

CRE 408 SETTLEMENT COMMUNICATION

DISTRICT COURT, WATER DIVISION 6, COLORADO Routt County Justice Center 1955 Shield Drive, Unit 200 Steamboat Springs, Colorado 80487 970-879-5020	▲ COURT USE ONLY ▲ CASE NO. 19CW3017
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE YELLOW JACKET WATER CONSERVANCY DISTRICT IN RIO BLANCO COUNTY, COLORADO.	
FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND DECREE OF THE WATER COURT	

This matter came before the Court upon the Applicant The Yellow Jacket Water Conservancy District's Application for Change of Water Right – Change in Place of Storage and Change of Use ("Application") and the Water Judge referred it to the undersigned Water Referee for Water Division 6, State of Colorado, in accordance with C.R.S. § 37-92-101, *et seq.*, known as the Water Right Determination and Administration Act of 1969.

The undersigned Referee having made such investigations as are necessary to determine whether or not the statements in the Application are true, and having been fully advised of the subject matter of the application, does hereby make the following determination and Ruling as the Referee in this matter:

FINDINGS OF FACT

1. The statements in the Application are true, except as may be otherwise stated herein.
2. Name, address and phone number of Applicant: Yellow Jacket Water Conservancy District, P.O. Box 447, Meeker, Colorado 81641. Applicant was represented in this matter by Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81601. Exhibit A is a map of the Applicant's Boundaries.
3. Notice. Timely and adequate notice of the pendency of these proceedings has been given in the manner required by C.R.S. § 37-92-302. Applicant filed an Application for Change of Water Right – Change in Place of Storage and Change of Use on July 30, 2019. The Application was properly published in the resume for Water Division 6. The Court has jurisdiction over the Application and over all entities or persons who had standing to appear even though they did not do so.

- i. The Application requests to change the place of storage for the 10,000 acre feet to Lake Avery, located in the S1/2 of Section 7 and the N1/2 of Section 18, Township 1 South, Range 91 West of the 6th P.M. The centerline of the dam can be described using UTM coordinates Zone 13, Northing 4427832, Easting 273887.
 - ii. Applicant requests to change the uses to add augmentation and to add piscatorial uses within and below Lake Avery. The Lake Avery 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 agreement with the CWCB for piscatorial purposes, including but not limited to instream flow use on Big Beaver Creek and the White River decreed in Case Nos. (77)W3652E and (77) W3652C to preserve the natural environment to a reasonable degree up to the decreed rates.
- h. Contemplated Draft of Water Right to Be Changed. The original decree for Sawmill Mountain Reservoir was in the amount of 80,000 acre feet, to be used for municipal, industrial, domestic, agricultural, and recreational uses. Applicant is changing 10,000 acre feet as the remaining amount has been relinquished to the stream. The reduced volume will result in a more limited impact to the river. Releases made from the Lake Avery Storage Right for piscatorial purposes to preserve the natural environment below the reservoir will be non-consumptive. Industrial uses are 100 percent consumptive. This is a downstream move and there are no intervening water rights junior to the subject right, and thus no injury will result to other water rights from the change requested. Applicant has conducted a preliminary analysis of the water available for the project based only on native flows and determined that there is an average of 23,100 acre feet available for storage at the new place of storage. Exhibit B is a map showing the water right locations.

i. Terms and Conditions:

- i. Applicant shall be limited to the amount of water legally and physically available at the original place of storage.
- ii. Applicant shall be subject to the terms and conditions of any stipulation entered in Case No. 09CW48, District Court, Water Division 6. The State Engineer and Division Engineer for Water Division 6 are not responsible for enforcing the terms and conditions of said stipulations except as such terms are explicitly incorporated into this decree.

Commented [WD3]: The Engineers do not object to the highlighted description of the general location of the Lake Avery, but the decree should also describe a point of diversion for Lake Avery using UTM coordinates. If Yellow Jacket would like to use that original point of diversion decreed for Big Beaver Reservoir in Case No. CA1269 that would be acceptable, but the decree should describe that point using UTM coordinates as well as the distance and bearing description included in the original decree.

Commented [WD4]: The Engineers have concerns with the broad extent of the highlighted authorization for piscatorial use below Lake Avery. Because the Engineers' understanding is that CPW and CWCB either support or do not object to the highlighted language, and the Engineers are reaching out to CPW and CWCB to discuss how to move forward on this issue.

7. To the extent they constitute legal conclusions; the foregoing Findings of Fact are incorporated herein.

8. All notices required by law have been properly made, including as required under C.R.S. § 37-92-302(3). The Court has jurisdiction over the Application and over all entities or persons who had standing to appear, even though they did not do so.

9. The Application is complete, covering all applicable matters required pursuant to the Water Right Determination and Administration Act of 1969. C.R.S. §§ 37-92-101-602.

10. The Water Court for Water Division 6 has jurisdiction over the subject matter of these proceedings and over all persons and owners of property who may be affected hereby, whether or not they have chosen to appear.

11. Applicant has met its burden of proof on all matters that it is required to establish in these proceedings.

12. Applicant has satisfied all legal requirements for the entry of a decree in this case.

13. Applicant has not abandoned any of the Water Rights in the preceding diligence period.

14. Review of determinations made by the Division Engineer or the State Engineer in administration of the subject water rights are water matters which the Water Court has exclusive jurisdiction.

RULING OF THE REFEREE

15. The Findings of Fact and Conclusions of Law as set forth above are incorporated herein by reference and are hereby modified as necessary to constitute part of the Ruling and Final Judgment and Decree.

16. The application of the Yellow Jacket Water Conservancy District for the change in place of storage and type of use for its Sawmill Mountain Reservoir right to allow it to be stored downstream in Big Beaver Creek Reservoir a/k/a Lake Avery to add augmentation use and to add piscatorial uses within and below Lake Avery is granted as described in paragraph 6 above.

17. The Court shall retain jurisdiction over the change of water right set forth in this Decree to reconsider the question of injury to the vested water rights of others, as provided in C.R.S. § 37-92-304(6). The retained jurisdiction period shall commence on the date of entry of this decree and shall continue until five years after the date on which the Applicant provides written notice to the parties, the Division Engineer and the Court that the Applicant has constructed a