



Scott Grosscup  
Office (970) 945-6546  
Direct (970) 928-3468  
sgrosscup@balcombgreen.com

September 24, 2021

Kelly Sheridan  
843 County Road 6  
Meeker, CO 81641

Benjamin J. Rogers  
P.O. Box 1083  
Meeker, CO 81641

Walter N. Proctor  
P.O. Box 642  
Meeker, CO 81641

David Smith, Jr.  
P.O. Box 359  
Meeker, CO 81641

Bailey Franklin  
P.O. Box 1236  
Meeker, CO 81641

Shawn Welder  
P.O. Box 2318  
Meeker, Co 81641

Paul Neilson  
P.O. Box 656  
Meeker, CO 81641

Anthony R. Theos  
P.O. Box 267  
Meeker, CO 81641

**Re: Board Meeting – Septe 11, 2020**

Dear Directors:

Enclosed are materials for the Board meeting for the Yellow Jacket Water Conservancy District for Thursday, September 30, 2020 at 2:00 p.m. The meeting will be held at the Meeker Library. I look forward to seeing you all again in person.

**Budget.** The materials include a draft budget for 2022. These numbers will be refined as we get closer to the end of year.

**Water Court Cases.** The Dsitrct has three pending water court applciaitons. The cases concern water rights decreed to Sawmill Mountain Reservoir (10,000 AF), Ripple Creek Reservoir (12,500 acre feet) and the North Fork Feeder Conduit (25 cfs). These include two change cases and a diligence application. The State and Division Engineer and the Colorado Water Conservation Board are opposers in the two change cases. Mahogany Energy Resources and Westlands LLC are also opposers in the case to change Ripple Creek Reservoir and the North Fork Feeder Conduit. The Parks and Wildlife Commission is also an opposer to the water court applications.

The Engineers and CWCB have raised a number of issues related to whether the District has demonstrated a need and demand for all of the water rights. And they question whether the District has the ability to construct these reservoirs, which water rights are nearly 50 years old or older. Attached are the most recent letters from theEngineers and CWCB.

The state entities have indicated a willingness to stipulate to the entry of a decree that would result in the District abandoning its conditional water rights in the Ripple Creek Reservoir and North Fork Feeder Conduit and consent to granting of water rights for the change to the Sawmill Mountain Reservoir right at Lake Avery and consenting to a finding of reasonable diligence on that water right.

Proceeding down this settlement path allows the District to focus efforts on a Lake Avery expansion rather than face legal challenges that could potentially result in the cancellation of all of the water rights. To prepare to fight those legal challenges would be expensive and require significant engineering and analysis that would deplete the District's resources.

We will discuss this settlement concept in executive session. I have included a proposed Ruling of Referee that would be the basis for a stipulated ruling in these cases.

Sincerely,



Scott Grosscup

**Meeting of the  
Yellow Jacket Water Conservancy District  
Thursday September 30, 2021  
2:00 to 4:00 p.m.**

**Meeker Library  
490 Main Street, Meeker, CO 81641**

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**Agenda**

1. Call Meeting to Order.
2. Approval of Minutes from December 11, 2020
3. Public Comment –
4. Approval of Accounts Payable
5. Appointment of Budget Director
6. Preview of 2022 Budget
7. Status of Water Rights Cases
  - a. Case No. 19CW3017 – Change of Sawmill Mountain Reservoir
  - b. Case No. 20CW3031 – Change of Ripple Creek Reservoir and Lost Park Feeder Canal
  - c. Case No. 20CW3034 – Diligence
8. Executive Session under C.R.S. §24-6-402(4)(b) to discuss legal issues on Water Cases in matter 6, above. Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of C.R.S. §24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
9. New Business
10. Adjourn

**Meeting of the  
Yellow Jacket Water Conservancy District  
Friday December 11, 2020  
10:00 a.m. to 12:00 p.m.**

**Via [gomeet.com/scottgrosscup](https://gomeet.com/scottgrosscup)  
(or by phone 1-571-748-4021 pin 6254 6985#)**

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Call to Order

The meeting was called to order at 10:00 a.m.

Roll Call

Directors Present  
Kelly Sheridan  
Walter Proctor  
Anthony Theos  
Paul Neilson  
Shawn Welder  
Bailey Franklin

Staff Present

Scott Grosscup, District's Attorney

Others Present

Erin Light, Division Engineer

Approval of Minutes from July 2, 2020

Director Neilson moved to approve the minutes from the July 2, 2020 meeting as presented, Director Welder seconded, all in favor.

Public Comment

There were no members from the public wishing to discuss items not on the agenda.

Approval of Accounts Payable

Director Proctor moved to pay the outstanding balance as of December 1 to Balcomb & Green, this amount has already been taken out of the remaining budget, Director Rogers second, all in favor.

Director Proctor moved to pay the outstanding balance as of October 1 to Applegate Group. Director Proctor indicated there was plenty of money in the engineering budget to pay this bill, Director Welder second, all in favor.

Director Proctor went on to say that the budget balance totals \$3,510 for the remainder of the year. Director Proctor is combining line items requests approval to pay Balcomb & Green and Applegate after January 1 as long as it is within the total budget balance. Director Sheridan agreed and asked if a motion is needed and if this has been done before. Attorney Grosscup suggested a motion be

made to allow the Treasurer to pay any remaining bills in December to close out the books for 2020 provided they remain within budgeted amounts within the general operating budget. Director Neilson moved to give the Treasurer such authority, Director Theos second, all in favor.

Director Welder asked Attorney Grosscup about an adjustment to the budget of \$5,000 which was suggested to be saved in reserve as a cushion for the legal budget/expenses. Attorney Grosscup indicated that would be within the 2021 budget, not in accounts paid in 2020.

### Yellow Jacket 2021 Budget

Director Proctor moved to open the 2021 Budget Hearing, Director Welder second, all in favor.

Attorney Grosscup briefly discussed the budget. It remains similar to past years. The District operates on a cash basis based on income and the mill levy remains the same at 0.209 mills. The revenue from property taxes is relatively constant compared to last year. There is a fair amount of carry-over from prior years as indicated in the estimated fund balance from January 1<sup>st</sup>. The budget considers the District spending almost its entire budgeted amounts in the reserve checking account as it is moving into 2021 and proposing an increase in general operating from \$36,000 to \$41,000 in large part due to anticipated increase in legal fees as we negotiate settlements of the District's three Water Court cases. Maintaining engineering expense is also at the \$15,000 level and an additional \$6,000 into the reserve fund leaving a general balance of \$2,000 in the operating fund.

Attorney Grosscup indicated that the budget was publicly posted at the Rio Blanco County and Moffat County courthouses and the post offices for review and the hearing for the budget was properly noticed in the newspapers that the hearing was scheduled for today. The District did not receive any comments from the public as to the budget neither for nor against or any requests to review it.

Director Sheridan asked if there were any questions. No questions asked.

Attorney Grosscup indicated there are three resolutions that need adopting, each in turn.

Director Proctor moved to adopt the resolution to continue the mill levy at .209 mills, Director Theos second, all in favor.

Director Proctor moved to adopt the resolution to approve the budget, Director Nielson second, all in favor.

Director Proctor moved to adopt the resolution to appropriate funds, second by Director Nielson, all in favor.

Director Theos moved to close the budget hearing, second Director Proctor, all in favor.

### Status of Water Rights Cases

Attorney Grosscup provided an update on the District's three pending Water Court cases. The first case is the Application to change Sawmill Mountain Reservoir right to Lake Avery. He reported at the last meeting that he had discussions with CWCB and DEO. Those discussions are continuing. There has been two primary issues; one is the release of water from Lake Avery for fish purposes below the reservoir. CWCB requests the uses as changed for fish purposes be clarified or stated as instream flow right with a contract with the CWCB for those purposes. He indicated that the discussions are ongoing and at some point, it will come before the Board for final decisions. The second issue relates to the CWB on operations of the Reservoir. The CWCB will be meeting with Parks & Wildlife to discuss how releases for these fish purposes will be made from the reservoir and how it will be accounted for within the reservoir. They are planning a meeting early next year.

The second case, the Ripple Creek Reservoir/And Lost Park Feeder Canal change received several statements of opposition. TOSCO has requested the District include a term and condition carried over from previous stipulations be included in the decree and in exchange they've agreed not to enter as an objector in the case. Discussion followed. No additional questions/discussion on this matter. Director Sheridan requested a Motion to accept the proposed Stipulation by TOSCO. Director Proctor moved to accept, second by Director Nielson, all in favor.

Attorney Grosscup indicated there will be additional negotiations on this case going forward as there are multiple opposers. He indicated he was recently notified by the Attorney General's Office that the State and Division Engineers are likely going to intervene in this case and enter as a party opponent. Discussion followed related to potential concerns of the application.

Attorney Grosscup returned to discuss the last pending water case; the status of the diligence application. This diligence relates to the case that caused the District a lot of concern eight or ten years ago and we did not receive any opposition which is good news. He does anticipate that the case cannot get resolved or entered until the other two cases are finalized on a procedural standpoint because the District did agree that we would do these others before we filed for entry of decree continuing the conditional water rights.

No additional questions or comments relating to the water cases. Attorney Grosscup concluded his portion of the meeting.

Director Sheridan asked about writing a letter for the Rio Blanco Water Conservancy in support of its Application for Wolf Creek Reservoir. Attorney Grosscup responded that this related to the Wolf Creek case headed to trial in January. A lot of issues are raised in that case with pending motions awaiting the Court's decision. There is not really anything in the legal field that the District can do. The District did enter into the intergovernmental agreement (IGA) as discussed in the last meeting with the Rio Blanco WCD and that agreement allows the support of the need and demand for the water right claimed in the action and that will be used as evidence in the case as to a future need and demand for the water rights. No action was taken.

Director Welder discussed the Round Table's Basin Implementation Plan (BIP) so part of the effort is to revise the list of line item projects that are currently on the BIP and so YJ comes up and he had questions and wanted to throw out thoughts to the rest of the Board. Currently, the Avery expansion project is a tier two project. The Board discussed the BIP. Director Welder indicated that the BIP wouldn't make or break any project necessarily. The scope of YJ mission is not only to see future water projects come to fruition but also protect water rights for future generations to exercise whether it's improved technology or changes in water demand. Protecting these water rights has extremely important value whether they build Kellogg Reservoir or not; protecting that water right in itself is very important.

Director Welder discussed possible grant funding. While he is not as familiar with the process, he has seen that the Rio Blanco WCD was approved a couple of grants (significant) \$300K+/-; YJ might not be ready to apply, but he would like to navigate in a direction that might include a set point that YJ would at some point see if it qualifies for grant assistance in the Avery pursuit of an enlargement. He does not know what that set point would be but Rio Blanco certainly has had a lot of money they've accumulated for the benefit of exploring Wolf Creek and at some point YJ could measure and weigh, using them as a model, to determine if it's an appropriate time for YJ to put in a request for a grant as well.

#### New Business

Director Sheridan asked of any new business? No new business reported by any participants.

The meeting adjourned at 10:50 a.m.

Read and approved this \_\_\_ day of \_\_\_\_\_ 2021.

Signed: \_\_\_\_\_

Attest: \_\_\_\_\_

**YELLOW-JACKET WATER CONSERVANCY DISTRICT  
PROPOSED BUDGET FOR 2022  
SUBMITTED FOR BOARD REVIEW AND APPROVAL**

This budget is prepared for consideration by the Board of Directors of the Yellow Jacket Water Conservancy District ("District"). The primary funding source for the District comes from property tax revenues. The assessed value of property within the District is nearly the same for 2022. This budget considers maintaining the District's present mill levy of 0.209 mills. Revenues and expenditures remain consistent.

Expenditures of the District, over the past several years include ongoing reservoir feasibility study and research into other viable uses for the District's conditional water rights. The legal agreements that settled past concerns also established a very specific schedule for the use, movement or abandonment of the remaining District water rights and the District will continue with the next stages toward development of these water rights within these constraints.

The District's budget format follows the previous year's format that separates "Operating Expenses," which includes: Postage, Office Supplies, Checks, CPA Fees, Publication Fees, Meetings, Supplies, Treasurer's Fees, Meals and miscellaneous reimbursement for unanticipated expenses and "Legal Fees" are limited to such fees and do not include other costs.

The District anticipates incurring additional legal and engineering fees in 2022 as it continues to prosecute its water court applications and to develop its long term master plan for its water rights portfolio and expand upon previous studies for the feasibility of its water rights. The District also anticipates incurring additional legal and administration costs associated with the District's primary objective to expand the Big Beaver Reservoir (Lake Avery).

The budgetary basis of accounting the District uses is cash basis.



INCOME/ASSETS	2020 Actual	2021 Estimated	2022 Proposed
Fund Balance January 1 <sup>st</sup>	\$26,816	\$17,679*	\$11,743
YJ Reserve Checking	\$13,073	\$13,073	\$19,074
Property Tax			
Rio Blanco	\$18,568	\$18,418	\$18,648
Moffat	\$5,267	\$5,952	\$6,437
Garfield	\$227	\$195	\$202
Highland Ditch	\$1,500	\$1,500	\$1,500
<b>Total Available Funds</b>	<b>\$66,151</b>	<b>\$56,817</b>	<b>\$57,604</b>

\*Adjusted after final payment of 2021 obligations in 2022.

Expenditures	2020 Actual	2021 Estimated	2022 Proposed
General Operating Expenses			
Legal Fees	\$16,566	\$15,000	\$18,000
Operating Expenses	\$4,684	\$5,000	\$5,000
Engineering	\$14,149	\$6,000	\$12,000
Total General Operating	\$35,399	\$26,000	\$35,000
Ending Fund Balances			
Operating Fund	\$17,679	\$11,743	\$3,529
Reserve Fund	\$13,073	\$19,074	\$19,075

**YELLOW JACKET WATER CONSERVANCY DISTRICT  
RESOLUTION TO SET MILL LEVY 2022**

A RESOLUTION LEVYING GENERAL PROPERTY TAXES FOR THE YEAR 2022 TO HELP DEFRAY THE COSTS OF GOVERNMENT FOR THE YELLOW JACKET WATER CONSERVANCY DISTRICT IN GARFIELD, MOFFAT, AND RIO BLANCO COUNTIES, COLORADO FOR THE 2022 BUDGET YEAR.

WHEREAS, the Board of Directors of the Yellow Jacket Water Conservancy District, has adopted the annual budget in accordance with the Local Government Budget Law, on December XX, 2021;

WHEREAS, the amount of money available to balance the budget for general operating purposes from property tax revenue is \$25,287;

WHEREAS, the amount of money necessary to balance the budget for bonds and interest is \$0.00; and

WHEREAS, the 2021 valuation for assessment for the Yellow Jacket Water Conservancy District as certified by the County Assessors for Garfield, Moffat, and Rio Blanco Counties totals \$120,995,208.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE YELLOW JACKET WATER CONSERVANCY DISTRICT:

1. That for the purposes of meeting the general operating expenses of the Yellow Jacket Water Conservancy District during the 2022 budget year, there is hereby levied a tax of **0.209** mills upon each dollar for the total valuation for assessment of all taxable property within the District for the year 2021;
2. That the established tax levy for the Yellow Jacket Water Conservancy District be certified to the respective County Commissioners for Garfield, Moffat, and Rio Blanco Counties.

ADOPTED, this XX<sup>th</sup> day of December, 2021, by a unanimous vote of the Yellow Jacket Water Conservancy District Board of Directors

Attest:

\_\_\_\_\_  
Kelly Sheridan, President  
Yellow Jacket Water Conservancy District

\_\_\_\_\_  
Benjamin Rogers, Vice-President  
Yellow Jacket Water Conservancy District

**YELLOW JACKET WATER CONSERVANCY DISTRICT  
RESOLUTION TO ADOPT BUDGET**

A RESOLUTION SUMMARIZING EXPENDITURES AND REVENUES AND ADOPTING A BUDGET FOR THE YELLOW JACKET WATER CONSERVANCY DISTRICT IN GARFIELD, MOFFAT, AND RIO BLANCO COUNTIES, COLORADO FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY 2022 AND ENDING ON THE LAST DAY OF DECEMBER 2022 BUDGET YEAR.

WHEREAS, the Board of Directors of the Yellow Jacket Water Conservancy District has appointed Walt Proctor, Director, to prepare and submit a proposed budget to said governing body at the proper time;

WHEREAS, Walt Proctor, Director, has submitted a proposed budget to this governing body on **October XX, 2021;**

WHEREAS, upon due and proper notice published and posted in accordance with the law, said proposed budget was open for inspection by the public at a designated place, a public hearing was held on December **XX**, 2021, and interested taxpayers were given the opportunity to file or register any objections to said proposed budget; and

WHEREAS, whatever increases may have been made in the expenditures, like increases were added to the revenues so that the budget remains in balance, as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE YELLOW JACKET WATER CONSERVANCY DISTRICT IN GARFIELD, MOFFAT, AND RIO BLANCO COUNTIES, COLORADO;

1. That the budget as submitted, amended, and herinabove summarized is approved and adopted as the budget of the Yellow Jacket Water Conservancy District for 2022.
2. That the budget hereby approved and adopted shall be signed by the President and Vice President of the Board of Directors of the Yellow Jacket Water Conservancy District and made a part of the public records of the District.

Adopted this **XX**<sup>th</sup> day of December, 2021, by a unanimous vote of the Yellow Jacket Water Conservancy District Board of Directors.

Attest:

\_\_\_\_\_  
Kelly Sheridan, President  
Yellow Jacket Water Conservancy District

\_\_\_\_\_  
Benjamin Rogers, Vice-President  
Yellow Jacket Water Conservancy District

**YELLOW JACKET WATER CONSERVANCY DISTRICT  
RESOLUTION TO APPROPRIATE SUMS OF MONEY**

A RESOLUTION APPROPRIATING SUMS OF MONEY TO THE GENERAL FUND OF THE YELLOW JACKET WATER CONSERVANCY DISTRICT IN GARFIELD, MOFFAT, AND RIO BLANCO COUNTIES, COLORADO FOR THE 2022 BUDGET YEAR.

WHEREAS, the Board of Directors has adopted the annual budget in accordance with the Local Government Budget Law, on December XX, 2021 and;

WHEREAS, the Board of Directors has made provision therein for revenues in an amount equal to or greater than the total proposed expenditures as set forth in said budget, and;

WHEREAS, it is necessary to appropriate revenues provided in the budget to and for the purposes described below.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE YELLOW JACKET WATER CONSERVANCY DISTRICT IN GARFIELD, MOFFAT, AND RIO BLANCO COUNTIES, COLORADO;

The following sums are hereby appropriated from the General Fund for the purposes stated:

TOTAL AVAILABLE FUNDS:	\$ 57,604
General Operations:	\$ 35,000
Reserves:	\$ 19,075
Operating Fund Balance:	\$ 3,529

Adopted this XX<sup>th</sup> day of December, 2021, by a unanimous vote of the Yellow Jacket Water Conservancy District Board of Directors.

Attest:

\_\_\_\_\_  
Kelly Sheridan, President  
Yellow Jacket Water Conservancy District

\_\_\_\_\_  
Benjamin Rogers, Vice-President  
Yellow Jacket Water Conservancy District

DISTRICT COURT, WATER DIVISION 6, COLORADO Routt County Justice Center 1955 Shield Drive, Unit 200 Steamboat Springs, Colorado 80487 970-879-5020	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">CASE No. <b>19CW3017</b></p>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF:  <p style="text-align: center;"><b>THE YELLOW JACKET WATER CONSERVANCY DISTRICT</b></p> <p style="text-align: center;">IN RIO BLANCO COUNTY, COLORADO.</p>	
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND DECREE OF THE WATER COURT</b>	

This matter came before the Court upon the Applicant The Yellow Jacket Water Conservancy District’s Application for Change of Water Right – Change in Place of Storage and Change of Use (“Application”) and the Water Judge referred it to the undersigned Water Referee for Water Division 6, State of Colorado, in accordance with C.R.S. § 37-92-101, *et seq.*, known as the Water Right Determination and Administration Act of 1969.

The undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having been fully advised of the subject matter of the application, does hereby make the following determination and Ruling as the Referee in this matter:

**FINDINGS OF FACT**

1. The statements in the Application are true, except as may be otherwise stated herein.
2. Name, address and phone number of Applicant: Yellow Jacket Water Conservancy District, P.O. Box 447, Meeker, Colorado 81641. Applicant was represented in this matter by Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81601. Exhibit A is a map of the Applicant’s Boundaries.
3. Notice. Timely and adequate notice of the pendency of these proceedings has been given in the manner required by C.R.S. § 37-92-302. Applicant filed an Application for Change of Water Right – Change in Place of Storage and Change of Use on July 30, 2019. The Application was properly published in the resume for Water Division 6. The Court has jurisdiction over the Application and over all entities or persons who had standing to appear even though they did not do so.

4. Opposers. Timely statements of opposition were filed in this case by the Colorado Water Conservation Board and the Colorado Division of Parks and Wildlife and Parks and Wildlife Commission (“CPW”). The State Engineer and Division Engineer for Water Division No. 6 intervened in this matter pursuant to Order of the Court entered August 24, 2021. Applicant has reached settlement with the opposers, which stipulations are on file with the court.

5. Report of the Division Engineer. This Court has given due consideration to the Division Engineer’s Summary of Consultation dated December 13, 2019 and Supplemental Report dated May 7, 2020 and Applicant’s responses thereto.

6. Request for Change. The Application requests to change the place of storage and type of use for its f/k/a Sawmill Mountain Reservoir right to allow it to be stored downstream in Big Beaver Creek Reservoir a/k/a Lake Avery (Applicant’s “Lake Avery Storage Right”):

- a. Information from previous decrees:
  - i. Original Decree: W-3245, Water Division 5, September 29, 1977
  - ii. Subsequent Diligence Decrees: 09CW48, dated August 26, 2014, 02CW37, dated September 3, 2002; 95CW213, dated February 5, 1996; 89CW113, dated October 25, 1989; 85CW149, dated October 7, 1985; 81CW136, dated September 4, 1984.
- b. Decreed Location: The right abutment of the dam forming Sawmill Mountain Reservoir is located in the NW1/4NW1/4 of Section 31, Township 1 North, Range 91 West of the 6th P.M. at a point whence the NW corner of Section 36, Township 1 North, Range 92 West of the 6th P.M. bears N 76°00” W 5,500 feet.
- c. Source: Big Beaver Creek, East Beaver Creek, Cow Creek, and tributaries thereto, all tributary to the White River.
- d. Date of Appropriation: October 7, 1976
- e. Amount: 10,000 acre-feet.
- f. Use: Municipal, industrial, agricultural, domestic, and recreational. Such use is limited to activities occurring within the District’s boundaries.
- g. Changes Requested:

- i. The Application requests to change the place of storage for the 10,000 acre feet to Lake Avery, located in the S1/2 of Section 7 and the N1/2 of Section 18, Township 1 South, Range 91 West of the 6<sup>th</sup> P.M.
  - ii. Applicant requests to change the uses to add augmentation and to add piscatorial uses within and below Lake Avery. The Lake Avery Storage Right shall not be released and used for piscatorial purposes below Lake Avery absent an agreement with the CWCB for instream flow use t or other legal agreement with the CWCB for piscatorial purposes, including but not limited to instream flow use on Big Beaver Creek and the White River decreed in Case Nos. (77)W3652E and (77) W3652C to preserve the natural environment to a reasonable degree up to the decreed rates.
- h. Contemplated Draft of Water Right to Be Changed. The original decree for Sawmill Mountain Reservoir was in the amount of 80,000 acre feet, to be used for municipal, industrial agricultural and other uses. Applicant is changing 10,000 acre feet as the remaining amount has been relinquished to the stream. The reduced volume will result in a more limited impact to the river. Releases made from the Lake Avery Storage Right for piscatorial purposes to preserve the aquatic environment below the reservoir will be non-consumptive. Industrial uses like augmentation uses are 100 percent consumptive. This is a downstream move and there are no intervening water rights junior to the subject right, and thus no injury will result to other water rights from the change requested. Applicant has conducted a preliminary analysis of the water available for the project based only on native flows and determined that there is an average of 23,100 acre feet available for storage at the new place of storage. Exhibit B is a map showing the water right locations.
- i. Terms and Conditions:
  - i. Applicant shall be limited to the amount of water legally and physically available at the original place of storage.
  - ii. Applicant shall be subject to the terms and conditions of any stipulation entered in Case No. 09CW48, District Court, Water Division 6.
  - iii. Any use of the augmentation water by exchange or otherwise in a way that causes upstream out-of-priority depletions with downstream augmentation supply cannot occur if any intervening instream flow water right is not met.

- iv. Lake Avery is owned and operated by CPW. Applicant does not currently have permission to access or use CPW land, facilities, or structures associated with Lake Avery or to store water in Lake Avery and this decree does not grant any such access. Applicant agrees to obtain CPW's voluntary and written consent prior to accessing, using, or constructing structures on land owned by CPW and prior to storing any water in Lake Avery, which consent may, *inter alia*, require Applicant to enter into an agreement with CPW related to the operations of Lake Avery prior to storing any water in Lake Avery. CPW agrees to process Applicant's request for authorization and operations agreement in accordance with applicable laws, rules, and regulations.

### **CONCLUSIONS OF LAW**

7. To the extent they constitute legal conclusions; the foregoing Findings of Fact are incorporated herein.
8. All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(3). The Court has jurisdiction over the Application and over all entities or persons who had standing to appear, even though they did not do so.
9. The Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969. C.R.S. §§ 37-92-101–602.
10. The Water Court for Water Division 6 has jurisdiction over the subject matter of these proceedings and over all persons and owners of property who may be affected hereby, whether or not they have chosen to appear.
11. Applicant has met its burden of proof on all matters that it is required to establish in these proceedings.
12. Applicant has satisfied all legal requirements for the entry of a decree in this case.
13. Applicant has not abandoned any of the Water Rights in the preceding diligence period.
14. Review of determinations made by the Division Engineer or the State Engineer in administration of the subject water rights are water matters which the Water Court has exclusive jurisdiction.

### **RULING OF THE REFEREE**



15. 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 and Final Judgment and Decree.

16. The application of the Yellow Jacket Water Conservancy District for the change in place of storage and type of use for its Sawmill Mountain Reservoir right to allow it to be stored downstream in Big Beaver Creek Reservoir a/k/a Lake Avery to add augmentation use and to add piscatorial uses within and below Lake Avery is granted as described in paragraph 6 above.

17. The Court shall retain jurisdiction over the change of water right set forth in this Decree to reconsider the question of injury to the vested water rights of others, as provided in C.R.S. § 37-92-304(6). The retained jurisdiction period shall commence on the date of entry of this decree and shall continue until five years after the date on which the Applicant provides written notice to the parties, the Division Engineer and the Court that the Applicant has stored water in Lake Avery under the Lake Avery Storage Right.

A copy of the Ruling shall be filed with the Division Engineer for Water Division No. 6 and with the State Engineer.

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

Dated: \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
Daniel R. Birch, Water Referee  
Division 6, Water Court

### **DECREE OF THE WATER COURT**

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

Dated: \_\_\_\_\_.

BY THE COURT:

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Michael A. O'Hara III, Water Judge  
Division 6, Water Court

**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, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
**Natural Resources and**  
**Environment Section**

July 20, 2021

VIA EMAIL

Scott Grosscup  
Balcomb & Green, PC  
PO Drawer 790  
Glenwood Springs, CO 81602  
[sgrosscup@balcombgreen.com](mailto:sgrosscup@balcombgreen.com)

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

Dear Scott:

My client the CWCB has reviewed the May 19, 2021 draft decree in this case and had the following questions and comments.

1. Please provide all pending and approved water supplies available for use by the Yellow Jacket Water Conservancy District. This should include supplies available pursuant to paragraph 13 of the recently decreed Case No. 14CW3043. Additionally, please detail the anticipated demands for the claimed uses in the draft decree.
2. Please clarify whether Kellog Gulch Reservoir will be on-channel or if it will be off-channel and thus require a structure to fill.
3. The decree must reflect that water must be physically and legally available at the original point of diversion for Ripple Creek Reservoir before it can be diverted and stored in the Kellog Gulch Reservoir. Applicant must be able to (a) verify legal and physical availability at the originally decreed point of diversion, (b) demonstrate that the water remained in the river and was not diverted on its way down to the new point of diversion, and (c) account for transit loss. Additionally, since the originally decreed point of diversion for both the North Fork Feeder Conduit and Ripple Creek Reservoir are on the North Fork of the White River, any water allocated to the North Fork Feeder Conduit must result in a like reduction in water available to the Ripple Creek Reservoir storage right and vice versa.

4. Paragraph 6.h of the draft decree indicates that an analysis of water availability for the project was conducted. Related to the above comment, this analysis should determine the legal and physical water available at both the original and new points of diversion and determine if any reduction of flow occurred in the conveyance of the rights from the original upstream point to the new downstream points. This analysis should consider historical gauge data, tributary inflows, and intervening diversions in the reach between the original and new points of diversion. Please provide this analysis to CWCB when completed.
5. The CWCB questions whether the claimed change of use of Ripple Creek Reservoir to allow for Colorado River Compact compliance purposes is proper.
6. The claim regarding the North Fork Feeder Conduit is unclear. The decree in Case No. W-3245 only recognizes use of the conduit for filling the Sawmill Mountain Reservoir, yet the decree in this Case No. 20CW3031 seems to indicate the North Fork Feeder Conduit has its own direct flow right. It should be clear that the Conduit does not have a direct flow right independent of the storage right, unless applicant is claiming augmentation use as a direct flow right.
7. Related to the above comment, since the North Fork Feeder Conduit was decreed only to fill Sawmill Mountain Reservoir and does not have its own direct flow right, diversions under this right should be limited to periods when storage capacity is available under the Sawmill Mountain Reservoir right being changed in pending Case No. 19CW3017. To prevent an expansion of historical use, any diversions under the North Fork Feeder Conduit should result in a corresponding paper fill of the Sawmill Mountain Reservoir right.
8. The decree must reflect the augmentation plans in which the applicant intends to use the North Fork Feeder Conduit water right for augmentation water. The claimed use for augmentation is a concern to the CWCB to the extent the claimed water right will augment depletions upstream of an instream flow water right. Can the applicant provide any additional information on the place of use for augmentation?
9. Is the claim to use the North Fork Feeder Conduit water right for instream flow use below Kellog Gulch Reservoir only after storage in Kellog Gulch Reservoir? In any event, should the claim to use for instream flow use below Kellog Gulch Reservoir (referenced in paragraph 7(o)(b)) be added to the language in the main paragraph 7 referencing the requested changes?

10. Please provide additional detail on the claim in paragraph 7(p) to use the North Fork Feeder Conduit to fill reservoirs located off-channel and on the Oak Ridge Park Ditch. The decree must be clear that the change of water right for the North Fork Feeder Conduit is not just a change of use but a change in place of storage, from Sawmill Mountain Reservoir to the reservoirs off the Oak Ridge Park Ditch, and Kellog Gulch Reservoir if that is the case. It seems the change in place of storage should be listed in paragraph 7(o) and the main paragraph 7.
11. The decree must include volumetric limits for use of the North Fork Feeder Conduit for the storage rights and Ripple Creek Reservoir.
12. The decree must be clear for the change in point of diversion for both water rights that the place of administration for calling the changed water right is the original point of diversion.

These are the CWCB's initial comments and the CWCB reserves the right to raise additional questions and comments as it better understands the decree and engineering in this case.

Sincerely,

FOR THE ATTORNEY GENERAL



JENNIFER MELE  
First Assistant Attorney General  
Water Conservation Unit  
Natural Resources & Environment Section  
Telephone: (720) 508-6282  
Email: [jennifer.mele@coag.gov](mailto:jennifer.mele@coag.gov)

cc: Kaylea White

**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

**PHIL WEISER**  
Attorney General  
**NATALIE HANLON LEH**  
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**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 7th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Natural Resources and  
Environment Section**

August 9, 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 provide you with the Engineers' comments on Yellow Jacket Water Conservancy District's ("District") May 19, 2021 proposed ruling in the above referenced case. I previously provided a separate letter dated June 18, 2021, concerning the Engineers' requests for engineering. The Engineers reserve the right to raise additional issues, comments, and concerns as more information about this case becomes known.

1. Proposed change to add Colorado River Compact compliance use. Because compliance with the Colorado River Compact is an obligation shared among the Upper Division States (Colorado, Wyoming, Utah, New Mexico), the Colorado River Compact and the Upper Colorado River Basin Compact are not structured to allow individual water users to meet Colorado's Compact obligations. As such, use of water for Colorado River Compact compliance purposes cannot form the basis for a new or changed appropriation of water by an individual water user. Applicant should remove this proposed use from the proposed ruling and decree.
2. Diversion rate for Ripple Creek Reservoir. Because the District seeks to change the location of its Ripple Creek Reservoir storage right from an on-channel reservoir to an off-channel reservoir, paragraphs 6 and 17.h of the

proposed ruling should be revised to specify the rate at which the District seeks to divert water to storage in Kellog Gulch Reservoir under the Ripple Creek Reservoir storage right.

3. No need to change Ripple Creek Reservoir to add in-reservoir piscatorial use. The Ripple Creek Reservoir storage right is already decreed for in-reservoir piscatorial use and does not need to be changed to allow such use. The first sentences of paragraphs 6(g)b) and 17.a.ii should be revised as shown below to reflect that the District is not changing the Ripple Creek Reservoir right to include in-reservoir piscatorial use.

**6(g)b):** Applicant requests to change the uses to add augmentation and to add piscatorial uses ~~within and~~ below the proposed reservoir. . .

**17.a.ii:** To change the uses to add augmentation and to add piscatorial uses ~~within and~~ below the proposed reservoir. . .

4. Piscatorial use of North Fork Feeder Conduit. Paragraphs 7(o)b) and 17.b.ii of the proposed ruling include statements suggesting that the District will use water diverted under the North Fork Feeder Conduit water right for piscatorial use below Kellog Gulch Reservoir. However, those same paragraphs also state that the only use the District seeks to add to the North Fork Feeder Conduit water right is augmentation use. Please explain whether the District intends to change the North Fork Feeder Conduit water right to add piscatorial use and describe where and how any such piscatorial use will occur. Please also explain whether the District seeks to divert the North Fork Feeder Conduit water right at Kellog Gulch Reservoir.
5. Contemplated draft. The Engineers' June 18, 2021 letter requests additional information concerning the contemplated drafts of Ripple Creek Reservoir and the North Fork Feeder Conduit. As of the date of this letter, the Engineers do not agree that paragraphs 6(h) and 6(p) of the proposed ruling accurately describe those rights' contemplated drafts.
6. Need and can and will. The Engineers' June 18, 2021 letter requests additional information concerning the District's need for the water rights the District seeks to change in this case in conjunction with the District's other water rights and the feasibility of the District's proposed changes. The Engineers look forward to receiving the District's response to those requests.
7. North Fork Feeder Conduit. The Engineers' June 18, 2021 letter includes questions related to the partial abandonment of the North Fork Feeder Conduit in Case No. 09CW48 and the District's intent with respect to the

remaining portion of the North Fork Feeder Conduit. The Engineers may have additional comments concerning the District's proposed change of the North Fork Feeder Conduit after reviewing the District's responses to those questions.

8. Measurement and accounting. The proposed ruling should be revised to include the following terms and conditions:

Applicant shall install measuring devices and provide accounting as required by the Division Engineer for the operation of the changes of water rights decreed herein.

The Division Engineer must approve Applicant's accounting forms before Applicant may operate the changes of water rights decreed herein.

9. Terms and conditions concerning amount of water available for diversion. Paragraph 18.a of the proposed ruling should be revised as shown below or to include substantively similar terms and conditions:

~~Applicant shall be limited to the amount of water legally and physically available at the original place of storage. The amount of water Applicant may divert to storage in Kellog Gulch Reservoir under the Ripple Creek Reservoir storage water right shall be limited to the amount of water legally and physically available under the Ripple Creek Reservoir storage water right at Ripple Creek Reservoir's originally decreed location, described in paragraph 6(b) above, less transit loss between Ripple Creek Reservoir's originally decreed location and the White River pump station described in paragraph 6(g)a) above. Prior to each diversion of the Ripple Creek Reservoir storage water right at Kellog Gulch Reservoir, Applicant shall provide the Division Engineer with evidence of the amount of water physically and legally available at Ripple Creek Reservoir's originally decreed location and obtain the Division Engineer's approval of Applicant's proposed diversion.~~

The amount of water Applicant may divert at the Oak Ridge Park Ditch under the North Fork Feeder Conduit water right shall be limited to the amount of water legally and physically available under the North Fork Feeder Conduit water right at the North Fork Feeder Conduit's originally decreed point of diversion, described in paragraph 7(j) above, less transit loss between the North Fork Feeder Conduit's originally decreed

point of diversion and the Oak Ridge Park Ditch's point of diversion. Water that is being delivered downstream from Ripple Creek Reservoir's originally decreed location for storage in Kellog Gulch Reservoir under the Ripple Creek Reservoir storage water right shall not be counted as physically and legally available to the North Fork Feeder Conduit water right. Prior to each diversion of the North Fork Feeder Conduit water right at the Oak Ridge Park Ditch, Applicant shall provide the Division Engineer with evidence of the amount of water physically and legally available at the North Fork Feeder Conduit's originally decreed point of diversion and obtain the Division Engineer's approval of Applicant's proposed diversion.

10. Engineers not responsible for enforcing terms of stipulations. Paragraph 18.b of the proposed ruling should be revised as shown below to mirror the similar term included in the 09CW48 and 09CW50 decrees and to make it clear that the Engineers are not responsible for enforcing the terms and conditions of the stipulations the District entered in Case Nos. 09CW48 and 09CW50.

Applicant shall be subject to the terms and conditions of any stipulation entered in Cases No. 09CW48 and 09CW50, District Court, Water Division 6. The State Engineer and Division 6 Engineer are not responsible for enforcing the terms of said stipulations except as such terms are explicitly incorporated into this decree.

11. Retained Jurisdiction Period. As you know, the purpose of a water court's retained jurisdiction under section 37-92-304(6), C.R.S., in a change of water rights case is to allow the parties to gain operational experience with the change to determine whether the terms and conditions are sufficient to prevent injury. The District's proposed retained-jurisdiction period will not serve that purpose because it is unlikely that the District will operate both changes it seeks in this case within five years of entry of a final decree. To ensure that the retained-jurisdiction period is long enough to allow the parties to gain operational experience with the District's proposed changes, paragraph 19 should be revised to provide that the court will retain jurisdiction from entry of a final decree until five years after the District files notice in this case, with service on all parties, that the District has diverted the Ripple Creek Reservoir storage water right to storage in Kellog Gulch Reservoir and has diverted the North Fork Feeder Conduit water right at the Oak Ridge Park Ditch.

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

**PHIL WEISER**  
Attorney General  
**NATALIE HANLON LEH**  
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**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
**Natural Resources and**  
**Environment Section**

July 20, 2021

VIA EMAIL

Scott Grosscup  
Balcomb & Green, PC  
PO Drawer 790  
Glenwood Springs, CO 81602  
[sgrosscup@balcombgreen.com](mailto:sgrosscup@balcombgreen.com)

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

Dear Scott:

My client the CWCB has reviewed the May 19, 2021 draft decree in this case and had the following questions and comments.

1. Please provide all pending and approved water supplies available for use by the Yellow Jacket Water Conservancy District. This should include supplies available pursuant to paragraph 13 of the recently decreed Case No. 14CW3043. Additionally, please detail the anticipated demands for the claimed uses in the draft decree.
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JENNIFER MELE  
First Assistant Attorney General  
Water Conservation Unit  
Natural Resources & Environment Section  
Telephone: (720) 508-6282  
Email: [jennifer.mele@coag.gov](mailto:jennifer.mele@coag.gov)

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