



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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Denver, CO 80203

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John Hickenlooper, Governor

Bob Randall, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Brent Newman, Chief, Interstate, Federal & Water Information Section
Carlee Brown, Interstate and Federal Manager
Erik Skeie, Special Projects Coordinator

DATE: September 19-20, 2018 Board Meeting

AGENDA ITEM: 14. Glenwood Springs RICD Update

Staff Recommendation:

This item is informational only, with no Board action requested.

Background:

The City of Glenwood Springs is seeking conditional water rights for Recreational In-Channel Diversions (RICDs) for three proposed boating parks on the Colorado River, located in and upstream of the City of Glenwood Springs: No Name Whitewater Park, the Horseshoe Bend Whitewater Park, and the Two Rivers Whitewater Park. The reaches for each park are shown on the attached map. The applicant proposes to operate the RICD water rights from April 1st to September 30th of each year.

Amounts:

Time Period	Flow Rate	Days
April 1 through June 7	1250 c.f.s.	68 days
June 8 through July 23	2500 c.f.s.	41 days
	4000 c.f.s.	5 days
July 24 through Sept 30	1250 c.f.s.	69 days

All of the above amounts 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. The 4000 c.f.s. event flow rate is further limited to no more than 5 continuous days between June 30 and July 6. The specific event flow dates will be as follows: (1) if July 4th falls on a Sunday, Monday, Tuesday or Wednesday, the event flow rate will be in effect June 30-July 4; (2) if July 4th falls on a Saturday, the event flow rate will be in effect



July 1-5; and (3) if July 4th falls on a Thursday or Friday, the event flow rate will be in effect July 2-July 6.

Public deliberation by the CWCB for this RICD application was originally held at the July 2015 Board meeting. Through this process the applicant, CWCB staff, CPW staff, and other objectors presented their stance on the claimed water rights.

As required under § 37-92-102(6)(b) the adopted CWCB Findings of Fact had three main findings as follows (comprehensive findings of fact are attached to this memo):

- The adjudication and administration of the RICDs will materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;
- the proposed RICDs will not affect the natural environment that instream flow (ISF) water rights protect; and
- the adjudication and administration of the RICDs, in the amounts claimed, will not promote maximum utilization of the waters of the State.

Staff was also instructed to fully participate in the water court case to defend the subject Findings of Fact and to assure that the final decree fully complies with statute.

Denver Water, Colorado Department of Transportation, West Divide Water Conservancy District, and the Bureau of Land Management have all signed stipulations to the decree. Colorado Parks and Wildlife (CPW), CWCB, and the Homestake Partners have not settled at this point. Recently, the City of Glenwood Springs and the Homestake Partners produced a settlement concept to allow for future development of water rights upstream of the RICD (attached). Essentially, the settlement concept contemplates a reduced call scenario. This scenario is triggered by a forecast of flows from the NRCS Colorado Water Supply Outlook report equal to or less than 1,400,000 af at the Dotsero gage between April and June. The proposed scenario would protect up to 30,000af of yield for any new water rights decreed after January 1, 2014, and that have a date of first use within 30 years of the Glenwood Springs RICD decree. Even under this reduced call scenario, the applicant could always call for 1,250 cfs regardless of the forecast. If the forecasted are flows above 1,400,000 af at Dotsero between April and June, Glenwood Springs may place calls for the RICD in the full amounts.

It should also be noted that all suggested language changes in the CWCB Comprehensive Findings of Fact were included in the most recent draft of the decree (attached). However, CPW's concerns with the No Name and Horseshoe Bend locations have yet to be addressed.

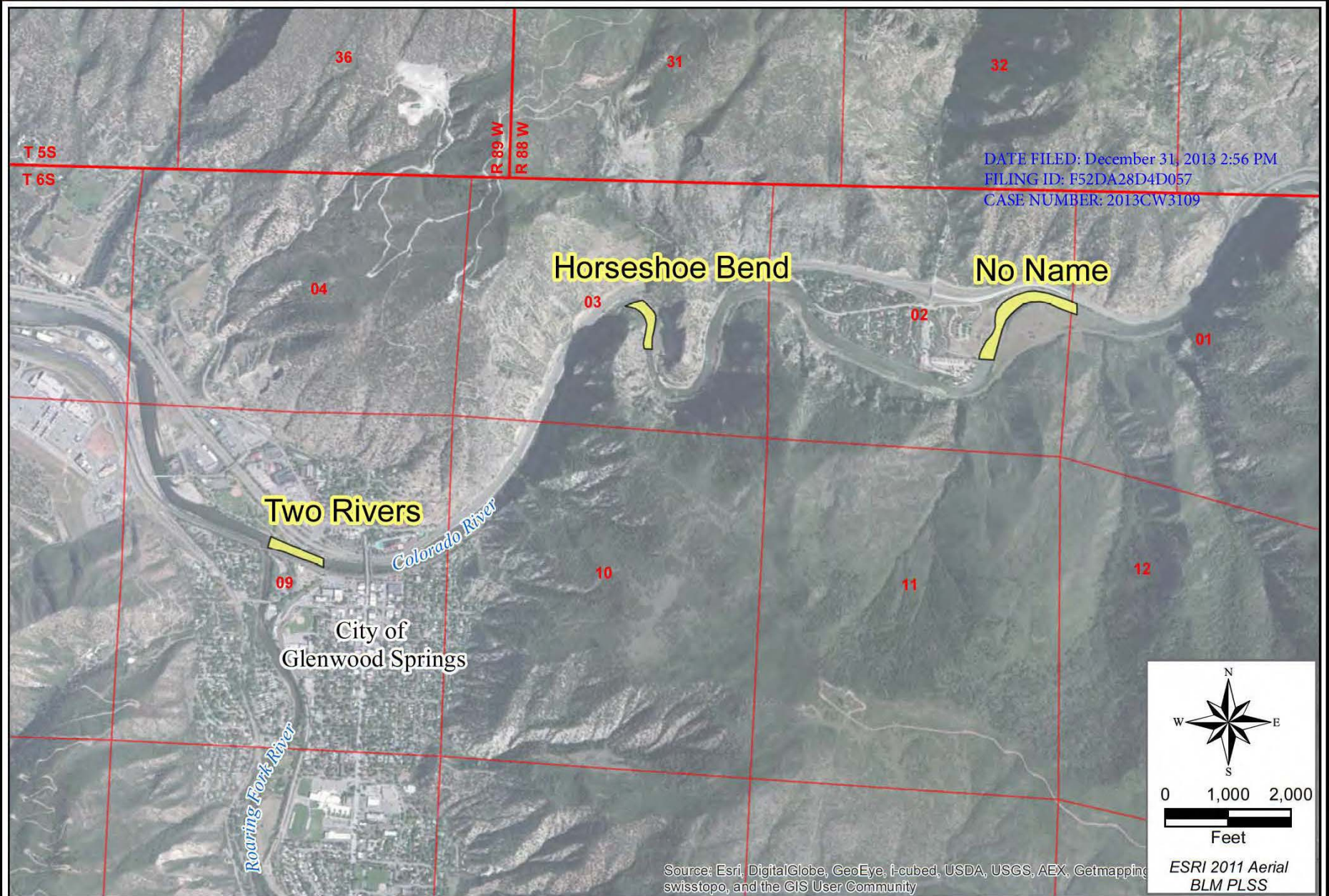
This is an informational item, with potential for a decision item to amend the CWCB Findings of Fact in light of all other settlements at the regularly scheduled CWCB Board Meeting in November.

Attachments:

- 1) Map of Proposed RICD
- 2) CWCB Findings of Fact approved July, 2015
- 3) Most Recent Proposed Ruling for 13CW3109, dated June 28th, 2016
- 4) Draft Settlement Concept Between Glenwood Springs and the Homestake Partners

Attachment 1

RICD Map



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

Attachment 2

CWCB Findings of Fact

DISTRICT COURT, WATER DIVISION 5 GARFIELD COUNTY, COLORADO 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601 (970) 945-5075	DATE FILED: September 14, 2015 1:06 PM FILING ID: 6CC1D7468A71C CASE NUMBER: 2013CW3109
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY OF GLENWOOD SPRINGS IN GARFIELD COUNTY, COLORADO	^ COURT USE ONLY ^
Attorneys for the Colorado Water Conservation Board: CYNTHIA H. COFFMAN, Attorney General SUSAN J. SCHNEIDER, Attorney Reg. #19961* First Assistant Attorney General Natural Resources & Environment Section Office of the Colorado Attorney General 1300 Broadway, 7 th Floor Denver, CO 80203 Phone Number: (720) 508-6311 Email Address: susan.schneider@state.co.us *Counsel of Record	Case No. 2013CW3109 Water Div. 5
COLORADO WATER CONSERVATION BOARD'S <u>AMENDED</u> COMPREHENSIVE FINDINGS OF FACT	

The Colorado Water Conservation Board ("CWCB") by and through its undersigned counsel hereby reports that on July 16, 2015 the CWCB, after deliberation in a public meeting, by a vote of 8 to 1 adopted the following abbreviated Findings of Fact:

1. The adjudication and administration of the RICDs will materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;

2. The proposed RICDs will not affect the natural environment that instream flow (ISF) water rights protect; and
3. The adjudication and administration of the RICDs, in the amounts claimed, will not promote maximum utilization of the waters of the State.

The Board also by a vote of 8 to 1 adopted the following comprehensive Findings of Fact:

I. Considering the specific amounts and activities as claimed in the application and proposed decree, and after deliberation in a public meeting held in conjunction with the regularly scheduled Board meeting held on July 15-16, 2015, in Ignacio, Colorado, the Board makes the following findings about the three proposed Recreational In-Channel Diversions (RICDs):

a. The Board must consider whether the adjudication and administration of the proposed RICDs 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 compact apportionment available for consumptive beneficial use within Colorado. In addition, the Board finds that the adjudication and administration of the proposed RICDs, for the flow amounts and time periods specified in the proposed decree, dated June 30, 2015, will materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements and will have an impact on the manner, cost, and timing of such development. The Board makes the following specific findings about the proposed RICDs for the flow amounts and time periods claimed:

Period	Flow Rate (cfs)
April 1 - June 7	1250
June 8 - July 23	2500
June 30 - July 6 (5 days)*	4000
July 24 - Sept 30	1250

*The 4,000 cfs event flow rate is further limited to no more than 5 continuous days between June 30 and July 6

i. There remains unappropriated water that Colorado could place to consumptive beneficial use upstream of the proposed RICD reaches. The proposed RICDs will 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. The Applicant is seeking less than 50% of the total average historic volume of stream flows; therefore, the requirements of section 37-92-305(13)(f) C.R.S. (2014) do not apply. The proposed decree, dated June 30, 2015, also provides that the City of Glenwood Springs cannot call for water under the RICDs water right if such call will not produce at least 500 cubic feet per second (cfs) at the control structures. Additionally, the City of Glenwood Springs has limited its claimed amounts 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. Additionally, the Board finds that the following italicized conditions agreed to by the Applicant would be acceptable provisions provided that the conditions are also included in the final decree conditions; however, even with these provisions, the proposed RICD application significantly impacts Colorado's ability to develop its compact entitlements:

“11.d. Non-Opposition. Glenwood Springs shall not use the RICD Water Rights as a basis to oppose any future application in the Water Court for Water Division 5 that proposes future development of the waters of the Colorado River or its tributaries upstream of the RICD Water Rights (including applications to confirm new water rights, changes of water rights, and/or for approval of plans for augmentation) where the proposed diversion is less than 1,000 acre-feet per year. Glenwood Springs also shall not use the RICD Water Rights as a basis to oppose any water rights applications filed to implement the Colorado River Cooperative Agreement effective September 26, 2013 (“CRCA”), or the 1998 Memorandum of Understanding Between the Cities of Aurora and Colorado Springs, Colorado River Water Conservation District, Climax Molybdenum Company, and the Vail Consortium (“Eagle River MOU”), provided that the contemplated drafts and yields of such water rights filings do not exceed the contemplated drafts or yields specified in these agreements. However, unless contrary to other provisions of this decree or related stipulations or agreements, or out-of-priority diversions are replaced in time and amount through an exchange, plan for augmentation or substitute water supply plan approved in the future, all water rights junior in priority to the RICD Water Rights may be subject to curtailment by a call for water under the RICD Water Rights, and nothing herein shall prohibit Glenwood Springs from requesting water rights administration by the State or Division Engineers or from filing statements of opposition for the purpose of protecting water rights other than the RICD Water Rights.

11.e. CRCA. Glenwood Springs and the CWCB agree to cooperate and coordinate in good faith concerning the future operation of the RICD Water Rights and future water rights appropriated for the “Upper Colorado Cooperative Project”, which is defined by the CRCA as “a water supply project

located on the West Slope, agreed to by Denver Water and the 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.

11.f. River Administration. In operating the RICD Water Rights, Glenwood Springs will regularly communicate with the Colorado River Water Conservation District (the "River District") concerning river conditions and water rights administration within Water Division No. 5, and will make reasonable efforts to operate the RICD Water Rights with due consideration of the water supply, water exchange, and augmentation needs of the River District, and its constituents, including but not limited to beneficiaries of the Green Mountain Historic Users Pool, in a manner consistent with the River District's statutory obligations in a manner consistent with the River District's statutory obligations regarding the development and protection of water resources for the benefit of its constituents. Glenwood Springs will at all times operate the RICD Water Rights in recognition of prior decrees and agreements."

11.g. For purposes of this Section 11.g., the following determinations shall apply:

i. The term "New Water Project" shall mean any single water project (which may include storage projects or storage projects with direct flow components) or combination of multiple water projects that: (a) was not constructed or otherwise in operation as of December 31, 2013; (b) diverts or stores water from points that are located upstream of the RICD Water Rights; and (c) is decreed and used for beneficial use within Water Division 5. New Water Projects may include water projects that utilize decreed water rights that are either senior or junior in administrative priority to the RICD Water Rights.

ii. The term "Firm Yield" shall mean the average annual yield of a New Water Project (based on a 3-year running average basis), as determined by the River District in consultation with Glenwood Springs.

iii. The term "Cumulative Firm Yield" shall mean the combined average annual yield of all New Water Projects (based on a 3-year running average basis), as determined by the River District in consultation with Glenwood Springs.

iv. *The term “Junior Protected Yield” shall mean the portion of the Cumulative Firm Yield supplied by water rights junior to the RICD Water Rights, up to a maximum of 20,000 acre-feet minus the Cumulative Firm Yield of New Water Projects supplied by water rights senior to the RICD Water Rights.*

Glenwood Springs shall consult with the River District on or prior to May 20th of each year regarding the implementation of this Section 11.i. If this consultation process determines that, during the period from June 8 to July 23 of that year, Glenwood Springs’ placement of a call on the Colorado River for the RICD Water Rights in excess of 1,250 c.f.s. would likely impair the Junior Protected Yield, then the RICD Water Rights shall be deemed satisfied by calling, in order of priority, only those water rights necessary to produce an administrative flow rate of 1,250 c.f.s. (as measured at the single measurement point described below in Section 23) from June 8 to July 23 of that year, or such portion of that period that is determined necessary to satisfy the Junior Protected Yield. This Section is intended to alleviate potential conflicts between the future operation of the RICD Water Rights and New Water Projects, but shall not be construed to require Glenwood Springs to reduce a call in the event that the Junior Protected Yield can be achieved by: (1) diverting water outside of the June 8 to July 23 time period each year; or (2) exercising water rights that are senior to the RICD Water Rights.

ii. The Board finds that the distance of the proposed RICDs to the State line is considerable, but in light of other concerns described below, the proposed RICD application materially impairs Colorado’s ability to develop its compact entitlements.

iii. The proposed RICDs are in close proximity to potentially suitable upstream points of diversion and upstream storage that could be utilized by those who would place the water to consumptive beneficial use. The Board finds that the addition of the proposed RICDs will materially impair the ability to divert and place to consumptive beneficial use water upstream of the proposed RICDs for currently undecreed uses. Thus, the proposed RICDs will materially impair the ability of the State of Colorado to consumptively use its compact entitlements.

iv. The Board finds that suitable downstream points of diversion or storage for consumptive beneficial use exist before the water leaves the State; however, in light of other concerns, the proposed RICD application significantly impacts Colorado’s ability to develop its compact entitlements.

v. Exchange opportunities within the State may be adversely impacted by the existence of the proposed RICDs. Therefore, the Board finds that the proposed RICDs will materially impair the ability of the State of Colorado to fully develop and place to consumptive beneficial use its compact entitlements.

vi. The Colorado River basin is over-appropriated, or "water critical," in certain locations within the basin during the RICD season and the proposed RICDs will further exacerbate these water shortages. Therefore, the Board finds that the proposed RICDs will materially impair Colorado's ability to fully develop and place to consumptive beneficial use its compact entitlements.

vii. 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 could allow benefitted post-compact water rights to continue to divert during a compact curtailment. The Board finds that the following italicized condition would be an acceptable provision for any proposed decree to reduce the impacts of the RICDs on Colorado's ability to fully use its compact entitlements. Despite this language, in light of other concerns, the proposed RICD application significantly impacts Colorado's ability to develop its compact entitlements:

"11.a. 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, the RICD Water Rights decreed herein will be administered in accordance with the 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 water compacts that are then in effect, if any, including any such rules intended to avoid, delay, or limit the severity of such a compact curtailment. If no such compact curtailment rules are then in effect, Glenwood Springs shall not place a call for the RICD Water Rights decreed herein during the period that implementation of an Article VIII(d)(8) curtailment order affects water diversions in Water Division No. 5, unless the State Engineer or Division Engineer determines that exercise of all or part of the RICD Water Rights will not affect Colorado's ability to comply with the Compact. Otherwise, the RICD Water Rights decreed herein shall be administered in accordance with this Decree and Colorado law."

viii. The RICDs will likely shield waters from consumptive uses that would otherwise be available under the Colorado River Compacts. Thus, the proposed RICDs will materially impair the ability of the State of Colorado to consumptively use its compact entitlements.

ix. The Board finds that beneficial consumptive water use opportunities exist upstream of the RICDs that would be impaired by the RICDs. Thus, the proposed RICDs will materially impair the ability of the State of Colorado to consumptively use its compact entitlements.

x. The Applicant has not included adequate provisions in the proposed decree for reducing or canceling the RICDs at this time. Thus, the proposed RICDs will materially impair the ability of the State of Colorado to consumptively use its compact entitlements.

b. The Board must consider whether the exercise of the proposed RICDs will cause material injury to existing instream flow (ISF) water rights. The proposed RICD will not cause material injury to existing instream flow water rights. The Board makes the following specific findings about the proposed RICDs regarding the potential for material injury to existing ISF water rights:

i. There are currently no existing ISF water rights held by the CWCB in the Colorado River in the proposed RICD reach. However, ISF water rights exist in the 15-mile Reach above Grand Junction, significantly downstream (approximately 75 miles downstream) of the proposed RICD reach. This instream flow water right is for July 1 through September 30 of each year, for decreed rates lower than the rates sought by the RICD. As such, the proposed RICD will not cause material injury to existing ISF water rights.

ii. The Board finds that the timing and duration of the RICDs will not negatively impact the natural environment for which the 15-mile Reach ISF was decreed and thereby cause material injury to existing ISF water rights.

iii. The Board finds that the administration of the RICD would not negatively impact the natural environment for which the ISF was decreed and thereby cause material injury to existing ISF water rights.

iv. The Board finds that the construction of the RICD white water park is not likely to cause material injury to the 15-mile Reach ISF or the natural environment for which the ISF was decreed.

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 finds that the proposed RICDs, in the amounts claimed, do not promote the maximum utilization of the waters of the State. In addition, the Board makes the following specific 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 that may be adversely affected. The Board finds that the proposed RICDs will prohibit upstream junior appropriations for direct diversion and storage and, therefore, will materially impair maximum utilization of the waters of the State. Given the proximity of other water rights, the Applicant's RICDs expand the potential for calls that will curtail upstream junior appropriators. Thus, the proposed RICDs would not 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 inhibit maximum utilization by restricting probable future changes, transfers, or exchanges of water rights from points of diversion or storage downstream of the reach affected by the proposed RICDs to points upstream of or within the reach affected by the proposed RICDs. Therefore, the Board finds that the opportunity to allow future changes, transfers, and exchanges of water from points located downstream of the proposed RICDs to points located upstream of the proposed RICDs will be unduly impacted, thereby preventing maximum utilization of the waters of the State.

iii. The Board finds that the Applicant intends to comply with appropriate federal policies, regulations and laws. However, in light of other concerns, the proposed RICDs will materially impair maximum utilization of the waters of the State.

iv. The Board finds that the proposed RICD appropriations do not promote maximum utilization of Colorado's water resources because, by claiming flow rates that are not consistent with flow rates appropriated by nearby water rights, the Applicant has not attempted to minimize its call upon the river and avoid waste. Further, the Board finds that there is not a reasonable and efficient means proposed by the Applicant to use, divert, capture and control the water diverted through the RICDs and they will not minimize the call upon the river and avoid waste. Therefore, the RICDs will materially impair maximum utilization of the waters of the State.

v. The Board finds that there is not a reasonable demand for the recreational activities for portions of the time periods requested at the requested flow rates claimed in the proposed decree, dated June 30, 2015. Thus, the proposed RICD application will materially impair maximum utilization of the waters of the State.

vi. The Board finds that the proposed decree, dated June 30, 2015, does have appropriate limitations on the time of day, days per period, and the time of year during which the proposed RICDs would be exercised. However, in light of other concerns, the proposed RICDs will materially impair maximum utilization of the waters of the State.

vii. The Board finds that the depths and individual flow rates of the proposed RICDs do not promote maximum utilization for flow amounts sought for the individual time periods because the Applicant is seeking flow rates that would exacerbate the call on the Colorado River and pull water down through the RICD reaches.

viii. The Board finds that the frequency and duration of the requested amounts of water for the proposed RICDs for the requested periods do not promote maximum utilization of waters of the State.

ix. The Board finds that there will likely be an economic benefit from the existence of the proposed RICDs. However, in light of other concerns, the proposed RICDs will materially impair maximum utilization of the waters of the State.

x. The Board finds that the proposed RICDs, to varying degrees, may have detrimental effects on several environmental aspects. Additionally, the Board finds that the following italicized condition proposed by the Applicant would be an acceptable provision provided that the condition is also included in the final decree conditions; however, even with this provision, the proposed RICD application would not promote maximum utilization of Colorado's water resources:

11.h. CPW Coordination. Prior to initiation of a Section 404 permit application to the U.S. Army Corps of Engineers, Glenwood Springs shall consult with Colorado Parks & Wildlife (CPW) with regard to RICD structure siting, design and contemplated future maintenance CPW may participate in the Section 404 permitting process to ensure that terms are included in the Section 404 permit(s) to protect aquatic resource values. Glenwood Springs also agrees to consult with CPW as to (1) the timing of construction and (2) the timing of any future reservoir releases for the benefit of the RICD Water Rights.

xi. The Board finds that the relationship of the requested individual RICD flow rates to the historic appropriated and unappropriated flow rates for each time period requested will exacerbate the call on upstream juniors, and therefore, would not promote maximum utilization of Colorado's water resources.

xii. The Board finds that the effect of the RICDs on other potential uses of water upstream of the RICDs will be detrimental, and therefore, would not promote maximum utilization of Colorado's water resources.

xiii. The Board finds that the application does not entirely meet the definition of a RICD, as defined in section 37-92-103(10.3). The Applicant has provided evidence that there is a demand for a reasonable recreational experience on additional days outside of the RICD statutory window of April 1 to Labor Day and the application has been filed by a city government. However, the Applicant has applied for an RICD outside of its city limits. The Applicant justifies this by citing the statutory language of section 31-12-105(1)(e), C.R.S. (2014), which recognizes the ability of a municipality to annex within a three-mile area of the municipality's geographical limits if the municipality has in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. Because the one RICD structure is not within the city limits but within three miles of the city limits, this reason alone should not be the basis for finding that the application would not promote maximum utilization of the waters of the state. However, the Applicant is seeking more than the "minimum amount of stream flow for a reasonable recreational experience." Therefore, the application would not promote maximum utilization of Colorado's water resources.

xiv. The Board finds that the proposed RICDs do not conserve or efficiently use the available stream flow that may be called down by other nearby water rights, and therefore negatively impacts the maximum utilization of Colorado's water.

xv. The Colorado River basin is over-appropriated, or "water critical," in certain locations within the basin during the RICD season and the proposed RICDs will further exacerbate these water shortages. Therefore, the Board finds that the proposed RICDs would not promote maximum utilization of Colorado's water resources.

xvi. The Board finds that the Applicant has failed to show how the proposed RICDs work together with existing and/or future uses within the State of Colorado in order to promote maximum utilization of waters of the State.

xvii. The Applicant has not included adequate provisions in the proposed decree for reducing or canceling the RICDs. Therefore, the Board finds that the proposed RICDs would not promote maximum utilization of Colorado's water resources.

xviii. The Applicant has included descriptions of each recreational opportunity sought at each flow amount. However, the Board finds that the current design submitted does not demonstrate that the flows sought are the minimum amount necessary to provide for each of the reasonable recreational experiences sought, and therefore negatively impact the maximum utilization of Colorado's water.

xix. The frequency and flow rates of historic reservoir releases through the proposed RICD reaches to meet historic upstream and downstream calls will be necessary to meet a portion of the flow rates claimed for the proposed RICDs, but not for the flow rates that exceed 1250 cfs. Maintenance of flows through the RICDs at the historic frequency and flow rates would maintain beneficial use of waters downstream of the RICDs. However, in light of other concerns, the proposed RICDs will materially impair maximum utilization of the waters of the State.

xx. The Board finds that unappropriated native flows exist in the proposed RICD stream reaches during some of the periods claimed; however, the volume of unappropriated flows claimed by the proposed RICDs is excessive and therefore the proposed RICDs would not promote maximum utilization of waters of the State.

Dated this 14th day of September, 2015.

CYNTHIA H. COFFMAN

Attorney General

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

/s/Susan J. Schneider

SUSAN J. SCHNEIDER, ##19961*

First Assistant Attorney General

Natural Resources and Environment Section

Attorneys for the Colorado Water

Conservation Board

*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that on this 14th day of September, 2015, I caused a true and correct copy of the foregoing **COLORADO WATER CONSERVATION BOARD'S COMPREHENSIVE FINDINGS OF FACT** to be served electronically via ICCES File & Serve to each of the following:

Name	Type	Attorney	Organization
American Whitewater	Opposer	Bartlett Phillip Miller, Robert Kortum Harris	Western Resource Advocates
Aurora, City of	Opposer	John Marshall Dingess, Ryan P. McLane, Teri L Petitt	Hamre Rodriguez Ostrander and Dingess PC
City And County of Denver Acting By And	Opposer	Casey S Funk	Denver Water
Colorado Department of Transportation	Opposer	Jennifer Lyn Mele	CO Attorney General
Colorado River Water Conservation District	Opposer	Jason Victor, Peter Cheney Fleming	Colorado River Water Conservation District
Colorado Springs, City of	Opposer	Michael John Gustafson	Colorado Springs Office of the City Attorney
Division 5 Engineer	Division Engineer	Division 5 Water Engineer	State of Colorado DWR Division 5
Glenwood Hot Springs Lodge And Pool Inc	Opposer	David Carl Hallford, Scott M Balcomb	Balcomb and Green PC
Glenwood Springs, City of	Applicant	Christopher Langhorne Thorne, Kylie Jo Crandall, Mark Edward Hamilton	Holland & Hart LLP
Grand County Board of Commissioners	Opposer	David C Taussig, Mitra Marie Pemberton	White & Jankowski, LLP
Grand Valley Water Users Association	Opposer	Kirsten Marie Kurath, Mark Allen Hermundstad	Williams Turner and Holmes PC

Name	Type	Attorney	Organization
Gypsum, Town of	Opposer	Jason M. Groves, Kevin Land Patrick	Patrick, Miller & Kropf, P.C.
Homestake Steering Committee	Opposer	Mary Mead Hammond, Mason Hamill Brown, William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
Orchard Mesa Irrigation District	Opposer	Kirsten Marie Kurath, Mark Allen Hermundstad	Williams Turner and Holmes PC
State Engineer	Opposer	Colorado Division Of Water Resources	State of Colorado - Division of Water Resources
United States of America	Opposer	Kristen C Guerriero	US Attorneys Office
Ute Water Conservancy District	Opposer	Kirsten Marie Kurath, Mark Allen Hermundstad	Williams Turner and Holmes PC
West Divide Water Conservancy District	Opposer	Edward Bryan Olszewski	Olszewski, Massih & Maurer, P.C.
Western Resource Advocates	Opposer	Bartlett Phillip Miller, Robert Kortum Harris	Western Resource Advocates

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

/s/ Constance L. Rust
CONSTANCE L. RUST

Attachment 3

Proposed Ruling 13CW3109

EXHIBIT A TO STIPULATION WITH CDOT

JUNE 28, 2016-PROPOSED RULING

DISTRICT COURT, WATER DIVISION NO. 5, COLORADO Court Address: 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601 (970) 928-3062 <i>telephone</i>	▲ COURT USE ONLY ▲ <hr/> Case Number: 13CW3109 Water Division: 5
CONCERNING THE APPLICATION OF: TheCITY OF GLENWOOD SPRINGS, a Colorado home rule city, in Garfield County, Colorado	
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE, JUDGMENT AND DECREE	

This matter comes before the Court on the Application for Surface Water rights for Recreational In-Channel Uses of the City of Glenwood Springs, Colorado ("Glenwood Springs" or "Applicant") filed on December 31, 2013. 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 findings and 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:

City of Glenwood Springs
101 West 8th Street
Glenwood Springs, CO 81601

With copy to:

Mark E. Hamilton, Esq.
Christopher L. Thorne, 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 the Application are within the boundaries of a designated groundwater basin.

3. Timely statements of opposition were filed by: the City and County of Denver by and through its Board of Water Commissioners, the Town of Gypsum, the U.S. Bureau of Land Management, the Glenwood Hot Springs Lodge & Pool, Inc., the Ute Water Conservancy District, Grand Valley Water Users Association, Orchard Mesa Irrigation District, the Colorado River Water Conservation District, the Colorado Department of Transportation, the Homestake Steering Committee, the Grand County Board of County Commissioners, the City of Aurora, the Colorado Water Conservation Board, the City of Colorado Springs, and the West Divide Water Conservancy District. Additionally, two other Objectors, American Whitewater and Western Resource Advocates, were permitted to intervene in this matter by order of the court dated _____. No other statements of opposition were received. The time for filing statements of opposition has expired.

4. Glenwood Springs has entered into stipulations with the U.S. Bureau of Land Management; and _____. The Court has reviewed these stipulations and entered orders approving them. The Court finds that this Judgment and Decree is consistent with the terms of the stipulations.

5. Glenwood Springs seeks confirmation of conditional surface water rights for recreational in-channel diversions (each a "RICD Water Right") located in the Colorado River, for three proposed boating parks to be known as the No Name Whitewater Park, the Horseshoe Bend Whitewater Park, and the Two Rivers Whitewater Park, all as more fully described below.

6. *RICD Water Right:* 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: NW¼ of the SW¼ of Section 1, Township 6 South, Range 89 West of the 6th 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: NW¼ of the SE¼ of Section 2, Township 6 South, Range 89 West of the 6th 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. Although the location for the No Name Park Whitewater Park location is not presently within the city limits of Glenwood Springs, it is only approximately one-half mile east of the present city limits of Glenwood Springs. Colorado law empowers municipalities to plan for access, utilities, waterways, waterfronts and parks within three miles of municipal boundaries. *See* C.R.S. 31-12-105(1)(e) (2015).

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 the Application.

e. Date water applied to beneficial use: N/A (this claim is for a conditional water right)

f. Amounts:

Time Period	Flow Rate	Days
April 1 through June 7	1250 c.f.s.	68 days
June 8 through July 23	2500 c.f.s. 4000 c.f.s.	41 days 5 days
July 24 through Sept 30	1250 c.f.s.	69 days

All of the above amounts 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. The 4000 c.f.s. event flow rate is further limited to no more than 5 continuous days between June 30 and July 6. The specific event flow dates will be as follows: (1) if July 4th falls on a Sunday, Monday, Tuesday or Wednesday, the event flow rate will be in effect June 30-July 4; (2) if July 4th falls on a Saturday, the event flow rate will be in effect July 1-5; and (3) if July 4th falls on a Thursday or Friday, the event flow rate will be in effect July 2-July 6.

- g. 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.

7. *RICD Water Right:* 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 6th P.M., at a point 1,386 feet from the south section line and 1916 feet from the east section line of said Section 3, Garfield County, CO.

UTM: NAD 83 Zone 13S: northing 4,381,318.52 m, easting 301,605.95 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 6th 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 the Application.
- e. Date water applied to beneficial use: N/A (this claim is for a conditional water right)
- f. Amounts:

Time Period	Flow Rate	Days
April 1 through June 7	1250 c.f.s.	68 days
June 8 through July 23	2500 c.f.s.	41 days
	4000 c.f.s.	5 days
July 24 through Sept 30	1250 c.f.s.	69 days

All of the above amounts 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. The 4000 c.f.s. event flow rate is further limited to no more than 5 continuous days between June 30 and July 6. The specific event flow dates will be as follows: (1) if July 4th falls on a Sunday, Monday, Tuesday or Wednesday, the event flow rate will be in effect June 30-July 4; (2) if July 4th falls on a Saturday, the event flow rate will be in effect July 1-5; and (3) if July 4th falls on a Thursday or Friday, the event flow rate will be in effect July 2-July 6.

- g. 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.
8. *RICD Water Right: 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, above its confluence with the Roaring Fork River, between the following two points on the centerline of the river:
 - i. Two Rivers Whitewater Park Upstream Extent:

PLSS: SW¹/₄ of the NE¹/₄ of Section 9, Township 6 South, Range 89 West of the 6th 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: SE¹/₄ of the NW¹/₄ of Section 9, Township 6 South, Range 89 West of the 6th 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 the Application.
- e. Date water applied to beneficial use: N/A (this claim is for a conditional water right)
- f. Amounts:

Time Period	Flow Rate	Days
April 1 through June 7	1250 c.f.s.	68 days
June 8 through July 23	2500 c.f.s. 4000 c.f.s.	41 days 5 days
July 24 through Sept 30	1250 c.f.s.	69 days

All of the above amounts 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. The 4000 c.f.s. event flow rate is further limited to no more than 5 continuous days between June 30 and July 6. The specific event flow dates will be as follows: (1) if July 4th falls on a Sunday, Monday, Tuesday or Wednesday, the event flow rate will be in

effect June 30-July 4; (2) if July 4th falls on a Saturday, the event flow rate will be in effect July 1-5; and (3) if July 4th falls on a Thursday or Friday, the event flow rate will be in effect July 2-July 6.

- g. 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.

9. Findings to Support the RICD Water Rights:

- a. Appropriate Entity. Glenwood Springs is a municipality incorporated within the State of Colorado and is entitled to appropriate surface water rights for recreational in-channel diversion water rights as defined in C.R.S. § 37-92-103(10.3) (2013).
- b. Specific Plan and Intent. Glenwood Springs has a specific plan and intent to divert or otherwise capture, possess and control a specific quantity of water for specific beneficial uses authorized by statute.
- c. Available Water. Glenwood Springs has demonstrated that unappropriated water is available in the amounts set forth in this Decree from the source claimed.
- d. Can and Will. Glenwood Springs has sufficiently 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. Appropriate Stream Reaches. The reaches of the Colorado River in which the Glenwood Springs recreational in-channel diversions will be located are appropriate reaches of the stream for the intended RICD Water Rights.
- f. 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 RICD structures identified above. The design capacities of these structures will capture, control, and divert the flows of the Colorado River up to 4000 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 Colorado River is usable at a variety of water levels. The low flow channel constructed into each structure will provide passage for boats and a usable hydraulic feature for inner tubes and other recreational water craft or include safety bypass channels for downstream users. 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) (2013), at all flow rates up to the maximum claimed above.

- g. Reasonable Recreational Experience. The claimed 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) 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. Likewise, Applicant has demonstrated that there is reasonable demand for these recreational experiences throughout the season claimed. *See generally* C.R.S. § 37-92-103(10.3)(2013).
- h. Minimum Stream Flow. The claimed flow amounts represent the minimum amount of stream flow to serve Applicant's intended and specified reasonable recreation experiences. C.R.S. § 37-92-305(13)(d) (2013).
- i. Amount Below Which There Is No Beneficial Use. The flow rate below which there is no longer any beneficial use of water at the control structures for the decreed purposes is 500 c.f.s. C.R.S. § 37-92-305(13)(d) (2013).
- j. Stream Flow Volume. During the RICD season claimed, the total average historical volume of water for the stream segments where the diversion structures will be located has been calculated to be 1,190,499 acre-feet. Fifty percent of this total average historical volume is 595,250 acre-feet. The total volume of water represented by the flow rates decreed for the claimed recreational in-channel diversions of 581,625 acre-feet is 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. Therefore, this Decree and the RICD Water Rights granted herein are not limited by sub-sections I, II or III of C.R.S. § 37-92-305(13)(f) (2013). Except as otherwise limited by this decree or in stipulations or agreements related thereto, Glenwood Springs may initiate a call for any amount of water between 500 c.f.s. and the maximum decreed rate within each applicable time period specified in Sections 6.f, 7.f and 8.f, above.
- k. Extended RICD Season. The Applicant has demonstrated a need for the reasonable recreational experience from Labor Day to September 30 each year, as required by C.R.S. § 37-92-103 (10.3). The Court finds that there is demand for a reasonable recreation experience at the No Name Whitewater Park, the Horseshoe Bend Whitewater Park, and the Two Rivers Whitewater Park between Labor Day and September 30 each year. Without limiting the foregoing, the Court finds that

non-motorized boating already occurs in these areas between Labor Day and September 30 each year, and that there is present and future demand for a reasonable recreation experience on the Colorado at these locations during the period from Labor Day to September 30 each year.

1. Event Flows. The Applicant has demonstrated a need for an event-flow period that shall be shorter than fourteen days, as required by C.R.S. § 37-92-103 (10.3). The Court finds that there is a need for event flows at 4000 c.f.s. for a total of five continuous days from June 30 to July 6 each year, as more specifically set forth in Sections 6.f, 7.f and 8.f, above.

10. Findings Regarding Compliance with the CWCB Review Process Pursuant to C.R.S. § 37-92-102(6) (2013) and Additional Statutory Factors Pursuant to C.R.S. § 37-92-113 (2013):

- a. CWCB Review Process. Pursuant to C.R.S. § 37-92-102(6) (2013), after deliberation at a public meeting on July 16, 2015, CWCB made written findings as to: (1) whether the adjudication and administration of the claimed recreational in-channel diversions would materially impair the ability of Colorado to fully develop and place to beneficial use its compact entitlements; (2) whether the adjudication and administration of the claimed recreational in-channel diversions would cause material injury to an instream flow; and (3) whether adjudication and administration of the claimed recreational in channel diversions would promote maximum utilization of the waters of the state. In making the following additional determinations, the Court has considered the CWCB's findings as required by C.R.S. § 35-92-305(13)(a) (2013).
- b. Compact Entitlements. The Court finds that the adjudication and administration of the RICD Water Rights, 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. § 37-92-305(13)(a)(I) (2013).
- c. Maximum Utilization. The RICD Water Rights will support 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. The RICD Water Rights promote maximum utilization of Colorado's water resources because Glenwood Springs has used a reasonable means to use, divert, capture, and control the water for RICD purposes 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 RICD Water Rights, subject to the terms of this Decree, will promote maximum utilization of the waters of the State.

- d. Stream Reach Appropriateness. The Court finds that the proposed whitewater parks are located in appropriate reaches of the stream required for the intended uses. C.R.S. § 37-92-305(13)(a)(III) (2013). The locations of the whitewater parks are appropriate for many reasons. These parks are all located in an already popular and active recreational use corridor accessible from I-70 and near downtown Glenwood Springs. In addition, the physical locations of the parks are appropriate due to favorable stream gradients and the adequacy of the existing river flows.
 - e. Access for Recreational Use. The whitewater parks will be accessible to the public for the recreational in-channel use proposed by Applicant, pursuant to C.R.S. § 37-92-305(13)(a)(IV)(2013). In particular, there is existing public access to the Colorado River at the three whitewater park locations. The City or other public agencies own or control access to the whitewater park locations, and additional amenities and public access can be developed at each whitewater park. Prior to construction of whitewater park features at any of the three proposed whitewater park locations, the City will first obtain any necessary authorizations for access and land use, including any required authorizations from CDOT and/or the Federal Highway Administration for use of lands or rights-of-way owned or maintained by CDOT.
 - f. Instream Flow Rights Injury. There are no instream flow water rights within these reaches of the Colorado River. As a result, the Court finds that the RICD Water Rights will not cause material injury to instream flow water rights. C.R.S. § 37-92-305(13)(a)(V) (2013).
11. Additional Terms and Conditions.
- a. Compact Administration. 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, the RICD Water Rights decreed herein will be administered in accordance with the 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 water compacts that are then in effect, if any, including any such rules intended to avoid, delay, or limit the severity of such a compact curtailment. If no such compact curtailment rules are then in effect, Glenwood Springs shall not place a call for the RICD Water Rights decreed herein during the period that implementation of an Article VIII(d)(8) curtailment order affects water diversions in Water Division No. 5, unless the State Engineer or Division Engineer determines that exercise of all or part of the RICD Water Rights will not affect

Colorado's ability to comply with the Compact. Otherwise, the RICD Water Rights decreed herein shall be administered in accordance with this Decree and Colorado law.

- b. Floodplain Regulations. Glenwood Springs will ensure that the design of the control structures complies with applicable floodplain management requirements.
- c. Direct Flow Water Rights—No Claim to Stored Water. The RICD Water Rights provide appropriative rights only to direct flows of the Colorado River at the boating parks specified herein. Although storage releases may flow through and be put to use in the boating parks to help satisfy the RICD Water Rights, this decree shall not give Glenwood Springs any rights to stored water, limit in any way either the amount or timing of releases of stored water, or provide any basis for Glenwood Springs to request or demand releases of such water; provided, that stored water may be delivered for beneficial use by the RICD structures described herein consistent with the terms of water court decrees or other authorizations for upstream storage rights and the consent of the owner(s) of said water rights.
- d. Non-Opposition. Glenwood Springs shall not use the RICD Water Rights as a basis to oppose any future application in the Water Court for Water Division 5 that proposes future development of the waters of the Colorado River or its tributaries upstream of the RICD Water Rights(including applications to confirm new water rights, changes of water rights, and/or for approval of plans for augmentation) where the proposed diversion is less than 1,000 acre-feet per year. Glenwood Springs also shall not use the RICD Water Rights as a basis to oppose any water rights applications filed to implement the Colorado River Cooperative Agreement effective September 26, 2013 ("CRCA"), or the 1998 Memorandum of Understanding Between the Cities of Aurora and Colorado Springs, Colorado River Water Conservation District, Climax Molybdenum Company, and the Vail Consortium ("Eagle River MOU"), provided that the contemplated drafts and yields of such water rights filings do not exceed the contemplated drafts or yields specified in these agreements. However, unless contrary to other provisions of this decree or related stipulations or agreements, or out-of-priority diversions are replaced in time and amount through an exchange, plan for augmentation or substitute water supply plan approved in the future, all water rights junior in priority to the RICD Water Rights may be subject to curtailment by a call for water under the RICD Water Rights, and nothing herein shall prohibit Glenwood Springs from requesting water rights administration by the State or Division Engineers or from filing statements of opposition for the purpose of protecting water rights other than the RICD Water Rights.
- e. CRCA. Glenwood Springs and the CWCB agree to cooperate and coordinate in good faith concerning the future operation of the RICD Water Rights and future

water rights appropriated for the “Upper Colorado Cooperative Project”, which is defined by the CRCA as “a water supply project located on the West Slope, agreed to by Denver Water and the 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.”

- f. River Administration. In operating the RICD Water Rights, Glenwood Springs will regularly communicate with the Colorado River Water Conservation District (the “River District”) concerning river conditions and water rights administration within Water Division No. 5, and will make reasonable efforts to operate the RICD Water Rights with due consideration of the water supply, water exchange, and augmentation needs of the River District, and its constituents, in a manner consistent with the River District’s statutory obligations regarding the development and protection of water resources for the benefit of its constituents. Glenwood Springs will at all times operate the RICD Water Rights in recognition of prior decrees and agreements.
- g. Protection of New Water Project Yield.

For purposes of this Section 11.g., the following determinations shall apply:

- i. The term “New Water Project” shall mean any water project (which may include storage projects or storage projects with direct flow components) or combination of multiple water projects that: (a) was not constructed or otherwise in operation as of December 31, 2013; (b) diverts or stores water from points that are located upstream of the RICD Water Rights; and (c) is decreed and used for beneficial use within Water Division 5. New Water Projects may include water projects that utilize decreed water rights that are either senior or junior in administrative priority to the RICD Water Rights.
- ii. The term “Firm Yield” shall mean the average annual yield of a New Water Project (based on a 3-year running average basis), as determined by the River District in consultation with Glenwood Springs and the owners or operators of the New Water Projects.
- iii. The term “Cumulative Firm Yield” shall mean the combined average annual yield of all New Water Projects (based on a 3-year running average basis), as determined by the River District in consultation with Glenwood Springs.
- iv. The term “Junior Protected Yield” shall mean the portion of the Cumulative Firm Yield supplied by water rights junior to the RICD Water Rights, up to a maximum of 20,000 acre-feet minus the Cumulative Firm Yield of New Water Projects supplied by water rights senior to the RICD Water Rights.

Glenwood Springs shall consult with the River District on or prior to May 20th of each year regarding the implementation of this Section 11.g. If this consultation process determines that, during the period from June 8 to July 23 of that year, Glenwood Springs' placement of a call on the Colorado River for the RICD Water Rights in excess of 1,250 c.f.s. would likely impair the Junior Protected Yield, then the RICD Water Rights shall be deemed satisfied by calling, in order of priority, only those water rights necessary to produce an administrative flow rate of 1250 c.f.s. (as measured at the single measurement point described below in Section 23) from June 8 to July 23 of that year, or such portion of that period that is determined necessary to satisfy the Junior Protected Yield. This Section is intended to alleviate potential conflicts between the future operation of the RICD Water Rights and New Water Projects, but shall not be construed to require Glenwood Springs to reduce a call in the event that the Junior Protected Yield can be achieved by: (1) diverting water outside of the June 8 to July 23 time period each year; or (2) exercising water rights that are senior to the RICD Water Rights.

- h. CDOT Access. Glenwood Springs shall continue to work with CDOT regarding access and construction upon land owned by CDOT. Glenwood Springs shall not access or use any lands owned by CDOT for development or operation of whitewater parks without first obtaining any necessary permits or entering into agreement with CDOT concerning such access or use.
- i. CPW Coordination. Prior to initiation of a Section 404 permit application to the U.S. Army Corps of Engineers, Glenwood Springs shall consult with Colorado Parks & Wildlife (CPW) with regard to RICD structure siting, design and contemplated future maintenance. CPW may participate in the Section 404 permitting process to ensure that terms are included in the Section 404 permit(s) to protect aquatic resource values. Glenwood Springs also agrees to consult with CPW as to (1) the timing of construction and (2) the timing of any future reservoir releases for the benefit of the RICD Water Rights.

CONCLUSIONS OF LAW

- 12. The Application filed herein was complete, covering all applicable matters required under C.R.S. § 37-92-302 (2013).
- 13. All notices required by law have been given, and no further notice need be given.
- 14. 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) (2013).
- 15. The Court has authority to confirm the conditional surface water rights for recreational in-channel diversion as requested by the Applicant. C.R.S. §§ 37-92-103(4) and (10.3) (2013).

16. The Court concludes that the Applicant is an entity entitled to obtain a water right for a recreational in-channel diversion pursuant to C.R.S. §§ 37-92-103(4) and (10.3) (2013).

17. The Applicant has complied with all requirements and met all standards and burdens of proof; therefore it is entitled to a decree confirming and approving the conditional RICD Water Rights described herein.

RULING OF THE REFEREE

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

19. The Court GRANTS the Application and hereby confirms conditional RICD Water Rights for the No Name Whitewater Park, the Horseshoe Bend Whitewater Park, and the Two Rivers Whitewater Park. The RICD Water Rights are 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.

20. The City Council of Glenwood Springs shall determine, by resolution, up to three employees or agents of the Glenwood Springs who shall be authorized to place a call for the RICD Water Rights approved herein. Glenwood Springs 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 RICD Water Rights decreed herein.

21. The Application herein was filed in 2013 and the water rights herein confirmed shall be administered as filed in 2013, and shall be junior to all water rights for which applications were filed in prior years. As between water rights filed in 2013, priorities shall be determined by historical dates of appropriation and shall not be affected by the date of entry of this Decree.

22. The Applicant may seek curtailment of water rights junior to the RICD Water Rights, diverting upstream of the RICD structures, only at times when beneficial use of the RICD Water Rights for non-motorized boating is occurring.

23. As part of compromise negotiations, Glenwood Springs has agreed to install, operate and maintain a single point gage for measurement and recording of administration for the RICD Water Rights granted in this Decree. This device will be acceptable to the Division engineer for water rights administration purposes. The gage shall be installed at the location of the first RICD structure to be constructed and shall be used for measurement at all of the RICD structures granted in this Decree. Only this device will be used for administrative purposes. Applicant shall provide accounting relating to the RICD Water Rights, as required by the Division Engineer.

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 ____ day of _____, 20____.

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 Glenwood Springs desires to maintain the conditional surface water rights decreed herein, or until such rights are made absolute.

DATED this ____ day of _____, 20____.

BY THE COURT:

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

Attachment 4
Draft Settlement Concept

GLENWOOD SPRINGS RICD
Case No. 13CW3109, Water Division No. 5

FEBRUARY 2018 SETTLEMENT CONCEPT (*H&H Revisions – 6/28/18*)
CONFIDENTIAL AND SUBJECT TO C.R.E. 408

Yield Protection for New Water Rights.

Glenwood Springs has agreed to the following additional call reduction requirements and terms to protect the future yield of certain New Water Rights junior to the RICD Water Rights:

- i. In years when the NRCS June 1 Colorado Water Supply Outlook Report (the "Outlook Report") forecasts the 50% exceedance probability streamflow at the Colorado River at Dotsero to be above 1,400,000 acre-feet for the period from April through July, Glenwood Springs may place calls for the RICD Water Rights in the full amounts, and within the time periods, decreed herein, without application of the call reduction terms described in subsection 11.g.ii, below. Such calls shall be administered and enforced by the Division Engineer.

In the event that the Outlook Report is not released prior to June 8 of any year, Glenwood Springs agrees that it will not place a call in excess of 1,250 c.f.s. until the Outlook Report has been released, and it has been determined that the conditions set forth in subsection 11.g.i have been satisfied, or Glenwood Springs is otherwise entitled to place such a call pursuant to subsection 11.g.ii, below.

Additionally, if the NRCS or any successor agency stops providing the Outlook Report or similar report forecasting the June 1 50% exceedance probability for streamflow in the Colorado River at Dotsero, the parties shall confer and decide upon another objective measure that will fairly and reliably provide substantially the same information on predicted streamflow. For the limited purpose of this paragraph, the Court shall retain continuing jurisdiction to resolve any dispute regarding the selection of another objective measure in the event that the Outlook Report or similar report should no longer be available and the parties are unable to agree upon and select another objective measure.

- ii. In years when the Outlook Report forecasts the 50% exceedance probability streamflow at the Colorado River at Dotsero to be equal to or less than 1,400,000 acre-feet, in order to protect the future yield of certain New Water Rights junior to the RICD Water Rights, between June 8 and July 23 each year, the rate of any call for the RICD Water Rights shall be subject to potential reduction as follows:
 - (a) For purposes of this subsection 11.g, "New Water Right" shall mean any water right (which may include direct flow, storage, or storage with direct flow components, but excludes any instream flow components) that:

- (1) has a decreed priority date of January 1, 2014 or later pursuant to C.R.S. § 37-92-306;
- (2) is decreed to divert or store water upstream of the RICD Water Rights;
- (3) is decreed with a specified average annual yield (the annual yield decreed for each New Water Right is referred as "Decreed Annual Yield");
- (4) in combination with all other New Water Rights does not exceed a cumulative Decreed Annual Yield of 60,000 ~~acre~~-feet, to be allocated in order of decreed water right priority; *616-723 = ~ 1/2 of*
- (5) has a date of first use no later than _____, 204____ (30 years after entry of a final decree in this matter);
- (6) has a decree that requires daily real-time streamflow and diversion measurement with telemetry (or functionally equivalent daily accounting for on-channel reservoir storage), and daily accounting and reporting of accrued Decreed Annual Yield, so that water availability, diversions and accrual of Decreed Annual Yield can be remotely monitored by the Division Engineer and Glenwood Springs (or provided electronically by the operator to the Division Engineer and Glenwood Springs on a daily basis);
- (7) is exercised in priority for beneficial use within the State of Colorado, and not pursuant to a plan for augmentation or substitute water supply plan that provides for replacement of depletions upstream of the RICD Water Rights; and
- (8) is exercised so that any other water rights senior to the RICD Water Rights owned by the New Water Right holder that are located in the same former water district¹ and decreed for the same type and place of use as the New Water Rights are utilized first, *Owner* such that any water legally and physically available, including consideration of any decrees and related operational criteria for complex water supply systems that dictate that senior water rights limit in-priority diversions under certain circumstances, is diverted and/or stored prior to the exercise of the New Water Right, subject to any decree conditions or constraints and related operational criteria for complex water supply systems.

¹ The former water districts are defined in §§ 148-13-2 through -72, C.R.S. (1963).

- (b) The holder of a New Water Right shall: (i) provide written notification to Glenwood Springs when the New Water Right is decreed; and (ii) after exercise of the New Water Right begins, directly provide to Glenwood Springs (or otherwise make available on the internet) the daily measuring and accounting data required by subsection 11.g.ii.(a)(6) above, in all years when yield protection is sought under the following subsection 11.g.ii.(c), below.
- (c) To the extent that any New Water Right does not realize its Decreed Annual Yield at its decreed point(s) of diversion or place(s) of storage by June 8 of any year, and if Glenwood Springs' placement of a call for the RICD Water Rights between June 8 and July 23 would materially prevent the accrual of additional Decreed Annual Yield that would otherwise be legally and physically available to that New Water Right at its point of diversion or storage, the Division Engineer shall administratively reduce Glenwood Springs' call by such amount as the Division Engineer determines to be necessary to allow continued diversion by the affected New Water Right up to its Decreed Annual Yield. However, in no case shall Glenwood Springs be required to reduce its call below 1,250 c.f.s. or to protect cumulative Decreed Annual Yield of all New Water Rights in excess of 50% of the cumulative Decreed Annual Yield of all New Water Rights decreed and in operation that year, not to exceed a maximum protected yield volume of 30,000 acre feet during the June 8 through July time period.
- (d) Nothing in this subsection 11.g.ii shall require Glenwood Springs to reduce calls for the RICD Water Rights during the authorized days and hours for competitive events (up to five consecutive days between June 30 and July 6 each year), as set forth above in subsections 6.f, 7.f., and 8.f., provided that such competitive events are scheduled and actually held during the years in which Glenwood Springs seeks to invoke the protection of this subsection. Additionally, Glenwood Springs shall provide written notice to all parties to this decree and the Division Engineer: (1) informing the parties and the Division Engineer that the competitive events have been scheduled, within seven days of such events being scheduled, and (2) informing the parties and the Division Engineer that the scheduled events will be held as scheduled, at least seven days prior to the date of the first scheduled event.
- (e) Any reduction in the flow rate of any call placed by Glenwood Springs pursuant to subsection 11.g.ii shall not be considered injury to the RICD Water Rights.