

### **Summary**

This application (attached) seeks to make a portion of the Eagle River Water & Sanitation District's Recreational In-Channel Diversion (RICD) water right absolute and also seeks a finding of reasonable diligence for a portion of the right. The RICD was originally decreed in Case No. 5-00CW259 and is located on Gore Creek in the Town of Vail, CO. The reach of the white water course is shown on the map attached and includes 3 decreed control structures. The RICD is decreed for the following flows:

<b>Time Period</b>	<b>Flow Rate (in cfs)</b>
March	54
April	227
May	400
June	400
July	400
August	218
Sept	67
Oct	48

### **CWCB Appropriations**

The CWCB holds the following instream flow (ISF) water rights that could be injured by this application:

<b>CWCB Case No.</b>	<b>Stream/Lake</b>	<b>Amount (cfs)</b>	<b>Approp. Date</b>
<b>5-77W3637</b>	Gore Creek	6 cfs (10/1 - 4/30) 16 cfs (5/1 - 9/30)	7/27/1977
<b>5-86CW222</b>	Gore Creek	10 cfs (10/1 - 10/31)	5/9/1986

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

The CWCB would like to ensure that the Applicant has provided proper evidence to support its claim for an absolute water right and its request for a finding of reasonable diligence for the RICD water right. Improper diligence or perfection of this RICD may affect Colorado's ability to promote maximum utilization of the waters of the State.

### **Other Objectors**

There are no other objectors in this case.

**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

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO  109 8 <sup>th</sup> Street, Suite 104 Glenwood Springs, CO 81601	<b>▲ COURT USE ONLY ▲</b>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE EAGLE RIVER WATER & SANITATION DISTRICT  IN SUMMIT COUNTY, COLORADO	
Porzak Browning & Bushong LLP Glenn E. Porzak (#2793) Corina A. Hach (#47783) 2120 13 <sup>th</sup> Street Boulder, CO 80302 Tel: 303-443-6800 Fax: 303-443-6864 Email: gporzak@pbblaw.com; chach@pbblaw.com	Case Number: 15CW _____ (08CW72) (00CW259)  Water Division: 5
<b>APPLICATION TO MAKE CONDITIONAL RIGHTS ABSOLUTE AND FOR FINDING OF REASONABLE DILIGENCE</b>	

1. Name, address and telephone number of applicant:

Eagle River Water & Sanitation District (the "District")  
c/o Manager  
846 Forest Road  
Vail, Colorado 81657

Direct all pleadings to:  
Glenn E. Porzak (#2793)  
Corina A. Hach (#47783)  
Porzak Browning & Bushong LLP  
2120 13<sup>th</sup> Street  
Boulder, CO 80302

2. Name of Structures: The Town of Vail Whitewater Park (the "Park").

3. Description of Decreed Conditional Water Rights:

- A. Date of Original Decree: June 5, 2002, 00CW259, District Court, Water Division 5.
- B. Legal Description of Structures: The Park is located within the channel of Gore Creek in the NW1/4 NW1/4 of Section 8, T. 5 S., R. 80 W. of the 6th P.M., Eagle County, Colorado, as shown on the map in **Exhibit A**. The locations of the 3 structures comprising the Park are as follows:
- i. Structure 1. A rock structure located within the channel of Gore Creek at a point which bears S. 55°54'49" E., a distance of approximately 1248 feet from the NW corner of Section 8, T. 5 S., R. 80 W., 6th P.M. The structure is 680 feet from the north Section line and 1030 feet from the west Section line.
  - ii. Structure 2. A rock structure located within the channel of Gore Creek at a point which bears S. 51°15'12" E., a distance of approximately 1190 feet from the NW corner of Section 8, T. 5 S., R. 80 W., 6th P.M. The structure is 725 feet from the north Section line and 935 feet from the west Section line.
  - iii. Structure 3. A rock structure located within the channel of Gore Creek at a point which bears S. 45°20'44" E., a distance of approximately 1128 feet from the NW corner of Section 8, T. 5 S., R. 80 W., 6th P.M. The structure is 775 feet from the north Section line and 805 feet from the west Section line.
- C. Source: The source for the water claimed is Gore Creek, a tributary of the Eagle River.
- D. Appropriation Date: October 10, 2000.
- E. Amounts decreed: The following monthly flow rates were decreed conditional at each of the structures in the Park in the quantities set forth below.

Mar	Apr	May	Jun	Jul	Aug	Sept	Oct
54 cfs	227 cfs	400 cfs	400 cfs	400 cfs	218 cfs	67 cfs	48 cfs

- F. Beneficial Use: Recreational boating purposes.

4. Prior Diligence and Absolute Decree: In Case No. 08CW72, this Court found that portions of the water rights decreed to the Park had become absolute and found that the District had exercised reasonable diligence as to the remaining conditional portions. The following table

displays the monthly flow rate that has been made absolute and the monthly flow rate that remains conditional for the Park:

	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct
Total Absolute (cfs)	0	0	400	400	400	0	0	0
Remaining Conditional (cfs)	54	227	0	0	0	218	67	48

5. Claim to Make Additional Water Rights Absolute for the Town of Vail Whitewater Park. All of the structures comprising the Park have been constructed, maintained and used for recreational boating purposes during the diligence period. Consistent with the terms of the original decree, the District is entitled to make absolute those flow rates put to beneficial use in any given month within the structures comprising the Park. Examples of documented beneficial uses include use for competitions and showcase demonstrations, use by youth as part of the “Kids Adventure Race” series, and consistent recreational use by residents and visitors. The District claims additional amounts absolute based on beneficial use that occurred while flows exceeded the amount previously made absolute, as summarized in the table below. The amounts not yet made absolute are noted as remaining conditional. The District reserves the right to make additional portions of the water right absolute based upon flows and use that occur while this application is pending.

	Mar	Apr	May	June	July	Aug	Sept	Oct
Total decreed (cfs)	54	227	400	400	400	218 cfs	67	48
Total currently absolute under 08CW72 (cfs)	0	0	400	400	400	0	0	0
Additional claimed absolute (cfs)	54	174	0	0	0	91	0	0
Remaining conditional (cfs)	0	53	0	0	0	127	67	48

6. Outline of work done to complete project and apply water to beneficial use. With respect to any remaining portion of the conditional water rights decreed to the Park that are not made absolute in this matter, the District seeks to retain the conditional status thereof by demonstrating its reasonable diligence. During the past 6 years, the District has been diligent in the continued use and development of its conditional water rights. The structures in the Park utilize mechanized bladders that are linked to a computer system and can be inflated and deflated in coordination with the current flow rate in order to control, concentrate, and direct the stream

flow for beneficial use. During the diligence period, the compressor used for inflating this system was replaced, as well as one of the solenoid valves. In addition, planning and preparation for a major overhaul that will occur in 2016 also occurred during the diligence period. This overhaul will include installing a new dryer, new compressor, and completely new solenoid valves in order to prevent water from entering the bladder system where such moisture can cause damage by freezing and thawing. Such maintenance and improvement efforts ensure that the Park's features are consistently operational and the Park is thereby a reliable attraction for local and visiting boaters. Other activities include marketing and hosting the annual Vail Whitewater Series, Mountain Games (originally sponsored by Teva, now sponsored by GoPro), and Kids Adventure Games, all of which raise the Park's visibility and popularity, increasing the likelihood that the Park will be beneficially used throughout the decreed months, and thus ensuring that the right will be perfected in a reasonable time. Other evidence of reasonable diligence includes beneficial use of the amounts claimed absolute herein; monitoring the Water Resume to determine whether any applications may require opposition in order to protect the subject water rights; and other actions that demonstrate reasonable diligence with respect to the subject conditional water rights.

7. Names and addresses of owners of land on which structures are or will be located, or upon which water is or will be placed to beneficial use:

The structures which constitute the Park are located on land owned by the Town of Vail, 75 S. Frontage Road, Vail, CO 81657.

WHEREFORE, the District seeks a decree of the Court ruling that the conditional water rights described at paragraph 3 above have been made absolute for recreational boating purposes in the amounts identified in paragraph 5 above; that the District has demonstrated reasonable diligence with respect to any remaining portions of said conditional water rights thus retaining the conditional status thereof; and such other and further relief as this Court deems just and proper.

Dated this 27<sup>th</sup> day of January, 2016.

PORZAK BROWNING & BUSHONG LLP



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Glenn E. Porzak (#2793)

Corina A. Hach (#47783)

Attorneys for Eagle River Water & Sanitation  
District

**VERIFICATION**

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF SUMMIT    )  
                  *Douglas*

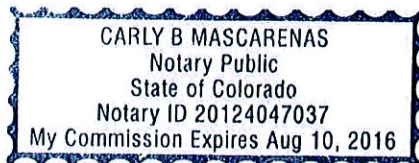
I, Thomas A. Williamsen, water engineer for the Eagle River Water and Sanitation District, state under oath that I have read the foregoing Application to Make Water Rights Absolute and for a Finding of Reasonable Diligence, and that the contents thereof are true to the best of my knowledge and belief.

*Thomas A. Williamsen*  
Thomas A. Williamsen

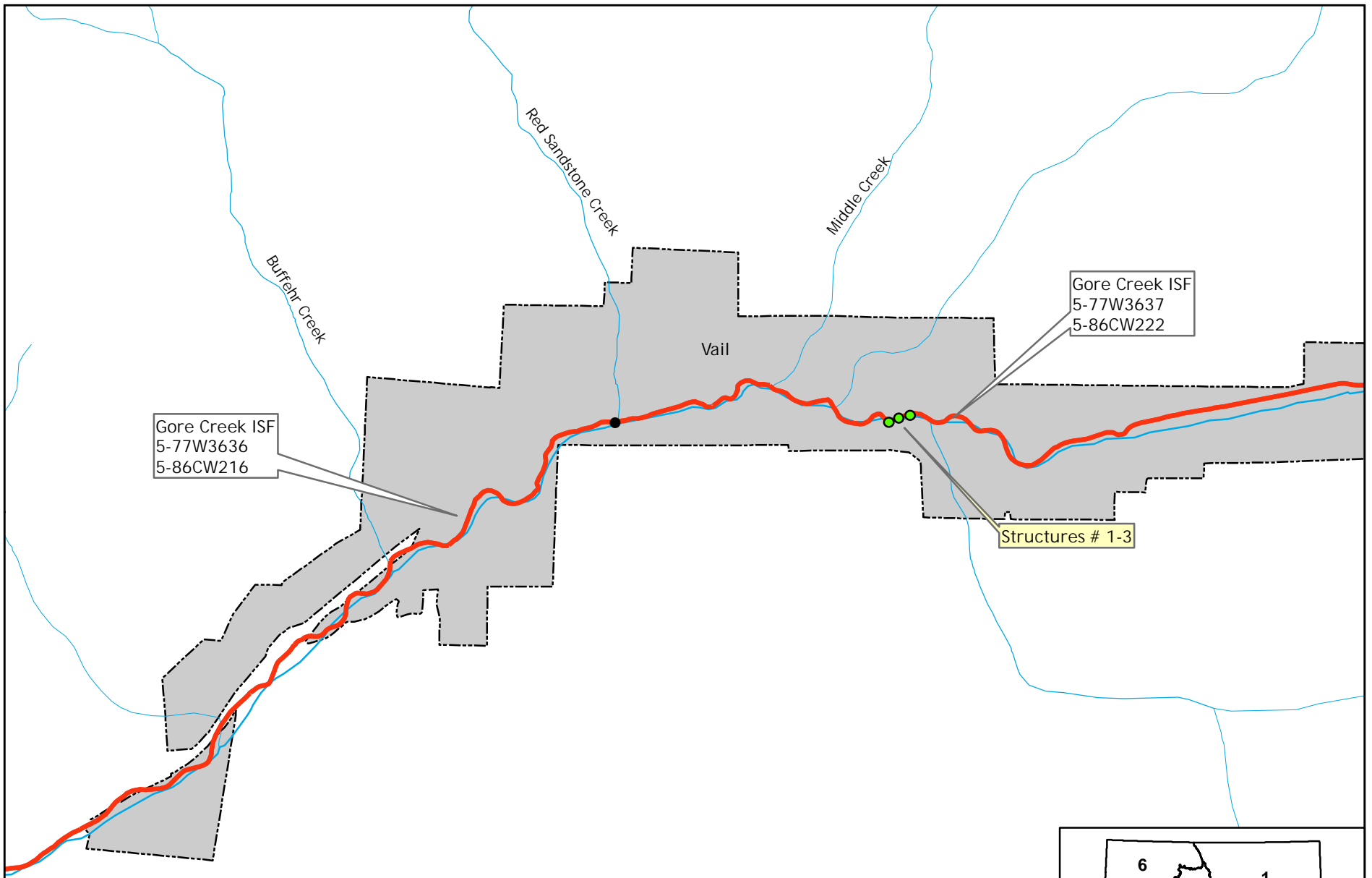
Subscribed and sworn to before me this 23 day of January, 2016, by Thomas A. Williamsen.

My commission expires Aug 10 2016

[SEAL]

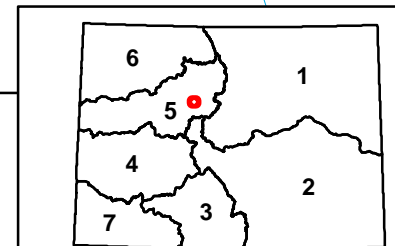


*Carly B Mascarenas*  
Notary Public



May 18-19, 2016 CWCB Board Meeting  
Consent Agenda Item 3a: Statement of Opposition  
Case No. 5-16CW3010: Eagle River Water & Sanitation District

0 0.25 0.5 1 Miles





DISTRICT COURT, WATER DIVISION 5 GARFIELD COUNTY, COLORADO 109 8 <sup>th</sup> Street, Suite 104 Glenwood Springs, CO 81601	DATE FILED: March 31, 2016 11:29 AM FILING ID: 8FB264D62CFBF CASE NUMBER: 2016CW3010
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE EAGLE RIVER WATER & SANITATION DISTRICT  IN EAGLE COUNTY, COLORADO	▲ COURT USE ONLY ▲ Case No. 2016CW3010  Water Division 5
Attorneys for the Colorado Water Conservation Board: CYNTHIA H. COFFMAN, Attorney General SUSAN J. SCHNEIDER, Atty. Reg. No. 19961* First Assistant Attorney General, Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7 <sup>th</sup> Floor Denver, CO 80203 Telephone: (720) 508-6311 Email: Susan.Schneider@coag.gov *Counsel of Record	STATEMENT OF OPPOSITION OF THE COLORADO WATER CONSERVATION BOARD

1. Name of objector: Colorado Water Conservation Board ("CWCB")  
  
 Mailing address: 1313 Sherman Street, Room 718  
 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:

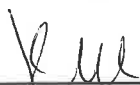
- a. The application alone does not present sufficient information to support its claim to make the RICD water right absolute or for a finding of reasonable diligence. The Applicant must provide proper evidence to support its claim to make absolute a water right for its RICD and for a finding of reasonable diligence in this case.
  - b. Improper diligence or perfection of this RICD water right may affect Colorado's ability to promote maximum utilization of the waters of the State, and may affect Colorado's ability to promote maximum utilization of said waters.
  - c. The CWCB wants to ensure that the Applicant has provided proper evidence to support its claim to make absolute and for a finding of reasonable diligence in this matter.
4. This statement of opposition is continuing in nature and shall apply to any and all future amendments to the original application.

Dated this 31<sup>st</sup> day of March, 2016.

CYNTHIA H. COFFMAN  
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.*

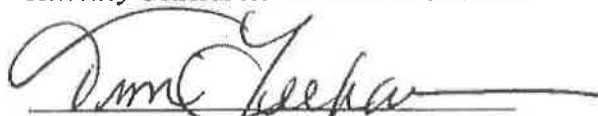
 *for Susan Schneider*  
\_\_\_\_\_  
SUSAN J. SCHNEIDER, #19961\*  
First Assistant Attorney General  
Natural Resources and Environment Section  
Attorneys for the Colorado Water  
Conservation Board  
\*Counsel of Record

VERIFICATION

STATE OF COLORADO                    )  
  ) ss  
CITY AND COUNTY OF DENVER        )

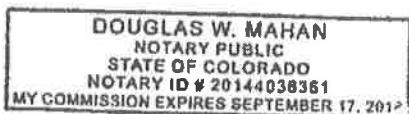
I, James Eklund, Director, Colorado Water Conservation Board, being duly sworn, hereby state that I have read the foregoing *Statement of Opposition* and that the contents are true to the best of my knowledge and belief.

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



Tim Feehan for James Eklund  
Director  
Colorado Water Conservation Board

Subscribed and sworn to before me in the City and County of Denver, State of Colorado, this 29<sup>th</sup> day of March 2016.




[SEAL]

My Commission expires:

09/17/2018

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

/s/   
NOTARY PUBLIC

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31<sup>st</sup> day of March, 2016, 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 as indicated:

Name	Type	Attorney and/or Organization
Eagle River Water & Sanitation District	Applicant	Glenn Edward Porzak Corina A. Hach (Porzak Browning & Bushong LLP)
Division 1 Engineer	Division Engineer	Division 1 Water Engineer
State Engineer	State Engineer	Colorado Division Of Water Resources

*E-filed pursuant to C.R.C.P. 121. Duly signed original on file at the Office of the Attorney General.*

/s/ Nan B. Edwards  
Nan B. Edwards