

<p>DISTRICT COURT WATER DIVISION No. 6, COLORADO Court Address: Routt County District Court P.O. Box 773117 Steamboat Springs, CO 80477</p>	
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY OF STEAMBOAT SPRINGS, IN ROUTT COUNTY, COLORADO</p>	<p style="text-align: center;">COURT USE ONLY</p> <hr/> Case Number: 03CW86 Div.: Ctrm.:
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<p>FINDINGS AND RECOMMENDATIONS OF THE COLORADO WATER CONSERVATION BOARD TO THE WATER COURT</p>	

In December 2003, the City of Steamboat Springs (“Steamboat Springs” or “Applicant”) filed an application for a Recreational In-Channel Diversion water right for its proposed recreational boating course in Case No. 03CW6 (“the RICD”). Pursuant to section 37-92-102(5) & (6), C.R.S. (2003), the Colorado Water Conservation Board (“CWCB” or “Board”) must submit findings and recommendations to the Water Court within 90 days after the closing date for filing statements of opposition. In April 2004 the Staff requested an extension of time, until June 11, 2004 to submit these findings and recommendations to the Water Court. This extension was granted by the water court.

Several parties requested a hearing before the Board as provided in sections 37-92-102(6)(a). On May 26 and 27, 2004, the CWCB held a hearing in Steamboat Springs, pursuant to the CWCB’s Rules Concerning Recreational In-Channel Diversions, 2 CCR 408-3 (“RICD Rules”), and section 37-92-102(5) & (6). The CWCB heard comments and oral testimony from the parties, the CWCB Staff, the Applicant and the public. Also, the Board accepted and reviewed dozens of submissions by the Applicant, the parties, and the CWCB Staff regarding this Application.

The Board's findings and recommendations are based on all of the information presented to the Board. The Board considered all of the issues related to the factors that the Board is required to consider, and the Board's findings and recommendations are based on the careful balancing of future needs of the State with the Applicant's desire to provide reasonable recreational opportunities.

The Board submits this document to the Water Court as its written findings and recommendations concerning the RICD.

FINDINGS and RECOMMENDATIONS

The Board finds and recommends, as follows:

- 1) Adjudication and administration of the RICD will not impair Colorado's ability to fully develop and put to consumptive beneficial use its compact entitlements because the amount of the claimed RICD can either be used downstream of the RICD or contribute in part to the delivery obligation of Article 13 of the Upper Colorado River Compact;
- 2) There is adequate access adjacent to the RICD reach given the location of the river trail and associated parking;
- 3) The applicant did not demonstrate to the Board's satisfaction that the reach of the Yampa River identified in the application is an appropriate reach for the RICD. By statute and rules, it is appropriate for the Board to consider impacts to flooding, flood control and the one hundred year flood elevations; and the Board is concerned that the RICD structures (Charlie's Hole and D-Hole) as constructed may negatively impact flooding, flood control and the one hundred year flood elevations;
- 4) Exercise of the RICD will not cause material injury to any CWCB instream flow water rights;
- 5) On balance, the adjudication and administration of the RICD as claimed does not promote maximum utilization of Colorado's water resources because: (a) the Applicant is claiming more water than is necessary for a reasonable recreation experience, and thus wastes water; (b) the RICD claimed flows are inefficient and wasteful as a matter of fact because evidence presented to the Board showed that a reasonable recreation experience exists at flows significantly lower than those claimed, and because different flow amounts can provide a reasonable recreation experience for different recreational activities (e.g. kayaking, rafting, tubing); and (c) there are probable future upstream junior diversions and storage that would be limited or precluded by the RICD as claimed. Provided that the water court grants an RICD decree for appropriate minimum amounts, the Board finds that the use of water flowing through the RICD reach for recreational purposes does and will promote maximum utilization of Colorado's water resources;
- 6) The applicant did not demonstrate to the Board's satisfaction that the RICD structures efficiently divert, capture, and control water without waste in the river's natural course and location.

- 7) The claimed RICD flow rates are not for the minimum stream flows necessary to provide a reasonable recreation experience for the recreational uses identified in the application because there was credible evidence before the Board that lower flows can provide a reasonable experience of the recreational uses sought.

Thus, because the Applicant did not fully satisfy the Board with respect to the factors identified above in paragraphs 3, 5, 6, and 7, the Board recommends that the water court deny this application.

Submitted this 11th day of June, 2004.

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