range 88 West, 6 P.M., as said section is described by the Geographic Coordinate Database, located 1350 feet from the South Section Line and 783 feet from the East Section Line, Garfield County.

iii. *Structure 3:* a point on the centerline of the Roaring Fork River in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 28, Township 7 South, Range 88 West, 6 P.M., as said section is described by the Geographic Coordinate Database, located 1369 feet from the South Section Line and 1078 feet from the East Section Line, Garfield County.

iv. *Structure 4:* a point on the centerline of the Roaring Fork River in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 28, Township 7 South, Range 88 West, 6 P.M., as said section is described by the Geographic Coordinate Database, located 1382 feet from the South Section Line and 1269 feet from the East Section Line, Garfield County.

v. *Structure 5:* a point on the centerline of the Roaring Fork River in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 28, Township 7 South, Range 88 West, 6 P.M., as said section is described by the Geographic Coordinate Database, located 1479 feet from the South Section Line and 2076 feet from the East Section Line, Garfield County.

C. *Source:* the source for all structures is the Roaring Fork River, tributary to the Colorado River.

D. *Appropriation Date:* April 25, 2006

i. Appropriation was made by formation of requisite intent to appropriate coupled with acts manifesting such intent, including but not limited to public meetings concerning the master planning of the Boating Park, passage of a resolution by the Town of Carbondale, and the filing of the application herein.

E. *Amounts:* The following amounts, in cubic feet per second ("c.f.s."), are herein decreed for each of the Structures 1-5, as detailed in the below table.

Time Period	Flow Rate in c.f.s.
March 15 through April 14	230
Apr. 15 through Apr. 30	310
May 1 through May 14	575
May 15 through July 14	1000 (see below ¶ 5.E.i.d)
July 15 through July 31	575
Aug. 1 through October 31	310
November 1 through November 30	230

- i. The Structures 1-5 will be operated and administered as follows:
 - a. The claim is limited to the period between 8:00 a.m. and 8:00 p.m. for all base flow levels.
 - b. A call may be placed outside the call period to account for transit time in order to provide the desired flow within the call period, provided that the effective period of call shall not exceed twelve hours per day (or sixteen hours per day on days on which nighttime competitive events will take place).
 - c. Intermittent Flows: The Applicant may call the Boating Park RICD water right for intermittent flows for events for up to a total of ten days, with the restriction that the applicant may call for up to 1600 c.f.s. for two events (each event will be designated for up to four consecutive days) between June 1 and June 30, and up to 1160 c.f.s. for one event (this event will be designated for up to four consecutive days) from May 15 to May 31. (By way of example, the Town of Carbondale could have two three consecutive day events and one four consecutive day event or two four consecutive day events and one two consecutive day event). The claim for up to 1,600 c.f.s. intermittent flows is limited to 8:00 a.m. until midnight to allow for nighttime competitive events. The Town of Carbondale shall provide a proposed event schedule to the Division Engineer, Southeastern and BWCD on or before April 1 each year that events are scheduled. The Town shall also notify the Division Engineer, Southeastern and BWCD at least seven days in advance of placing any call for the intermittent flows greater than 1000 c.f.s. Such notices shall be delivered by electronic mail to the electronic mail address for each entity as identified in the

Town's separate stipulations with such entities, or as otherwise agreed upon by the parties.

- d. Carbondale shall install and rate a single measuring device within the RICD Reach and such measuring device will be acceptable to the Division Engineer for water rights administration purposes. The measuring device may be located at one of the Structures as a rated section and continuous recorder. Only this single measuring device shall be used for administrative purposes.
 - F. *Uses:* a reasonable recreational experience in and on the water including boating, kayaking, tubing, rafting, floating, and canoeing.
6. Findings to Support the Boating Park RICD Water Right:
- A. Carbondale is a municipality incorporated within the State of Colorado and is entitled to appropriate surface water rights for recreational in-channel diversions as defined in C.R.S. § 37-92-103(10.3).
 - B. Carbondale has a specific plan and intent to divert or otherwise capture, possess and control a specific quantity of water for specific beneficial uses.
 - C. Carbondale has demonstrated that unappropriated water is available in the amounts set forth herein from the source claimed.
 - D. Carbondale has demonstrated that the water can and will be diverted and beneficially used, and that the project can and will be completed with diligence and within a reasonable time.
 - E. The reach of the Roaring Fork River in which the Carbondale Gateway Boating Park is located is an appropriate reach of the stream for the intended Boating Park RICD water right.
 - F. The amounts of water claimed and decreed herein will be controlled in the water's natural course in the Roaring Fork River during the claimed time periods by means of Structures 1-5. The design capacities of the Structures will capture, control, and divert the flows of the Roaring Fork River up to 1600 c.f.s., which allow flows of that amount to be fully captured by the high flow channel constructed into each structure. The Structures will be designed such that the Roaring Fork River is usable at a variety of water levels. The low flow channel constructed into each Structure will provide deep passage for boats and a usable hydraulic feature for inner tubes and other recreational water craft. During run-off, the high flow channel constructed into each Structure will provide a larger, more usable hydraulic feature in the form of a hydraulic jump or wave train that

kayakers and other boaters may use for the intended recreational purposes. In view of the foregoing, the Structures are capable of efficiently diverting and controlling the water flows without waste for the claimed conditional amounts as identified above and in a manner that constitutes a diversion under C.R.S. § 37-92-103(7), at all flow rates up to the maximum claimed above.

- G. These intended recreational experiences of boating, kayaking, tubing, rafting, floating, and canoeing are reasonable and the proposed amounts of water that the Applicant desires to appropriate are reasonable and appropriate, under reasonably efficient practices, to accomplish without waste the purpose for which the appropriations are lawfully made. C.R.S. § 37-92-103(10.3) (2005).

7. Findings Regarding Compliance with the CWCB Review Process Pursuant to C.R.S. § 37-92-102(6) (2005),

- A. Summary. The Applicant requested that the CWCB hold a timely public hearing regarding the Town of Carbondale's application, but the Applicant later rescinded this request due to the CWCB's approval of a stipulated ruling in this matter in lieu of entering alternative written findings. Nevertheless, CWCB considered the five statutory factors found in C.R.S. § 37-92-102(6)(b)(I)-(V) (2005), pursuant to the Applicant's and CWCB's stipulation, CWCB determined that the entry of this decree comported with these statutory factors. Based on the stipulation, the Court finds that Carbondale is entitled to the Boating Park water right for the Structures given consideration of the following five statutory factors:
- B. Compact Entitlements: The Court finds that the adjudication and administration of the claimed Boating Park RICD water right, under the conditions contained in this Decree, will not impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements. C.R.S. § 37-92-102(6)(b)(I) (2005).
- C. Stream Reach Appropriateness: The Court finds that the Boating Park is located in an appropriate reach of the stream required for the intended use. C.R.S. § 37-92-102 (6)(b)(II) (2005). The location of the Boating Park is appropriate for many reasons. The Boating Park, at its given location, provides recreation, draws economic activity to the Town of Carbondale, and is accessible from downtown Carbondale and from State Highways 82 and 133. Additionally, the Boating Park may be entered through property owned by the Town of Carbondale.
- D. Access for Recreational Use: The nature and extent of the access required for the activities sought is proper. The Town of Carbondale owns and/or controls access for the recreational in-channel use, and there are no impediments for the Town of Carbondale obtaining adequate access. The Court finds, for the reasons stated above, that there is access for the contemplated recreational uses. C.R.S. § 37-92-102(6)(b)(III) (2005).

- E. **Instream Flow Rights Injury:** There are instream flow water rights within this reach of the Roaring Fork River. The Applicant will consult with the Division of Wildlife before and during the construction of the Boating Park RICD water right to ensure that the construction of the Structures will not unreasonably impact the natural environment that the instream flow water rights seek to protect. As a result, the Court finds that the Boating Park RICD water right will not cause material injury to instream flow water rights. C.R.S. § 37-92-102(6)(b)(IV) (2005).
- F. **Maximum Utilization:** The Boating Park places a new, valuable, beneficial use on the water of a seasonally over-appropriated stream, while allowing for continued utilization and development of the waters of the State for both consumptive and non-consumptive uses, without causing any reduction in flow, injury to downstream water rights, or injury to upstream senior water rights. C.R.S. § 37-92-102(6)(b)(V) (2005). The proposed Boating Park RICD water right promotes maximum utilization of Colorado's water resources because Carbondale has used a reasonable means to use, divert, capture, and control the water for a RICD so as to minimize its call upon the river and avoid waste. Based upon the evidence, the Court finds that the adjudication and administration of the Boating Park RICD water right, subject to the terms of this decree, will promote maximum utilization of the waters of the State.
8. **CWCB Term and Condition.** The primary use of the Boating Park is from 8:00 a.m. to 8:00 p.m. for all base flow levels and for intermittent flows of up to 1600 c.f.s. Nighttime boating events are limited to claims for intermittent flows for the number of days and events as described pursuant to paragraph 5.E. Nighttime boating events included within the claim require notice to the Division Engineer at least seven days prior to the event. Other factors, including the travel time of water from upstream facilities, will limit the future ability to reduce the flows during other hours without impacting flows during nighttime boating events. As part of their settlement stipulation in this case, Carbondale and the CWCB have further agreed, as between themselves, that daily fluctuations in flow in excess of 10-15% of stream flow (exclusive of natural diurnal flow fluctuations) should be avoided to the extent possible in order to minimize any impacts to fish and wildlife habitat, while still fulfilling all the requirements and rights under this Decree.
9. **Upper Colorado River Compact Terms and Conditions.**
- A. During any period when the state of Colorado implements a finding of the Upper Colorado River Commission pursuant to Article VIII(d)(8) of the Upper Colorado River Basin Compact of 1948 (Article VIII(d)(8) Finding) that calls for curtailment of water uses (Compact Curtailment) in a manner that affects water diversions in Water Division No. 5, the Boating Park RICD water right decreed herein will be administered in accordance with Compact Curtailment rules adopted by the State Engineer or such other state agency as may, in the future, be empowered to adopt rules or otherwise act to assure compliance with interstate

compacts then in effect. If no such Compact Curtailment rules are then in effect, Carbondale will not place an administrative call for water on the Boating Park RICD water right decreed herein during the period that implementation of an Article VIII(d)(8) Finding affects water diversions in Water Division No. 5; but the rights shall otherwise be administered in accordance with this decree and Colorado law.

- B. In addition, pursuant to its Stipulation with Colorado Springs Utilities dated February 6, 2013, Carbondale agrees that it will not exercise the Boating Park RICD water right herein in a manner that will limit or prevent the operation of a junior appropriative right of exchange (adjudicated or un-adjudicated) that may be operated by the Twin Lakes Reservoir and Canal Company ("Twin Lakes") to exchange-to points at facilities of Twin Lakes upstream of the RICD Reach described herein and that may reduce the stream flow through the RICD Reach; provided that any such exchange is operated for the sole purpose of allowing the continuation of upstream diversions pursuant to the senior water rights decreed to the Independence Pass Transmountain Diversion System that would otherwise be curtailed at that time by the State Engineer or other state agency with jurisdiction in order to assure compliance by the State of Colorado with the Colorado River Compact or the Upper Colorado River Basin Compact.
- C. Further, the Boating Park RICD water rights herein shall be administered in accordance with any rules that may be adopted by the State Engineer or other state agency with jurisdiction seeking to avoid, delay, or recover from, a Compact Curtailment.

CONCLUSIONS OF LAW

- 10. The Application filed herein was complete, covering all applicable matters required under C.R.S. § 37-92-302 (2005).
- 11. All notices required by law have been given, and no further notice need be given.
- 12. The Court has jurisdiction of this matter and of all persons, whether they have appeared or not. C.R.S. §§ 37-92-301(2) and -303(1) (2005).
- 13. The Court has authority to confirm the conditional surface water rights for recreational in-channel diversion as requested by Carbondale. C.R.S. § 37-92-103(10.3) (2005).
- 14. The Court concludes that Carbondale is an entity entitled to obtain a water right for a recreational in-channel diversion pursuant to C.R.S. § 37-92-103(10.3) (2005).
- 15. Carbondale has complied with all requirements and met all standards and burdens of proof; therefore it is entitled to a decree confirming and approving the Carbondale Gateway Boating Park RICD water rights as described herein.

RULING OF THE REFEREE

16. The foregoing Findings of Fact and Conclusions of Law are incorporated herein by this reference.

17. The Court GRANTS the Application for conditional surface water rights for the Structures the Carbondale Gateway Boating Park RICD. The Boating Park RICD is decreed for the amounts as set forth above for the above-described recreational in-channel uses, subject to the terms and conditions set forth herein.

18. In confirming these RICD water rights, the Water Court specifically finds and determines that these RICD water rights are part of an integrated water system such that diligence on any one or more of the five Structures approved herein shall be considered diligence as to Structures 1-5. The Water Court also finds that Carbondale can and will apply these new rights to beneficial use within a reasonable time.

19. The Board of Trustees of the Town of Carbondale shall determine, by resolution, up to three employees or agents of the Town who shall be authorized to place a call for the Carbondale Gateway Boating Park RICD approved herein. Carbondale shall provide the Division Engineer with a copy of the initial resolution designated the authorized individuals and each subsequent resolution changing the authorized individuals. This resolution shall be passed prior to use of the Boating Park RICD decreed herein.

20. The application herein was filed in 2006 and the water rights herein confirmed shall be administered as filed in 2006, and shall be junior to all water rights for which applications were filed in prior years. As between water rights filed in 2006, priorities shall be determined by historical dates of appropriation and shall not be affected by the date of entry of this decree.

21. 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 RICD Reach; therefore, Carbondale shall not place any administrative calls against diversions that are augmented by exchange under the BWCD's appropriative rights of exchange decreed in Case Nos. 01CW305 and 02CW77.

22. Pursuant to C.R.S. § 37-92-502(5) (2005), Carbondale shall install and maintain measuring devices, provide accounting, and supply calculations regarding the timing of depletions as required by the Division Engineer. Carbondale has agreed, as part of compromise negotiations with the CWCB and the State and Division Engineers, to install and rate a single point gage for measurement and recording of administration for the Boating Park RICD water right decreed herein. In the event that this device ever becomes inoperable, Carbondale shall provide timely written notice of such inoperability to the parties in this case. In this event, the Division Engineer may reasonably determine that an alternate gage or combination of gages may be used to measure and administer the Boating Park RICD water right until such time as the original measuring point becomes operable. If the Division Engineer reasonably determines that

other measuring devices are necessary to administer this decree, Carbondale shall install, operate, and maintain at its expense all gages and measuring devices as the Division Engineer reasonably determines to be necessary to administer this decree, and in any case shall report at reasonable times to the Division Engineer the readings from such gages and measuring devices.

23. This Decree shall not be construed to constitute any precedent regarding the appropriate terms and conditions to be included in any other water rights decree.

It is ORDERED that a copy of this Decree shall be filed with the Division Engineer for Water Division No. 5 and with the State Engineer.

It is further ORDERED that this Ruling shall be filed with the Water Clerk, subject to judicial review.

DATED this 6th day of January, 2014.

BY THE REFEREE:



Holly Strablizky, Water Referee
Water Division No. 5, State of Colorado

JUDGMENT AND DECREE

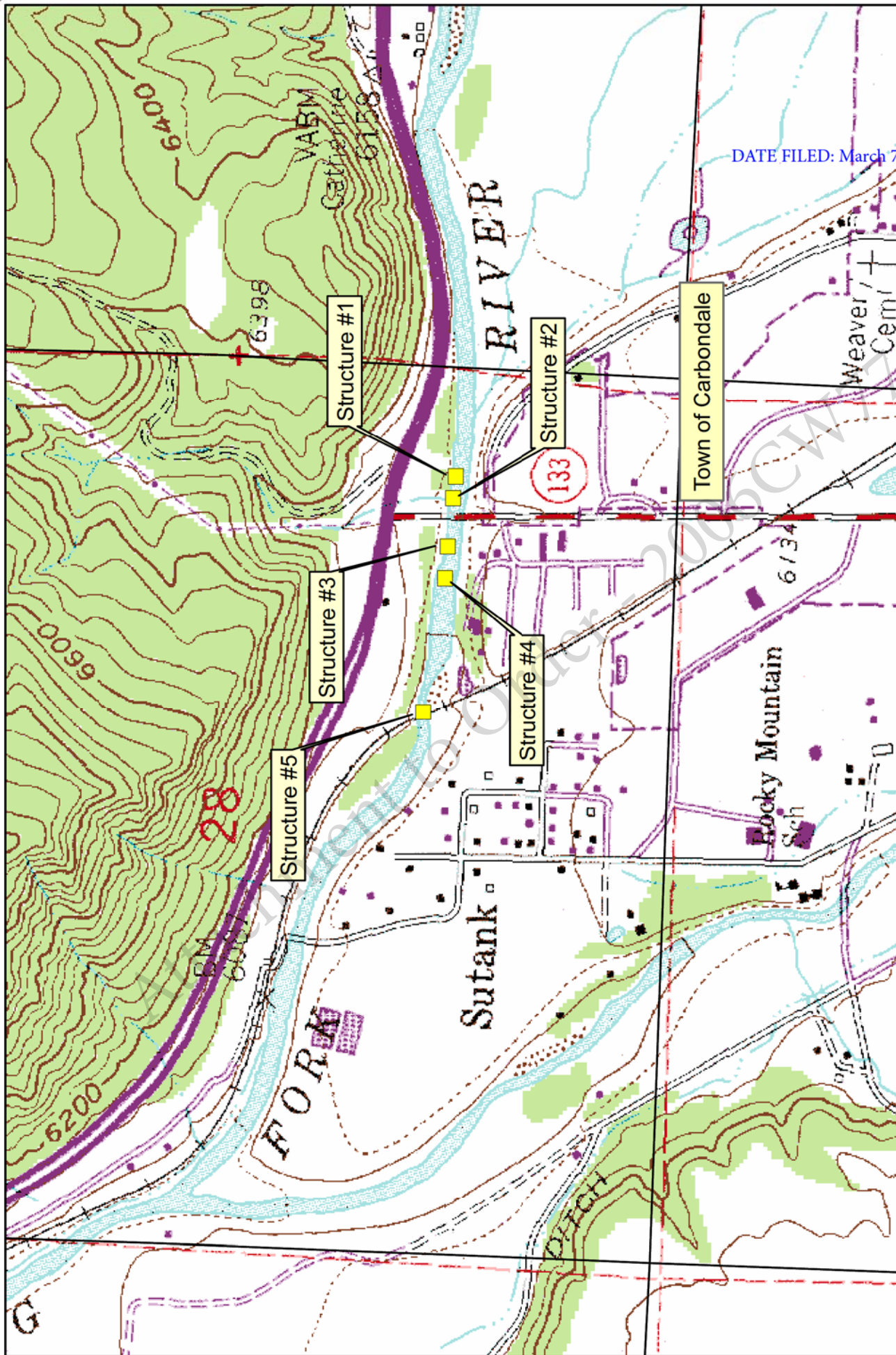
No protest having been filed to the foregoing Ruling of the Referee and the time for filing such protest having now expired, the foregoing Ruling of the Referee is confirmed and approved and is hereby made the judgment and decree of this Court. An Application for Finding of Reasonable Diligence shall be filed on or before the end of the month, six years from the date of the Water Judge's Order, and thereafter in accordance with the provisions of Article 92 of Chapter 37, Colorado Revised Statutes, so long as Carbondale desires to maintain the conditional surface water rights decreed herein, or until such rights are made absolute.

DATED this ____ day of _____, 2020.

BY THE COURT:

Hon. James Boyd, Water Judge
Water Division No. 5, State of Colorado

Attachment to Order - 06CW77

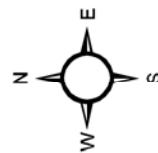


DATE FILED: March 7, 2017



RESOURCE
ENGINEERING, INC.

909 Colorado Avenue
Glenwood Springs, CO 81601
(970) 945-6777 Voice (970) 945-1137 Facsimile



1 inch equals 800 feet

Town of Carbondale - Gateway River Park

EXHIBIT A: RICD Structure Locations



Date: 07/24/2008
File: 476-8.1