

### **Summary**

This application (attached) seeks surface water rights for three Recreational In-Channel Diversions (RICDs) on the Colorado River located in and upstream of the City of Glenwood Springs.

The three RICDs that the City of Glenwood Springs is seeking are for No Name Whitewater Park, the Horseshoe Bend Whitewater Park, and the Two Rivers Whitewater Park. The reaches for each RICD are shown on the map attached. Each RICD is proposed to operate from April 1<sup>st</sup> to September 30th of each year at the following flow rates:

<b>TIME PERIOD</b>	<b>FLOW RATE (in cfs)</b>
Apr. 1- Apr. 29	1250
Apr. 30- May 10	2500*
May 11-July 6	4000*
July 7-July 23	2500*
July 24- Sep. 30	1250

\* up to 5 days of event flows at a rate of 4000 c.f.s. between May 11 and July 6, with the remainder of days between April 30 and July 23 not to exceed 2500 c.f.s.

### **CWCB Appropriations**

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

### **Basis for Statement of Opposition**

The Applicant's proposed RICDs may materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements. The CWCB is also concerned whether the flow rate of the Applicant's proposed RICDs, in the amounts claimed, would promote maximum utilization of the waters of the State.

### **Other Objectors**

The following entities have filed Statements of Opposition (SOP) in the case:

- West Divide Water Conservancy District
- City of Colorado Springs
- City of Aurora
- Grand County Board of Commissioners
- Homestake Steering Committee
- Colorado Department of Transportation
- Colorado River Water Conservation District
- Ute Water Conservancy District

- Grand Valley Water Users Association
- Orchard Mesa Irrigation District
- Glenwood Hot Springs Lodge and Pool Inc.
- Bureau of Land Management, Colorado River Valley Field Office
- Town of Gypsum
- Denver Water

**Staff Recommendation**

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

Attachments:  
Application and Map  
SOP

<b>DISTRICT COURT, WATER DIVISION NO. 5</b> <b>STATE OF COLORADO</b> Court Address: 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601 (970) 945-5075 <i>telephone</i>	DATE FILED: December 31, 2013 2:56 PM FILING ID: F52DA28D4D057 CASE NUMBER: 2013CW3109  <p style="text-align: center;">▲ COURT USE ONLY ▲</p>																				
<b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF:</b>  <b>THE CITY OF GLENWOOD SPRINGS, COLORADO</b>  <b>in Garfield County, Colorado.</b>																					
Attorneys for Applicant: <table border="0"> <tr> <td>Name:</td> <td>Mark E. Hamilton, #24585</td> </tr> <tr> <td>Address:</td> <td>HOLLAND &amp; HART LLP 600 East Main Street, Suite 104 Aspen, CO 81611-1991</td> </tr> <tr> <td>Telephone:</td> <td>(970) 925-3476</td> </tr> <tr> <td>Facsimile:</td> <td>(866) 784-7682</td> </tr> <tr> <td>E-Mail:</td> <td><a href="mailto:MEHamilton@hollandhart.com">MEHamilton@hollandhart.com</a></td> </tr> <tr> <td>Name:</td> <td>Christopher L. Thorne, #20003</td> </tr> <tr> <td>Address:</td> <td>HOLLAND &amp; HART LLP 555 17th Street, Suite 3200 Denver, CO 80202-3979</td> </tr> <tr> <td>Telephone:</td> <td>(303) 295-8488</td> </tr> <tr> <td>Facsimile:</td> <td>(303) 713-6310</td> </tr> <tr> <td>E-Mail:</td> <td><a href="mailto:CThorne@hollandhart.com">CThorne@hollandhart.com</a></td> </tr> </table>	Name:	Mark E. Hamilton, #24585	Address:	HOLLAND & HART LLP 600 East Main Street, Suite 104 Aspen, CO 81611-1991	Telephone:	(970) 925-3476	Facsimile:	(866) 784-7682	E-Mail:	<a href="mailto:MEHamilton@hollandhart.com">MEHamilton@hollandhart.com</a>	Name:	Christopher L. Thorne, #20003	Address:	HOLLAND & HART LLP 555 17th Street, Suite 3200 Denver, CO 80202-3979	Telephone:	(303) 295-8488	Facsimile:	(303) 713-6310	E-Mail:	<a href="mailto:CThorne@hollandhart.com">CThorne@hollandhart.com</a>	<p style="text-align: center;"><b>Case Number:</b></p> <p style="text-align: center;"><b>13 CW _____</b></p> <p style="text-align: center;"><b>Div.:            Ctrm.:</b></p>
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E-Mail:	<a href="mailto:CThorne@hollandhart.com">CThorne@hollandhart.com</a>																				
<b>APPLICATION FOR SURFACE WATER RIGHTS FOR RECREATIONAL IN-CHANNEL USES</b>																					

1. *Name and address of Applicant:*

City of Glenwood Springs  
 c/o Jan Shute, City Attorney  
 101 West 8th Street  
 Glenwood Springs, CO 81601

*Please direct all pleadings to:*

Mark E. Hamilton, Esq.

Christopher L. Thorne, Esq.

Holland & Hart LLP

600 E. Main St., Suite 104

Aspen, CO 81611

[mehamilton@hollandhart.com](mailto:mehamilton@hollandhart.com)

[cthorne@hollandhart.com](mailto:cthorne@hollandhart.com)

2. *Introduction:* The City of Glenwood Springs (“City” or “Applicant”) seeks to confirm three conditional water rights associated with three whitewater parks in and on the Colorado River: the No Name Whitewater Park, the Horseshoe Bend Whitewater Park, and the Two Rivers Whitewater Park. Each location will have control structures designed to control the entire flow within the river channel and to perform at various rates of flow for the beneficial uses described below. The locations of these three parks are depicted on the attached map (Exhibit A).
3. *Names of structures:* No Name Whitewater Park, Horseshoe Bend Whitewater Park, and Two Rivers Whitewater Park.
4. *Conditional surface water right for recreational in-channel diversion:* No Name Whitewater Park

a. Location:

The diversion structures comprising the No Name Whitewater Park will be located in the channel of the Colorado River between the following two points on the centerline of the river:

i. No Name Whitewater Park Upstream Extent:

PLSS: NW<sup>1</sup>/<sub>4</sub> of the SW<sup>1</sup>/<sub>4</sub> of Section 1, Township 6 South, Range 89 West of the 6<sup>th</sup> P.M., at a point 1880 feet from the north section line and 85 feet from the west section line of said Section 1, Garfield County, CO.

UTM: NAD 83 Zone 13S: northing 4,381,478 m, easting 303,685 m

ii. No Name Whitewater Park Downstream Extent:

PLSS: NW<sup>1</sup>/<sub>4</sub> of the SE<sup>1</sup>/<sub>4</sub> of Section 2, Township 6 South, Range 89 West of the 6<sup>th</sup> P.M., at a point 1475 feet from the south section line and 1290 feet from the east section line of said Section 1, Garfield County, CO.

UTM: NAD 83 Zone 13S: northing 4,381,237 m, easting 303,246 m

The precise locations of the structures within this reach of the Colorado River will be confirmed upon making this conditional water right absolute.

- b. Source: Colorado River
- c. Appropriation date: December 19, 2013
- d. How appropriation was initiated: By formation of the requisite intent to appropriate coupled with actions manifesting such intent, including but not limited to discussions in public meetings, engineering and planning studies, preliminary design, and passage of Resolution 2013-38 by the City authorizing the filing of this Application.
- e. Date water applied to beneficial use: N/A (this claim is for a conditional water right)
- f. Amounts claimed:

Time Period	Flow Rate (c.f.s.)
Apr. 1 through Apr. 29	1250
Apr. 30 through May 10	Not to exceed 2500*
May 11 through July 6	Not to exceed 4000*
July 7 through July 23	Not to exceed 2500*
July 24 through Sept 30	1250

The above amounts claimed are limited to the period between 6:00 a.m. and 9:00 p.m. each day, except during competitive events when these hours may be extended to between 6:00 a.m. and 12:00 midnight each day.

\*Applicant seeks to confirm a conditional water right for up to five days of event flows at a rate of 4000 c.f.s. between May 11 and July 6, with the remainder of days between April 30 and July 23 not to exceed the claimed 2500 c.f.s. flow rate. *See* below remarks in Section 8.a concerning additional limitations.

- g. Use: All recreational uses in and on the Colorado River including without limitation, boating, rafting, kayaking, tubing, floating, canoeing, paddling, and all other non-motorized recreational uses.
5. *Conditional surface water right for recreational in-channel diversion:* Horseshoe Bend Whitewater Park
- a. Location:

The diversion structures comprising the Horseshoe Bend Whitewater Park will be located within the channel of the Colorado River between the following two points on the centerline of the river:

i. Horseshoe Bend Whitewater Park Upstream Extent:

PLSS: NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 3, Township 6 South, Range 89 West of the 6<sup>th</sup> P.M., at a point 1285 feet from the south section line and 1910 feet from the east section line of said Section 3, Garfield County, CO.

UTM: NAD 83 Zone 13S: northing 4,381,288 m, easting 301,608 m

ii. Horseshoe Bend Whitewater Park Downstream Extent:

PLSS: NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 3, Township 6 South, Range 89 West of the 6<sup>th</sup> P.M., at a point 1920 feet from the north section line and 2250 feet from the east section line of said Section 3, Garfield County, CO.

UTM: NAD 83 Zone 13S: northing 4,381,513 m, easting 301,551 m

The precise locations of the structures within this reach of the Colorado River will be confirmed upon making this conditional water right absolute.

- b. Source: Colorado River
- c. Appropriation date: December 19, 2013
- d. How appropriation was initiated: By formation of the requisite intent to appropriate coupled with actions manifesting such intent, including but not limited to discussions in public meetings, engineering and planning studies, preliminary design, and passage of Resolution 2013-38 by the City authorizing the filing of this Application.
- e. Date water applied to beneficial use: N/A (this claim is for a conditional water right)
- f. Amounts claimed:

Time Period	Flow Rate (c.f.s.)
Apr. 1 through Apr. 29	1250
Apr. 30 through May 10	Not to exceed 2500*
May 11 through July 6	Not to exceed 4000*
July 7 through July 23	Not to exceed 2500*

July 24 through Sept 30	1250
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The above amounts claimed are limited to the period between 6:00 a.m. and 9:00 p.m. each day, except during competitive events when these hours may be extended to between 6:00 a.m. and 12:00 midnight each day.

\* Applicant seeks to confirm a conditional water right for up to five (5) days of event flows at a rate of 4000 c.f.s. between May 11 and July 6, with the remainder of days between April 30 and July 23 not to exceed the claimed 2500 c.f.s. flow rate. *See* below remarks in Section 8.a concerning additional limitations.

- g. Use: All recreational uses in and on the Colorado River including without limitation, boating, rafting, kayaking, tubing, floating, canoeing, paddling, and all other non-motorized recreational uses.
6. *Conditional surface water right for recreational in-channel diversion:* Two Rivers Whitewater Park

a. Location:

The diversion structures comprising the Two Rivers Whitewater Park will be located within the channel of the Colorado River between the following two points on the centerline of the river:

i. Two Rivers Whitewater Park Upstream Extent:

PLSS: SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 9, Township 6 South, Range 89 West of the 6<sup>th</sup> P.M., at a point 2394 feet from the north section line and 1975 feet from the east section line of said Section 9, Garfield County, CO.

UTM: NAD 83 Zone 13S: northing 4,380,248m, easting 300,033 m

ii. Two Rivers Whitewater Park Downstream Extent:

PLSS: SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 9, Township 6 South, Range 89 West of the 6<sup>th</sup> P.M., at a point 2075 feet from the north section line and 2330 feet from the west section line of said Section 9, Garfield County, CO.

UTM: NAD 83 Zone 13S: northing 4,380,353 m, easting 299,772 m

The precise locations of the structures within this reach of the Colorado River will be confirmed upon making this conditional water right absolute.

- b. Source: Colorado River
- c. Appropriation date: December 19, 2013
- d. How appropriation was initiated: By formation of the requisite intent to appropriate coupled with actions manifesting such intent, including but not limited to discussions in public meetings, engineering and planning studies, preliminary design, and passage of Resolution 2013-38 by the City authorizing the filing of this Application.
- e. Date water applied to beneficial use: N/A (this claim is for a conditional water right)
- f. Amounts claimed:

Time Period	Flow Rate (c.f.s.)
Apr. 1 through Apr. 29	1250
Apr. 30 through May 10	Not to exceed 2500*
May 11 through July 6	Not to exceed 4000*
July 7 through July 23	Not to exceed 2500*
July 24 through Sept 30	1250

The above amounts claimed are limited to the period between 6:00 a.m. and 9:00 p.m. each day, except during competitive events when these hours may be extended to between 6:00 a.m. and 12:00 midnight each day.

\*Applicant seeks to confirm a conditional water right for up to five (5) days of event flows at a rate of 4000 c.f.s. between May 11 and July 6, with the remainder of days between April 30 and July 23 not to exceed the claimed 2500 c.f.s. flow rate. *See* below remarks in Section 8.a concerning additional limitations.

- g. Use: All recreational uses in and on the Colorado River including without limitation, boating, rafting, kayaking, tubing, floating, canoeing, paddling, and all other non-motorized recreational uses.
7. *Names and addresses of owners of lands upon which structures will be located (based upon information obtained from the Garfield County Assessor):*
- a. No Name Whitewater Park:  
  
Colorado Department of Transportation  
222 S. 6th St.  
Grand Junction, CO 81501



Joseph Wayne McKeel  
6544 Harlow Drive  
Bremerton, WA 98312

- b. Horseshoe Bend Whitewater Park:

City of Glenwood Springs (Applicant)

- c. Two Rivers Whitewater Park:

City of Glenwood Springs (Applicant)

Colorado Department of Transportation  
(*see above* Section 7.a)

Union Pacific Corporation  
c/o Bob Brenner (property tax department)  
1400 Douglas St., Stop 1640  
Omaha, NE 68179-1640

Pursuant to Colo. Rev. Stat. § 37-92-302(2)(b), within ten (10) days of filing this application, Applicant shall give notice by registered or certified mail, return receipt requested, to each of the foregoing landowners (other than Applicant).

8. *Remarks:*

- a. The City hereby reserves the right, and gives notice to all interested parties, that it will further refine the time periods and flow rates claimed herein and provide such information to the Colorado Water Conservation Board (“CWCB”) and objectors in this proceeding. While flow rates will not exceed the above-listed claims, nor extend beyond the time periods listed, it is the City’s intent that any final decree in this matter will limit the total volume of water represented by the flow rates decreed for the claimed recreational in-channel diversions to no greater than 50% of the sum of the total average historical volume of water for the stream segments where the diversion structures will be located, pursuant to C.R.S. § 37-92-305(13)(f). Based upon preliminary engineering, this is expected to result in no more than 46 days each year with flow rates in excess of 1250 c.f.s. With regard to the 4000 c.f.s. claimed flow rate, it is the City’s intent to confirm an event flow right at this rate for no more than five days each year to coincide with a holiday weekend or other planned special events.

- b. This Application is made pursuant to Colo. Const. Art XVI, § 5, Art XVI, § 6, and C.R.S. §§ 37-92-101, *et seq.* Pursuant to C.R.S. § 37-92-102(5), within 30 days of filing the Applicant will submit a copy of this Application to the CWCB for review.

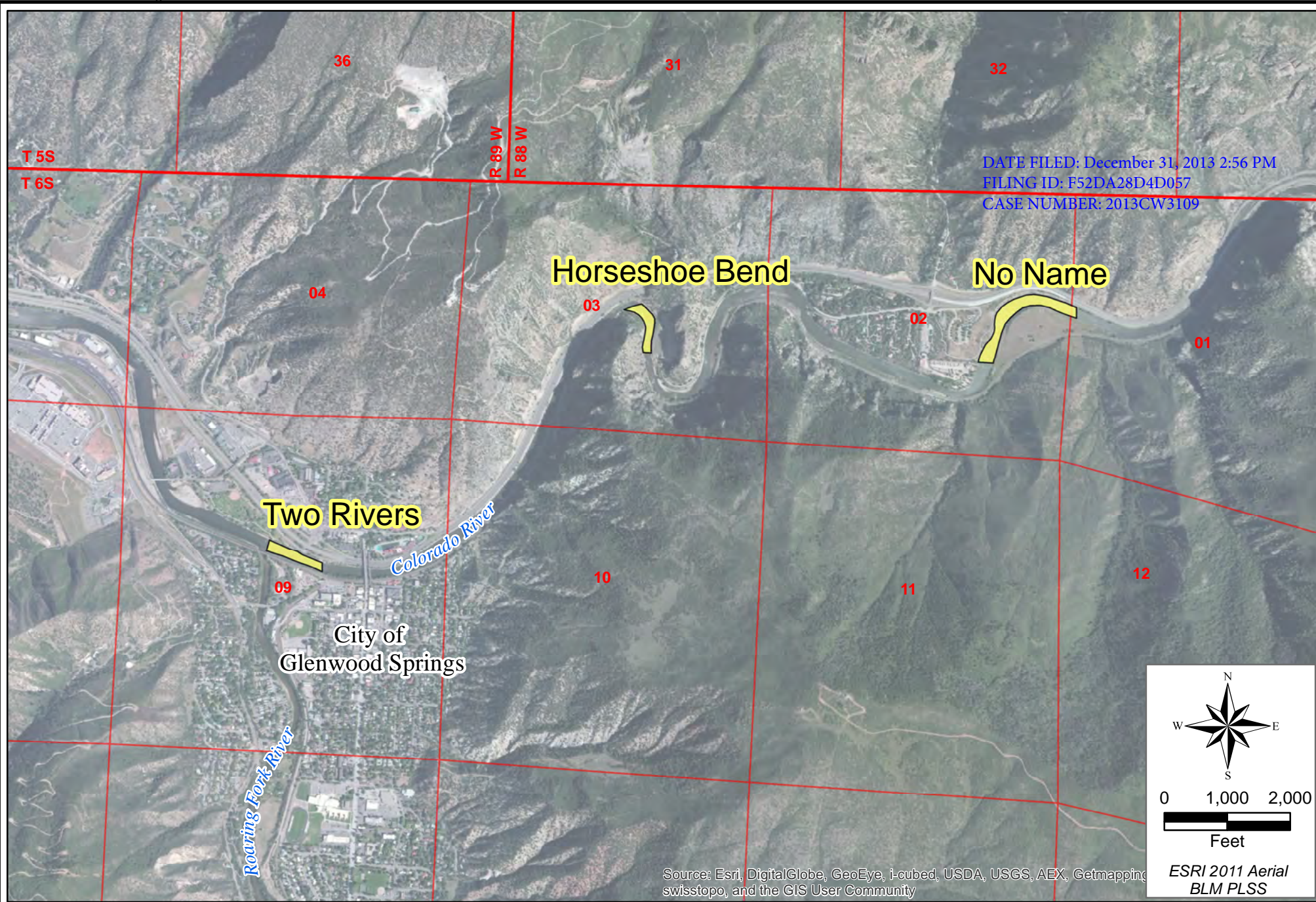
RESPECTFULLY SUBMITTED this 31st day of December 2013.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Mark E. Hamilton', with a long horizontal flourish extending to the right.

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Mark E. Hamilton, #24585  
Christopher L. Thorne, #20003  
HOLLAND & HART LLP  
**ATTORNEYS FOR APPLICANT**



Wright Water Engineers, Inc.  
818 Colorado Ave. Suite 307  
Glenwood Springs, CO 81601  
P:(970) 945-7755 F:(970) 945-9210

Designed by: HJC  
Checked by: JMK  
Date: 12-16-13  
Project Number: 131-036.000

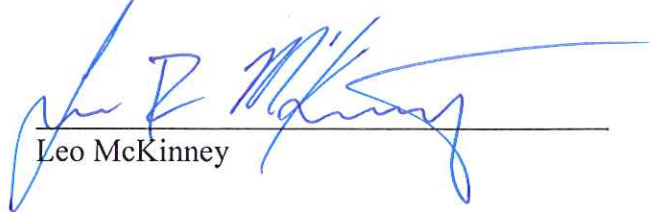
**City of Glenwood Springs**  
**Recreational In-Channel Diversion Reaches**  
**Township: 6S Range: 89 W. of the 6th P.M.**

**EXHIBIT**  
**A**



VERIFICATION

I, Leo McKinney, Mayor of the City of Glenwood Springs, Colorado, state under oath that I have read this application and verify its content.

  
\_\_\_\_\_  
Leo McKinney

STATE OF COLORADO     )  
                                          ) ss.  
COUNTY OF GARFIELD    )

Subscribed and sworn to before me this 31<sup>ST</sup> day of December 2013, by Leo McKinney, as Mayor of the City of Glenwood Springs, Colorado.

WITNESS my hand and official seal.

My commission expires: 2/27/16



  
\_\_\_\_\_  
Notary Public

*In accordance with C.R.C.P. 121 § 1-26, this document has been electronically filed via ICCES. A printed copy of this document with original signatures is maintained by the filing party and will be made available for inspection by other parties or by the Court upon request.*

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<p>DISTRICT COURT, WATER DIVISION 5  GARFIELD COUNTY, COLORADO  Garfield County Courthouse  109 Eighth Street, Rm. 104  Glenwood Springs, CO 81601  (970) 945-5075</p> <hr/> <p><b>CONCERNING THE APPLICATION FOR  WATER RIGHTS OF:</b></p> <p><b>THE CITY OF GLENWOOD SPRINGS,  COLORADO</b></p> <p><b>IN GARFIELD COUNTY, COLORADO</b></p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Attorneys for the State and Division Engineers:</b>  JOHN W. SUTHERS, Attorney General  SUSAN SCHNEIDER  First Assistant Attorney General  Attorney Reg. # 19961*  Natural Resources &amp; Environment Section  Office of the Colorado Attorney General  1300 Broadway, 7<sup>th</sup> Floor  Denver, CO 80203  Telephone: (720) 508-6311  Email: <a href="mailto:susan.schneider@state.co.us">susan.schneider@state.co.us</a>  *Counsel of Record</p>	<p>Case No. 2013C3109</p> <p>Water Division 5</p>
<p style="text-align: center;"><b>STATEMENT OF OPPOSITION OF THE COLORADO WATER  CONSERVATION BOARD</b></p>	

1. Name of objector: Colorado Water Conservation Board ("CWCB")  
  
Mailing address: 1313 Sherman Street, Room 721, Denver, CO 80203
2. Name of ditch or structure: As more fully described in the application.
3. State facts why this application for water rights should not be granted or why it should be granted only on certain conditions:

- a. Applicant's proposed Recreational In-Channel Diversion ("RICD") may materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements.
  - b. The CWCB is concerned whether the Applicant's proposed RICD, in the amounts claimed, would promote maximum utilization of the waters of the state.
4. This statement of opposition is continuing in nature and shall apply to any and all future amendments to the original application.

Dated this 10<sup>th</sup> day of February, 2014.

JOHN W. SUTHERS

Attorney General

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

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

*/s/ Susan Schneider*

---

SUSAN SCHNEIDER, #19961\*


First Assistant Attorney General

Natural Resources and Environment Section

Attorneys for the CWCB

\*Counsel of Record

*Signed original on file with the Office of  
the Attorney General for the State of  
Colorado.*

  
James Eklund  
Director  
Colorado Water Conservation Board

Subscribed and sworn to before me in the City and County of Denver, State of Colorado, this 14th day of February 2014.

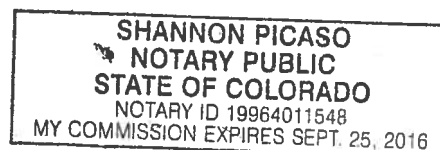
*Signed original on file with the Office of  
the Attorney General for the State of  
Colorado.*

[SEAL]

My Commission expires:

September 25, 2016

/s/ Sharon Piccolo  
NOTARY PUBLIC



**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of February, 2014, I caused the foregoing **STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD** to be served by ICCES File & Serve or by first-class U.S. mail to each of the following:

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

*/s/Constance L. Rust*

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