



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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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: November 14-15, 2018 Board Meeting

AGENDA ITEM: 19. Glenwood Springs RICD Application Update

Staff Recommendation:

This item is informational only, with no Board action requested. The Board may wish to deliberate the request from Glenwood Springs in the City's attached memo and determine if additional information or action is needed.

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 City recently presented the latest settlement concept to the CWCB Board at the September 2018 meeting. The Board indicated that the City needed to better demonstrate how the latest reduced call provision (paragraph 11.g in the attached decree) addresses the Findings of Fact adopted by the CWCB in July 2015.

As required under § 37-92-102(6)(b) the adopted CWCB Findings of Fact had three main findings as follows:

- 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.

The attached memo from Wright Water Engineers was submitted to provide the City's perspective on how the reduced call provision addresses the CWCB's 2015 Findings of Fact.



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For more background information, please refer to the [September 2018](#) and [July 2015](#) Board Memos.

Attachments:

- 1) Glenwood Springs' Update and Response to CWCB 2015 Findings
- 2) CWCB Amended Comprehensive Findings of Fact approved July 2015
- 3) Most Recent Proposed Ruling for 13CW3109, dated November 2, 2018

Attachment 1

Glenwood Springs' Update and Response to CWCB 2015 Findings



WWE
MEMORANDUM

To: Erik Skeie, Brent Newman, Carlee Brown
Colorado Water Conservation Board
Via Email

Cc: Mark Hamilton and Chris Thorne
Holland & Hart LLP

From: Wright Water Engineers, Inc.
Jonathan Kelly, P.E.

Date: November 2, 2018

Re: GWS RICD Case—Update and Response to CWCB 2015 Findings

On behalf of the City of Glenwood Springs (the City), Wright Water Engineers, Inc. (WWE) has prepared this memorandum to the Colorado Water Conservation Board (CWCB) to (1) update the CWCB regarding the status of Water Court Case No. 13CW3109, in which the City is seeking confirmation of recreational in-channel diversion (RICD) water rights, and (2) provide an updated technical basis for the Board's review and evaluation of the decree proposed by the City for entry by the Water Court, to support positive Findings of Fact in that case. At the request of CWCB staff, consultants for the City appeared before the Board at its September 2018 meeting to begin the process of updating the Board on case developments, including the development of a new approach to protection of junior water rights appropriations. The City now requests that the Board direct CWCB staff to work with us between now and the CWCB Board meeting in January 2019 to move toward amending the Findings and reaching a settlement. In particular, this memorandum addresses certain aspects of the Board's initial Findings of Fact (the Findings), filed with the Water Court on September 14, 2015, and the July 2, 2015 memorandum to the CWCB from Ted Kowalski and Suzanne Sellers. WWE used the format of this CWCB memorandum to organize the discussion below.

BACKGROUND

The City filed an application for RICD water rights in 2013 to protect and enhance recreational boating activities in the Colorado River between the Shoshone Power Plant and the confluence with the Roaring Fork River. The claimed water rights include a base/novice flow rate of 1250 c.f.s, equivalent to the existing non-consumptive senior water right for the Shoshone Power Plant, and two higher flow rates for intermediate to advanced boating experiences. For a period of 46 days, the City claims RICD flows of 2,500 cfs, which is a target flow rate for intermediate boaters that is particularly desirable to the commercial rafting industry. In addition, the City seeks to protect "event" flows of 4,000 cfs during a five-day period around the Fourth of July holiday in order to be able to host a boating festival at a time when other Colorado streams no longer experience flow levels capable of supporting such an event.

Consultants for the City presented at the July 15-16, 2015 Board meeting in Ignacio. At the time, the City had only begun the process of working with objectors in the case to understand and address their concerns. While we had met and/or settled with some of the opposers by then, settlement negotiations had not commenced at that point with the Homestake Partners and other parties. Subsequent to the September 2018 CWCB board meeting, the City has also continued to coordinate with attorneys for Western Resource Advocates, American Whitewater, Grand County, and Town of Gypsum concerning the revised decree language in anticipation of the development of settlement stipulations with these additional parties.

Since the 2015 Board Meeting, the City has made substantial progress in working with opposers to understand their concerns and develop decree provisions to address those concerns. The City has signed stipulations agreeing to entry of a proposed decree with the U.S. Bureau of Land Management, Denver Water, the Glenwood Hot Springs Lodge & Pool, Inc., the Ute Water Conservancy District, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, the Colorado Department of Transportation, and the West Divide Water Conservancy District. In addition, the City has reached conceptual settlement terms with the Homestake Partners group and the River District, pending execution of final stipulations. It is the City's understanding that both the Homestake Group and the River District's staff support resolution of this matter on the terms set forth herein. Applicant is working with staff at the River District toward having its Board take action on approving the stipulation at its next board meeting in January 2019. In addition, we continue to work with the Homestake Partners with the objective of having a final stipulation prior to the CWCB Board meeting in January 2019.

The key to the successful negotiations since the July 2015 Board Meeting has been the development of decree terms and conditions that will protect additional development upstream of the RICD reach, whether that be in the form of planned projects in the upper Colorado River basin for the benefit of Western Slope water users or transmountain diversions for the Front Range. As described in more detail below, the extensive and resource intensive negotiations have resulted in a comprehensive "call reduction" provision in the proposed decree, that will effectively protect the ability of Colorado to develop its compact entitlements and promote maximum utilization, the first two statutory factors that apply to the CWCB's evaluation of the City's claims. The third statutory factor that the CWCB is to consider is whether the exercise of the RICDs would cause material injury to existing instream flow (ISF) water rights. The 2015 Findings confirm that this criterion is satisfied and need not be further addressed.

A copy of the City's latest proposed decree is attached. It sets forth various recent changes to the decree, including in particular changes to the hours of operation of the RICD water rights (see paragraphs 6.f, 7.f, and 8.f), the call reduction provision (see paragraph 11.g) and revised language concerning environmental permitting and consultation recently requested by Colorado Parks & Wildlife (see paragraph 11.i). These terms are further discussed below, followed by a discussion of how the 2015 CWCB Findings have been addressed.

CALL REDUCTION PROVISION

One of the key concerns raised by CWCB staff at the time of the 2015 Board Meeting was that the proposed decree would not maximize beneficial use for future upstream development under junior

water rights. In prior RICD cases, subordination provisions were included to protect junior water rights up to a certain volumetric limit. Previous RICD decrees, such as those for Grand County and Pitkin County, have included protection of up to 3,000 acre-feet. This approach was not workable for the Glenwood Springs RICD since it would also result in the subordination of the 1,250 cfs base/novice flow claim due to the statutory restriction of one flow claim per time period despite the prior existence of an existing senior non-consumptive water right in this amount that existing and future water rights are already subject to. Consequently, the City and the opposers have worked hard to cooperatively develop an alternative mechanism to achieve similar results.

The concept that ultimately achieves this objective, and which is the basis for the recent settlement agreements, is the call reduction provision (paragraph 11.g of the proposed decree), which will allow for junior, upstream water rights that would not otherwise be able to legally divert, to require the City to reduce a call under the RICD water right during the 46-day period, at such times when claimed flows exceed 1,250 cfs in an amount sufficient to allow the junior rights to divert. There are criteria needed, and specified in the proposed decree, for administration by the Division Engineer that must be met for a junior water right to qualify for protection under this provision. In addition, there would be a 30,000 acre-foot cap on the cumulative volume of junior yield that can benefit from this provision - this cap is an order of magnitude larger than previous RICD subordination provisions.

The following is an example of how the call reduction provision might work:

A junior water right decreed to divert upstream of the RICD is taking water up until June 23, when the RICD right transitions from 1,250 cfs to 2,500 cfs. On this date, the upstream junior has sufficient physical supply and would be in priority if not for the RICD call. In addition, the upstream right has installed real-time measuring and reporting instrumentation necessary for administration by the Division Engineer. Under this scenario, the RICD calling right would be reduced by the amount necessary to allow the junior right to continue diversions. Even though a specific water right is triggering the call reduction provision, all upstream water rights and numerous other water users will benefit from the call reduction.

At the September 2018 CWCB meeting, a question was raised as to whether the City's flow claims have been reduced since the original filing. The City intentionally made minimal flow claims relative to available flow in its original application, in part to keep the volumetric claim below 50% of available flow, and to have flexibility to develop call reduction scenarios along the lines of the provision that has since been developed in this case. Although the maximum rates that can be claimed under the RICD have not changed, in operation the call reduction provision and hours of operation will serve to reduce the claimed flow rates in real time as needed to allow upstream water projects to divert.

HOURS OF OPERATION

As part of our extensive negotiations with the Homestake Partners, the City agreed to reduce the hours of operation allowable at the boating park. Only during these hours of operation will the City be able to place a call for its RICD water rights. The restriction on the hours of operation are included in paragraphs 6.f, 7.f, and 8.f of the attached proposed ruling.

CPW CONSULTATION

The City has been in communication with Jay Skinner of the CPW since the September 2018 Board meeting. This communication has resulted in the development of additional decree language that is intended to ensure appropriate consultation prior to environmental permitting. This is set forth in a revised paragraph 11.i of the decree, which now reads as follows:

11.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. Glenwood Springs' obligation to consult with CPW prior to Section 404 permitting shall apply prior to initial construction of any RICD structures, as well as in the future should Glenwood Springs ever seek to materially enlarge any existing RICD structures or add any new RICD structures. 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.

OVERVIEW OF 2015 FINDINGS OF FACT

The 2015 Findings included adverse findings on the potential impact of the RICD to full utilization of Colorado's compact entitlement and maximum utilization criteria. The 2015 Findings concluded that the RICD would not impact existing ISF water rights.

The CWCB staff considered the criteria identified in the RICD Rules in developing the Findings ultimately approved by the Board. As evidenced in its memorandum, the staff did not have concerns with many of the factors but proposed negative findings in light of its views that the version of the decree proposed at that time (2015) did not adequately address several issues. We will summarize these key issues and describe how the terms and conditions in the current proposed decree (2018) address these issues.

The adverse conclusions incorporated in the 2015 Findings were predicated on technical issues that are addressed in the proposed decree. These issues included exacerbation of the call on the Colorado River, and limitation of exchange potential through the reach containing the RICD water rights. Other issues raised included potential environmental impacts, reasonable demand for recreational activities, and minimum flow needed for desired recreational experiences.

The following discussion summarizes CWCB staff's analysis as presented in its memorandum prior to the 2015 Board meeting in support of the 2015 Findings. The specific paragraph numbers below track the 2015 Findings, and the italicized text is taken directly from CWCB's 2015 staff memorandum. If staff concluded that an issue had been adequately addressed, then "no issue" is indicated. If, however, staff identified remaining concerns, WWE has provided a response as to how the terms and conditions of the proposed decree address those issues.

Percent of Historical Flows (paragraph I.a.i.)

Based on these facts, Staff determines that the Applicant is seeking less than 50% of the average historic flows and therefore is not be subject to the additional limitations described above.

No issue.

Days of Call and Volume (paragraphs I.a.iii, v, vi, viii, ix and I.c.i, ii, iv, vii, viii, xi, xii, xv, xvi, xix, xx).

For these reasons, Staff contends that the RICDs will exacerbate the call on the river and materially impact the ability of the state to fully use its compact entitlements because the RICDs will pull a substantial amount of water downstream of the RICDs.

When the CWCB staff evaluated the City's flow claims, the concept of the call reduction provision had only recently been developed in coordination with the River District. Other parties and CWCB staff had limited time to assess it, and staff's recommendations therefore did not attribute any flow or volume reductions to any "call reductions." Nonetheless, excluding consideration of a call reduction mechanism, and ignoring any calls from the existing senior Shoshone hydropower right, CWCB staff's analysis of the potential for new calls by the RICD water rights found that only an average of 17 additional days of call could occur in a proposed 183-day long RICD season. With the addition of a call reduction provision, and consideration of the existing Shoshone water right, the proposed new comprehensive call reduction provision will serve to reduce or eliminate this call potential with regard to beneficiaries of the new provision. In addition, as discussed above, the hours of operation have been further limited, which will also serve to reduce the volume of the call demand.

Upstream and Downstream Water Demand (paragraphs I.a.ii and iv)

From this information, Staff concludes that water that may be pulled through the RICDS and may potentially be beneficially used before the water leaves the state.

No issue.

Compact Compliance (paragraphs I.a.vii and I.c.xvii)

To address concerns about how the RICD may affect Colorado's future compact compliance, the Applicant has included a compact compliance provision in the proposed decree, which is similar to language approved by the Board in Pitkin County's RICD decree. Staff finds this provision acceptable and appropriate.

No issue.

Provision for Reducing or Canceling RICD (paragraph I.a.x and I.c.xvii)

The Applicant has not included additional provisions for reducing or canceling the RICD other than the compact compliance provision and the reduced call subordination provision indicated above. Thus, the proposed RICDs will impact the ability of the State of Colorado to consumptively use its compact entitlements and would not promote maximum utilization of Colorado's water resources.

CWCB staff had previously recognized the inclusion of the requested language regarding Compact Administration (paragraph 11.a). Staff also found that there was sufficient downstream potential for development of beneficial consumptive uses. When these factors are combined with the call reduction provision, the proposed decree ensures that the RICD water rights will not materially impair the ability of Colorado to develop its and place to consumptive beneficial use its compact entitlements.

Staff had previously recognized that the City's claim satisfied the statutory definition of being less than 50 percent of the available flow during the RICD season. The claimed volume is actually much less than 50 percent when considering that for 137 of the 183 days of the RICD season, the flow claims are the same as the existing senior Shoshone call; the restricted hours of operation for the water park will further limit the potential called volume; and, finally, the new call reduction provision will lessen the called volume during critical periods. These factors all combine to ensure that the adjudication and administration of the RICD water rights, in the amounts claimed, will appropriately balance competing water needs and therefore promote maximum utilization of the waters of the State.

The call reduction provision was developed in cooperation with opposers including the Homestake Partners and the River District with the express purpose of reducing the potential call by the RICD water rights at times when junior, upstream water rights would otherwise be able to divert water for beneficial use. At any time when the flows exceed the historical Shoshone call of 1,250 cfs (June 8 through July 23), the flows can be reduced by an amount necessary—but not below the historical Shoshone right of 1,250 cfs—to enable eligible water rights to divert. Since the call is being reduced, any upstream water right could benefit when the provision is implemented.

Instream Flow Water Rights (paragraph I.b)

Staff contends that the proposed RICDs will not cause material injury to existing ISF water rights because the next downstream ISF is located at the "15-mile Reach" above Grand Junction, approximately 75 miles downstream.

No issue.

Federal Laws, Regulations and Policies (paragraph I.c.iii)

The Applicant has indicated that it intends to obtain all required regulatory approvals and permits upon completion of its final design.

No issue.

Design Considerations (paragraphs I.c.iv, vii, xiii, xiv, xviii)

The lack of an updated design called into question the efficiency of the current design and whether the claimed flows meet the requirement that they are the “minimum amount of stream flow for a reasonable recreational experience.” Moreover, the Applicant had not demonstrated that it has used a reasonable and efficient means to use, divert, capture, and control the water for the RICD to minimize the call upon the river and avoid waste.

In its rebuttal, the Applicant modified its cross-sectional design of the whitewater parks. This information represents new information that should have been provided in the Applicant’s original submittal. Staff is not inclined to change its original proposed findings associated with the design considerations until the objector’s have had a chance to respond to this late information.

The City’s water park design engineer, Scott Shipley, P.E. of S2o Engineering, prepared a rebuttal report to specifically address the CWCB’s initial concerns regarding minimum amount of flow for a reasonable recreational experience. The analyses included in this report were not considered in the Staff’s proposed findings. The City stands by the proposed design with the bypass channel as meeting the criteria for claiming the minimum flow necessary for the intended recreational experience. Furthermore, the design uses a reasonable and efficient means to use, divert, capture, and control the water for the RICD to minimize the call upon the river and avoid waste.

Demand for RICDs (paragraph I.c.v)

The Staff agrees that a demand for recreational boating exists; however, the Staff does not agree that the demand is reasonable for the flow amounts sought given that the highest visitation tends to occur at flow levels closer to the minimum flow levels sought in the applications (1250 cfs). With the benefit of engineered structures, the demand should be able to be met at these lower flow levels.

The City conducted extensive interviews with the boating community to determine the most desired flow rates. The rafting community, in particular, was adamant that the longer flows could be maintained at the 2,500-cfs level, the better for their business. The City is seeking to enhance the existing experience for these users, but also create a draw for new users seeking more advanced experiences. Specifically, the City desires to establish an annual boating festival around the Fourth of July weekend, when competition flows can still be found at the proposed RICD locations.

Appropriate Time Limitations (paragraph I.c.vi)

The Applicant has demonstrated a need for a period of less than 14 days for its July 4th holiday event flows and therefore has appropriate time limitations included within the application.

No issue.

Economic Benefit (paragraph I.c.ix)

The Applicant and AW&WRA [American Whitewater and Western Resource Advocates] have provided adequate data to support a finding that there will likely be an economic benefit from the existence of the proposed RICDs.

No issue.

Environment (paragraph I.c.x)

While, the Applicant has proposed language for the decree that may address CPW's Section 404 permitting concerns, this language does not address the other environmental concerns raised.

As noted above, the City has continued to work with Colorado Parks and Wildlife (CPW) staff to develop decree language to address CPW's concerns. In addition, the S2o rebuttal report specifically addressed concerns raised regarding scour, erosion, sediment transport, and fish passage.

CONCLUSION

The City hopes the above discussion will assist the Board in evaluating the significant progress and revisions to the proposed decree that have been made since the 2015 Findings issued. We believe that the terms and conditions of the proposed decree, including the call reduction provision, satisfy the remaining concerns expressed by the CWCB staff and the Board. As a result, we are hopeful that the Board will authorize staff to stipulate to entry of the proposed decree and/or take steps to issue amended findings as may be deemed procedurally appropriate by the Board and the AG's office.

Attachment: Case No. 13CW3109 Proposed Decree – November 2, 2018

Attachment 2

CWCB Amended Comprehensive Findings of Fact approved July 2015



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

Most Recent Proposed Ruling for 13CW3109, dated November 2, 2018



REVISED DECREE NOVEMBER 2, 2018
SETTLEMENT COMMUNICATION—SUBJECT TO C.R.E. 408

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: The CITY 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, Judgment 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, the City and County of Denver by and through its Board of Water Commissioners, the Glenwood Hot Springs Lodge & Pool, Inc., the Ute Water Conservancy District, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, the Colorado Department of Transportation, the West Divide Water Conservancy District; 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. **Background:** 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 in Sections 6, 7 and 8. The time period for all of the RICD Water Rights would generally extend from April 1 through September 30 each year. During this time period, the RICD Water Rights would have three decreed flow rates. The lowest flow rate in the amount of 1,250 c.f.s. would extend from April 1 through June 7, and again from July 24 through September 30, each year. A higher flow rate of 2500 c.f.s. would extend between June 8 and July

23 each year. And, an “event” flow rate of 4000 c.f.s. would extend for up to five continuous days between June 30 and July 6 each year. The 1250 c.f.s. flow rate is intended to allow beginner and intermediate boaters to use the boating structures to develop their skills. The 2500 c.f.s. flow rate is intended to make the boating structures more attractive to intermediate users and also allow for freestyle boating maneuvers by advanced boaters. The 4000 c.f.s. flow rate is intended to provide an experience similar to other competitive event sites in Colorado, while still supporting intermediate use.

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: NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ 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: NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ 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 Glenwood Springs~~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

The dates and times of operation are ~~All of the above amounts are~~ limited as follows: ~~to~~

Dates	Times
<u>April 1 through April 30</u>	<u>6:30 a.m. through 8:00 p.m.*</u>
<u>May 1 through May 31</u>	<u>6:00 a.m. through 8:30 p.m.*</u>
<u>June 1 through June 30</u>	<u>6:00 a.m. through 9:00 p.m.*</u>
<u>July 1 through July 31</u>	<u>6:00 a.m. through 9:00 p.m.*</u>
<u>August 1 through August 31</u>	<u>6:00 a.m. through 8:30 p.m.*</u>
<u>September 1 through September 30</u>	<u>6:30 a.m. through 7:30 p.m.*</u>

~~the period between 6:00 a.m. and 9:00 p.m. each day,~~

~~*Dexcept during~~ lighted competitive events, ~~when evening these~~ hours may be extended until ~~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: NW¹/₄ of the SE¹/₄ 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: NW¹/₄ of the SE¹/₄ 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 Glenwood Springs ~~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

The dates and times of operation ~~All of the above amounts~~ are limited as follows:
~~to~~

<u>Dates</u>	<u>Times</u>
<u>April 1 through April 30</u>	<u>6:30 a.m. through 8:00 p.m.*</u>
<u>May 1 through May 31</u>	<u>6:00 a.m. through 8:30 p.m.*</u>
<u>June 1 through June 30</u>	<u>6:00 a.m. through 9:00 p.m.*</u>
<u>July 1 through July 31</u>	<u>6:00 a.m. through 9:00 p.m.*</u>
<u>August 1 through August 31</u>	<u>6:00 a.m. through 8:30 p.m.*</u>
<u>September 1 through September 30</u>	<u>6:30 a.m. through 7:30 p.m.*</u>

~~the period between 6:00 a.m. and 9:00 p.m. each day, *except~~ during lighted
competitive events, ~~evening when these~~ hours may be extended until 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 Glenwood Springs~~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

The dates and times of operation ~~All of the above amounts~~ are limited as follows:

Dates	Times
<u>April 1 through April 30</u>	<u>6:30 a.m. through 8:00 p.m.*</u>
<u>May 1 through May 31</u>	<u>6:00 a.m. through 8:30 p.m.*</u>
<u>June 1 through June 30</u>	<u>6:00 a.m. through 9:00 p.m.*</u>

<u>July 1 through July 31</u>	<u>6:00 a.m. through 9:00 p.m.*</u>
<u>August 1 through August 31</u>	<u>6:00 a.m. through 8:30 p.m.*</u>
<u>September 1 through September 30</u>	<u>6:30 a.m. through 7:30 p.m.*</u>

~~to the period between 6:00 a.m. and 9:00 p.m. each day, *except d~~During competitive events, ~~evening when these~~ hours may be extended ~~until 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.
 - l. 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 meetings on July 16, 2015, September 19, 2018, and, 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, or for findings of reasonable diligence or to make water rights absolute) 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 such 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. Glenwood Springs also shall not use the RICD Water Rights as a basis to oppose any water rights application for New Water Rights upstream of the RICD Water Rights, as such term is defined below in sub-section 11.g.ii(a). 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. Yield Protection for ~~of~~ New Water RightsProject Yield.

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 National Resources Conservation Service’s (“NRCS”) June 1 Colorado Water Supply Outlook Report (the “Outlook Report”) forecasts the 50% exceedance probability streamflow in 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 agree upon another objective measure that will fairly and reliability 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 another objective measure.

ii. In years when the Outlook Report forecasts the 50% exceedance probability streamflow in 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;
- (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 located in the same former water district¹ as the New Water Right and decreed for the same type and place of use as the New Water Rights are utilized first, prior to the exercise of the New Water Right, but not limiting flexible operations of water rights with decreed volumetric limitations.
- (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 electronically) the daily measuring and accounting data required by

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

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 23 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.

~~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. Glenwood Springs' obligation to consult with CPW prior to Section 404 permitting shall apply prior to initial construction of any RICD structures, as well as in the future should Glenwood Springs ever seek to materially enlarge any existing RICD structures or add any new RICD structures. 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.

JUDGMENT AND DECREE~~**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.

24. Parts of this decree are the result of negotiations and settlement discussions between the parties. Its terms are based on the specific facts and circumstances of this case. By stipulating to the entry of this decree, no party in this case intends that it become a precedent to resolve issues in any other case.

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. A~~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.

~~DONEATED~~ this ____ day of _____, 20__.

BY THE COURT:

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

District Court, Water Division No. 5, Colorado

Case No. 13CW3109; Application of the City of Glenwood Springs

Findings of Fact, Conclusions of Law, ~~Ruling of Referee~~, Judgment and Decree

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