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May 11, 2020

VIA EMAIL

Scott Grosscup
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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



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