

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

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

/s/_____