



**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 7<sup>th</sup> 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

