February 8, 2013

Balcomb & Green, P.C.

Attorneys at Law

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Via U.S. Mail

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***Re: YJWCD – February 8, 2013 Meeting Materials***

Dear Directors:

Attached is an Agenda for the next meeting of the YJWCD for Friday February 8, 2013 to begin at 3:30 and minutes from the last meeting. Mike Brennan has indicated he will not be available. Please advise if you cannot make the meeting.

***White River Highland Ditch.*** We were directed to contact the White River Highland Ditch Company concerning payments for past due amounts. We sent the Highland Ditch Company a letter and invoice in December of last year. The total amount of the invoice was $3,048, which included use of the water for four years in which payment was not received. The Highland Ditch Company then sent a check in the amount of $762 for use of the Highland Ditch water right in 2012. Representatives from the Highland Ditch Company will be present at the next meeting to discuss use of this water right.

The Board also requested that we investigate the Town of Meeker’s potential interest in this water right. After discussing this with the attorney for the Town of Meeker, it does not appear that the YJWCD and Town have ever entered into an agreement that requires the YJWCD to deliver a portion of this water right to the Town.

Rather, the YJWCD acquired its interest in the Fourth Enlargement from Rio Blanco County in 1972 (how the county acquired its interests from the original claimants is unknown at this point). As part of the acquisition of this water right, the YJWCD and County entered into an agreement that provided the Town of Meeker, or Meeker community would have “preferred standing” for the domestic and municipal uses of this water right. It also provided that the Town would be charged to be determined rate for this water.[[1]](#footnote-1)

It does not appear that the YJWCD and Town have ever entered into an agreement for use of this water right for municipal purposes. There have, however, been discussions about conveying a portion of the water rights to the Town, possibly as much as 10 cfs of this water right.

Thus, the YJWCD’s obligation to deliver this water right to the Town of Meeker is limited to the terms of this 1972 Agreement – a document that is arguably void for vagueness in that it does not specify the amount to be delivered or price to be paid. It is also an Agreement between the YJWCD and Rio Blanco County, raising the question of whether the Town, a third-party beneficiary, could seek enforcement of the agreement, or if such enforcement is limited to the County or YJWCD.

***Exclusion of Moffat County Lands***. At the last meeting, Balcomb & Green was directed to investigate the process to remove Districts 8 and 9, which are located in Moffat County, from the District in 2013. Following is an outline of the statutory process set forth in section 37-45-137, C.R.S., for excluding lands from the boundaries of a water conservancy district and issues that the YJWCD will face.

1. Landowner files petition for exclusion with District with description of land and deposit of money to pay costs of exclusion proceedings;
2. Notice of hearing is published once a week for three consecutive weeks of the hearing;
3. Board holds hearing and determines whether lands should be excluded and determines whether such lands should be excluded.

While this process appears relatively simple, it does require individual landowners to file the petition for exclusion of properties. There is no process that allows the Board of Directors to make the determination that specific lands should be excluded without the individual landowner first petitioning the district. Thus, to remove Districts 8 and 9, the District would need to get the individual petitions from each landowner requesting to be removed from the District.

Very truly yours,

Balcomb & Green, P.C.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Scott Grosscup

Encl.

cc:

1. Paragraph 3 of the Agreement between the YJWCD and Board of County Commissioners of the County of Rio Blanco dated April 24th, 1972 states:

   Yellow –Jacket Water Conservancy district recognizes that one of the uses for the water rights transferred hereunder is domestic. If, in the development and utilization of this right, domestic or municipal water shall be required by the Town of Meeker or the Meeker community, Yellow-Jacket agrees that insofar as reasonably may be done, the domestic or municipal requirements of the Meeker community shall have a preferred standing in the Fourth Enlargement of the Highland Ditch, Priority No. 701. The rates to be charged the Town of Meeker or the Meeker community for water under this water right in the Highland Ditch will be determined in a manner taking into consideration the payment under this agreement, and not solely by the prevailing rates for domestic and municipal water.” [↑](#footnote-ref-1)