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**CO Montrose County District Court 7th JD**

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DISTRICT COURT,  
WATER DIVISION 4, COLORADO  
1200 N. Grand Avenue, Bin A  
Montrose, CO 81401

**CONCERNING THE APPLICATION FOR  
WATER RIGHTS OF THE  
UPPER GUNNISON RIVER  
WATER CONSERVANCY DISTRICT**

in Gunnison County.

**▲ COURT USE ONLY ▲**

Case Number: 12CW4

(Ref. Case No. 02CW38)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE  
AND DECREE**

This matter comes before the Referee upon the application of the Upper Gunnison River Water Conservancy District to make absolute the conditional water right decreed to the Gunnison River Whitewater Course in Case No. 02CW38. The Referee, having made such investigations as are necessary to determine whether the statements in the application are true, and having become fully advised with respect to the subject matter of the application, hereby makes the following findings of fact and conclusions of law, and enters the following ruling of the referee.

**FINDINGS OF FACT**

1. Name and Address of Applicant:

Upper Gunnison River Water Conservancy District  
Attention: Frank J. Kugel, General Manager  
210 West Spencer, Suite B  
Gunnison, CO 81230  
Telephone: 970.641.6065

(herein referred to as the District).

2. Opposition: A Statement of Opposition was filed by the Colorado Water Conservation Board. The time for filing such statements has expired and no motion to intervene has been filed.

3. Report of the Division Engineer: The Referee has given due consideration to the Division of Engineer's Consultation Report/Recommendation dated June 14, 2012, which

recommends approval to make absolute the amounts conditionally decreed to each of the structures within the Gunnison River Whitewater Course for recreational boating use (including, but not limited to, kayaking, rafting, and canoeing).

4. The Subject Conditional Water Right:

- a. Name of Structure: Gunnison River Whitewater Course (the Course).
- b. Date of original Decree: January 12, 2006; Case No. 02CW038, Water Division 4.
- c. Legal description of location of structures: The Course is located within the channel of the Gunnison River, downstream of U. S. Highway 50 West of the City of Gunnison in Sections 2 and 3, Township 49 North, Range 1 West of the New Mexico Principal Meridian, County of Gunnison, State of Colorado. The location of the six structures which constitute the Course as built are as follows:

Structure 1: A “V” dam located within the channel of the Gunnison River located North 6 degrees East, a distance of 1,040 feet from the Southwest corner of Section 2.

Structure 2: Double offset deflectors located at points within the channel of the Gunnison River located North 4 degrees West a distance of 640 feet from the Southeast corner of Section 3.

Structure 3: Double offset deflectors located at points within the channel of the Gunnison River located North 15 degrees West a distance of 530 feet from the Southeast corner of Section 3.

Structure 4: Double offset deflectors located at points within the channel of the Gunnison River located North 35 degrees West a distance of 480 feet from the Southeast corner of Section 3.

Structure 5: A “U” dam located within the channel of the Gunnison River located North 56 degrees West a distance of 550 feet from the Southeast corner of Section 3.

Structure 6: A “U” dam located within the channel of the Gunnison River located North 65 degrees West a distance of 700 feet from the Southeast corner of Section 3.

The length of the Course is approximately one-quarter mile. A map showing the location of the Course is attached to this Ruling and Decree as EXHIBIT A. In accordance with the terms of the original Decree, the District has verified the precise locations of the structures as built and in

place on the date of the Application in this case. The descriptions above reflect modifications to the locations described in original Decree resulting from such verification. All structures remain within the stream reach described in the original Decree.

- d. Source of water: Gunnison River.
- e. Uses: Recreational boating including, but not limited to, kayaking, rafting, and canoeing.
- f. Appropriation date: October 20, 1998.
- g. Amount: The following amounts are conditionally decreed to each of the structures that constitute the Course for each of the following semi-monthly periods:

May 1-15	May 16-31	June 1-15	June 16-30	July 1-15	July 16-31	August 1-15	August 16-31	Sept 1-15	Sept 15-30
535 c.f.s.	875 c.f.s.	1200 c.f.s.	1200 c.f.s.	975 c.f.s.	500 c.f.s.	400 c.f.s.	325 c.f.s.	300 c.f.s.	270 c.f.s.

5. The Referee finds that the following facts support making the water right decreed to the Course absolute:

a. The six structures described in paragraph 4 above have been constructed, maintained and used for recreational boating purposes since the original Decree was entered by the Water Court.

b. All of the flows conditionally decreed to the structures that constitute the Course are claimed absolute based upon flows through the Course and recreational use of the structures since the original Decree was entered. Based upon flows measured at the Gunnison River at Gunnison gage, adjusted for West Branch diversions, flows that met or exceeded the amounts decreed to the Course occurred for the number of days shown in the following table:

<b>Year</b>	<b>May 1-15</b>	<b>May 16-31</b>	<b>June 1-15</b>	<b>June 16-30</b>	<b>July 1-15</b>	<b>July 16-31</b>	<b>August 1-15</b>	<b>August 16-31</b>	<b>Sept 1-15</b>	<b>Sept 15-30</b>
<b>2006</b>	15	16	15	2	5	16	15	16	15	15
<b>2007</b>	15	16	15	5	0	16	15	16	12	15
<b>2008</b>	15	16	15	15	15	16	15	16	15	15
<b>2009</b>	15	16	15	15	14	16	15	16	15	15
<b>2010</b>	3	10	15	7	0	8	15	16	15	5
<b>2011</b>	11	16	15	15	15	16	15	16	15	15

c. Water was applied to beneficial use within the Course in the decreed amounts during each semi-monthly period described in paragraphs 4.g. and 5.b. above in each year from 2006 through 2011. Documentation of recreational boating use of the Course during the period May1 through September 30 during the years 2006-2011 includes the following:

- i. Under contract with the District, Colorado Land and Water Specialists collected use and flow data at the Course on at least two days during each semi-monthly period from May 1 through September 30 during 2006, 2007, and 2008 and recorded and photographed recreational boating use of the Course with flows equal to or greater than the decreed amounts.
- ii. The Gunnison River Festival, a four-day event featuring several kayak events, a Community River Parade, Raft Paddle Race, Raft Rodeo, River Board and SUP, Hooligan Race, Downriver Race, Enduro, and Family Float events has been conducted on the Course each year from 2006 through 2011.
- iii. Scenic River Tours, Inc., an adventure company based in Gunnison, carried an estimated 2,500 clients per season through the Course in rafts and kayaks each year from 2006 through 2011. Other adventure companies report similar use of the Course during that period.

- iv. Local adventure companies and the Western State College Wilderness Pursuits program have utilized the Course each Summer since 2006 for kayak classes.

#### CONCLUSIONS OF LAW

6. To the extent they constitute legal conclusions, the foregoing Findings of Fact are incorporated herein.

7. All notices required by law have been properly made, including those required under C.R.S. §§ 37-92-302(2)(b)(II) and 37-92-302(3). The Court has jurisdiction over the Application and over all persons or entities that had standing to appear, even though they did not do so.

8. The Application is complete, covering all applicable matters required pursuant to the *Water Right Determination and Administration Act of 1969*, C.R.S. §§ 37-92-101, *et seq.*

9. The District has fulfilled all legal requirements for a finding that the water right decreed to the Gunnison River Whitewater Course should be made absolute.

#### RULING OF THE REFEREE

10. The Findings of Fact and Conclusions of Law as set forth above are incorporated herein by reference and are hereby modified as necessary to constitute part of the Ruling of the Referee.

11. The Application To Make Absolute is GRANTED for the amounts conditionally decreed to each of the structures that constitute the Course for each of the semi-monthly periods set out in paragraph 4.g. above.

12. The conditions contained in paragraph 8 of the decree in Case No. 02CW38 shall continue in full force and effect.

13. A copy of this Decree of the Water Court shall be filed with the State Engineer and the Division Engineer for Water Division No. 4.

14. It is further ORDERED that this Ruling shall be filed with the Water Clerk, subject to judicial review.

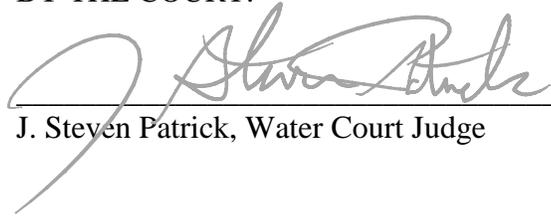
Dated this 12<sup>th</sup> day of September, 2012.

  
S. Gregg Stanway, Water Court Referee

No protest was filed to this matter. The foregoing Ruling of the Referee is confirmed and approved and made the Judgment and Decree of this Court.

Dated this 9<sup>th</sup> day of October, 2012.

BY THE COURT:



A handwritten signature in cursive script, appearing to read "J. Steven Patrick", is written over a horizontal line.

J. Steven Patrick, Water Court Judge

