



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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Denver, CO 80203

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

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

DATE: March 20-21, 2018 Board Meeting

AGENDA ITEM: 29.Glenwood Springs RICD Findings of Fact

Staff Recommendation:

Staff recommends adoption of the Amended Findings of Fact dated March 8th, 2019 for the Glenwood Springs Recreational In Channel Diversion (Attachment 1).

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 presented a settlement concept to the CWCB Board at the September 2018 meeting. The Board determined that the City needed to better demonstrate how the settlement concept, including the reduced call provision, non-opposition provision and time restrictions (paragraphs 11.g, 11.d, 6.f, 7.f and 8.f in the attached decree) addresses the negative Findings of Fact adopted by the CWCB in July 2015. The City of Glenwood Springs returned to present at the November 2018 Board Meeting and explained how the settlement concept and decree provisions satisfied the remaining opposers to the RICD water rights and should result in revised findings by the CWCB. Staff was directed to amend the 2015 CWCB Findings of Fact to take the new decree provision and negotiations with Colorado Parks and Wildlife into consideration.

Pursuant to § 37-92-102(6)(b), the 2019 amended CWCB Findings of Fact are as follows:

- The adjudication and administration of the RICDs will not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;
- The proposed RICDs will not cause material injury to instream flow water rights; and
- The adjudication and administration of the RICDs, in the amounts claimed, will promote maximum utilization of the waters of the State.

The proposed March 8, 2019 Amended Findings of Fact are attached to this memo.



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

Attachments:

- 1) CWCB Amended Findings of Fact. March 8, 2019
- 2) Map of Proposed RICD
- 3) Most Recent Proposed Ruling for 13CW3109, dated March 1st, 2019.
- 4) March 4th Draft Agreement between Glenwood Springs and Colorado Parks and Wildlife
- 5) CWCB Findings of Fact approved July, 2015
- 6) RICD Rules

Attachment 1

Proposed CWCB Findings of Fact

July 16, 2015, the CWCB deliberated at a public meeting pursuant to its statutory obligation to consider three factors and issue written findings as to each, as required under section § 37-92-102(6) C.R.S., and consistent with its Rules Concerning Recreational In-Channel Diversions, codified at 2 C.C.R. 408-3. On September 14, 2015, the CWCB submitted Amended Comprehensive Findings of Fact to the Court. Subsequently, Glenwood Springs, in consultation and settlement with opposers to the RICD water court application, significantly revised its proposed draft decree for the RICD water rights and included additional terms and conditions that are more restrictive on Glenwood Springs. Considering these more restrictive provisions as set forth in the revised proposed decree dated March 1, 2019, and after deliberation in a public meeting held on March 21, 2019, the CWCB determines that amending its findings dated September 14, 2015 is warranted. The Board makes the following amended findings regarding the proposed RICD water rights.

- A. The Board finds that adjudication and administration of the RICD water rights for the flow amounts and time periods summarized below and specified in the proposed decree dated March 1, 2019 will not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements. The Board considered the following in making this determination:
- i. The amount and location of remaining unappropriated compact entitlement waters in the basin in question and at the RICD point of diversion;
 - ii. The proximity of the RICD to the state line;
 - iii. The proximity of the RICD to suitable upstream points of diversion or storage which may be utilized by those who would place the water to consumptive beneficial use;
 - iv. The existence of suitable downstream points of diversion or storage for consumptive beneficial use before the water leaves the state;
 - v. Exchange opportunities within the State that may be adversely impacted by the existence of the RICD;
 - vi. Whether the basin is overappropriated;
 - vii. The effect on other decreed, existing undecreed, or reasonably foreseeable uses of the amount of water claimed;
 - viii. Whether a RICD shields waters from a consumptive use that would otherwise be available under a particular compact;
 - ix. Whether beneficial consumptive use opportunities upstream from the claimed RICD would further develop Colorado's compact entitlements

- and be impaired by applicant's sought for stream flow amounts; and
- x. What provisions in the application are proposed for reducing or canceling the RICD.

As applied for, and as currently proposed, the RICD water right is limited to the following rates.

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.

The March 1, 2019 draft of the proposed decree provides that Glenwood Springs can only call for the water under the RICD water right at the following dates and times of operation:

DATES	TIMES
April 1 through April 30	6:30 a.m. through 8:00 p.m.*
May 1 through May 31	6:00 a.m. through 8:30 p.m.*
June 1 through June 30	6:00 a.m. through 9:00 p.m.*
July 1 through July 31	6:00 a.m. through 9:00 p.m.*
August 1 through August 31	6:00 a.m. through 8:30 p.m.*
September 1 through September 30	6:30 a.m. through 7:30 p.m.*

*During lighted competitive events, evening hours may be extended until 12:00 midnight each day.

Additionally, Glenwood Springs has included terms and conditions at paragraphs 11.d and 11.g of the March 1, 2019 version of the proposed decree to allow for additional upstream development of water, including an agreement not to oppose applications for water rights in certain situations and a call reduction provision.

The CWCB finds that the RICD water rights will not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements.

- B. The Board finds that the exercise of the proposed RICD water rights will not cause material injury to existing instream flow ("ISF") water rights. The Board

considered the following in making this determination:

- i. The nature and extent of the ISF in the proposed reach or any affected downstream reach;
- ii. The timing and duration of the RICD as such may relate to the specific natural environment for which the ISF was decreed;
- iii. Whether the RICD, or administration of the RICD, would negatively impact the natural environment for which the ISF was decreed; and
- iv. Whether during the construction of the RICD structures, the construction may cause material injury to the ISF or the natural environment for which the ISF was decreed.

There are 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) 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. This finding is consistent with the Board's September 2015 findings.

C. The Board finds that the adjudication and administration of the proposed RICD water rights, under the terms and conditions of the March 1, 2019 draft decree, would promote maximum utilization of the waters of the State. The Board considered the following in making this determination:

- i. Whether there are any probable future upstream junior appropriations for direct diversion or storage;
- ii. Whether there are any probable future changes, transfers, or exchanges of water rights from points of diversion downstream of the reach affected by the RICD to points upstream of or in the reach affected by the RICD;
- iii. Whether the Applicant has demonstrated that it has complied or will comply with appropriate federal policies, regulations and laws;
- iv. Whether a reasonable and efficient means will be utilized to use, divert, capture and control the water for the RICD so as to minimize the call upon the river and avoid waste;
- v. Whether a reasonable demand exists for the recreational activity in question as determined by levels of current use and/or estimates of future use;

- vi. Whether the application has appropriate limitations upon the time of day, days per month, and the time of year during which the proposed RICD would be exercised;
- vii. The depths and flow rate of the proposed RICD;
- viii. With what frequency and duration, and from what sources, the requested amounts of water for the proposed RICD occur;
- ix. The economic effects of the proposed RICDs;
- x. The environmental effects of the proposed RICD;
- xi. The relationship of the requested RICD flow rates to the historical appropriated and unappropriated flow rates for each time period requested;
- xii. The effect of the RICD on other potential uses of water;
- xiii. Whether the application as a whole meets the elements of the definition of a RICD, as defined in section 37-92-103(10.3);
- xiv. Whether the RICD would conserve and efficiently use the available stream flow, thereby promoting maximum utilization of Colorado's water resources;
- xv. Whether the RICD will not make the river basin water critical and the resulting impact on existing water rights and users;
- xvi. Whether the RICD will work together with existing and/or future uses within the State of Colorado to promote maximum utilization of waters of the State;
- xvii. Any provision in the application for reducing or canceling the RICD;
- xviii. A description of each recreational opportunity sought at each flow amount sought, and why the flow amount is the minimum amount for each reasonable recreation experience sought;
- xix. The historical frequency and flow rates of imported water and reservoir releases through the proposed RICD reach, and whether such flows will be necessary to meet the flow rates claimed for the proposed RICD; and
- xx. Whether, and to what extent, unappropriated native flows exist in the proposed RICD stream reach during the periods claimed, and the percentage of unappropriated flows claimed by the proposed RICD.

The Board finds that the following provision at paragraph 11.i assists in ensuring that the construction of any proposed RICD structures will not affect the natural environment for which the downstream ISF water rights were decreed:

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.

On June 4, 2015 CPW issued a statement regarding potential environmental effects of the RICD specific to the proposed Horseshoe Bend site (Rule C.x. above). CPW staff testified at the 2015 hearing and at the November 2018 Board meeting that the Horseshoe Bend site is valuable bighorn sheep habitat. CPW staff additionally testified that this section of the Colorado River has a significant resident bighorn sheep population that is already impacted by human activities such as highway development and boat traffic. CPW staff also stated that this stretch of river provides valuable fish habitat as it is somewhat isolated from the highway and railroad, and the deep, confined channel makes ideal refuge habitat for fish. Glenwood Springs and CPW have negotiated an agreement that allows the Horseshoe Bend site to remain in the decree as an option for development as a site of an RICD park, but provides that before pursuing development of the Horseshoe Bend site, Glenwood Springs must first diligently pursue the No Name and Two Rivers sites as preferred and prioritized sites to develop one or the other of those two possible sites over development of the Horseshoe Bend site. The agreement further provides that in the event Glenwood Springs elects to pursue development of the Horseshoe Bend site because site specific constraints to the development of the Two Rivers or No Name locations are significantly more substantial and difficult to overcome than those presented at the Horseshoe Bend location~~if they are unable to develop either of the other two sites~~, CPW has sole discretion to withhold approval of development of the Horseshoe Bend site if the environmental concerns arising from Glenwood Springs's proposed use of the site have not been or cannot be adequately addressed.

Given the revised terms and conditions of the decree, and the agreement with CPW, the CWCB determines that the adjudication and administration of the RICD, in the amounts listed and with the call reduction provision in the March 1, 2019 decree, would promote maximum utilization of the waters of the State.

CONCLUSION

The CWCB, after deliberation in a public meeting, finds as follows:

- (1) The adjudication and administration of the RICD will not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements,
- (2) exercise of the RICD will not cause material injury to instream flow water rights appropriated pursuant to §§37-92-102 and
- (3) administration and adjudication of the RICD will promote maximum utilization of waters of the state.

Dated this ____th day of March, 2019.

PHILIP J. WEISER

Attorney General

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

/

JENNIFER MELE, #30720*

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 ____th day of March, 2019, I caused a true and correct copy of the foregoing **COLORADO WATER CONSERVATION BOARD'S SECOND AMENDED 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

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/s/_____

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 - ii. The proximity of the RICD to the state line;
 - iii. The proximity of the RICD to suitable upstream points of diversion or storage which may be utilized by those who would place the water to consumptive beneficial use;
 - iv. The existence of suitable downstream points of diversion or storage for consumptive beneficial use before the water leaves the state;
 - v. Exchange opportunities within the State that may be adversely impacted by the existence of the RICD;
 - vi. Whether the basin is overappropriated;
 - vii. The effect on other decreed, existing undecreed, or reasonably foreseeable uses of the amount of water claimed;
 - viii. Whether a RICD shields waters from a consumptive use that would otherwise be available under a particular compact;
 - ix. Whether beneficial consumptive use opportunities upstream from the claimed RICD would further develop Colorado's compact entitlements

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What provisions in the application are proposed for reducing or canceling the RICD.

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*During lighted competitive events, evening hours may be extended until 12:00 midnight each day.

Additionally, Glenwood Springs has included terms and conditions at paragraphs 11.d and 11.g of the March 1, 2019 version of the proposed decree to allow for additional upstream development of water, including an agreement not to oppose applications for water rights in certain situations and a call reduction provision.

The CWCB finds that the RICD water rights will not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements.

- B. The Board finds that the exercise of the proposed RICD water rights will not cause material injury to existing instream flow ("ISF") water rights. The Board

considered the following in making this determination:

- i. The nature and extent of the ISF in the proposed reach or any affected downstream reach;
- ii. The timing and duration of the RICD as such may relate to the specific natural environment for which the ISF was decreed;
- iii. Whether the RICD, or administration of the RICD, would negatively impact the natural environment for which the ISF was decreed; and
- iv. Whether during the construction of the RICD structures, the construction may cause material injury to the ISF or the natural environment for which the ISF was decreed.

There are 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) 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. This finding is consistent with the Board's September 2015 findings.

C. The Board finds that the adjudication and administration of the proposed RICD water rights, under the terms and conditions of the March 1, 2019 draft decree, would promote maximum utilization of the waters of the State. The Board considered the following in making this determination:

- i. Whether there are any probable future upstream junior appropriations for direct diversion or storage;
- ii. Whether there are any probable future changes, transfers, or exchanges of water rights from points of diversion downstream of the reach affected by the RICD to points upstream of or in the reach affected by the RICD;
- iii. Whether the Applicant has demonstrated that it has complied or will comply with appropriate federal policies, regulations and laws;
- iv. Whether a reasonable and efficient means will be utilized to use, divert, capture and control the water for the RICD so as to minimize the call upon the river and avoid waste;
- v. Whether a reasonable demand exists for the recreational activity in question as determined by levels of current use and/or estimates of future use;

- vi. Whether the application has appropriate limitations upon the time of day, days per month, and the time of year during which the proposed RICD would be exercised;
- vii. The depths and flow rate of the proposed RICD;
- viii. With what frequency and duration, and from what sources, the requested amounts of water for the proposed RICD occur;
- ix. The economic effects of the proposed RICDs;
- x. The environmental effects of the proposed RICD;
- xi. The relationship of the requested RICD flow rates to the historical appropriated and unappropriated flow rates for each time period requested;
- xii. The effect of the RICD on other potential uses of water;
- xiii. Whether the application as a whole meets the elements of the definition of a RICD, as defined in section 37-92-103(10.3);
- xiv. Whether the RICD would conserve and efficiently use the available stream flow, thereby promoting maximum utilization of Colorado's water resources;
- xv. Whether the RICD will not make the river basin water critical and the resulting impact on existing water rights and users;
- xvi. Whether the RICD will work together with existing and/or future uses within the State of Colorado to promote maximum utilization of waters of the State;
- xvii. Any provision in the application for reducing or canceling the RICD;
- xviii. A description of each recreational opportunity sought at each flow amount sought, and why the flow amount is the minimum amount for each reasonable recreation experience sought;
- xix. The historical frequency and flow rates of imported water and reservoir releases through the proposed RICD reach, and whether such flows will be necessary to meet the flow rates claimed for the proposed RICD; and
- xx. Whether, and to what extent, unappropriated native flows exist in the proposed RICD stream reach during the periods claimed, and the percentage of unappropriated flows claimed by the proposed RICD.

The Board finds that the following provision at paragraph 11.i assists in ensuring that the construction of any proposed RICD structures will not affect the natural environment for which the downstream ISF water rights were decreed:

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.

On June 4, 2015 CPW issued a statement regarding potential environmental effects of the RICD specific to the proposed Horseshoe Bend site (Rule C.x. above). CPW staff testified at the 2015 hearing and at the November 2018 Board meeting that the Horseshoe Bend site is valuable bighorn sheep habitat. CPW staff additionally testified that this section of the Colorado River has a significant resident bighorn sheep population that is already impacted by human activities such as highway development and boat traffic. CPW staff also stated that this stretch of river provides valuable fish habitat as it is somewhat isolated from the highway and railroad, and the deep, confined channel makes ideal refuge habitat for fish. Glenwood Springs and CPW have negotiated an agreement that allows the Horseshoe Bend site to remain in the decree as an option for development as a site of an RICD park, but provides that before pursuing development of the Horseshoe Bend site, Glenwood Springs must first diligently pursue the No Name and Two Rivers sites to develop one or the other of those two possible sites. The agreement further provides that in the event Glenwood Springs elects to pursue development of the Horseshoe Bend site if they are unable to develop either of the other two sites, CPW has sole discretion to withhold approval of development of the Horseshoe Bend site if the environmental concerns arising from Glenwood Springs's proposed use of the site have not been or cannot be adequately addressed.

Given the revised terms and conditions of the decree, and the agreement with CPW, the CWCB determines that the adjudication and administration of the RICD, in the amounts listed and with the call reduction provision in the March 1, 2019 decree, would promote maximum utilization of the waters of the State.

CONCLUSION

The CWCB, after deliberation in a public meeting, finds as follows:

- (1) The adjudication and administration of the RICD will not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements,

- (2) exercise of the RICD will not cause material injury to instream flow water rights appropriated pursuant to §§37-92-102 and
- (3) administration and adjudication of the RICD will promote maximum utilization of waters of the state.

Dated this ____th day of March, 2019.

PHILIP J. WEISER

Attorney General

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

/

JENNIFER MELE, #30720*

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 ____th day of March, 2019, I caused a true and correct copy of the foregoing **COLORADO WATER CONSERVATION BOARD'S SECOND AMENDED COMPREHENSIVE FINDINGS OF FACT** to be served electronically via ICCES File & Serve to each of the following:

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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

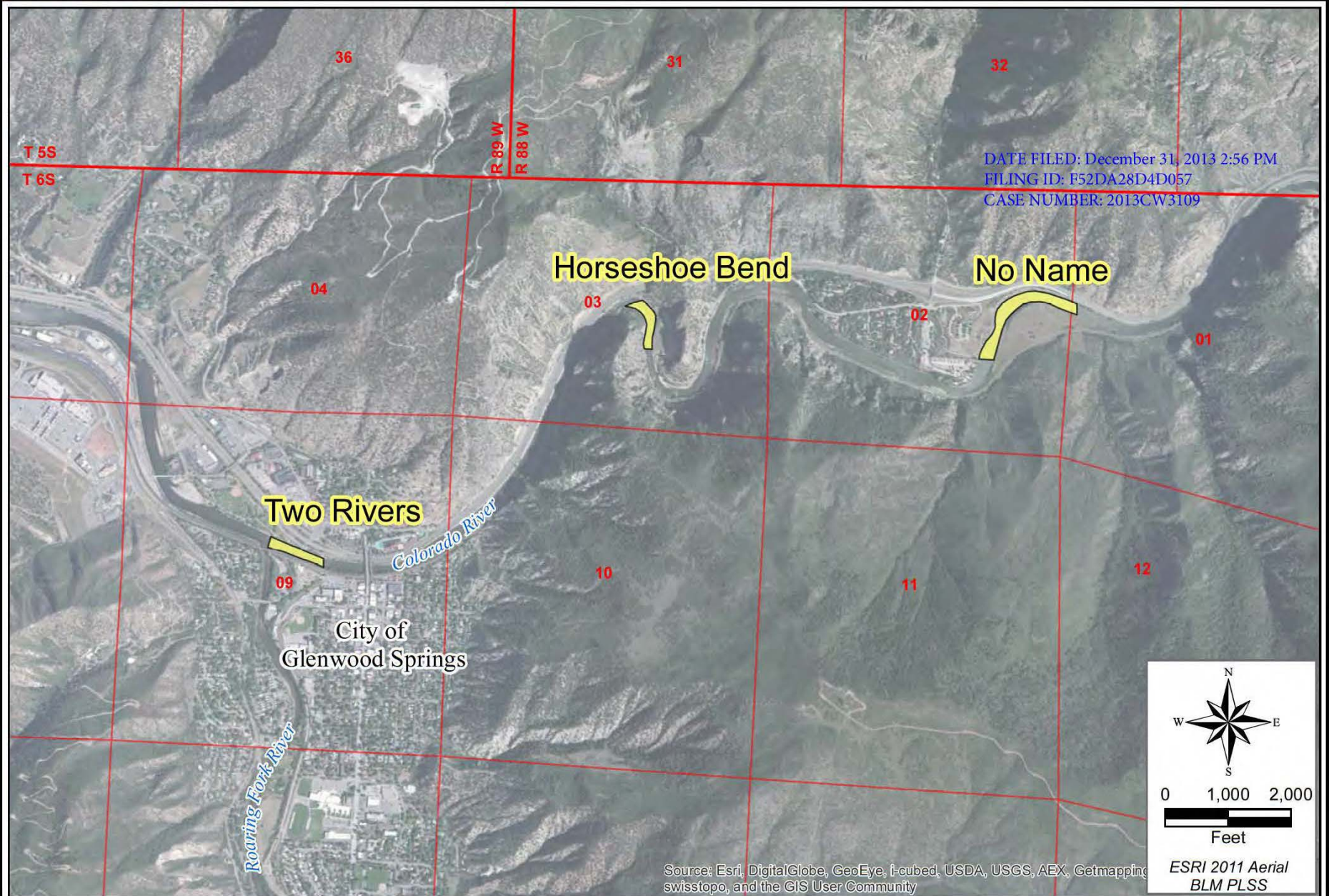
Name	Type	Attorney	Organization
Gypsum, Town of	Opposer	Jason M. Groves, Kevin Land Patrick	Patrick, Miller &Kropf, P.C.
Homestake Steering Committee	Opposer	Mary Mead Hammond, Mason Hamill Brown, William Arthur Paddock	Carlson, Hammond & Paddock, L.L.C.
Orchard Mesa Irrigation District	Opposer	Kirsten 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/_____

Attachment 2

RICD Map



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

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

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

EXHIBIT
A

Attachment 3
Proposed Ruling 13CW3109

REVISED DECREE MARCH 1, 2019
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: TheCITY OF GLENWOOD SPRINGS, a Colorado home rule city, in Garfield County, Colorado	
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

This matter comes before the Court on the Application for Surface Water rights forRecreational In-Channel Usesof 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 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 authorizing the filing of the Application.
- e. Date water applied to beneficial use: N/A (this claim is for a conditional water right)
- f. Amounts:

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

The dates and times of operation are limited as follows:

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

*During lighted competitive events, evening hours may be extended until 12:00 midnight each day.

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

- g. Uses: all recreational uses in and on the Colorado River including without limitation, boating, rafting, kayaking, tubing, floating, canoeing, paddling, and all other non-motorized recreational uses.
7. ***RICD Water Right:*** Horseshoe Bend Whitewater Park.
- a. Location:

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

i. Horseshoe Bend Whitewater Park Upstream Extent:

PLSS: NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 3, Township 6 South, Range 89 West of the 6th P.M., at a point 1,386 feet from the south section line and 1916 feet from the east section line of said Section 3, Garfield County, CO.

UTM: NAD 83 Zone 13S: northing 4,381,318.52 m, easting 301,605.95 m

ii. Horseshoe Bend Whitewater Park Downstream Extent:

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

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

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

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

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

The dates and times of operation are limited as follows:

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

*During lighted competitive events, evening hours may be extended until 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: SE¼ of the NW¼ 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 authorizing the filing of the Application.
- e. Date water applied to beneficial use: N/A (this claim is for a conditional water right)
- f. Amounts:

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

The dates and times of operation are limited as follows:

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

*During competitive events, evening hours may be extended until 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 is no greater than 50% of the sum of the total average historical volume of water for the stream segments where the diversion structures will be located. Therefore, this Decree and the RICD Water Rights granted herein are not limited by sub-sections I, II or III of C.R.S. § 37-92-305(13)(f) (2013). Except as otherwise limited by this decree or in stipulations or agreements related thereto, Glenwood Springs may initiate a call for any amount of water between 500 c.f.s. and the maximum decreed rate within each applicable time period specified in Sections 6.f, 7.f and 8.f, above.
- k. Extended RICD Season. The Applicant has demonstrated a need for the reasonable recreational experience from Labor Day to September 30 each year, as required by C.R.S. § 37-92-103 (10.3). The Court finds that there is demand for a reasonable recreation experience at the No Name Whitewater Park, the Horseshoe Bend Whitewater Park, and the Two Rivers Whitewater Park between Labor Day and September 30 each year. Without limiting the foregoing, the Court finds that non-motorized boating already occurs in these areas between Labor Day and

September 30 each year, and that there is present and future demand for a reasonable recreation experience on the Colorado at these locations during the period from Labor Day to September 30 each year.

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

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

- a. CWCB Review Process. Pursuant to C.R.S. § 37-92-102(6) (2013), after deliberation at public meetings on July 16, 2015, September 19, 2018, November 15, 2018 and March __, 2019, 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, 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 subsection 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 New Water Rights.

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

- i. In years when the 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 reliably provide substantially the same information on predicted streamflow. For the limited purpose of this paragraph, the Court shall retain continuing jurisdiction to resolve any dispute regarding the selection of another objective measure in the event that the Outlook Report or similar report should no longer be available and the parties are unable to agree upon 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 30 years after the date of 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) New Water Rights shall also include any water right meeting the requirements of Sections 11g.ii. (a) (1), (2), (4), (5), (7) and (8), which:
- (1) is decreed as a direct flow water right with a flow rate no greater than 2.50 c.f.s., or a storage water right with a maximum annual volume of 30 acre-feet and a filling rate of no greater than 2.50 c.f.s.;
 - (2) is decreed such that the Decreed Annual Yield of the water right can be readily determined or estimated from the decree, if not specified therein;
 - (3) is exercised pursuant to accounting procedures or reported monthly projections of daily diversions provided to Glenwood Springs and the Division Engineer that are sufficient to allow for determination by the Division Engineer of call reduction amounts as specified below; and
 - (4) in combination with all other New Water Rights meeting only the requirements of this Section 11.g.ii.(b), does not exceed a cumulative Decreed Annual Yield of 2,000 acre-feet.

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

- (c) 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 subsection 11.g.ii.(a)(6) above, in all years when yield protection is sought under the following subsection 11.g.ii.(d), below.
- (d) 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.
- (e) 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.

- (f) 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.
- 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.
- j. Statutory Presumption of No Injury. Pursuant to C.R.S. § 37-92-103(10.3), there shall be a presumption that there will not be material injury to the RICD Water Rights from subsequent appropriations or changes of water rights if the effect on the RICD Water Rights caused by such appropriations or changes does not exceed one-tenth of one percent of the lowest decreed flow rate (one tenth of one percent of 1,250 c.f.s. equals 1.25 c.f.s.) for the RICD Water Rights as measured at the gage described in Section 23 below, and the cumulative effects on the RICD Water Rights caused by such appropriations or changes do not exceed two percent of the lowest decreed flow rate (two percent of 1,250 c.f.s. equals 25 c.f.s.) for the RICD Water Rights as measured at the gage.

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

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. 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.

DONE this ____ day of _____, 20____.

BY THE COURT:

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

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“IGA”), is made this ____ day of _____ 2019, by and between the City of Glenwood Springs (the “City”) and the Colorado Division of Parks and Wildlife (“CPW”), a Division of the Colorado Department of Natural Resources, jointly referred to herein as the “Parties.”

A. In connection with the water court application filed by the City for recreational in-channel diversion (“RICD”) water rights in Case No. 13CW3109, Water Division No. 5, the City has proposed development of a whitewater park to include up to two RICD control structures to be installed in one of the following three potential locations: (1) Two Rivers Park in Glenwood Springs (the “Two Rivers” location); (2) No Name Rest Area at the I-70/No Name interchange (the “No Name” location); and (3) Horseshoe Bend, just downstream from the No Name Location (the “Horseshoe Bend” location).

B. Prior to development of a whitewater park at any one of these three proposed locations, the City anticipates undertaking a more detailed site evaluation and selection process.

C. In a June 4, 2015 Statement submitted to the Colorado Water Conservation Board (“2015 CPW Statement”), CPW expressed specific concerns with regard to wildlife and aquatic habitat impacts if a whitewater park is developed at the Horseshoe Bend location, and also provided reasons why CPW currently prefers the Two Rivers location over the No Name site.

D. Although site-specific permitting issues will need to be addressed in the future with regard to any of the three proposed whitewater park sites, the City is willing to consult with CPW during its site selection process and to diligently pursue and prioritize the development of the Two Rivers or No Name locations over the development of the Horseshoe Bend location during that process. Should, however, the City determine that neither the Two Rivers nor No Name locations are feasible to develop, and thus needs to pursue the Horseshoe Bend location, the City is willing to grant approval authority to CPW with regard to development of the Horseshoe Bend location pursuant to the terms of this IGA.

E. Section 29-1-203, C.R.S., as amended, authorizes and enables governments of the State of Colorado to enter into cooperative agreements or contracts. While the details and format of the City’s further site evaluation and selection process for the three potential RICD sites identified in Case No. 13CW3109 have not yet been established, the City and CPW desire to enter into this IGA to confirm the intent of the Parties to collaborate and cooperate with respect to that process, and to describe general principles that have been agreed upon. This agreement is being entered into by the Parties as partial consideration for the City’s request that CPW exercise its discretion as a referral agency to the Colorado Water Conservation Board (“CWCB”) to recommend approval of a final decree in Case No. 13CW3109 that includes the Horseshoe Bend location.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the sufficiency of which is acknowledged, the parties agree as follows:

1. Site Evaluation and Selection Process. At such time as the City commences the process of selecting the whitewater park site to be developed, the City shall notify CPW's Area 8 and NW Regional offices to request further input and comments from CPW staff regarding potential wildlife, aquatic habitat, and river corridor impacts along with and possible mitigation measures at the proposed whitewater park locations. The City shall continue to keep CPW apprised, and regularly consult with CPW, as the process progresses. The City shall fully consider and address in writing any written comments received from CPW and, at all times during the City's site selection process, to the maximum extent feasible, the development of the No Name location or the Two Rivers location shall be preferred and prioritized over any potential development of the Horseshoe Bend location, and the Horseshoe Bend location shall not be developed as a whitewater park by the City unless approved by CPW, as set forth in the following section.
2. Additional CPW Approval Authority. If it becomes apparent to the City during its site evaluation and selection process that site-specific constraints to the development of the Two Rivers or No Name locations are significantly more substantial and difficult to overcome than those presented by at the Horseshoe Bend location, the City may proceed to request the approval of CPW to develop the Horseshoe Bend location. CPW shall timely consider the City's request, including any additional measures or mitigation that the City may propose to address CPW's concerns. CPW shall then proceed to either approve the City's request, deny the City's request, or approve the City's request with conditions to minimize and to mitigate for the on-site and off-site known and predicted environmental and recreational impacts of developing this location. In all cases, such determination shall be in the sole discretion of CPW, and shall be binding upon the City.
3. RICD Structure Design and Placement Evaluation Process. After the City has chosen one of the whitewater park locations described in Case No. 13CW3109, as with the site evaluation process set forth in Paragraph 1 above, the City shall also consult with and fully consider and address CPW's comments on the design and placement of the RICD structures in addition to all other whitewater park design aspects that may have environmental impacts, such as fish passage, scour and erosion of bed and bank habitat features, stream hydraulics, natural stream function, and installation of lighting features intended to be used for lighted night-time events, as well as impacts to terrestrial wildlife. The Parties agree that the City may install up to two RICD structures at the one location chosen.
4. Abandonment of Horseshoe Bend Location. Should the City successfully develop either the Two Rivers or the No Name location, or should CPW deny the City's request to develop the Horseshoe Bend location, the City agrees it shall not pursue further development of RICD structures within the Colorado River at the Horseshoe Bend location.

5. RICD Monitoring, Adaptive Management, and Maintenance. In CPW's 2015 Statement, CPW requested that the City and CPW collaborate on the development of a pre and post construction monitoring and RICD structure maintenance plan. The City will consult with CPW prior to construction to develop a Monitoring and Adaptive Management Plan (MAMP) in order to define and track the implementation of construction, design and future maintenance controls. Upon completion of construction, the City also agrees to maintain the RICD structures in accordance with the final design and as set forth in the MAMP.
6. Continuing Consultation Post RICD Development. The City's water court application and proposed final decree in Case No. 13CW3109 provide for a conditional water right to be approved for "event" flows in the amount of up to 4000 c.f.s. for up to five continuous days in late June or early July. In the 2015 CPW Statement, CPW expressed concerns regarding potential impacts to fisheries from these event flows wherein the City may arrange for a release of stored upstream water to increase water flowing through the RICD. In CPW's view, the timing of the release, amount of the release, ramping rate, and the sources of the released water could impact various species of fish and fish age classes. For example, during June and July, when proposed event flows may occur, CPW is concerned that significant changes in stream flow could disrupt fish spawning, egg incubation, and fry emergence of recreationally important trout and native fish including bluehead and flannelmouth suckers, roundtail chub, speckled dace, and sculpin. In CPW's view, any substantial changes in wetted habitat due to artificial flow fluctuations could also flush fish of all ages down river or strand them in dry or undesirable habitat that could lead to fish kills. For these reasons, CPW currently prefers that changes in stream flow due to releases of upstream water for event flows not exceed a ramping rate of 500 c.f.s. in a 12-hour period, at any time from April 1 through September 30 (throughout the decreed RICD season). However, if impacts to the fishery are observed as a result of any RICD stream flow fluctuations, CPW may re-examine and revise this ramping rate recommendation and notify the City of the same. The City hereby agrees to consult with CPW as soon as practicable prior to arranging for any event flow releases that would exceed CPW's requested ramping rate. If CPW anticipates significant detriment to the fisheries as a result of the City's proposed event flow releases, the City agrees to avoid and/or minimize these fisheries concerns with a range of options to prevent and/or reduce harm to the fisheries, which may include the City altering the timing and/or rate of event flow releases, the City foregoing or rescheduling such releases, or other creative solutions agreed upon by the Parties. The City also agrees to consult with CPW and to address any other significant wildlife impacts related to the use of lighting for night-time competitive events at either the No Name or Horseshoe Bend locations.
7. Additional Consultation with CPW Prior to Section 404 Permitting. The additional obligations of the City set forth herein with regard to site selection and evaluation, RICD structure design and placement, and RICD monitoring, adaptive management, and maintenance, shall be in addition to and shall not modify or diminish the City's obligations to consult with CPW prior to initiation of Section 404 permitting for any

proposed whitewater park site pursuant to Section 11.i of the Final Decree in Case No. 13CW3109, Water Division No. 5.

8. Third Parties. Nothing contained in this IGA is intended to or shall create a contractual relationship with, or cause of action in favor of, or claim for relief by a third party. Any third party receiving a benefit from this IGA is only an incidental and unintended beneficiary.
9. Governing Law and Venue. Colorado law shall govern the administration of this IGA. Venue for purposes of any dispute shall be in the District Court for the County of Denver or Garfield County.
10. Assignment. This IGA is not assignable without the express written consent of all Parties.
11. City Approval. The City Manager's signature below is subject to ratification by City Council at its next regular meeting following mutual execution.

This Intergovernmental Agreement was executed and became effective as of the date set forth above.

THE CITY OF GLENWOOD SPRINGS

By: Debra Figueroa
Name: Debra Figueroa
Title: City Manager

COLORADO DIVISION OF PARKS & WILDLIFE

By: _____
Name: JT Romatzke
Title: Northwest Regional Manager

Attachment 4

Draft Agreement Between CPW and Glenwood Springs

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU"), is made this ____ day of _____ 2019, by and between the City of Glenwood Springs (the "City") and the Colorado Division of Parks & Wildlife ("CPW").

A. In connection with the water court application filed by the City for recreational in-channel diversion ("RICD") water rights in Case No. 13CW3109, Water Division No. 5, the City has proposed development of a whitewater park in the following three locations, (1) Two Rivers Park in Glenwood Springs (the "Two Rivers" location); (2) No Name Rest Area at the I-70/No Name interchange (the "No Name" location); and (3) Horseshoe Bend, just downstream from the No Name Location (the "Horseshoe Bend" location).

B. Prior to development of a whitewater park at any of these three proposed locations, the City anticipates undertaking a more detailed site evaluation and selection process.

C. CPW has expressed specific additional concerns with regard to potential wildlife impacts if a whitewater park is developed at the Horseshoe Bend location.

D. Although site-specific permitting issues will need to be addressed in the future with regard to any or all of the three proposed whitewater park sites, the City is willing to consult with CPW during its site selection process and to diligently pursue and prioritize the development of the Two Rivers and/or No Name locations over the development of the Horseshoe Bend location during that process. Should, however, the City determine that the Horseshoe Bend location is the City's preferred location, the City is willing to grant approval authority to CPW with regard to development of the Horseshoe Bend location pursuant to the terms of this MOU.

E. While the details and format of the City's further whitewater park site evaluation and selection process have not yet been established, the City and CPW desire to enter into this MOU to confirm the intent of the parties to collaborate and cooperate with respect to that process, and to describe general principles that have been agreed upon.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth herein, the sufficiency of which is acknowledged, the parties agree as follows:

1. Site Evaluation and Selection Process. At such time as the City commences the process of selecting the whitewater park site(s) to be developed, the City shall notify CPW's regional office and request further input and comments from CPW staff regarding potential wildlife impacts, and possible mitigation measures, at the proposed whitewater park locations. The City shall continue to keep CPW apprised, and regularly consult with CPW, as the process progresses. The City shall fully consider CPW's comments and, at all times during the City's site selection process, to the maximum extent feasible, the development of the No Name location and/or the Two Rivers location shall be preferred and prioritized over any potential development of the Horseshoe Bend location, and, the

Horseshoe Bend location shall not be developed as a whitewater park by the City unless approved by CPW, as set forth in the following section.

2. Additional CPW Approval Authority. If it becomes apparent to the City during its site evaluation and selection process that site-specific constraints to development of the Two Rivers and No-Name locations are significantly more substantial and difficult to overcome than those presented by the Horseshoe Bend location, the City may proceed to request the approval of CPW to develop the Horseshoe Bend location. CPW shall timely consider the City's request, including any additional measures or mitigation that the City may propose to address CPW's concerns. CPW shall then proceed to either approve the City's request, deny the City's request, or approve the City's request with conditions. In all cases, such determination shall be in the sole discretion of CPW, and shall be binding upon the City.
3. Abandonment of Horseshoe Bend location. Should the City successfully develop either the Two Rivers or No Name locations, or should CPW deny the City's request to develop the Horseshoe Bend location, the City agrees it shall not further pursue development of boating structures within the Colorado River at the Horseshoe Bend location.
4. Additional Consultation with CPW Prior to Section 404 Permitting. The additional obligations of the City set forth herein with regard to site selection shall be in addition to and shall not modify or diminish the City's obligations to consult with CPW prior to initiation of Section 404 permitting for any proposed whitewater park site pursuant to Section 11.i of the Final Decree in Case No. 13CW3109, Water Division No. 5.

This Memorandum of Understanding was executed and became effective as of the date set forth above.

THE CITY OF GLENWOOD SPRINGS

By: _____
Name: Debra Figueroa
Title: City Manager

COLORADO DIVISION OF PARKS & WILDLIFE

By: _____
Name:
Title:

Attachment 5

CWCB September 2015 Findings of Fact

DISTRICT COURT, WATER DIVISION 5 GARFIELD COUNTY, COLORADO 109 Eighth Street, Suite 104 Glenwood Springs, CO 81601 (970) 945-5075 CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY OF GLENWOOD SPRINGS IN GARFIELD COUNTY, COLORADO	DATE FILED: September 14, 2015 1:06 PM FILING ID: 6CC1D7468A71C CASE NUMBER: 2013CW3109 ^ 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 6

RICD Rules

DEPARTMENT OF NATURAL RESOURCES

Colorado Water Conservation Board

2 CCR 408-3

RECREATIONAL IN-CHANNEL DIVERSION RULES

1. Title

Rules Concerning Recreational In-Channel Diversions, adopted pursuant to section 37-92-102, C.R.S., and hereinafter referred to as the “RICD Rules” or “Rules”.

2. Purpose of Rules

The purpose of these Rules is to set forth the procedures to be followed by: 1) applicants for Recreational In-Channel Diversions (hereinafter referred to as “RICDs”); and 2) the Colorado Water Conservation Board (hereinafter referred to as “CWCB” or “Board”) when making Findings of Fact to a water court regarding RICDs. In addition, the purpose of these Rules is to provide guidance about the type of information that will assist the Board in making its findings to the water court. The Board has incorporated into these Rules, the Statement of Basis and Purpose prepared and adopted at the time of the rulemaking. These Rules will supersede the RICD Rules adopted on November 15, 2005, codified at 2 CCR 408-3, and they are intended to apply to applications that will be reviewed by the Board after the effective date of these Rules. However, they will not apply to applications that were already filed prior to July 1, 2006.

3. Statutory Authority

The General Assembly specifically recognized the appropriation and adjudication of RICDs by local governmental entities, pursuant to sections 37-92-102, 37-92-103, & 37-92-305, C.R.S. The statutory authority for these Rules is found at section 37-60-106(k) and 37-60-108, C.R.S. By promulgating these Rules, the Board assumes no liability related to RICDs and expressly does not waive its sovereign immunity under Article 10, Title 24, C.R.S.

4. Definitions

- a. Applicant. Means a local governmental entity that has filed a water court application for a RICD on or after July 1, 2006.
- b. Application Receipt Date. Means the date that the Board receives a copy of the RICD application.
- c. Application. A water court application filed with the CWCB for consideration under these Rules.
- d. Beneficial Use. Is defined as stated in section 37-92-103(4), C.R.S., which is incorporated herein by reference.
- e. Board. Means the Colorado Water Conservation Board as defined in sections 37-60-101, 103 and 104, C.R.S., which is incorporated herein by reference.
- f. Board’s Office. Means the Colorado Water Conservation Board’s office, located at 1313 Sherman Street, 7th Floor, Denver, CO 80203. The phone number is (303) 866-3441. The facsimile number is (303) 866-4474. The Board’s website is <http://www.cwcb.state.co.us>.

- g. Compact Entitlements. Means all of Colorado's water entitlements pursuant to interstate compacts, equitable apportionments, supreme court rulings designating water apportionments, or any other legally recognized designation of apportionment of interstate waters.
- h. Control Structure. Is defined as stated in section 37-92-103(6.3), C.R.S., which is incorporated herein by reference.
- i. Director. Means the director of the Colorado Water Conservation Board, who is the chief administrative head of the Board, under the direction and supervision of the Board, and who has general supervision and control of all its activities, functions, and employees.
- j. Diversion or Divert. Is defined as stated in section 37-92-103(7), C.R.S., which is incorporated herein by reference.
- k. Findings of Fact. Means the written factual findings of the Board regarding the factors set out in section 37-92-102(6), C.R.S. and filed with the water court.
- l. Instream Flow (hereinafter referred to as "ISF"). Means any water, water rights or interests in water appropriated or acquired by the Board, pursuant to section 37-92-102(3), C.R.S., for the preservation of the natural environment to a reasonable degree. Pursuant to section 37-92-102(3), C.R.S., no other person or entity may appropriate such rights, for any purpose whatsoever.
- m. Local Governmental Entity. Means a Colorado entity authorized to appropriate a RICD and includes a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district.
- n. Person. Means an individual, a partnership, a corporation, a municipality, the state of Colorado, the United States, or any other legal entity, public or private.
- o. Reasonable Recreation Experience. Is defined as stated in section 37-92-103(10.1), C.R.S., which is incorporated herein by reference.
- p. Recreational In-Channel Diversion. Is defined as stated in section 37-92-103(10.3), C.R.S., which is incorporated herein by reference.
- q. Staff. Means the Director and other personnel employed by the Board.

5. Optional Pre-Application Process

Prior to submitting an application to the water court or to the Board, the Board encourages the applicant to meet with staff to discuss the proposed RICD application and the procedures to be followed by the Board to review the application. Staff will provide input regarding how the proposed application can meet the intent of the RICD Rules.

6. Submissions Required from an Applicant

Within 30 days after filing an application for a RICD with any water court, an applicant shall submit a copy of the application to the Board office, pursuant to section 37-92-102(5), C.R.S.

7. Required Findings

The Board, after deliberation in a public meeting, is required to make certain written findings relative to each RICD application. § 37-92-102(6), C.R.S. The statutory definition of RICD requires that the applicant claim only the minimum stream flow, that the flow be used for a reasonable recreation experience in and on the water, and that the flow be diverted, captured, controlled, and placed to beneficial use. The required findings on factors are:

- a. Whether the adjudication and administration of the RICD would materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements. The Board, in making this finding, may consider, but is not limited to, the following:
 - i. The amount and location of remaining unappropriated compact entitlement waters in the basin in question and at the RICD point of diversion;
 - ii. The proximity of the RICD to the state line;
 - iii. The proximity of the RICD to suitable upstream points of diversion or storage which may be utilized by those who would place the water to consumptive beneficial use;
 - iv. The existence of suitable downstream points of diversion or storage for consumptive beneficial uses before the water leaves the state;
 - v. Exchange opportunities within the state that may be adversely impacted by the existence of the RICD;
 - vi. Whether the basin is over-appropriated;
 - vii. The effect on other decreed, existing undecreed, or reasonably foreseeable uses of the amount of water claimed;
 - viii. Whether a RICD shields waters from a consumptive use that would otherwise be available under a particular compact;
 - ix. Whether beneficial consumptive water use opportunities upstream from the claimed RICD would further develop Colorado's compact entitlements and would be impaired by applicant's sought for stream flow amounts; and,
 - x. What provisions in the application are proposed for reducing or canceling the RICD.
- b. Whether the exercise of the RICD would cause material injury to existing ISF water rights. The Board, in making this finding, may consider, but is not limited to, the following:
 - i. The nature and extent of the ISF in the proposed reach or any affected downstream reach;
 - ii. The timing and duration of the RICD as such may relate to the specific natural environment for which the ISF was decreed;
 - iii. Whether the RICD, or administration of the RICD, would negatively impact the natural environment for which the ISF was decreed; and,
 - iv. Whether during the construction of the RICD structures, the construction may cause material injury to the ISF or the natural environment for which the ISF was decreed.
- c. Whether the adjudication and administration of the RICD, in the amounts claimed, would promote maximum utilization of the waters of the State. The Board, in making this finding, may consider, but is not limited to, the following:
 - i. Whether there are any probable future upstream junior appropriations for direct diversion or storage;
 - ii. Whether there are any probable future changes, transfers, or exchanges of water rights from points of diversion downstream of the reach affected by the RICD to points upstream of or in the reach affected by the RICD;

- iii. Whether Applicant has demonstrated that it has complied with appropriate federal policies, regulations and laws, or has indicated that it will comply with all appropriate federal policies, regulations and laws;
- iv. Whether a reasonable and efficient means is to be utilized to use, divert, capture and control the water for a RICD so as to minimize its call upon the river and avoid waste;
- v. Whether a reasonable demand exists for the recreational activity in question as determined by levels of current use and/or estimates of future use;
- vi. Whether the application has appropriate limitations upon the time of day, days per month, or seasons during which the RICD would be exercised;
- vii. The depth and flow rate of the proposed RICD;
- viii. With what frequency and duration, and from what sources, the requested amounts of water for the RICD occur;
- ix. The economic effects of the proposed RICD;
- x. The environmental effects of the proposed RICD;
- xi. The relationship of the requested RICD flow rates to the historic appropriated and unappropriated flow rates for each time period requested;
- xii. The effect of the RICD on other potential uses of water;
- xiii. Whether the application as a whole meets the elements of the definition of a RICD, as found in section 37-92-103(10.3);
- xiv. Whether the RICD would conserve and efficiently use the available stream flow, thereby promoting maximum utilization of Colorado's water resources;
- xv. Whether the RICD will make the river basin water critical and the resulting impact on existing water rights and users;
- xvi. Whether the RICD may work together with existing and/or future uses within the State of Colorado to promote maximum utilization;
- xvii. Any provision in the application for reducing or canceling the RICD;
- xviii. A description of each recreational opportunity sought by the applicant at each flow amount sought, and why the flow amount is the minimum amount for each reasonable recreation experience sought;
- xix. The historic frequency and flow rates of imported water and reservoir releases through the proposed RICD reach, and whether such flows will be necessary to meet the flow rates claimed for the proposed RICD; and,
- xx. Whether, and to what extent, unappropriated native flows exist in the proposed RICD stream reach during the periods claimed, and the percentage of unappropriated flows claimed by the RICD.

8. Additional Information

Because section 37-92-102(6)(b), C.R.S. requires the Board to report its findings within 90 days after the closing date for the filing of statements of opposition, an applicant may elect to provide additional information at the time it submits its application to the Board. The following types of information would assist the Board in making its findings:

- a. A description of structures, including design plans for the physical control structures, engineering data and calculations used to design the facilities associated with the application;
- b. Maps showing the location of all physical control structures and access points;

- c. Evidence, including hydraulic and hydrologic calculations, that the physical control structures are capable of diverting, capturing, and controlling water within the stream channel;
- d. Documentation describing and justifying the nature of the recreational experience sought;
- e. Documentation identifying and/or justifying the time of day and season of use sought;
- f. Evidence that the amounts requested in the RICD application are available for appropriation;
- g. Information about the frequency of occurrence of the requested stream flows, including exceedance calculations and duration curves for the claimed stream flows;
- h. Information demonstrating that the amount of water claimed is the minimum amount necessary to achieve the reasonable recreation experience sought;
- i. Information about all necessary permits and the status thereof, including existing or proposed permit terms and conditions;
- j. List of persons notified by the applicant about the RICD; and,
- k. Information about existing or proposed gages on the affected stream that may be utilized to administer the water right being sought.

9. Notice

Within fifteen days of the application receipt date, the staff shall post notice of receipt of the application on the CWCB website. The notice shall include the name of the applicant, the flow amounts claimed, the water division, the name of the stream, the proposed reach of the stream, the location of the structures including the county, and information about how to obtain party status. In addition, the staff shall notify the county commissioners of the county in which the RICD is (or will be) located, and any upstream counties. The Board shall include notice of public deliberations on an RICD on its agenda for a regularly scheduled or specially scheduled Board meeting that is also posted on the CWCB website. At that time or at a subsequently noticed Board meeting the Board will: 1) ratify the Statement of Opposition filed by the Staff; 2) direct the Staff to issue appropriate written findings.

10. Statements of Opposition and Staff Report

The staff intends to file a statement of opposition in every RICD case to assure that the Board has the ability to properly weigh in on the requisite factors to the water court. Circumstances may occur where the Staff would propose not filing a statement of opposition to an RICD case, but the Staff would inform the Board of such a case and obtain Board concurrence or comment in these types of situations. The Staff shall provide a written report and recommendation to the Board based on the information provided by the applicant and any other applicable information. At a Board meeting following the Staff's filing of a statement of opposition, the Board will: 1) ratify the statement of opposition, inform the Staff about the appropriate findings to file with the water court, and direct the Staff to fully participate in the water court proceedings; 2) inform the Staff about the appropriate findings to file with the water court and choose to withdraw the statement of opposition; or 3) ratify the statement of opposition and table the discussion regarding the appropriate findings to file with the water court and whether to participate fully in water court.

11. Public Deliberations

The Board will publicly deliberate about the findings that it will make for each RICD.

12. Submission of Findings to the water court

Pursuant to section 37-92-102(6)(c), C.R.S., the Board shall submit its findings of fact to the water court within 90 days after the final closing date for filing statements of opposition.

However, the Board, for good cause shown on the record, may request that the water court grant additional time to the Board for making and reporting its findings of fact.