



# BALCOMB & GREEN

WATER LAW | REAL ESTATE | LITIGATION | BUSINESS ESTD 1953

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

Dear Directors:

Enclosed are materials for the Board meeting for the Yellow Jacket Water Conservancy District for Friday, December 11, 2020 at 10:00 a.m. The meeting will be held using Gomeet.Com. You can participate virtually through video conference or by telephone. To participate with a smart phone or computer with camera and microphone, just type [gomeet.com/ScottGrosscup](https://gomeet.com/ScottGrosscup) into the browser and it will lead you to the meeting. Or you can call in as a conference call to 1-571-748-4021, pin 625 6985#. I am happy to do a run-through with anyone if interested.

**Budget.** Here is the recent budget. We expect that it may change by a few dollars as the final assessments are provided. Otherwise, the budget is similar to the budget provided you in October.

**Water Court Cases.** The District has three pending water court applications.

Case No. 19CW3017, is the change of Sawmill Mountain Reservoir to Lake Avery. The Colorado Water Conservation Board and Colorado Parks and Wildlife have filed statements of opposition. CPW is willing to enter into a stipulation, however, I have been waiting to confirm that CWCB consents to the proposed uses. The CWCB has requested revised language for piscatorial uses below Lake Avery. CWCB now requests the following language:

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“The water storage right shall not be released and used for piscatorial purposes below Lake Avery absent an agreement with the CWCB for instream flow use to achieve flows up to the decreed flow rates for existing instream flow water rights downstream of Lake Avery decreed on Big Beaver Creek and White River decreed in Cases No. (77) W3652E and (77) W3652, to preserve the natural environment to a reasonable degree.”

This proposed language is different from previous proposed language, and is somewhat more limiting. It only allows water to be released for environmental purposes to meet the CWCB’s instream flow right and does not allow for releases for endangered fish. However, there currently is no biological opinion on the White River so arguably no need. Thus, I would recommend the board accept the proposed language as part of a final settlement with the CWCB.

However, the CWCB still has questions about how the water will be stored and released from Lake Avery. There currently is not an agreement with CPW as to how to handle that. The CWCB wants to meet with CPW to get a better understanding of how that all works, so we are waiting on CWCB to discuss with CPW.

Case No. 20CW3031 is the application to change Ripple Creek Reservoir to Kellog Gulch, and to change the Lost Park Feeder Canal to the Oak Ridge Park Ditch. Statements of opposition were filed by Mahogany Energy Resources, LLC, Colorado Water Conservation Board, Westlands LLC, and Colorado Parks and Willife. This case is waiting the Division Engineer’s consultation report. However, I understand that the Division Engineer may move to intervene in the case. The State is taking the position that a water conservancy district cannot release water for compact compliance purposes.

In addition to the forgoing opposers, The Oil Shale Corporation has asked the District to include the following term and condition from the settlements of the preivous diligence decree in any decree entered in this case. And should the District agree to the condition, then it wouldn’t oppose the entry of a final decree.

“The District shall not place a call against any water right located between the original point of diversion and the new point of diversion or place of storage sought in this case for: (1) the Ripple Creek Reservoir water right confirmed by the Decree in Civil Action No. 1269, District Court in and for the County of Rio Blanco, dated November 21, 1966; and (2) the North Fork Feeder Conduit water right confirmed by the Decree in Case No. W-4325, Water Division 5, dated September 28, 1977.”

Because this condition was part of the previous stipulation entered in the previous case and is already a condition of the water rights, I recommend that I be authorized to enter into the proposed stipulation.

Case No. 20CW3034 is the District's application for finding of reasonable diligence on its remaining conditional water rights. No statements of opposition were filed to the application. We are awaiting the Division Engineer's consultation report on this case. I do not see this case being wrapped up ahead of the other two pending matters.

Sincerely,



Scott Grosscup