



# BALCOMB & GREEN

WATER LAW | REAL ESTATE | LITIGATION | BUSINESS ESTD 1953

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**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

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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.

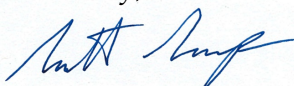
The second issue concerns the contemplated draft of the water rights, what would have been used at the original point of diversion. We provided several reports from the 1970's that show what the Bureau of Reclamation thought could be served by the project. The original reservoir was 80,000 acre feet, 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 Kellog 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