

**PHIL WEISER**  
Attorney General  
**NATALIE HANLON LEH**  
Chief Deputy Attorney General  
**ERIC R. OLSON**  
Solicitor General  
**ERIC T. MEYER**  
Chief Operating Officer



**STATE OF COLORADO  
DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 7th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Natural Resources and  
Environment Section**

June 18, 2021  
*Via email*

Scott A. Grosscup, Esq.  
BALCOMB & GREEN, P.C.  
Post Office Drawer 790  
Glenwood Springs, Colorado 81602  
sgrosscup@balcombgreen.com

**CRE 408 SETTLEMENT COMMUNICATION**

**RE: Case No. 20CW3031, Application of the Yellow Jacket Water Conservancy District**

Dear Scott:

I am writing to you on behalf of the State Engineer and Division Engineer for Water Division 6 ("Engineers") to inform you of issues in this case that the Engineers believe the Yellow Jacket Water Conservancy District ("District") will need to provide engineering to address, and that are not addressed by the engineering and other information the District has provided to date in Case No. 19CW3017. This letter does not provide the Engineers' comments on the District's proposed decree. The Engineers intend to provide separate decree comments on or before August 9, 2021. The Engineers reserve the right to raise additional issues, comments, and concerns as more information about this case becomes known.

1. Need for water rights:

- a. The evidence the District has provided to date in Case No. 19CW3017 does not demonstrate a need for both the water rights the District seeks to change in this case and those it seeks to change in Case No. 19CW3017. Please provide evidence that the District needs both its Sawmill Mountain Reservoir and Ripple Creek Reservoir storage rights as well as the right to store additional water under its North Fork Feeder Conduit water right, including the extent to which the District needs each right.

2. Ripple Creek Reservoir:

- a. Please provide evidence of the contemplated draft of Ripple Creek Reservoir as of its November 9, 1953 appropriation date. The Bureau of Reclamation reports concerning the Yellow Jacket Project provided in Case No. 19CW3017 were published in 1976 and do not address the District's intent as to the contemplated draft of Ripple Creek Reservoir in 1953.
- b. Please provide a copy of the water rights plan required by paragraph 18.2 of the decree entered in Case No. 09CW50.
- c. Please provide evidence that there is a substantial probability that the District can and will, within a reasonable time, construct a 12,500 acre-foot off-channel reservoir at the Kellog Gulch site and utilize the Ripple Creek Reservoir storage right to fill that reservoir. Such evidence should address the technical feasibility of the project, the economic feasibility of the project, the District's present right and prospective ability to access the planned site of the reservoir and associated facilities, and the District's ability to obtain the necessary permits for construction of the reservoir and associated facilities. Such evidence should also demonstrate that there is a substantial probability that the District can and will construct the Kellog Gulch Reservoir in addition to the District's contemplated Oak Ridge Park Ditch reservoir(s) and enlargement of Lake Avery.
- d. Given that the proposed Kellog Gulch Reservoir site is downstream from the majority of the land located within the District's boundaries, please explain how the District will deliver water stored in Kellog Gulch Reservoir under the Ripple Creek Reservoir storage right to locations within the District for the District's proposed uses. To the extent the District proposes to deliver such water by exchange, please provide an analysis of the exchange potential between the location where stored water will be delivered to the White River and the upstream locations where such water will be diverted by exchange. Any exchange-potential analysis should consider instream-flow water rights held by the Colorado Water Conservation Board.

3. North Fork Feeder Conduit:

- a. Given that the North Fork Feeder Conduit was decreed to fill Sawmill Mountain Reservoir with water diverted from the North Fork of the White River, why was the North Fork Feeder Conduit not completely

abandoned in Case No. 09CW48 along with the right to fill Sawmill Mountain Reservoir from the North Fork of the White River?

- b. Please explain the basis for the reduction of the North Fork Feeder Conduit's decreed diversion rate from 500 c.f.s. to 25 c.f.s. in Case No. 09CW48.
- c. Please provide a copy of the water rights plan required by paragraph 18.2 of the decree entered in Case No. 09CW48.
- d. Please provide the following information concerning the off-channel reservoirs located along the Oak Ridge Park Ditch in which the District intends to store water diverted under the North Fork Feeder Conduit water right: (i) the reservoirs' planned locations; (ii) the reservoirs' planned capacities; (iii) the amount of water diverted under the North Fork Feeder Conduit water right the District claims the right to store in the reservoirs.
- e. Please provide evidence that there is a substantial probability that the District can and will, within a reasonable time, construct an off-channel reservoir or reservoirs along the Oak Ridge Park Ditch and store water diverted under the North Fork Feeder Conduit water right in that reservoir/those reservoirs. Such evidence should address the technical feasibility of the project, the economic feasibility of the project, the District's present right and prospective ability to access the Oak Ridge Park Ditch and the planned site(s) of the reservoir(s) and associated facilities, and the District's ability to obtain the necessary permits for construction of the reservoir(s) and associated facilities. Such evidence should also demonstrate that there is a substantial probability that the District can and will construct the Oak Ridge Park Ditch reservoir(s) in addition to the District's contemplated Kellog Gulch Reservoir and enlargement of Lake Avery.

Thank you for your attention to this matter. Please do not hesitate to contact me if there is anything you would like to discuss.

Sincerely,

FOR THE ATTORNEY GENERAL

*/s/ Will Davidson*

WILLIAM D. DAVIDSON  
Assistant Attorney General  
Natural Resources & Environment Section  
Direct: (720) 508-6280  
Email: [will.davidson@coag.gov](mailto:will.davidson@coag.gov)

cc: Emily Halvorsen, Assistant Attorney General  
Erin Light, Division Engineer, Water Division 6