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August 9, 2021
Via email

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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

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