



BALCOMB & GREEN

WATER LAW | REAL ESTATE | LITIGATION | BUSINESS ESTD 1953

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

June 26, 2020

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 – July 2, 2020

Dear Directors:

Enclosed are materials for the Board meeting for the Yellow Jacket Water Conservancy District for Thursday, July 2, 2020 at 3:00 p.m. The meeting will be held at the Fairfield Center and will be open to the public.

RBCWCD IGA. Included is the revised IGA that has language allowing the YJWCD to store water in Wolf Creek Reservoir under a future agreement. RBWCD representatives intent to present at the meeting and request the Board to approve entry into the agreement.

Lake Avery Expansion. Several issues have arisen with the water court application to change the Sawmill Mountain Reservoir. The first relates to the claimed ability to release water for piscatorial purposes below the reservoir and the claimed use “for releases to preserve the aquatic environment below the reservoir.” The Colorado Water Conservation Board has objected to this language arguing that it looks too much like an instream flow right. Included in the packet is its letter. The objectionable language was included at the request of Colorado Parks and Wildlife.

I have worked out the following settlement language with the CWCB: “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 or other legal arrangement with an entity holding legal authority or this type of beneficial use.” This avoids a fight about

ASPEN | BASALT | GLENWOOD SPRINGS | LAMAR

Post Office Box 790 | Glenwood Springs, Colorado 81602 | 800.836.5928 | 970.945.6546 |
BalcombGreen.com

whether water released for fish purposes without a contract demand is a beneficial use and it removes the language about preserving the aquatic environment. Releases would be to a contract purpose. There are other reservoirs and releases that are made for piscatorial purposes pursuant to contracts with the Bureau of Reclamation for endangered fish purposes.

The other issues have been raised by the Division Engineer's Office and relate to whether the District has a need and demand for the water rights and whether the change of water rights will result in an enlargement of the water rights. That office's Supplement Letter is included. Regarding demand, these demands are based largely on state sponsored studies and models that we have pointed the office to. This is a difficult crystal ball to look into as previous estimates in the 1970's have not come to pass.

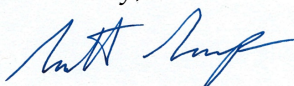
The second issue concerns the contemplated draft of the water rights, what would have been used at the original point of diversion. We provided several reports from the 1970's that show what the Bureau of Reclamation thought could be served by the project. The original reservoir was 80,000 acre feet, the District is changing 10,000 acre feet. We have provided estimates showing that the entire Yellow Jacket Project had a need and demand for over 95,000 acre feet for oil shale and coal development within the White River Basin. Not all of that was for use in the District boundaries, but it does appear that many acres of that land are, including additional irrigated lands. Thus, changing the water to add augmentation use to 10,000 acre feet when the original draft of the project was 95,000 acre feet of fully consumed water would fit within the contemplated draft of the water right.

I have responded to the Division Engineer with these additional studies. Now we wait to see if there are any additional concerns.

Lost Park and Ripple Creek Reservoirs. Also included is a recommendation from Applegate Group to move the remaining Ripple Creek Reservoir Right and North Fork Feeder Conduit rights to Kellogg Gulch reservoir. I assume the District will receive similar comments from the Division Engineer's Office on this proposed change of water right. The District needs to apply to move the water right and request a finding of reasonable diligence for these rights before the end of August.

See you on Thursday.

Sincerely,



Scott Grosscup

**Meeting of the
Yellow Jacket Water Conservancy District
Thursday July 2, 2020
3:00 to 5:00 p.m.**

**Fairfield Center
200 Main Street, Meeker, CO 81641**

Agenda

1. Call Meeting to Order.
2. Approval of Minutes from February 6, 2020
3. Public Comment –
4. Approval of IGA – Rio Blanco Water Conservancy District
5. Approval of Accounts Payable
6. Yellow Jacket Water Storage Feasibility Study
 - a. Lake Avery Expansion Update
 - b. Lost Park and Ripple Creek Reservoirs, North Fork Feeder Conduit
7. New Business
8. Adjourn

Meeting of the
Yellow Jacket Water Conservancy District
Thursday, February 13, 2020
3:00 to 5:00 p.m.

Meeker Library
490 Main Street, Meeker, CO 81641

Call to Order

The meeting was called to order at 3:00 p.m.

Roll Call

Directors Present
Kelly Sheridan
Ben Rogers
Walter Proctor
David Smith
Paul Neilson
Shawn Welder
Bailey Franklin
Anthony Theos

Staff Present

Scott Grosscup, District Attorney

Others Present

Shana Miller, Water Commissioner

Approval of Minutes from December 5, 2019

Director Smith moved to approve the minutes from December 5, 2019 as presented, Director Proctor second, all in favor.

Public Comment

No one from the public offered any public comment.

Approval of Accounts Payable

Director Proctor moved to pay accounts payable to Balcomb & Green, P.C., director Smith second, all in favor.

Director Proctor then stated that he was ready to close out the books for 2019 and circulated the budget versus expenses document for 2019. He indicated that the 2020 budget estimated roughly \$12,000 in funds to be carried over into 2020. However, actual expenses were less than budget and actual carryover is more than \$17,000, with a current account balance of approximately \$33,000 at the end of year.

Yellow Jacket Water Storage Feasibility Study

Lake Avery Expansion – Scott reported that he had received the Division Engineer's consultation report on the application to move the Sawmill Mountain Reservoir Rights to Lake Avery. He has filed a response to that report along with a proposed decree for review by the opposition, Colorado Parks and Wildlife and the Colorado Water Conservation Board. They, along with the Division Engineer, will review the response and proposed decree and respond to Scott with any additional questions or additional terms and conditions to be included in a proposed decree.

Scott discussed some of the concerns that were raised, which included the contemplated draft of the water rights and operation of the water rights at the new place of storage. The board discussed operation of the reservoir in light of instream flow requirements and the existence of an instream flow water right from the outlet to its confluence with the White River. The board was reminded of previous stipulations limiting the ability to fill the reservoir when there was a call placed and administered for an instream flow water right placed by the Colorado Water Conservation Board.

Lost Park and Ripple Creek Reservoirs, North Fork Feeder Conduit – The board next began a discussion about options for the District's remaining conditional water rights that are required to be changed from their current decreed points of diversion to locations downstream of the Town of Meeker, with applications to be filed before August of 2020.

Craig Ullmann began the discussion with Applegate Group's report on the Possible Impact of Moving the Lost Park/Ripple Creek Water Rights Downstream. He stated that the purpose of this report was to evaluate the ability of a storage right downstream to augment, by exchange, depletions to the upper White River. Earlier analysis focused on the potential Taylor Draw call. This evaluation focused on instream flow calls on the White River in the amount of 200 cfs from its confluence with Piceance creek upstream to the confluence of the North Fork and South Fork. He then discussed the map showing the extent of the instream flow water right, major diversions along the White River, and days during the study period when the instream flow would be in deficit. The study showed that while there has not been a call placed for the instream flow right, the right could be deficit in August and September of most years, and June and July of some years. It would generally not place a call in October or May. The right would most likely be satisfied during the non-irrigation season. The impact of such a call would be limited to a few junior diverters. The report concludes that downstream storage could be used to augment against a Taylor Draw call but upstream storage would still be necessary to meet the instream flow call.

Ms. Shana Lewis stated that the CWCB considered placing a call in 2018 but did not due to impacts that would be faced by diversion structures senior to the instream flow but lacked operable headgates and measuring devices.

Craig then summarized the District's remaining water rights and previous studies performed by Applegate Group. These prior studies show that there is sufficient water at the original Ripple Creek reservoir to store the remaining 12,500 acre feet. But in-basin water supplies for the Lost Park Reservoir are less than the remaining decreed amount. The Lost Park Reservoir was to be primarily fed from feeder canals from the White River to the reservoir that have been abandoned. Prior stipulations require that these water rights be stored below the Town of Meeker and that storage be subordinated to the instream flow water right.

The North Fork Feeder Conduit water right has some potential for development. However, it would be subordinate to the CWCB's instream flow water right and be junior to the Taylor Draw water right. It is also junior to the major irrigation structures that would not benefit from its priority. It could, however, be used to fill an off-channel reservoir located west of Range 93 West.

Discussion followed regarding administrative scenarios on the White River, including how augmentation plans could use releases from upstream storage. Current studies estimate a current demand for up to 200 acre feet to augment existing wells. Craig also discussed limitations of off-channel reservoirs on the Oak Ridge Park Ditch to augment by exchange water rights that would be upstream of those reservoirs. Director Proctor discussed possible storage limitations and capacity in Lake Avery so as not to inundate neighboring property and suggest that the greatest benefit for the North Fork Feeder Conduit would be to divert at the Oak Ridge Park Ditch for potential filling of an off-channel reservoir.

The Board then discussed potential operations in the event of a compact call and need for upper basin storage, with anticipated demand of at least 11,000 acre feet from the White River. Some of the downstream storage sites may have the benefit of providing such storage. Questions were raised regarding financing options and legal standards for changing water rights.

The board discussed the need to find allies and build coalitions. Discussion followed about political challenges of moving the Ripple Creek reservoir to either Wolf Creek Reservoir or other downstream location. Craig and Scott were directed to look at the known downstream storage locations and provide the Board with recommendation for moving the 12,500 acre feet decreed to Ripple Creek Reservoir, with the plan on moving the North Fork Feeder Conduit to divert at the Oak Ridge Park Ditch to potentially fill any off-channel reservoir with any remaining water rights decreed to the Sawmill Mountain Reservoir that may not be able to be stored at an enlarged Lake Avery.

Director Proctor then reported on discussion he had with Tom Gray of the Basin Roundtable about storage in the Axial Basin, and proposed by some water users in that basin.

New Business

Scott reported that he had received a draft intergovernmental agreement from the attorney for the Rio Blanco Water Conservancy District to allow the RBWCD to serve constituents within the YJWCD's boundaries by releasing water from its storage projects by exchange. Director Proctor noted that in several meetings discussing the possible integrated water management plan meetings there was majority support for additional storage. The board consensus was to proceed with revisions to the IGA, including but not limited to, allowing YJWCD water to be stored in Wolf Creek Reservoir, with revisions to be presented at the next meeting.

Director Proctor then discussed that there are some misconceptions in the community about the District's goals in enlarging Lake Avery and the benefits. By consensus, Scott was directed to develop a talking paper to be used to emphasize the benefits of an enlarged Lake Avery and how that water could be used to benefit stream health and provide augmentation water for discussion at the next meeting.

Adjourn

The meeting adjourned at 5:07 p.m.

Read and approved this ____ day of _____, 2020

Signed: _____

Attest: _____

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement is made effective the ___ day of _____, 2020, by and between the Rio Blanco Water Conservancy District (“Rio Blanco”), and the Yellow Jacket Water Conservancy District (“Yellow Jacket”).

RECITALS

A. Rio Blanco and Yellow Jacket are authorized to supply water for beneficial use within their boundaries pursuant to the Water Conservancy Act (C.R.S. §37-45-101, *et seq.*) and the Water Activity Enterprise Act.

B. Rio Blanco and Yellow Jacket have adjoining service areas within the White River basin. Rio Blanco’s District boundaries are depicted on the attached Exhibit A. Yellow Jacket’s District boundaries are depicted on the attached Exhibit B.

C. Rio Blanco and Yellow Jacket are authorized to cooperate between themselves to provide functions and services lawfully authorized to each of them pursuant to C.R.S. § 29-1-203 and to enter leases or exchanges of water with other political subdivisions of the state pursuant to C.R.S. § 37-83-106.

D. The Colorado River Risk Study Phase III has estimated average annual depletions to water rights perfected by use after November 24, 1922 on the White River (“Post-compact Rights”) to be 11,887 acre-feet if there is a compact curtailment.

E. Yellow Jacket and Rio Blanco have further identified needs for water within the White River beyond the event of a compact call.

F. In 2014, Rio Blanco commissioned a Water Storage Feasibility Study by W.W. Wheeler & Associates and EIS Solutions for the lower White River Drainage (“Feasibility Study”).

G. Based on the Feasibility Study, on October 29, 2014, Rio Blanco’s Board of Directors adopted Resolution 2014-01 (“Initial Resolution”) authorizing filing of a conditional water right application for Wolf Creek Reservoir that is currently being adjudicated in Case No. 14CW3043, Water Division No. 6 (“Wolf Creek Reservoir”).

H. Rio Blanco intends to use water from Wolf Creek Reservoir to provide augmentation supplies for domestic, municipal, commercial, industrial, irrigation and environmental purposes, and to augment depletions from Post-compact Rights if there is a compact curtailment on the Colorado River, or from administration of the White River.

I. In addition, consistent with the original plan and intent regarding use of water from Wolf Creek Reservoir in the Initial Resolution, on February 26, 2020 Rio Blanco’s Board of Directors adopted Resolution 2020-001 authorizing adjudication of an umbrella augmentation plan as soon as practicable using water from the Wolf Creek Reservoir as a primary source for augmentation (the “Augmentation Plan”).

J. Available water supplies are inadequate to meet existing and future water demands, especially in the event of a compact curtailment on the Colorado River. The parties desire to enter into the within Intergovernmental Agreement to ensure a legal water supply for their respective constituents' health, welfare and benefit.

AGREEMENT

Now, therefore, Rio Blanco and Yellow Jacket agree as follows:

1. Incorporation of Recitals. The above Recitals are hereby incorporated into and made a material part of this Agreement.

2. Rio Blanco's Agency. Rio Blanco shall act pursuant to this IGA on behalf of Yellow Jacket in the contracting of Rio Blanco's Wolf Creek Reservoir water supplies within the Yellow Jacket boundaries. This Agreement shall not affect Yellow Jacket's management of or contracting for Yellow Jacket's own water rights within its boundaries. Rio Blanco will serve the water users in the Yellow Jacket boundaries on terms determined from a Cost of Service Study for the recovery of all Wolf Creek Reservoir Project costs. Nothing herein shall prevent Rio Blanco and Yellow Jacket from entering into a separate agreement to allow for the storage of water rights owned by Yellow Jacket in Wolf Creek Reservoir and for use by Yellow Jacket.

3. Term and Termination: This contract shall be for a term of 40 years with an automatic 40 year renewal at the end of the initial term. This Agreement may only be terminated upon the mutual consent of both parties.

4. Ownership of Facilities: Rio Blanco will initially own Wolf Creek Reservoir, its water right, the Augmentation Plan, and related facilities. Rio Blanco may contract with Yellow Jacket or other entities for joint ownership of, or a contractual interest in, a portion of such rights or in the capacity of the reservoir

5. Adjudication of Augmentation Plan: Rio Blanco shall be responsible for adjudicating the Augmentation Plan so that it will allow Rio Blanco to provide augmentation water to customers within Yellow Jacket's boundaries without monetary contribution from Yellow Jacket. Yellow Jacket expressly agrees not to oppose any water rights applications in Water Division No. 6 filed by Rio Blanco for this purpose.

6. Notices: Any notice required by or made pursuant to this Agreement shall be made by giving the party to be noticed a written statement thereof by hand delivering or mailing the same by first class, United States postage at or to the following addresses:

To Rio Blanco:
Rio Blanco Conservancy District
c/o Alden Vanden Brink
2252 E. Main
Rangely, CO 81648

With copy to:

Edward B. Olszewski, Esq.
Olszewski, Massih & Maurer, P.C.
Post Office Box 916
Glenwood Springs, CO 81602
Telephone: (970) 928-9100

To Yellow Jacket
Yellow Jacket Water Conservancy District
P.O. Box 447
Meeker, CO 81641

With copy to:
Scott Grosscup, Esq.
Balcomb & Green, P.C.
P.O. Drawer 790
Glenwood Springs, CO 81602
Telephone: (970) 945-6546

The parties may change their addresses for receipt of notice by giving notice as provided herein.

7. Agreement: This Agreement constitutes the entire, integrated understanding of the parties as to the subject matter effective hereby, and all prior or contemporaneous discussions and understandings regarding such subject matter are merged herein or discharged hereby.

8. Amendments: Any amendment or extension of this Agreement shall not be effective unless stated in writing, approved and executed by all parties.

9. Indemnification and Liability: To the extent permitted by law, the individual parties hereby indemnify each other for their individual acts and omissions and assume full liability for their individual acts and omissions. The parties do not hereby waive any application of the Colorado Governmental Immunity Act, and no third-party beneficiaries are intended or created by this Agreement.

10. Jurisdiction. Any suit involving any dispute or matter arising under this Agreement may only be brought in Rio Blanco County, Colorado, having jurisdiction over the subject matter of the dispute or matter. All parties hereby consent to the exercise of personal jurisdiction by any such court with respect to any proceeding. The prevailing party in any such dispute or matter shall be entitled to an award of its reasonable costs including but not limited to reasonable attorney's fees.

IN WITNESS whereof, the parties have executed this Agreement on the date shown below.

RIO BLANCO WATER CONSERVANCY DISTRICT

By: _____
_____, President

Date: _____

YELLOW JACKCET WATER CONSERVANCY DISTRICT

By: _____
_____, President

Date: _____

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**

May 11, 2020

VIA EMAIL

Scott Grosscup
Balcomb & Green, PC
P.O. Box 790
Glenwood Springs, CO 81602
sgrosscup@balcombgreen.com

RE: Application of Yellow Jacket Water Conservancy District
Case No. 19CW3017

Dear Scott:

Thank you for taking the time to meet with the CWCB to discuss Lake Avery operations and the subject water court case. The CWCB has the following initial comments on the draft decree.

1. The applicant claimed a change of water right for Big Beaver Creek Reservoir a/k/a Lake Avery to add augmentation use, piscatorial uses within and below Lake Avery, and for releases to preserve the aquatic environment below the reservoir. Given the language of §37-92-102(3) C.R.S., and the *St. Jude's* case, the applicant cannot properly decree a right to use water instream for piscatorial purposes. The CWCB understands that the applicant will delete the proposed use to preserve the aquatic environment below the reservoir. CWCB would consider a revision to include the following language: "The water storage right shall not be released and used for piscatorial below Lake Avery absent an agreement with the CWCB for instream flow use or other legal arrangement with an entity holding legal authority for this type of beneficial use."

With this decree revision, the CWCB would like to include language in the stipulation between the applicant and CWCB stating "the CWCB cannot acquire the changed water storage right until it has been made absolute by applicant, and the water may not be put to instream piscatorial use absent CWCB board approval, and either a future court proceeding or appropriate administrative approval." A future water court proceeding would be necessary in the event the Division Engineer needs to administer the instream flow use, in which case we would need to decree the flow rates.

2. The CWCB is concerned that the claimed use of augmentation, which is fully consumptive, could result in an expansion of use of the water right and injure downstream instream flow water rights. Exhibit C, provided by Applicant in response to the Division Engineers' December 13th, 2019 Summary of Consultation, appears to list water needs and associated consumptive use for the "entire White River Basin in Colorado and Utah." This is not representative of the needs and consumptive use within the Applicant's district boundaries. Applicant should provide an estimate of the originally contemplated needs and consumptive use with the District boundaries. Any use that results in an expansion of use is outside of the originally contemplated right and is not entitled to an appropriation date of 1976 and should be administered with a 2019 priority.
3. Please include a map of the district boundaries as a part of the decree.
4. Please include a decree term to protect the existing ISF water rights in the proposed augmented area, such as: "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."

The CWCB reserves the right to raise additional issues and comments as it better understands the application and draft decree 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

cc: Kaylea White



ADDITIONAL WRITTEN REPORT BASED ON RESPONSE TO REPORT OF THE DIVISION ENGINEER

May 7, 2020

Division 6 Water Court Case No. 19CW3017, Yellow Jacket Water Conservancy District

REPORT FILED BY DIVISION ENGINEER

FILING ID: 833C5E6C307A1

CASE NUMBER: 2019CW3017

On July 30, 2019, Yellow Jacket Water Conservancy District (YJWCD) filed an application requesting the Court grant a change of water right to move its Sawmill Mountain Reservoir water right to a new location and to change (add) the uses decreed to the water right. On December 13, 2019, a Report of the Division Engineer (RODE) was filed with the Court outlining several concerns. On February 12, 2020, YJWCD filed a response to the RODE (Response), which included several Exhibits, and a Proposed Ruling.

This written report is submitted based upon review of the information filed in the Response, including the exhibits attached thereto from which additional questions and concerns arose. As there are opposers in the case, this Additional Written Report includes comments related only to the Response to the RODE.

1. Concern No. 2 - The applicant's response to this concern is confusing. The application specifically provides that they request to add to the already decreed uses "piscatorial uses within and below Lake Avery, and for releases to preserve the aquatic environment below the reservoir". In the applicant's response to my concern, they state that the piscatorial use is intended to be within and below Lake Avery. I am not sure how this is not an instream flow use. Additionally, they reference Exhibit A attached to the Response, which specifically provides that "CPW is concerned about maintaining instream flows in the Upper White River drainage" and the impetus of the letter appears to be CPW's desire to be able to make releases from Lake Avery for instream flow purposes in the White River. As a result, this concern has not been adequately addressed. Additionally, the applicant must address the concerns of opposer, CWCB, as it relates to this requested use.
2. Concern No. 3.c. - Exhibit B provides that the physical availability of Sawmill Mountain Reservoir is 23,100 AF. I question however, whether this is actually the legal availability. Applicant should confirm whether the 23,100 AF is the claimed physical or legal availability.

Contemplated Draft

3. Concern No. 4.a. - Per Exhibit C (Upper Colorado Resource Study - Yellow Jacket Unit Colorado, U.S. Bureau of Reclamation, November 1976), the oil shale industrial demand was listed as 60,000 AF and such use would be made available at the potential Oil Shale Diversion Dam on the White River at the mouth of Yellow Creek. This dam and point of diversion and thus presumably the place of use, is not within the YJWCD boundary. Furthermore, the report provides that the Oil Shale Diversion Dam was dropped as a proposed project. This leaves the 35,000 AF for the Coal industry as provided in Exhibit C, and it is not clear whether the entirety of this demand would be for use within the YJWCD boundary. The Yellow Jacket Unit appears to be the entire White River Basin in Colorado and Utah and the MOP Compromise Plan as evaluated in this Study consisted of the Milk Creek and White River Segments. As provided in the report, the Milk Creek Segment would provide all of the surface irrigation (8,500 AF) and 5,000 AF of the coal industry. Further, to meet the project demands in the MOP Compromise Plan, Sawmill Mountain Reservoir would be sized to a total capacity of 55,000 AF of which 3,000 AF would be dead storage.



"The maximum physical storage capability of the site (if needed) is about 79,000 AF." YJWCD obtained a water right for said reservoir in the amount of 80,000 AF; clearly based on physical storage capability rather than actual demand. None-the-less, the 95,000 AF demand as reported in the 1976 U.S. Bureau of Reclamation report was clearly based on demands outside the District boundaries and it is not clear whether the contemplated draft of the Sawmill Mountain Reservoir water right as acquired by the Yellow Jacket Water Conservancy District properly assumes a 95,000 AF for oil shale industry and coal industry demand. Applicant should modify their contemplated draft to reflect the intended demands within the District at the time the water right was acquired.

4. Concern Nos. 6, 7, 8 - In reviewing what the applicant claims as the contemplated depletions, i.e. 112,800 AF, one must closely look at the Upper Colorado Resource Study - Yellow Jacket Unit Colorado, U.S. Bureau of Reclamation, November 1976 report (Exhibit C). This report specifically provides that: The MOP Compromise Plan, consisting of the Milk Creek and White River Segments would provide a regulated water supply for the following purposes and list five purposes that total 126,400 AF. Of this amount, the Milk Creek Segment would provide for all the surface irrigation and 5,000 AF for the coal industry, as mentioned above, with the remainder of the water for uses in the White River Segment. This reduces the 126,400 AF to 112,900 AF of demand, not depletions. As stated above, the oil shale diversion dam was dropped as a proposed project feature. Though the report recognizes the need for an oil shale water supply, its construction and operation would be the responsibility of a private water user. This further reduces the contemplated demands to 52,900 AF. Though this is still well above the 10,000 AF remaining under the Sawmill Mountain Reservoir water right, as mentioned above these demands as depicted in the November 1976 U.S. Bureau of Reclamation report was based on demands within the Yellow Jacket Unit, which appears to comprise the entire White River Basin in Colorado and Utah. The applicant's reliance on this report as a determination of the contemplated draft for the Sawmill Mountain Reservoir water right falls short. The applicant cannot expand their uses beyond those that were originally contemplated. Though a reduction of the water right from 80,000 AF to 10,000 AF is substantial, I still do not see evidence based on the contemplated draft that the applicant can simply add the new requested uses without an expansion of the originally intended use.

Can and Will and Speculation:

5. Concern No. 9 - Based on the information provided by the applicant, questions arise as to the ability for Lake Avery to be enlarged based on the geologic and soil conditions. As provided in Exhibit C, the Lake Avery Enlargement was removed from further evaluation and consideration because of unacceptable abutment conditions. As provided in Exhibit E, a raise of Lake Avery would require that particular attention be paid to the foundation of the dam and existing drainage infrastructure. Additionally, Exhibit E provides that "Lake Avery remains a viable option for 1,200 to 2600 AF of storage, yet the applicant is requesting to move 10,000 AF to the site. This mere fact has raised the question of whether the applicant intends on enlarging the reservoir or whether they intend to paper fill a more senior water right so that the junior Sawmill Mountain Reservoir water right can be used to fill the reservoir, and if enlarged, what that enlargement would be. Applicant must clarify how they are going to physically get 10,000 AF into Lake Avery.
6. Concern 10 - Applicant claims that the needs and demands within the Yellow Jacket Water Conservancy District range from 3,635 to 14,457 AF. I have concerns with some of their



analysis of these demands. First, of these demands, 1,200 and 8,050 AF, respectively, is considered non-consumptive and the basis for these estimates were not provided in Exhibit E. Second, the number of decreed wells in all of Water District 43 (the White River basin) are around 330 not 574 as claimed by the applicant as located within the District's boundaries. Of these wells, some are non-exempt and some are exempt, and it cannot be determined whether the analysis considered the priority of the underground water rights in relation to Taylor Draw Reservoir. As such, the claimed 4,200 AF of annual consumptive use is very questionable. Third, though we all recognize that there will be an increase in municipal demands within the District, many of these demands will be met by the Town of Meeker's existing water rights, one of which is pre-compact and two of which are senior to Taylor Draw Reservoir. Fourth, it would be good to have additional information on the future increased demands associated with irrigation since an increase in these demands seems unlikely.

Though I do not dispute that there will be future demands for water within the District, and the District may be the appropriate entity to meet some of these demands, Exhibit E overestimates the demands and the demands to be met by the District.



Erin C. H. Light, P.E.
Division Six Engineer



CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May 2020 a true and correct copy of this report was served through Colorado Courts E-Filing to the below persons:

Yellow Jacket Water Conservancy District
C/O Scott A. Grosscup
Balcomb & Green, P.C.

Colorado Water Conservation Board
C/O Jennifer Mele
Office of the Colorado Attorney General

Colorado Division of Parks and Wildlife and Parks and Wildlife Commission
C/O Heather A. Warrant and Elizabeth M. Joyce
Office of the Colorado Attorney General

Kevin G. Rein, State Engineer
Colorado Division of Water Resources



Erin C. H. Light, P.E., Division Engineer



Memorandum

Date: 6-25-2020

AG Job No.: 10-118

To: Scott Grosscup

From: Craig Ullmann

RE: Kellog Gulch Reservoir

As requested by the Board we have further evaluated the Kellog Gulch reservoir site that was identified during our study in 2016. The original evaluation of this site was for a reservoir that would store 17,687 acre-feet. We have now evaluated this site for a 12,500 acre-foot reservoir which would represent the remaining combined volume of the Lost Park and Ripple Creek conditional water rights.

The attached map depicts the extents of the resulting reservoir and dam embankment. some significant advantages:

- The project would be entirely located on public lands owned predominantly by the BLM with some State lands around the dam and pump station.
- This dam and reservoir would not impact any wilderness areas or wilderness study areas although the reservoir does come close to the Black Mountain WSA on the eastern edge.
- The drainage basin is very small, 2.8 sq miles, which translates into a more economical spillway.
- Dry drainage channel, with no expected wetland impacts at the dam.
- No known existing infrastructure is located in the reservoir area (including gas/oil wells).

The main disadvantage to the site is that all water would need to be pumped out of the White River. In previous work, we evaluated a gravity inlet for Tom Little Gulch reservoir and determined that the river diversion would need to be so far upstream that the cost would be prohibitive to construct the conveyance infrastructure and we do not feel that the situation would be any different for the Kellog Gulch site.

The pumping rate assumed would dramatically affect the capital cost of the pump station. For this analysis we have assumed that the reservoir would be entirely filled in 4 months which requires a flowrate of approximately 52 cfs. It may be possible to work with an existing ditch, the Imes and Reynolds, to allow water to be diverted from the river and carried in the ditch to the base of the proposed dam. It is highly likely that the existing ditch would need to be enlarged to allow for additional capacity but it could simplify the permitting process if the existing river headgate for this ditch could be used. This would also slightly decrease the overall pumping head by about 15 feet. This ditch irrigates lands adjacent to the White River primarily owned by the State of Colorado.

Water diversions at a new location would be limited to those legally and physically available at the original point of diversion. At the original Ripple Creek Reservoir site there is USGS stream

gage data available from 1965 through 1973. During the driest year within that period, 1966, the physical availability was between 50 and 200 cfs. A comparison of 1966 with long term gage records on the White indicate that it was indeed a rather dry year, but it was significantly higher than a few other dry years such as 1977, 2002, 2012, 2018. The location of the original site is relatively high in the drainage basin and there are not a lot of water rights immediately below the site that would be able to significantly affect the water availability at this point. Furthermore, there are many tributaries that feed into the river prior to any significant diversions and therefore it appears that a pump rate of 52 cfs at Kellog Gulch would be reasonable under most, if not all, hydrologic conditions.

A conceptual cost estimate is shown below for the revised reservoir at this site. At this point we have assumed that a multi-level intake tower would be required for the reservoir outlet. Due to the warm water species located in the lower White River basin it may be necessary to regulate the temperature and quality of the release water.

Kellog Gulch Dam - Opinion of Probable Cost - 12,500 Ac-ft Option











Item	Quantity	Units	Unit Cost	Cost
Mobilization	10	%	Const Cost	\$2,191,821
Foundation/Keyway Excavation	216,888	CY	\$5.00	\$1,084,441
Foundation Grouting	1	LS	\$250,000	\$250,000
Foundation Fill	216,888	CY	\$7.00	\$1,518,217
Embankment Fill (average including filters & slope protection)	1,084,441	CY	\$11.00	\$11,928,851
Outlet Pipe (48 inch encased)	663	LF	\$1,500	\$994,500
Intake Tower and Bridge	1	LS	\$2,000,000	\$2,000,000
Outlet Discharge Structure	1	LS	\$200,000	\$200,000
Emergency Spillway Structure (2.8 sq mile basin)	1	LS	\$500,000	\$500,000
Intake/Forebay for Pump Station	1	LS	\$500,000	\$500,000
Pump Station From White River - 52 cfs, 150 feet, 85% eff	1,040	HP	\$2,000	\$2,080,000
Pipeline From Pump Station to Reservoir	1,437	LF	\$600	\$862,200
<i>Construction Subtotal</i>				\$24,110,030
Contingency/Unlisted items	20%	%		\$4,822,006
Construction Total				\$28,932,036
Engineering Design	10	%		\$2,893,204
Permitting	2	%		\$578,641
Mitigation	2	%		\$578,641
Construction Engineering Services	10	%		\$2,893,204
			Project Total	\$35,875,725
			Potential Annual Yield	12,500
			Unit Cost	\$2,870

Based on past analysis of the remaining YJWCD conditional water rights we recommend that 12,500 acre feet of the Ripple Creek Reservoir water right be moved to this location. Stipulations in the last round of diligence stated that only a total 12,500 acre-feet of water could be developed between the 12,500 acre feet Lost Park right and the 12,500 acre-foot Ripple Creek right. Without the Lost Park feeder Canals, abandoned during the last diligence period, the Lost Park right has a severely limited physical water supply

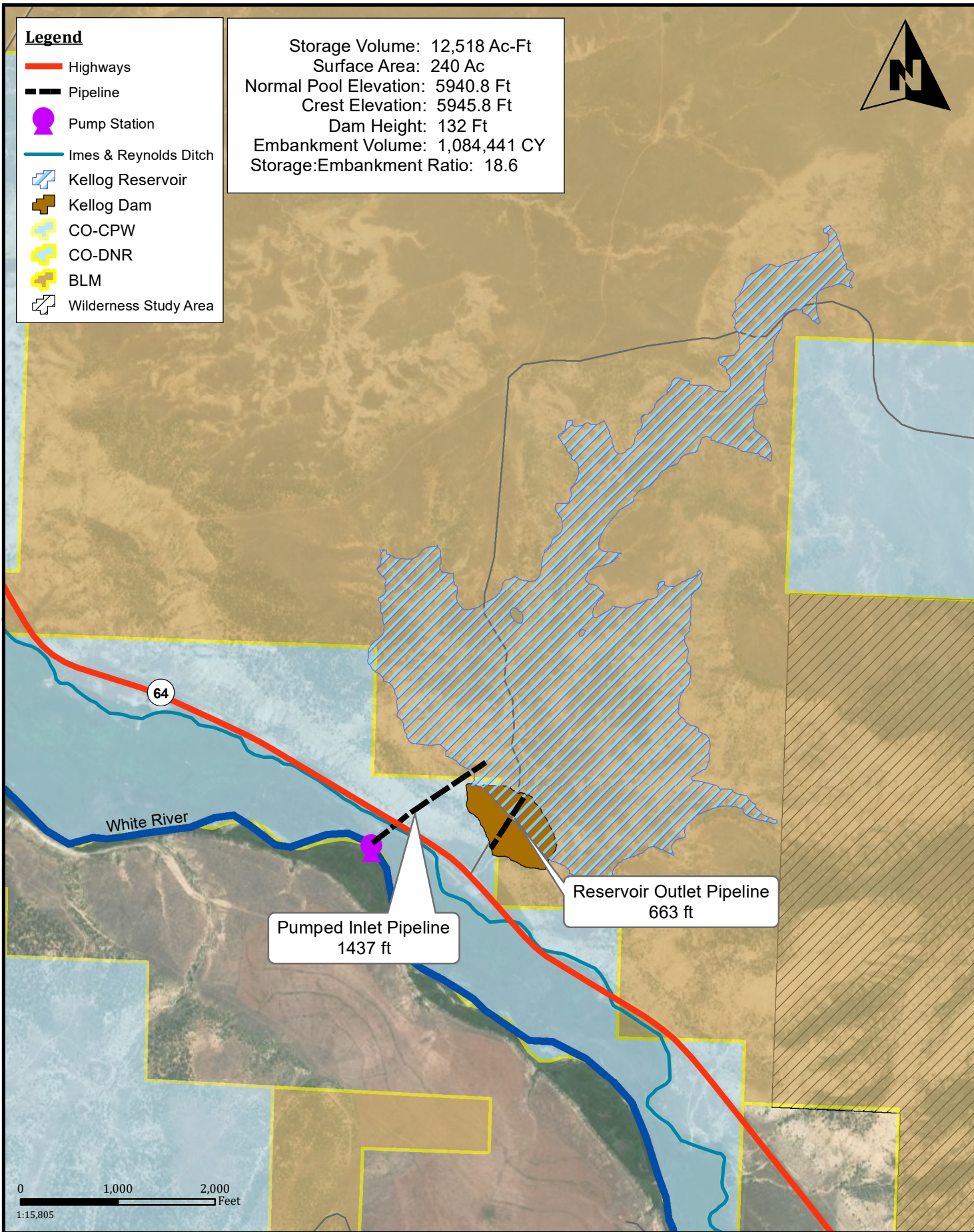
due to the relatively small drainage basin. Ripple Creek, however, has sufficient water available at the original point of diversion and would allow the full 12,500 acre feet to be diverted in all but the driest of years. Furthermore, we also recommend that the remaining 25 cfs North Fork Feeder Conduit right be moved to the location of the pump station shown on the attached map. While this water right is significantly more junior than the Ripple Creek right it could still provide another source for filling the reservoir.



Legend

-  Highways
-  Pipeline
-  Pump Station
-  Imes & Reynolds Ditch
-  Kellog Reservoir
-  Kellog Dam
-  CO-CPW
-  CO-DNR
-  BLM
-  Wilderness Study Area

Storage Volume: 12,518 Ac-Ft
 Surface Area: 240 Ac
 Normal Pool Elevation: 5940.8 Ft
 Crest Elevation: 5945.8 Ft
 Dam Height: 132 Ft
 Embankment Volume: 1,084,441 CY
 Storage:Embankment Ratio: 18.6



Pumped Inlet Pipeline
1437 ft

Reservoir Outlet Pipeline
663 ft

0 1,000 2,000
Feet
1:15,805

Date Saved: 6/24/2020 10:58:51 AM
 Path: N:\10118 Yellow Jacket Water Storage Feasibility\Drawings\GIS\KellogReservoir.mxd



Applegate Group, Inc.
 Water Resource Advisors for the West
 1490 West 121st Ave., Ste 100 Phone: (303) 452-6611
 Denver, CO 80234-2728 Fax: (303) 452-2759
 www.ApplegateGroup.com e-mail: info@applegategroup.com

Kellog Reservoir Site
 Yellow Jacket Conservancy District

Date: 22 Jun 2020
 Job #: 10-118
 Drawn By: BAK

Figure:
1
 Of: 1