

DISTRICT COURT, GARFIELD (GLENWOOD SPRINGS) COUNTY, COLORADO	
Court Address: 109 8th Street, Ste. 104, Glenwood Springs, CO, 81601	DATE FILED: January 10, 2014 3:11 PM CASE NUMBER: 2010CW298
In the Interest of: GRAND COUNTY BOARD OF COUNTY COMMISSION	<p style="text-align: center;"><b>⚠ COURT USE ONLY ⚠</b></p>
	Case Number: 2010CW298 Division: E                      Courtroom:
<b>Decree - Amended: Decree to court</b>	

The motion/proposed order attached hereto: GRANTED WITH AMENDMENTS.

The application for reasonable diligence mentioned in paragraph 67 shall be filed in January 2020.

Issue Date: 1/10/2014



JAMES BERKLEY BOYD  
District Court Judge

DISTRICT COURT, WATER DIVISION 5, COLORADO 109 8 <sup>th</sup> Street, Suite 104 Glenwood Springs, CO 81601	▲ Court Use Only ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF  <b>THE BOARD OF COMMISSIONERS FOR THE  COUNTY OF GRAND, COLORADO</b>  IN GRAND COUNTY, COLORADO	
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT, AND DECREE OF THE  WATER COURT</b>	

THIS MATTER came before the Court on the application of the Board of Commissioners for the County of Grand, Colorado (“Grand County” or “Applicant”) for Recreational In-Channel Diversions (“RICD”) water rights. The Court, having considered the pleadings, evidence and arguments presented and the stipulations of the parties, and being fully advised in the premises, hereby finds, concludes, rules, adjudges and decrees as follows.

**FINDINGS OF FACT**

1. Name and Address of Applicant. The name of the Applicant is the Board of Commissioners for the County of Grand, State of Colorado, P.O. Box 264, Hot Sulphur Springs, CO 80451, *with a copy to* David C. Taussig, White & Jankowski, LLP, 511 Sixteenth Street, Suite 500, Denver, Colorado, 80202.
2. Notice and Jurisdiction. The application herein was filed on December 28, 2010. All notices of the application and the amendment were given in the manner required by law and the Court has jurisdiction over the subject matter of this proceeding and over all persons and property affected hereby, regardless of whether those persons or owners of property have appeared. The water and lands which are the subject of this decree are not located in a designated groundwater basin.
3. Statements of Opposition. Statements of opposition to the application were timely filed by 24 parties, and 1 party intervened by unopposed motion as described below:
  - a. Board of County Commissioners of Pitkin County;
  - b. Board of County Commissioners for the County of Summit;
  - c. CNL Income Granby LLC;

- d. Colorado Water Conservation Board (“CWCB”);
  - e. Colorado River Water Conservation District;
  - f. Cornerstone Winter Park Holdings LLC, Byers Peak Properties, LLC, C. Clark Lipscomb & Meredith C. Lipscomb (collective statement of opposition);
  - g. City and County of Denver, acting by and through its Board of Water Commissioners (“Denver Water”);
  - h. Granby Realty Holdings LLC;
  - i. Grand County Water and Sanitation District No. 1;
  - j. Grand County Mutual Ditch and Reservoir Company;
  - k. Homestake Partners, being the Cities of Aurora and Colorado Springs, through the Homestake Steering Committee;
  - l. Middle Park Water Conservancy District;
  - m. Northern Colorado Water Conservancy District and the Municipal Subdistrict, Northern Colorado Water Conservancy District;
  - n. State and Division Engineers;
  - o. Town of Fraser;
  - p. Town of Kremmling;
  - q. Town of Winter Park;
  - r. Trout Unlimited;
  - s. United States of America, Department of the Interior, Bureau of Land Management, Kremmling Field Office;
  - t. Winter Park Recreational Association; and
  - u. Winter Park Water and Sanitation District.
  - v. Climax Molybdenum Company filed an unopposed motion to intervene on May 26, 2011 and its statement of opposition was accepted by order dated October 7, 2011.
4. No Summary of Consultation. The Division Engineer entered the case as an objector and did not prepare a summary of consultation.

5. Stipulations. Applicant has entered into stipulations with the following parties on the basis that these parties would not oppose entry of a decree at least as protective of their rights as the version attached to each such stipulation:
- a. Bureau of Land Management in a Stipulation dated January 5, 2012 and an Order approving the same entered January 5, 2012;
  - b. Denver Water in a Stipulation dated May 5, 2012 and an Order approving the same entered May 17, 2012;
  - c. Town of Kremmling in a Stipulation dated July 25, 2012 and an Order approving the same entered July 26, 2012, and an Amended Stipulation dated May 9, 2013 and an Order approving the same entered June 2, 2013;
  - d. Middle Park Water Conservancy District in a Stipulation dated July 25, 2012 and an Order approving the same entered July 26, 2012, and an Amended Stipulation dated May 9, 2013 and an Order approving the same entered June 2, 2013;
  - e. Grand County Water and Sanitation District No. 1 in a Stipulation dated July 25, 2012 and an Order approving the same entered July 26, 2012, and an Amended Stipulation dated May 9, 2013 and an Order approving the same entered June 2, 2013;
  - f. Winter Park Water and Sanitation District in a Stipulation dated August 13, 2012 and an Order approving the same entered August 14, 2012, and an Amended Stipulation dated May 9, 2013 and an Order approving the same entered June 2, 2013;
  - g. Cornerstone Winter Park Holding LLC, Byers Peak properties, LLC, C. Clark Lipscomb & Meredith C. Lipscomb in a Stipulation dated August 21, 2012 and an Order approving the same entered August 24, 2012;
  - h. Granby Realty Holdings LLC in a Stipulation dated August 27, 2012 and an Order approving the same entered August 31, 2012;
  - i. Grand County Mutual Ditch & Reservoir Company in a Stipulation dated August 30, 2012 and an Order approving the same entered August 31, 2012;
  - j. Colorado River Water Conservation District in a Stipulation dated September 18, 2012 and an Order approving the same entered November 18, 2012;
  - k. Colorado Water Conservation Board in a Stipulation dated November 14, 2012 and an Order approving same entered November 18, 2012;
  - l. Board of County Commissioners for the County of Summit in a Stipulation dated November 11, 2012 and an Order approving same entered November 18, 2012;

- m. CNL Income Granby LLC in a Stipulation dated November 15, 2012 and an Order approving same entered November 23, 2012, and an Amended Stipulation dated May 29, 2013 and an Order approving the same entered June 2, 2013;
- n. Town of Fraser in a Stipulation dated January 7, 2013 and an Order approving same entered February 8, 2013;
- o. Northern Colorado Water Conservancy District and the Municipal Subdistrict, Northern Colorado Water Conservancy District in a Stipulation dated February 7, 2013 and an Order approving same entered February 18, 2013;
- p. The Homestake Partners, being the Cities of Aurora and Colorado Springs in a Stipulation dated November 25, 2013 and an Order approving same entered November 26, 2013;
- q. Town of Winter Park in a Stipulation dated December 6, 2013, and an Order approving the same entered December 16, 2013;
- r. Winter Park Recreational Association in a Stipulation dated December 6, 2013, and an Order approving the same entered December 16, 2013;
- s. State Engineer and Division Engineer in a Stipulation dated December 11, 2013, and an Order approving the same entered December 16, 2013;
- t. Climax Molybdenum Company in a Stipulation dated December 12, 2013 and an Order approving the same entered December 16, 2013; and

Trout Unlimited withdrew its Statement of Opposition in a Withdrawal of Statement of Opposition dated July 3, 2012, and the Court entered an Order approving the same on July 10, 2012. Board of County Commissioners, Pitkin County, Colorado withdrew its Statement of Opposition in a Withdrawal of Statement of Opposition dated May 23, 2013.

- 6. Referral. Grand County's application was referred to the Water Referee. On August 31, 2012, the matter was re-referred to the water judge.
- 7. Notice to CWCB and CWCB Findings. Pursuant to C.R.S. § 37-92-102(5), Grand County transmitted a copy of its application in this case to the CWCB on January 25, 2011. The CWCB considered Grand County's application at a public meeting on March 21, 2012 in Denver, Colorado. The CWCB submitted its findings to the Court on March 28, 2012. The Court has considered the CWCB's findings.
- 8. Description of Applicant. Grand County's mission, in part, is "to provide a natural and social environment suitable for a variety of commercial, recreational, and personal pursuits in which people can live, work, play, grow up, and grow old." Water based recreation is an important component of Grand County's economy, and the County

actively works to protect and develop water resources within its boundaries to support recreation and other uses. Grand County filed the application in this case to develop new non-motorized recreational boating opportunities on the main stem of the Colorado River.

9. Summary of the Application. The Applicant seeks confirmation of conditional water rights associated with two whitewater parks in and on the Colorado River: the Hot Sulphur Springs Whitewater Park and the Gore Canyon Whitewater Park. The general locations of these parks are shown on Exhibit A. At each park, Grand County has designed and plans to install two structures in the Colorado River to create whitewater hydraulic features for non-motorized recreation use. Each of the four structures will divert and control the flow of the main stem of the Colorado River between specific points and will create different recreational experiences at different rates of flow. Grand County seeks separate water rights for each of the whitewater parks, and collectively these water rights are referred to as “RICD Water Rights” in this decree.
10. Intended Recreational Experiences. Although any recreational use of water may occur at Grand County’s whitewater parks, the intended recreational experiences that form the basis of Grand County’s appropriation involve freestyle whitewater recreation. Grand County seeks recreational experiences for multiple ability levels, and has designed its structures and appropriations to appeal to different ability levels depending on the location, time period, and flow rate. These different difficulties of navigating and playing in a whitewater feature are analogous to different difficulties of ski or snowboard trails, and Grand County has designated the experiences it seeks using the same terminology as those trails: green for beginner, blue for intermediate, black for advanced, and double black for expert.

### **Hot Sulphur Springs Whitewater Park**

11. Introduction. Grand County has appropriated conditional water rights for the Hot Sulphur Springs Whitewater Park. The elements of appropriation and terms and conditions for operation of these water rights are as follows.
12. Location. The Hot Sulphur Springs Whitewater Park will be located in and on the Colorado River in Pioneer Park near the Town of Hot Sulphur Springs, Colorado in part of the S $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 3, T. 1 N., R. 78 W., 6<sup>th</sup> P.M., Grand County, Colorado. The Hot Sulphur Springs Whitewater Park is designed with two structures that will each control and divert the flow of the Colorado River to create a hydraulic feature. The upstream structure and associated whitewater feature are named the “Glory Hole” and the downstream structure and associated whitewater feature are named the “Hot Pocket.” A map showing the approximate upstream and downstream extent of the Hot Sulphur Springs Whitewater Park and the structure locations is attached as Exhibit B.
  - a. The Glory Hole structure will be located in and across the Colorado River in the SE $\frac{1}{4}$  of Section 3, T. 1 N., R. 78 W., 6<sup>th</sup> P.M., Grand County, Colorado. The left abutment of the Glory Hole structure will be located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 3, whence the SE corner of said Section 3 bears S 53° 39” E, 880 feet.

b. The Hot Pocket structure will be located in and across the Colorado River in the SE¼ of Section 3, T. 1 N., R. 78 W., 6<sup>th</sup> P.M., Grand County, Colorado. The left abutment of the Hot Pocket structure will be located in the SE¼ SE¼ of said Section 3, whence the SE corner of said Section 3 bears S 61° 20” E, 1,426 feet.

13. Source. Colorado River.
14. Date of Appropriation. December 21, 2010. See paragraph 38 for initiation of appropriation.
15. Calling Rates of Flow. As a matter of compromise and settlement with the CWCB, Grand County has defined “calling” rates of flow for the Hot Sulphur Springs Whitewater Park water rights in this paragraph 15, and “non-calling” beneficial use of water in the Hot Sulphur Springs Whitewater Park as described below in paragraph 16. Grand County may place a call for water for the calling rates of flow in this paragraph subject to the terms of this decree. The following calling rates of flow for the Hot Sulphur Springs Whitewater Park water rights, expressed in cubic feet per second (“cfs”), are **CONDITIONAL**:

<b>Flow Schedule for Calling Rates of Flow for Hot Sulphur Springs Whitewater Park Water Rights</b>			
<u>Period</u>	<u>Flow Rate</u>	<u>Experience</u>	<u>85% of Flow Rate</u>
April 10 – May 20	250 cfs	Blue	212.5 cfs
May 21 – July 4	850 cfs	Black (Hot Pocket) / Blue (Glory Hole)	722.5 cfs
July 5 – Aug 2	250 cfs	Blue	212.5 cfs

After considering all of the factors bearing on the reasonableness of Grand County’s claims, including the flow needed to accomplish the claimed recreational experiences listed above, benefits to the community, the intent of the appropriator, stream size and characteristics, and total stream flow available at the control structures during the periods listed above, the Court finds that the flow rates listed in the table above are the minimum amounts necessary to serve Grand County’s intended reasonable recreation experiences.

16. Non-Calling Beneficial Use. The Court finds for the purposes of this decree that beneficial recreational in-channel uses may occur at the Hot Sulphur Springs Whitewater Park and there is a demand for reasonable recreation experiences at flow rates between 90 cfs up to 850 cfs between April 1 and October 15, provided the proposed in-channel diversions are constructed and operate substantially as contemplated by their presently proposed designs. With water that Grand County makes available to the Colorado River for recreational use at the Hot Sulphur Springs Whitewater Park under other water rights decreed for such recreational use, Grand County shall have the ability to deliver and

protect such water to increase otherwise existing flows to achieve flows between 90 cfs and 850 cfs for recreational use between April 1 and October 15, but Grand County shall not have the right to place a call for water at the Hot Sulphur Springs Whitewater Park except under its recreational in channel diversion water rights as identified in the schedule in paragraph 15, and subject to the terms of this Decree. The delivery of water by Grand County under the other water rights contemplated by this paragraph shall be administered by the Division Engineer consistent with this decree and any other decrees for such water rights. The provisions of this paragraph shall not bind or have any preclusive effect on other interested persons that may seek to participate in any adjudication regarding the other water rights that may be proposed or decreed for the recreational use contemplated by this paragraph. Grand County shall serve written notice to the Objectors named herein, including the State and Division Engineer, of the water rights that it will make available to the Colorado River pursuant to this paragraph.

17. 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 boating recreational uses, for both structures. Other recreational activities may occur but may not serve as evidence of a reasonable recreation experience.
18. Minimum Flow Rates. The minimum amounts necessary to serve Grand County's intended reasonable recreation experiences are listed in paragraph 15 above. As contemplated by section 37-92-305(13)(d) and described in paragraph 16 above, the Court finds that the beneficial uses listed in paragraph 17 may occur at flow rates below those necessary for the intended recreational experiences. However, the Court finds that below 90 cfs, there is no longer any beneficial use of water at the Hot Sulphur Springs Whitewater Park under this decree.
19. Volume of Appropriation. Pursuant to C.R.S. § 37-92-305(13)(e), the Court finds that the total volume of water appropriated for the Hot Sulphur Springs Whitewater Park water rights is 110,385 acre-feet according to the calculation prescribed by the statute. The Court notes that, pursuant to the time of day term and condition in paragraph 21.b below, the actual appropriated volumes are 42% less than the statutory calculation. Nevertheless, the volume calculated pursuant to statute exceeds 50% of the sum of the total average historical volume of water passing the park between April 10 and August 2. The volume of the appropriation is non-consumptive.
20. Appropriate Stream Reach. The Glory Hole and Hot Pocket are located near a reach of the Colorado River that is used by non-motorized boaters. These structures are located to create new recreational opportunities, especially for beginning and intermediate boaters, adjacent to an existing park in Hot Sulphur Springs. The river channel at each of the two structure locations is suitable for creation of the new whitewater features claimed by Grand County. The Court finds that the Glory Hole and Hot Pocket structures are located in an appropriate stream reach.



21. Terms and Conditions.

- a. Grand County shall only call for water to satisfy the Hot Sulphur Springs Whitewater Park water rights in accordance with the schedule in paragraph 15 above. The State Engineer shall not administer a call for these water rights unless the curtailment of junior water rights would result in at least 85% of the flow rate for the applicable time period at the calling structure.
- b. The hours of operation of the Hot Sulphur Springs Whitewater Park are 6:00 a.m. to 8:00 p.m. Subject to the terms of this decree, Grand County may place a call for the RICD Water Rights at any time, provided the call will produce water to the calling RICD Water Right during the hours of operation.
- c. *Case No. 2011CW21 (Div. 5).* Grand County shall not place a call for water for the Hot Sulphur Springs Whitewater Park water rights when a call would impair Denver Water's exchanges sought in Case No. 11CW21 from Dillon Reservoir to Williams Fork Reservoir at a rate of 148 cfs and up to 6,095 acre-feet annually, and to the existing points of diversion on the Fraser River and Williams Fork Diversion Projects at a rate of 56 cfs and up to 8,747 acre-feet annually.
- d. Initially, the Hot Sulphur Springs Whitewater Park may be administered using the existing stream gauge on the Colorado River at Hot Sulphur Springs (Station ID #09034500) with due consideration for any return flows or other inflows accruing to the stream below the gauge and above the park, as reasonably approved by the Division Engineer. If that gauge is not operating, then back-up administration may be done using the existing Colorado River at Windy Gap near Granby gauge (ID #09034250) with due consideration for any return flows or other inflows accruing to the stream below the gauge and above the park, as reasonably approved by the Division Engineer. See also paragraph 63 for measuring devices.
- e. Grand County shall not place a call for water for the Hot Sulphur Springs Whitewater Park water rights if a call would adversely impact Denver Water's replacement and exchange operations from Williams Fork Reservoir to the Fraser River Diversion Project under Civil Action Nos. 657 and 1430 (Div. 5).

22. Land Ownership. The land where the Glory Hole and Hot Pocket structures are to be located is owned by the Town of Hot Sulphur Springs. Grand County provided notice of its application in this case to the Town of Hot Sulphur Springs in compliance with C.R.S. § 37-92-302(2)(b). Grand County shall not construct the Glory Hole and Hot Pocket structures until it obtains permission from the Town of Hot Sulphur Springs.

23. Access. The Glory Hole and Hot Pocket structures are to be located on the Colorado River at Pioneer Park in the Town of Hot Sulphur Springs. There is existing public access to the river and a parking lot at this location. Grand County may work with the Town of Hot Sulphur Springs to improve this access or construct additional access pursuant to the terms and conditions in paragraph 22 above.

**Gore Canyon Whitewater Park**

24. Introduction. Grand County has appropriated conditional water rights for the Gore Canyon Whitewater Park. The elements of appropriation and terms and conditions for operation of these water rights are as follows.
25. Location. The Gore Canyon Whitewater Park will be located in and on the Colorado River below Big Gore Canyon in parts of the W $\frac{1}{2}$  of Section 7, T. 1 S., R. 81 W., 6<sup>th</sup> P.M. and the E $\frac{1}{2}$  of Section 12, T. 1 S., R. 82 W., 6<sup>th</sup> P.M., Grand County, Colorado. The Gore Canyon Whitewater Park is designed with two structures that will each control and divert the flow of the Colorado River to create hydraulic features. The upstream structure and associated whitewater feature are named “Inspiration Point” and the downstream structure and associated whitewater features are named the “Launch Counter.” A map showing the upstream and downstream extent of the Gore Canyon Whitewater Park is attached as Exhibit C.
- a. The Inspiration Point structure will be located in the W $\frac{1}{2}$  of Section 7, T. 1 S., R. 81 W., 6<sup>th</sup> P.M., Grand County, Colorado. The right abutment of the Inspiration Point structure will be located in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 7, whence the NW corner of said Section 7 bears N 56° 11” W, 1,742 feet.
- b. The Launch Counter structure will be located in the E $\frac{1}{2}$  of Section 12, T. 1 S., R. 82 W., 6<sup>th</sup> P.M., Grand County, Colorado. The left abutment of the Launch Counter structure will be located in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 12, whence the SE corner of said Section 12 bears S 15° 41” E, 1,948 feet.
26. Source. Colorado River.
27. Date of Appropriation. December 21, 2010. See paragraph 38 for initiation of appropriation.
28. Calling Rates of Flow. As a matter of compromise and settlement with the CWCB, Grand County has defined “calling” rates of flow for the Gore Canyon Whitewater Park water rights in this paragraph 28, and “non-calling” beneficial use of water in the Gore Canyon Whitewater Park as described below in paragraph 29. Grand County may place a call for water for the calling rates of flow in this paragraph subject to the terms of this decree. The following calling rates of flow for the Gore Canyon Whitewater Park water rights expressed in cfs are **CONDITIONAL**:

<b>Flow Schedule for Calling Rates of Flow for Gore Canyon Whitewater Park Water Rights</b>			
<u>Period</u>	<u>Flow Rate</u>	<u>Experience</u>	<u>85% of Flow Rate</u>
April 5 – April 28	860	Blue	731 cfs

April 29 – July 22	1500	Black (Launch Counter) / Double Black (Inspiration Point)	1275 cfs
July 23 – Oct. 15	860	Blue	731 cfs

After considering all of the factors bearing on the reasonableness of Grand County’s claims, including the flow needed to accomplish the claimed recreational experiences listed above, benefits to the community, the intent of the appropriator, stream size and characteristics, and total stream flow available at the control structures during the periods listed above, the Court finds that the flow rates listed in the table above are the minimum amounts necessary to serve Grand County’s intended reasonable recreation experiences.

29. Non-Calling Beneficial Use. The Court finds for the purposes of this decree that beneficial in-channel recreational use of water may occur and there is a demand for reasonable recreation experiences at the Gore Canyon Whitewater Park at flow rates between 500 cfs up to 2,500 cfs between April 1 and October 15, provided the proposed in-channel diversions are constructed and operated substantially as contemplated by their presently proposed designs. With water that Grand County makes available to the Colorado River for recreational use at the Gore Canyon Whitewater Park under other water rights decreed for such recreational use, Grand County shall have the ability to deliver and protect such water to increase otherwise existing flows to achieve flows between 500 cfs and 2,500 cfs for recreational use between April 1 and October 15, but Grand County shall not have the right to place a call for water at the Gore Canyon Whitewater Park except under its recreational in-channel diversion water rights as identified in the schedule in paragraph 28, and as limited by the terms of this Decree. The delivery of water by Grand County under the other water rights contemplated by this paragraph shall be administered by the Division Engineer consistent with this decree and any other decrees for such water rights. The provisions of this paragraph shall not bind or have any preclusive effect on other interested persons that may seek to participate in any adjudication regarding the other water rights that may be proposed or decreed for the recreational use contemplated by this paragraph. Grand County shall serve written notice to the Objectors named herein, including the State and Division Engineer, of the water rights that it will make available to the Colorado River pursuant to this paragraph.
  
30. 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 boating recreational uses, for both structures. Other recreational activities may occur but may not serve as evidence of a reasonable recreation experience.
  
31. Extended Recreation Season. The Court finds that there is demand for a reasonable recreation experience at the Gore Canyon Whitewater Park between Labor Day and October 15. Without limiting the foregoing finding, the Court finds that non-motorized boating already occurs in the area of the two planned structures at the Gore Canyon

Whitewater Park between Labor Day and October 15 and that there is demand for a continuing reasonable recreation experience on the Colorado River at this location during the period from Labor Day to October 15.

32. Minimum Flow Rates. The minimum amounts necessary to serve Grand County's intended reasonable recreation experiences are listed in paragraph 28 above. As contemplated by section 37-92-305(13)(d) and described in paragraph 29 above, the Court finds that the beneficial uses listed in paragraph 30 may occur at flow rates below those necessary for the intended recreational experiences. However, the Court finds that below a flow rate of 500 cfs, there is no longer any beneficial use of water at the Gore Canyon Whitewater Park under this decree.
33. Volume of Appropriations. Pursuant to C.R.S. § 37-92-305(13)(e), the Court finds that the total volume of water appropriated for the Gore Canyon Whitewater Park water rights is 438,055 acre-feet according to the calculation prescribed by the statute. The Court notes that, pursuant to the time of day term and condition in paragraph 35.b below, the actual appropriated volumes are 42% less than the statutory calculation. Nevertheless, the volume calculated pursuant to statute exceeds 50% of the sum of the total average historical volume of water passing the park between April 5 and October 15. The volume of the appropriation is non-consumptive.
34. Appropriate Stream Reach. The Inspiration Point and Launch Counter structures are located in a reach of the Colorado River that is already frequently used by non-motorized boaters. These structures are located to create new recreational opportunities near the bottom of Gore Canyon and near an existing access road, parking facilities, and boat launch. Finally, the river channel at each of the two structure locations is suitable for creation of the new whitewater features claimed by Grand County. The Court finds that the Inspiration Point and Launch Counter structures are located in an appropriate stream reach.
35. Terms and Conditions.
  - a. Grand County shall only call for water to satisfy the Gore Canyon Whitewater Park water rights in accordance with the schedule in paragraph 28 above. The State Engineer shall not administer a call for these water rights unless the curtailment of junior water rights would result in at least 85% of the flow rate for the applicable time period at the calling structure.
  - b. The hours of operation of the Gore Canyon Whitewater Park are 6:00 a.m. to 8:00 p.m. Subject to the terms of this decree, Grand County may place a call for the RICD Water Rights at any time, provided the call will produce water to the calling RICD Water Right during the hours of operation.
  - c. Initially, the Gore Canyon Whitewater Park may be administered using the existing Colorado River near Kremmling, Colorado gauge (ID# 09058000), with due consideration for any return flows or other inflows accruing to the stream

below the gauge and above the park, as reasonably approved by the Division Engineer. See also paragraph 63 for measuring devices.

36. Land Ownership. The land where the Inspiration Point and Launch Counter are to be located is owned and managed by the United States Department of the Interior, Bureau of Land Management (“BLM”). Grand County provided notice of its application in this case to the BLM in compliance with C.R.S. § 37-92-302(2)(b). Grand County shall follow the appropriate permitting and/or other appropriate processes under federal statutes and regulations at the time it develops the Inspiration Point and Launch Counter structures.
37. Access. There is existing public access to the Colorado River and a parking lot at the location of the Gore Canyon Whitewater Park. Grand County may work with the BLM to improve this access or construct additional access pursuant to the process described in paragraph 36 above.

#### **Additional Findings of Fact**

38. Initiation of Appropriations. Grand County initiated the appropriations for the RICD Water Rights by forming the intent to appropriate combined with overt actions manifesting and providing notice of that intent. Specifically, Grand County adopted Resolution No. 2010-12-33 memorializing its intent to appropriate and posted notice of its intent at both the Hot Sulphur Springs and Gore Canyon Whitewater parks on December 21, 2010. Grand County provided further confirmation and notice of its intent by, inter alia, adopting Resolution No. 2010-12-41, dated December 28, 2010, describing its intent in various public meetings, and filing the application in this case.
39. Confirmation of Appropriations. Grand County has completed the “first step” in the appropriation of its RICD Water Rights by showing the requisite intent to appropriate combined with an open, physical demonstration of that intent and the Court confirms the conditional appropriation of the RICD Water Rights.
40. Diligence. Since the date of appropriation, Grand County has continually exercised reasonable diligence in the development of its RICD Water Rights. Specific activities undertaken by Grand County include detailed design work on the four structures described above, hydrologic investigations at the whitewater park locations, and the prosecution of the application in this case.
41. Availability of Unappropriated Water. The Court finds that there is sufficient unappropriated water available in the Colorado River on sufficiently frequent occasions that there is a substantial probability Grand County can and will complete the appropriations of the RICD Water Rights.
42. Can and Will. The Court finds that, under all the facts and circumstances, there is a substantial probability Grand County can and will complete the appropriations of its RICD Water Rights within a reasonable time.

43. No injury. The appropriation of the RICD Water Rights will not cause material injury to any other water rights so long as they are operated pursuant to the terms and conditions of this decree.
44. Additional Findings Pursuant to C.R.S. § 37-92-305(13).
- a. The RICD Water Rights decreed herein will not materially impair the ability of the State of Colorado (“State”) to fully develop and place to consumptive beneficial use its compact entitlements. The RICD Water Rights are non-consumptive and are located more than 200 river miles upstream of the location where the Colorado River flows into Utah. Because of their location and non-consumptive nature, the RICD Water Rights do not preclude other water development opportunities to use any remaining portion of Colorado’s entitlement to waters of the Colorado River.
  - b. The adjudication and administration of the water rights decreed herein will promote maximum utilization of waters of the State. The RICD Water Rights will not impact downstream development of new water projects because the RICD Water Rights are non-consumptive. The terms and conditions in this decree, including but not limited to those in paragraph 45 and 21.c, will allow for additional water to be developed upstream of the RICD Water Rights. Finally, the Court finds that non-motorized boating on the Colorado River provides substantial economic benefit to Grand County and Colorado and the non-consumptive use of water for the RICD Water Rights is consistent with maximum utilization of the waters of the Colorado River.
  - c. The RICD Water Rights decreed herein control water and place it to the intended beneficial uses via a reasonably efficient means of diversion without waste.
  - d. The CWCB appropriated an instream flow water right through the reach of the river where the Glory Hole and Hot Pocket structures are to be located for 90 cfs, which was decreed in Case No. 80CW447 (Div. 5). The CWCB appropriated an instream flow water right through the reach of the river where the Inspiration Point and Launch Counter structures are to be located for 500 cfs (September 16 – May 14), 600 cfs (May 15 – July 31) and 750 cfs (August 1 – September 15) which was decreed in Case No. 11CW159 (Div. 5). Grand County has designed control structures to integrate with the natural environment, including enhancements to fish habitat. The Applicant will consult with the Division of Parks and Wildlife and the CWCB before and during any construction or repair of the RICD so that the construction activities will not impact the natural environment that the instream flow water rights seek to protect. As a result, the RICD Water Rights decreed herein will not cause material injury to instream flow water rights appropriated pursuant to C.R.S. § 37-92-102(3) and (4).

45. Additional Terms and Conditions:

- a. Pursuant to C.R.S. § 37-92-103(10.3), there shall be a presumption that there will not be material injury to this RICD from subsequent appropriations or changes of water rights if the effect on this RICD caused by such appropriations or changes does not exceed one-tenth of one percent of the lowest decreed rate of flow (0.25 cfs for the Hot Sulphur Springs Whitewater Park and 0.86 cfs for the Gore Canyon Whitewater Park) for this RICD as measured at the RICD and the cumulative effects on this RICD caused by such appropriations or changes do not exceed two percent of the lowest decreed rate of flow (5 cfs for the Hot Sulphur Springs Whitewater Park and 17.2 cfs for the Gore Canyon Whitewater Park) for this RICD measured at the RICD.
- b. The RICD Water Rights decreed herein are not intended to deprive the people of the State of Colorado of the beneficial use of those waters available pursuant to interstate compact. The County agrees that the RICD Water Rights will be administered by the State Engineer in accordance with rules duly promulgated by the State Engineer in accordance with C.R.S. § 37-80-104 and § 37-92-501 related to the curtailment of Colorado River basin water uses within Colorado in order to comply with the Colorado River Compact of 1922 and the Upper Colorado River Basin Compact of 1948, including any such rules intended to avoid, delay, or limit the severity of such a compact curtailment. If no such compact curtailment rules have been promulgated, the County will not place a call for the RICD Water Rights during any specific period of time 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 implements in a manner that curtails water diversions within Water Division 5, but shall otherwise be administered in accordance with this decree and Colorado law.
- c. In addition to the no call provisions in paragraphs 21.c and 45.g, Grand County reserves the right not to call the RICD Water Rights, within the sole discretion of Grand County, as against future water rights up to the first 3,000 acre-feet of depletions per year, applied to all water users in the order of their priority. The provision in the preceding sentence shall be implemented as follows. On or before January 30<sup>th</sup> of each year, Grand County will provide written notice to the Division Engineer stating whether it will exercise its discretion as described in the first sentence of this paragraph, and identifying all water rights that have been applied for or decreed in the previous calendar year (and cumulatively for all previous years) that will be included on Exhibit D, described below. The notice shall be substantially in the form of Exhibit D to the decree and shall identify the water rights by decree number, name, administration number, appropriation date, and year of priority of (1) the most junior right against which Grand County will not place a call, and (2) all other upstream water rights junior to the RICD Water

Rights but senior to the junior-most water right identified in the written notice. Water rights included on Exhibit D shall remain on Exhibit D and shall not be called out by the RICD Water Rights in perpetuity, provided, however, Exhibit D may be modified if a water right is denied, canceled or decreed for a lesser amount. Upon receipt of the written notice, the Division Engineer shall administer the RICD Water Rights as junior in priority to all water rights identified in the Exhibit D form. This paragraph shall not allow “selective subordinations.”

- d. Grand County shall not use the RICD Water Rights as a basis to oppose any future application in the Division 5 water court that proposes future development of the waters of the Colorado River or its tributaries upstream of the Grand County whitewater parks where the proposed diversion, beneficial use(s) and return flows occur upstream of either Grand County whitewater park, and the contemplated diversion is less than 1,000 acre-feet each year. Such water rights may, however, be subject to curtailment by a call for water under the RICD Water Rights. Unless otherwise provided in a stipulation, paragraph 45.d concerns new appropriations and not applications for changes of water rights.
- e. Grand County shall provide final designs for the four control structures described above that are signed and sealed by a professional engineer to the Division Engineer and the Water Court.
- f. For purposes of making the RICD Water Rights absolute, use of a higher calling flow rate at each Whitewater Park will suffice to also make the lower flow rate(s) absolute.
- g. *Case No. 2011CW152 (Div. 5)*. Grand County shall not place a call for water under the RICD Water Rights, specifically the Calling Rates of Flow in paragraphs 15 and 28, when such a call would impair the storage and substitution of up to of 1,775 acre-feet in Gross Reservoir, storage of up to 2,500 acre-feet in Williams Fork Reservoir, and exchanges of up to 4,275 acre-feet into Green Mountain Reservoir, Wolford Mountain Reservoir, and Williams Fork Reservoir, as contemplated by the application in Case No. 2011CW152, as amended.
- h. The RICD Water Rights do not have the right to “stack” on top of the instream flow water rights identified in paragraph 44.d. For example, if the flows in the Colorado River at the Hot Sulphur Springs Whitewater Park measure 240 cfs on April 15, Grand County shall have the right to call to produce 250 cfs in the Colorado River at the Park, and not to produce 340 cfs (90 cfs + 250 cfs) at the Park.
- i. Grand County shall determine by resolution up to three employees or agents who shall be authorized to place a call for the recreational in-channel water rights approved herein. Grand County shall provide the Division Engineer with a copy



of the initial resolution designating the authorized individuals and each subsequent resolution changing the authorized individuals.

- j. The surface water rights confirmed herein shall be subject to the operation of all senior water rights, including appropriative rights of exchange operating through the Hot Sulphur Springs Whitewater Park and Gore Canyon Whitewater Park, including (1) those described in Case Nos. 90CW236 and 97CW290 (Div. 5), and including (2) any irrigation or domestic uses perfected by use on or before October 15, 1977 and protected by the Historical Users Pool in Green Mountain Reservoir, as contemplated under Senate Document 80 (Act of August 9, 1937, 50 Stat. 564) and the Operating Policy for Green Mountain Reservoir; Colorado Big Thompson Project, Colorado (Federal Register, Vol. 48, No. 247, December 22, 1983), and any amendments thereto.
- k. A call by Grand County under the RICD Water Rights will not be administered by the Division Engineer to curtail future water rights (including exchanges) upstream of the RICD Water Rights, the depletions from which both (1) qualify for the presumption of no material injury under paragraph 45.a (rights that do not affect the RICD Water Rights by more than one tenth of one percent of the lowest rate of flow, i.e., 0.25 cfs at the Hot Sulphur Springs Whitewater Park and 0.86 cfs at the Gore Canyon Whitewater Park); and (2) fall within the first 3,000 acre-feet of annual depletions under paragraph 45.c.
- l. Grand County will operate the RICD Water Rights with due consideration of its constituents water supply and augmentation needs and with recognition of Middle Park Water Conservancy District and Colorado River Water Conservation District's statutory obligations for the development of a water supply for use by their joint constituency. Grand County will, at all times, operate the RICD Water Rights in recognition of existing decrees and agreements.
- m. Denver Water, Grand County, and other West Slope entities entered into the Colorado River Cooperative Agreement, (the "Cooperative Agreement"), to resolve longstanding water issues between the parties. Pursuant to Article III.E.20 of the Cooperative Agreement, Denver Water has agreed to bypass and/or deliver from its Williams Fork and/or Fraser River collection systems for use by the Grand County Water Users (*i.e.* the Town of Fraser, the Town of Granby, the Grand County Water and Sanitation District No. 1, the Winter Park Water and Sanitation District, and the Winter Park Recreational Association) an additional 375 acre-feet of water per year ("Additional Bypass Water"). Denver Water and the Grand County Water Users also entered into the 2012 Grand County Water Users' Operating Plan, which provides for implementation of certain aspects of the Cooperative Agreement, including the delivery and use of the Additional Bypass Water, and to provide for continued operations of previous water use agreements involving Denver Water and certain West Slope entities, including the Clinton Reservoir-Fraser River Water Agreement, dated July 21, 1992 (the

“Clinton Agreement”). Grand County shall not operate the RICD Water Rights in a way that would impair or interfere with the contractual rights of any of the Grand County Water Users, including without limitation, augmentation, replacements or exchanges to implement, make use of or change any Existing Contract Water, Reservoir Yield, Bypass Water or Additional Bypass Water, as those terms are used under the Clinton Agreement, Cooperative Agreement or 2012 Grand County Water Users’ Operating Plan, as those agreements may be amended from time to time. Grand County and/or any of the Grand County Water Users will communicate any request to accomplish compliance with this paragraph in writing to the Division Engineer. The request shall include sufficient details as to how the RICD Water Rights should be administered to accomplish compliance with this paragraph. The State and Division Engineer shall administer any such request to the extent allowed by Colorado law and this decree without injury to vested water rights. Any disputes between Grand County and the Grand County Water Users regarding this paragraph shall be finally resolved by a court with jurisdiction and not by the State and Division Engineers in their roles as administrators of this decree.

### **CONCLUSIONS OF LAW**

46. Incorporation of Findings of Fact. To the extent they may be deemed to be Conclusions of Law, the foregoing Findings of Fact are incorporated in these Conclusions of Law.
47. Consistent with Law. The application is contemplated and authorized by law. *See e.g.*, C.R.S. § 37-92-101 *et seq.*; *id.* at § 103(10.3).
48. Notice and Jurisdiction. Timely and adequate notice of this application was given in the manner required by law and the Court has jurisdiction over the subject matter of this proceeding and over all persons, owners of property, and water rights affected hereby, regardless of whether those persons or water rights have appeared. The application in this matter and the resume publications of the application placed such persons on notice of the relief requested by the application and granted by this Decree.
49. 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 structures described in paragraphs 12 and 25 above. C.R.S. § 37-92-103(7). Flow rates up to the amounts set forth in paragraphs 15, 16, 28, and 29 will be efficiently controlled, concentrated and diverted, without waste, to create waves, hydraulic holes, large changes in current direction, and whitewater features that will be used by kayakers and other boaters for the intended recreational experiences.
50. Diversion and Use. The controlling of the claimed amounts of water during the claimed time periods by the proposed in-channel structures and devices and the use of such water for the intended recreational in-channel boating purposes:

- a. Represents a reasonably efficient practice of diversion and beneficial use, *Alamosa-La Jara Water Users Protection Ass'n v. Gould*, 674 P.2d 914, 934-5 (Colo. 1983); C.R.S. §§ 37-92-102(2)(b), 37-92-103(4) and (7);
  - b. Represents the use of the minimum amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation was lawfully made by Grand County, C.R.S. § 37-92-103(4) and (10.3); and
  - c. Will create opportunities for the intended recreational experiences to occur, at the minimum stream flows needed to provide the identified recreational experiences. C.R.S. § 37-92-103(10.3).
51. Reasonable Recreational Experience. The intended recreation experiences are reasonable. By using the proposed in-channel structures and devices in a reasonably efficient manner to control that amount of water that is reasonable and appropriate to accomplish without waste the intended recreational in-channel non-motorized boating purposes, and thereby providing opportunities for reasonable recreation experiences to occur with the minimum amounts of water for each recreational opportunity, the proposed appropriation of water meets the beneficial use standards historically applied to water rights, which standards, as recognized by Senate Bill 01-216, are also to be applied to “recreational in-channel diversions.” See C.R.S. § 37-92-103(4) and (10.3).
52. No Injury to Instream Flow Rights and Flood Control. Decreed instream flow water rights exist in the reach of the Glory Hole and Hot Pocket structures decreed herein. However, exercise of the water rights decreed herein will complement, and will not cause material injury to, any CWCB instream flow water rights. Construction of the Glory Hole and Hot Pocket structures will not adversely affect the reach of the stream or the natural environment of the stream that instream flow rights are decreed to protect. The CWCB maintains no liability for any damages, injury or other issues related to or arising from the control structures. Should the CWCB’s pending instream flow application in Case No. 11CW159 (Div. 5) be decreed, the same conclusions of law shall apply as to those instream flow water rights.
53. Extended Season at Gore Canyon Whitewater Park. There is a demand for reasonable recreational experiences at the Gore Canyon Whitewater Park between Labor Day and October 15. C.R.S. § 37-92-103(10.3).
54. Non-Speculation. The Court concludes, in accordance with C.R.S. § 37-92-103(3), that Grand County has a non-speculative intent to put the RICD Water Rights decreed herein to beneficial use within a reasonable time.
55. Can and Will. The Court concludes, in accordance with C.R.S. § 37-92-305(9)(b), that Grand County’s RICD Water Rights are feasible and that Grand County has shown a substantial probability that it will divert and use its RICD Water Rights for the purposes for which they were adjudicated with diligence and within a reasonable time.

56. Reasonable Diligence. The Court concludes that, in accordance with C.R.S. § 37-92-301(4), Grand County has demonstrated reasonable diligence in development of its RICD Water Rights by showing that, since their date of appropriation, Grand County has undertaken a steady application of effort to complete the appropriations in a reasonably expedient and efficient manner taking into account all the facts and circumstances.
57. Non-injury. Grand County can and will be able to divert its RICD Water Rights without injury to owners and users of vested water rights and decreed conditional water rights.
58. Integrated System. The RICD Water Rights are part of integrated system of water rights together with anticipated sources of water from agreements with other water users, and future acquisitions and appropriations to support Grand County's economy, ecology and recreation.

### **JUDGMENT AND DECREE**

59. Incorporation of Findings and Conclusions. The foregoing Findings of Fact and Conclusions of Law are incorporated herein as if set forth verbatim.
60. CWCB Recommendation Considered. The CWCB submitted its findings of fact and recommendations to the Court on March 28, 2012. The Court has duly considered the findings and recommendations as required by C.R.S. § 37-92-305.
61. Approval of RICD Water Rights. Grand County's application for RICD water rights is hereby confirmed, approved, adjudicated and decreed subject to the terms and conditions herein with an appropriation date of December 21, 2010.
62. Accounting. Applicant shall provide such accounting for the water rights adjudicated herein as reasonably requested by the Division Engineer.
63. Measuring Devices. Applicant shall install adequate measuring devices as may reasonably be required by the Division Engineer pursuant to C.R.S. §37-92-502(5)(a) to administer this decree.
64. Administration by State and Division Engineers. The State Engineer shall administer this decree in accordance with the terms and conditions set forth herein.
65. No Material Injury. The terms and conditions provided for in this ruling and decree are adequate to assure that no material injury to any water users will result from the operation of Grand County's RICD Water Rights.
66. Priority Administration. The water rights and priority granted herein are based on the appropriation date above and the filing of the application in this case in 2010. Said water rights and priority shall be administered as having been filed in 2010 and shall be junior to all water rights granted pursuant to applications filed in previous years. As between all water rights applied for in the same calendar year, priorities shall be determined by

historical dates of appropriation and shall not be affected by the date of filing of the Application or the date of entry of this ruling.

67. Reasonable Diligence. The conditional RICD Water Rights decreed herein are continued in full force and effect until the last day of December, 2019. To maintain these conditional RICD Water Rights, an application for reasonable diligence shall be filed on or before the last day of December, 2019, or a showing made on or before such date that such conditional water rights have become absolute water rights by reason of the completion of the appropriation.
68. No Precedent. The findings of fact, conclusions of law and decree in this matter were completed as a result of substantial discussions, negotiations, and compromises by, between and among the Applicant and several objectors pertaining to all parts of the findings, conclusions and decree. It is specifically understood and agreed by the parties hereto, and found and concluded by the Court, that the acquiescence of the parties to a stipulated decree under the specific factual and legal circumstances of this contested matter and upon the numerous and interrelated compromises reached by the parties shall never give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, *stare decisis*, *res judicata*, estoppel, laches, or otherwise, nor to any administrative or judicial practice or precedent, by or against any of the parties hereto in any other matter, case or dispute, nor shall testimony concerning such acquiescence of any party to a stipulated decree herein be allowed in any other matter, case or dispute. All parties stipulate and agree that they do not intend the findings, conclusions and decree to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The parties further stipulate and agree that they each reserve the right to propose or to challenge any legal or factual position in any other matter filed in this or any other court without limitation by these Findings, Conclusions and Decree.
69. The water clerk shall file a copy of this Decree with the Division Engineer for Water Division No. 5 and the State Engineer.

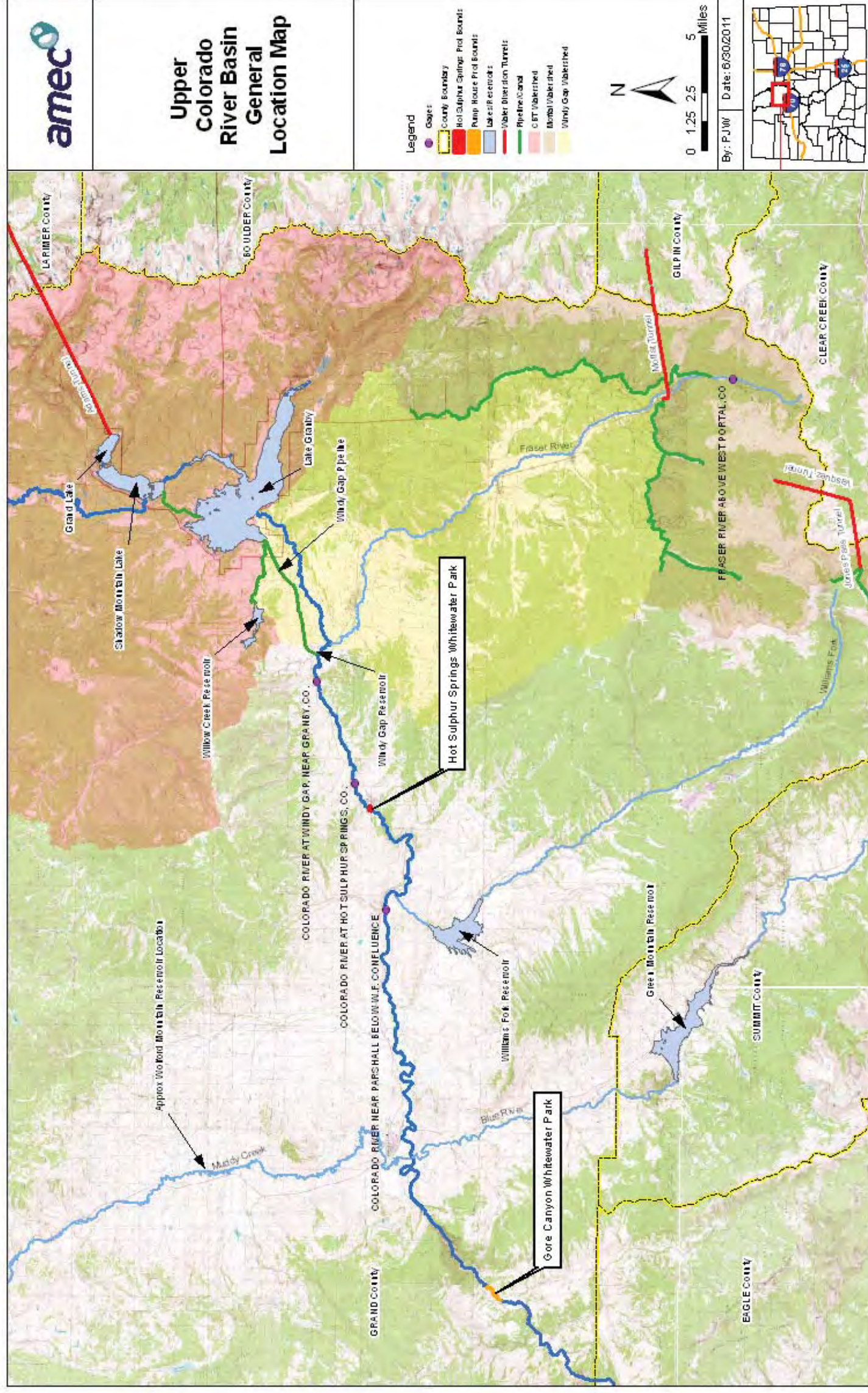
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE COURT:

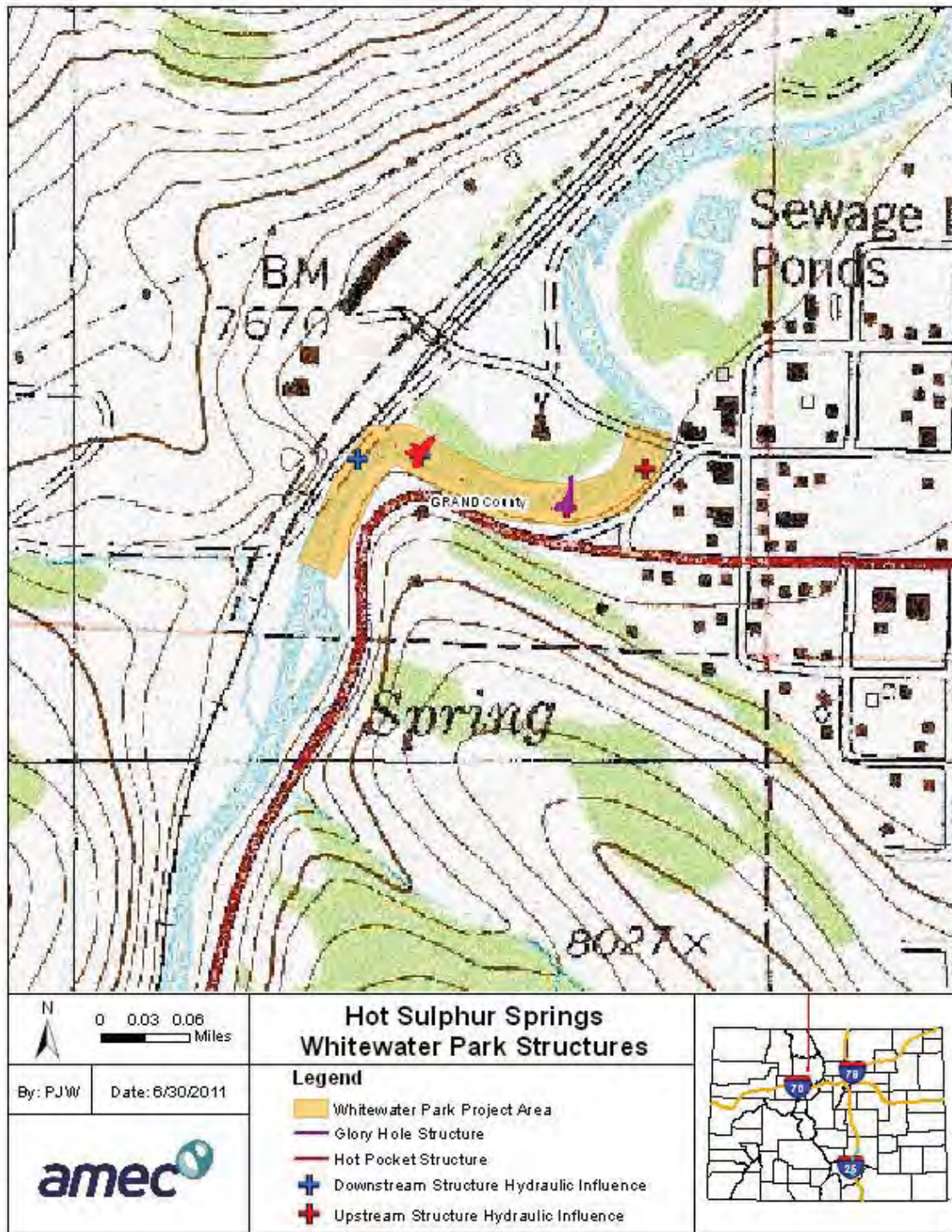
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James B. Boyd  
Water Judge, Water Division 5  
State of Colorado

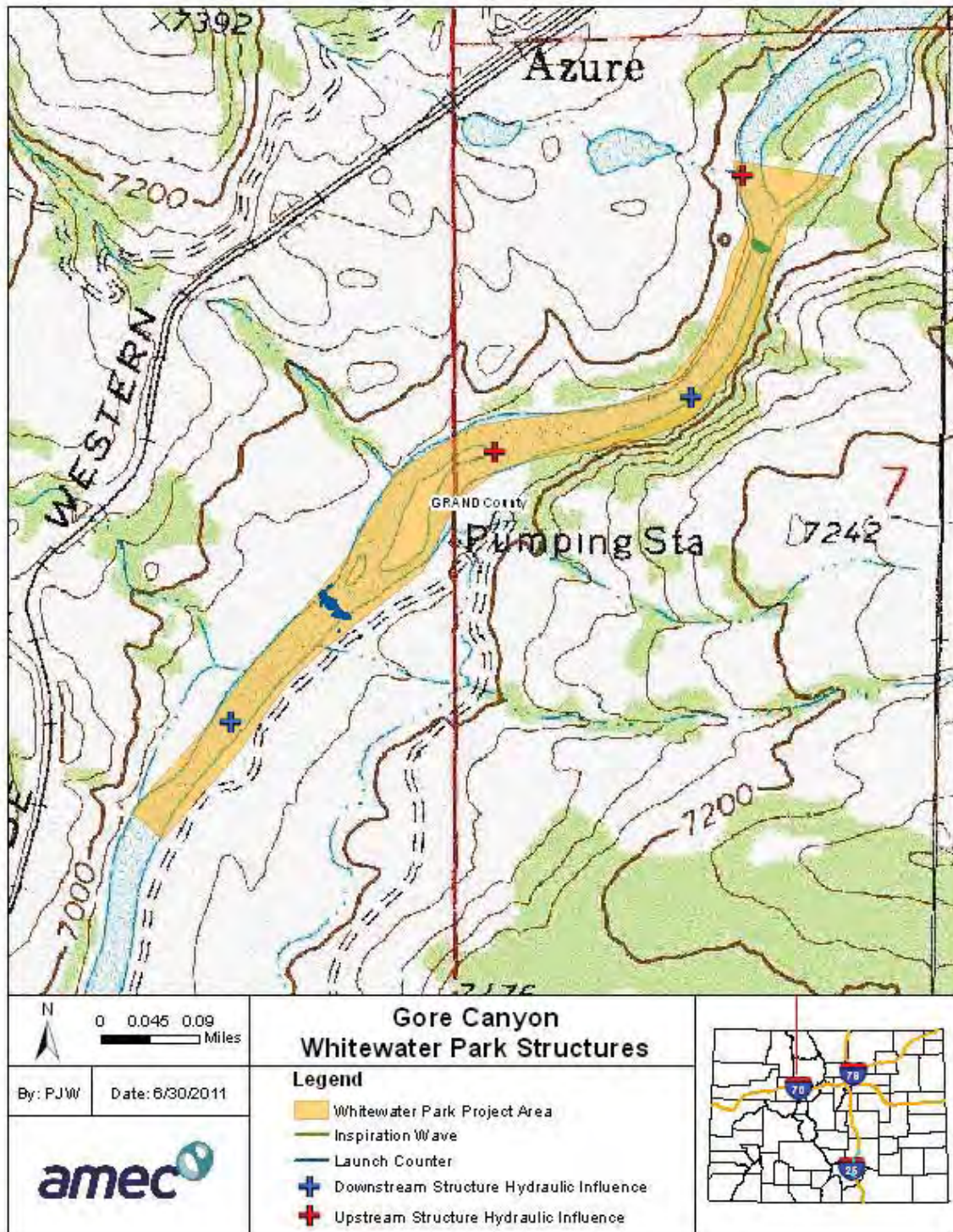
Figure 5: Locations of Hot Sulphur Springs and Gore Canyon Whitewater Parks within Upper Colorado River Basin



**Figure 3: Locations of RICD Control Structures, Hot Sulphur Springs Whitewater Park**



**Figure 4: Locations of RICD Control Structures, Gore Canyon Whitewater Park**





**Grand County Board of Commissioners**  
**Notice to Division 5 Engineer**  
**January 25, 2015**

= decreed, absolute  
 = decreed, conditional in whole or in part  
 = pending

**Water Rights Qualified Under Paragraph 45c, Case No. 10CW298**

Water Right Name	Applicant	Case No.	Appropriation Date	Adjudication Date	Maximum Annual Depletion, AF	Comments Regarding Maximum Annual Depletion
XYZ Municipal Pipeline ABC Trout Ponds	XYZ W&SD ABC Ranch	13CW097 13CW195	7/14/2012 4/15/2010	12/31/2013 12/31/2013	9.8 15.7	from decree (depletions from indoor municipal use, 5% CU of diversions) (1) from decree (annual evaporative depletion)
Antlers Lodge Wells Megabucks West Snowmaking system	Antlers, LLC Megabucks, LLC	14CW122 14CW215	7/11/2014 9/30/2014	12/31/2014 12/31/2014	62.0 500.0	from applicant's application and engineering report (domestic and irrigation use) (1) from applicant's application and engineering report (snowmaking and storage) (1)
<b>Total Annual Depletions, acre-feet</b>					<b>587.5</b>	

(1) subject to revision based upon final decree