

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
ERIC R. OLSON
Solicitor General
ERIC T. MEYER
Chief Operating Officer



**STATE OF COLORADO
DEPARTMENT OF LAW**

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000
**Natural Resources and
Environment Section**

July 20, 2021

VIA EMAIL

Scott Grosscup
Balcomb & Green, PC
PO Drawer 790
Glenwood Springs, CO 81602
sgrosscup@balcombgreen.com

RE: Application of Yellow Jacket Water Conservancy District
Case No. 20CW3031

Dear Scott:

My client the CWCB has reviewed the May 19, 2021 draft decree in this case and had the following questions and comments.

1. Please provide all pending and approved water supplies available for use by the Yellow Jacket Water Conservancy District. This should include supplies available pursuant to paragraph 13 of the recently decreed Case No. 14CW3043. Additionally, please detail the anticipated demands for the claimed uses in the draft decree.
2. Please clarify whether Kellog Gulch Reservoir will be on-channel or if it will be off-channel and thus require a structure to fill.
3. The decree must reflect that water must be physically and legally available at the original point of diversion for Ripple Creek Reservoir before it can be diverted and stored in the Kellog Gulch Reservoir. Applicant must be able to (a) verify legal and physical availability at the originally decreed point of diversion, (b) demonstrate that the water remained in the river and was not diverted on its way down to the new point of diversion, and (c) account for transit loss. Additionally, since the originally decreed point of diversion for both the North Fork Feeder Conduit and Ripple Creek Reservoir are on the North Fork of the White River, any water allocated to the North Fork Feeder Conduit must result in a like reduction in water available to the Ripple Creek Reservoir storage right and vice versa.

4. Paragraph 6.h of the draft decree indicates that an analysis of water availability for the project was conducted. Related to the above comment, this analysis should determine the legal and physical water available at both the original and new points of diversion and determine if any reduction of flow occurred in the conveyance of the rights from the original upstream point to the new downstream points. This analysis should consider historical gauge data, tributary inflows, and intervening diversions in the reach between the original and new points of diversion. Please provide this analysis to CWCB when completed.
5. The CWCB questions whether the claimed change of use of Ripple Creek Reservoir to allow for Colorado River Compact compliance purposes is proper.
6. The claim regarding the North Fork Feeder Conduit is unclear. The decree in Case No. W-3245 only recognizes use of the conduit for filling the Sawmill Mountain Reservoir, yet the decree in this Case No. 20CW3031 seems to indicate the North Fork Feeder Conduit has its own direct flow right. It should be clear that the Conduit does not have a direct flow right independent of the storage right, unless applicant is claiming augmentation use as a direct flow right.
7. Related to the above comment, since the North Fork Feeder Conduit was decreed only to fill Sawmill Mountain Reservoir and does not have its own direct flow right, diversions under this right should be limited to periods when storage capacity is available under the Sawmill Mountain Reservoir right being changed in pending Case No. 19CW3017. To prevent an expansion of historical use, any diversions under the North Fork Feeder Conduit should result in a corresponding paper fill of the Sawmill Mountain Reservoir right.
8. The decree must reflect the augmentation plans in which the applicant intends to use the North Fork Feeder Conduit water right for augmentation water. The claimed use for augmentation is a concern to the CWCB to the extent the claimed water right will augment depletions upstream of an instream flow water right. Can the applicant provide any additional information on the place of use for augmentation?
9. Is the claim to use the North Fork Feeder Conduit water right for instream flow use below Kellog Gulch Reservoir only after storage in Kellog Gulch Reservoir? In any event, should the claim to use for instream flow use below Kellog Gulch Reservoir (referenced in paragraph 7(o)(b)) be added to the language in the main paragraph 7 referencing the requested changes?

10. Please provide additional detail on the claim in paragraph 7(p) to use the North Fork Feeder Conduit to fill reservoirs located off-channel and on the Oak Ridge Park Ditch. The decree must be clear that the change of water right for the North Fork Feeder Conduit is not just a change of use but a change in place of storage, from Sawmill Mountain Reservoir to the reservoirs off the Oak Ridge Park Ditch, and Kellog Gulch Reservoir if that is the case. It seems the change in place of storage should be listed in paragraph 7(o) and the main paragraph 7.
11. The decree must include volumetric limits for use of the North Fork Feeder Conduit for the storage rights and Ripple Creek Reservoir.
12. The decree must be clear for the change in point of diversion for both water rights that the place of administration for calling the changed water right is the original point of diversion.

These are the CWCB's initial comments and the CWCB reserves the right to raise additional questions and comments as it better understands the decree and engineering in this case.

Sincerely,

FOR THE ATTORNEY GENERAL



JENNIFER MELE
First Assistant Attorney General
Water Conservation Unit
Natural Resources & Environment Section
Telephone: (720) 508-6282
Email: jennifer.mele@coag.gov

cc: Kaylea White