

Consent Agenda Item 1.d

November 20-21, 2019 Board Meeting

Case No. 19CW3017 (Water Division 6); Yellow Jacket Water Conservancy District

Water Court Application

Application for Change of Water Right - Change in Place of Storage and Change of Use.

Staff Recommendation

Staff recommends that the Board ratify the September 2019 filing of a Statement of Opposition filed on behalf of the Board to protect CWCB's instream flow water rights and to protect CWCB's exclusive authority to hold instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water rights in Water Division 6 in the Upper White River Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
77W3652E (Div 5)	Big Beaver Creek	outlet Lake Avery Res	confl White River	2 (1/1 - 12/31)	11/15/1977
77W3652C (Div 5)	White River	confl NF & SF White River	confl Piceance Creek	200 (1/1 - 12/31)	11/15/1977

*Decreed as Division 5

Potential for Injury

- CWCB has exclusive authority to hold instream flow water rights. Applicant requests a water right change to add, among other things, "releases to preserve the aquatic environment below the reservoir," which appears to be an instream flow claim, and Applicant has not requested a contract or other instrument from CWCB for instream flow use of the water.
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.




Other Objectors

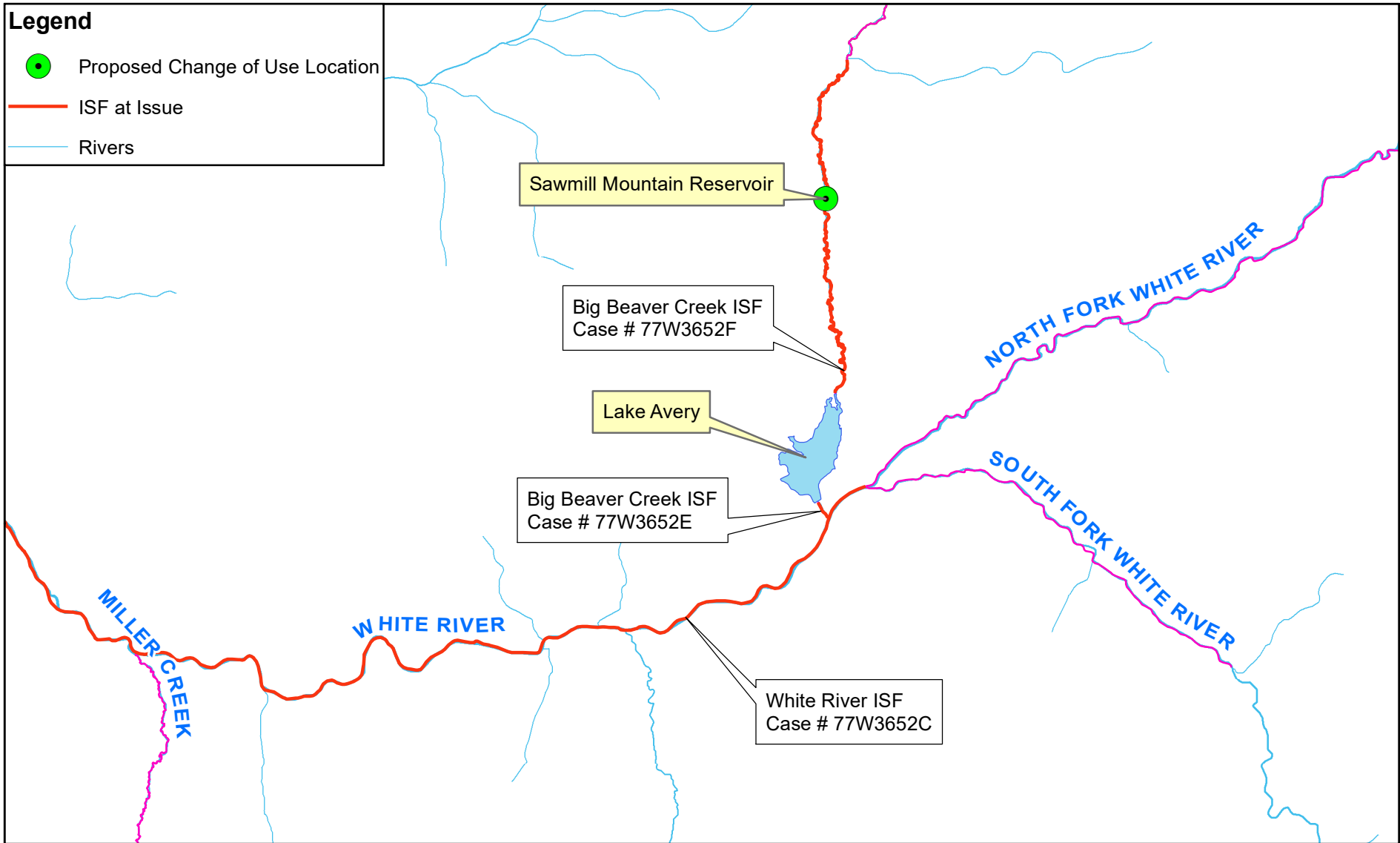
A Statement of Opposition was also filed by Colorado Parks and Wildlife.

Attorney Representing CWCB

Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.

Legend

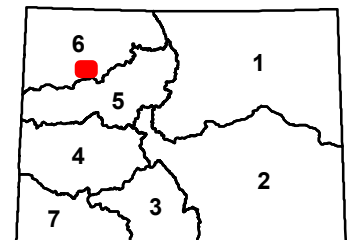
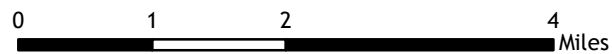
-  Proposed Change of Use Location
-  ISF at Issue
-  Rivers



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

Nov 20 - 21, 2019 CWCB Board Meeting
Consent Agenda Item 1.d: Statement of Opposition
Case No. 19CW3017, Div 6
Yellow Jacket Water Conservancy District



**DISTRICT COURT, WATER DIVISION 6, COLORADO
TO ALL PERSONS INTERESTED IN WATER APPLICATIONS
IN WATER DIVISION 6**

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following pages comprise a resume of Applications and Amended Applications filed in the office of Water Division 6, during the month of **July 2019**.

2019CW3017 Rio Blanco County. Big Beaver Creek, E. Beaver Creek, Cow Creek, and trib. thereto, all trib. to the White River. **Application for Change of Water Right – Change in Place of Storage and Change of Use.** Applicant: Yellow Jacket Water Conservancy District, c/o Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. Summary: Applicant requests to change the 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: Orig. Decree: W-3245, Water Division 5, 9/29/1977. Subsequent Diligence Decrees: 09CW48, dated 8/26/2014, 02CW37, dated 9/3/2002; 95CW213, dated 2/5/1996; 89CW113, dated 10/25/1989; 85CW149, dated 10/7/1985; 81CW136, dated 9/4/1984. Decreed Location: The right abutment of the dam forming Sawmill Mountain Reservoir is located in the NW1/4NW1/4, Sec. 31, T. 1 N., R. 91 W., 6th P.M. at a pt. whence the NW corner of Sec. 36, T. 1 N., R. 92 W., 6th P.M. bears N 76°00' W 5,500 ft. Source: Big Beaver Creek, E. Beaver Creek, Cow Creek, and trib. thereto, all trib. to the White River. Date of Approp.: 10/7/1976. Amt: 10,000 AF. Use: Mun., ind., ag., dom., and rec. Such use is limited to activities occurring within the District's boundaries. Changes Requested: Applicant requests to change the place of storage for the 10,000 AF to the Big Beaver Reservoir, (a/k/a Lake Avery), located in the S1/2 of Sec. 7 and the N1/2 of Sec. 18, T. 1 S., R. 91 W., 6th P.M. Applicant requests to change the uses to add aug. and to add pisc. uses within and below Lake Avery, and for releases to preserve the aquatic environment below the reservoir. Contemplated Draft of Water Right to Be Changed. The orig. decree for Sawmill Mountain Reservoir was in the amount of 70,000 AF, to be used for mun., ind. ag. and other uses. Applicant is changing 10,000 AF as the remaining amt. has been relinquished to the stream. The reduced volume will result in a more limited impact to the river. Releases made for pisc. purposes to preserve the aquatic environment below the reservoir will be non-consumptive. Ind. uses like aug. uses are 100 percent consumptive. Early plans for the Sawmill Mountain project estimated ind. demands of up to 95,000 AF. This is a downstream move and 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 AF available for storage at the new place of storage. Terms and Conditions: Applicant shall be limited to the amt. of water legally and physically available at the orig. place of storage. Applicant shall be subject to the terms and conditions of any stipulation entered in Case No. 09CW48, District Court, Water Division 6. Landowner upon Which Structure is Located: Colorado Division of Wildlife, 1313 Sherman Street, Denver, CO 80203. 5 pgs.

**Attachment
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Nov. 20-21, 2019**

The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest within the time provided by statute, or be forever barred.

You are hereby notified that you will have until the last day of **September 2019** to file with the Water Court a Verified Statement of Opposition, setting forth facts as to why a certain Application should not be granted or why it should be granted only in part or on certain conditions. A copy of such Statement of Opposition must be served on the Applicant or the Applicant's Attorney, with an affidavit or certificate of such service being filed with the Water Court, as prescribed by Rule 5, C.R.C.P. The filing fee for the Statement of Opposition is \$192.00, and should be sent to the Clerk of the Water Court, Division 6, 1955 Shield Dr. Unit 200, Steamboat Springs, CO 80487.

MARY ANN NINGER
CLERK OF COURT
ROUTT COUNTY COMBINED COURT
WATER DIVISION 6

/s/ Kimberly A. Marshall
Deputy Court Clerk