

Consent Agenda Item 1.a

November 18-19, 2020 Board Meeting

Case No. 20CW3031 (Water Division 6); The Yellow Jacket Water Conservancy District

Summary of Water Court Application

Application for changes of water rights.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in September 2020 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 Divisions 5 and 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
W-3652C(1977) (Div. 5)	White River	confl NF & SF White River	confl Piceance Creek	200 (1/1 - 12/31)	11/15/1977
W-3652H(1977) (Div. 5)	North Fork White River	confl Marvine Creek	confl SF White River	120 (1/1 - 12/31)	11/15/1977
W-3704(1978) (Div. 5)	North Fork White River	confl Ripple Creek	confl Marvine Creek	70 (1/1 - 12/31)	01/19/1978
19CW3014 (Div. 6)	North Fork White River	confl Big Fish Creek	confl Ripple Creek	23 (11/16 - 05/10) 74 (05/11 - 09/15) 60 (09/16 - 11/15)	01/29/2019

Potential for Injury

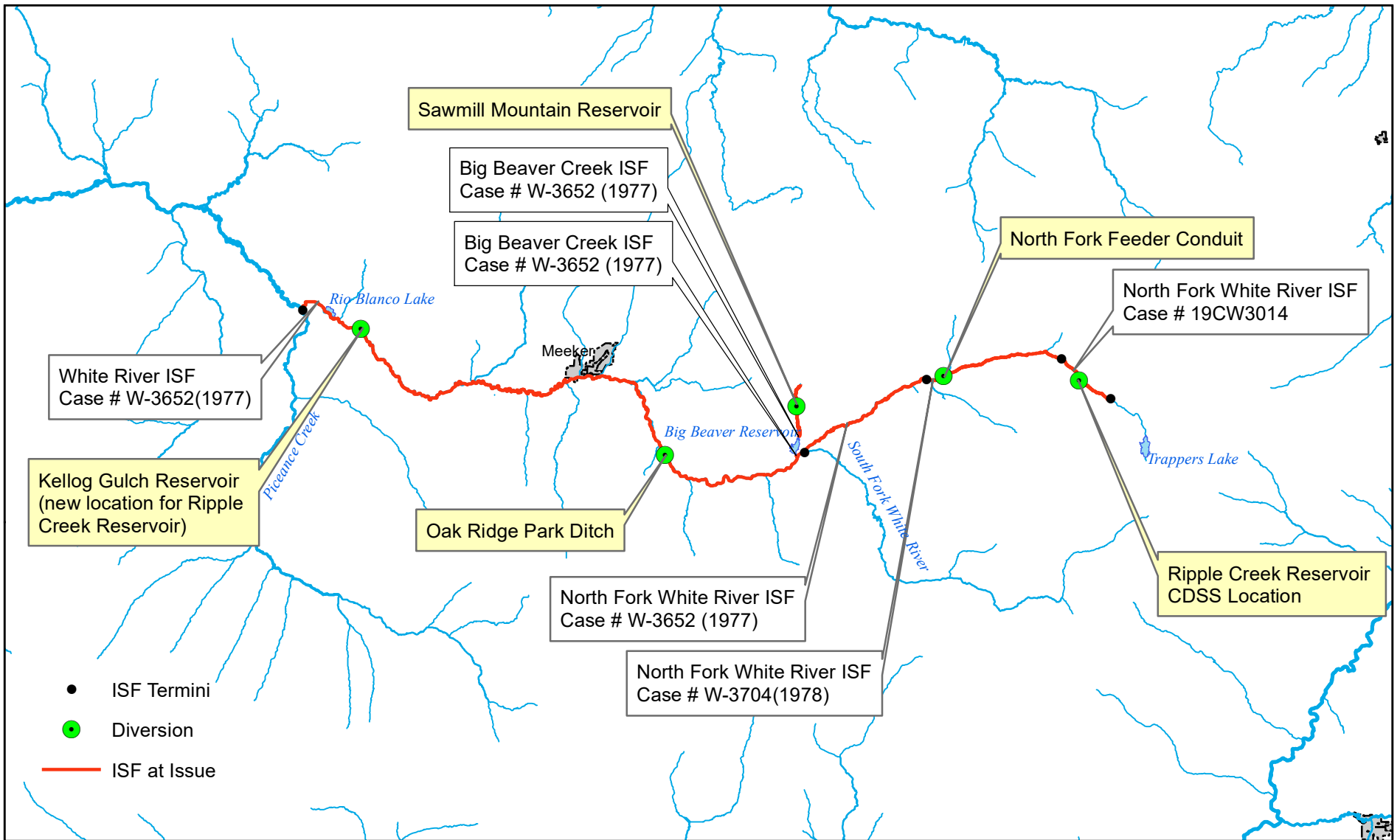
- CWCB has exclusive authority to hold instream flow water rights. Applicant has not requested a contract or other devise from CWCB for the claimed "piscatorial uses...below the proposed reservoir," which appears to be a claim for instream flow use of the water.
- The proposed changes of water rights 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.
- Applicant's claimed use of Colorado River Compact compliance purposes does not appear to be a valid beneficial use claim.

Other Objectors

Statements of Opposition were also filed by Mahogany Energy Resources, LLC. and Westlands, LLC.

Attorney Representing CWCB

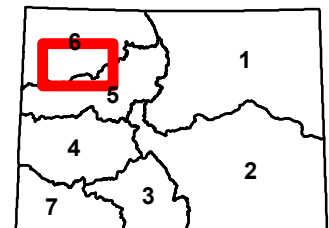
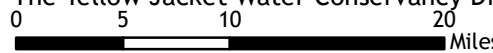
Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



COLORADO
Colorado Water Conservancy Board

Department of Natural Resources

November 18-19, 2020 CWCB Board Meeting
 Consent Agenda Item 1.a: Statement of Opposition
 Case No. 20CW3031 (Division 6)
 The 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 2020**.

20CW3031 RIO BLANCO COUNTY. N. Fork of White River. Application for Changes of Water Rights. **Applicant: Yellow Jacket Water Conservancy Dist.,** c/o Balcomb & Green, P.C., P.O. Drawer 790, Glenwood Springs, CO 81602; 970-945-6546. Decreed water right for which change is sought: Ripple Creek Reservoir. Previous decrees:

Orig. Decree: Civil Action No. 1269, Dist. Court in and for the County of Rio Blanco, 11/21/1966. Subsequent Diligence Decrees: 09CW50, dated 8/26/2014, 01CW302, dated 9/24/2003; 94CW244, dated 11/17/1995; 88CW132, dated 10/11/1988; 84CW116, dated 10/30/1984; 80CW184, dated 1/22/1981; W-673-76, dated 7/28/1977; W-673, dated 11/3/1972; W-153, dated 9/22/1970; CA1269, dated 6/13/1970, *nunc pro tunc*, 6/10/1968. Decreed location: A dam located in the un-surveyed portion of Sec. 18, T. 1 N., R. 88 W., 6th P.M. and the initial pt. of survey of said reservoir being located at a pt. on the right abutment of the dam forming the same, whence tract corner No. 1 of H.E. 141 in the S.W. Quarter Sec. 18, which is un-surveyed, in T. 1 N., R. 88 W., 6th P.M. bears N. 51°35' W. a distance of 180 ft. Exhibit A. Source: N. Fork of White River, all of the unnamed and named trib. of said stream entering the same above site of the dam forming said reservoir, and all surface drainage and runoff from rainfall and melting snow around the perimeter thereof. Date of Approp.: 11/9/1953. Amt: 12,500 AF. Use: Irr., Dom., mun., stock water, ind., flood control, pisc., wildlife prot. and preservation, and rec. uses. Such use is limited to activities occurring within the District's boundaries. Changes Requested: Applicant requests to change the place of storage for the 12,500 acre decreed to the Ripple Creek Reservoir from its decreed location to Kellog Gulch Reservoir. The Dam is located in NE 1/4 of the NW 1/4 of Sec. 9 S., R. 96 W., T. 1 N., with UTM Coordinates, Zone 13 NAD 83, X: 229645.6, Y: 4440712.7. The Reservoir will fill from a pump station located on the White River at a pt. located NW 1/4 of the NW 1/4 of Sec. 9 S., R. 96 W., T.1 N., UTM Coordinates, Zone 13 NAD 83, X: 229207.7, Y: 4440702.4. Exhibit B. Applicant requests to change the uses to add aug. and to add pisc. uses within and below the proposed reservoir and to allow the water right to be used for Colorado River Compact compliance purposes. The water storage right shall not be released and used for pisc. purposes below Kellog Gulch Reservoir absent an agreement with the CWCB for instream flow use or other legal argument with an entity holding legal authority for this type of beneficial use. Contemplated Draft: Ripple Creek Reservoir was Orig. decreed for 27,991.7 AF. Applicant is changing 12,500 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 nonconsumptive. Ind. uses like aug. uses are 100 percent consumptive. Early plans for Ripple Creek Reservoir in conjunction with the Yellow Jacket Project estimated ind. demands of up to 95,000 AF together with additional Irr. uses. 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 water available for storage at the new place of storage. Applicant requests to change the pt. of diversion for the N. Fork Feeder Conduit to the Oak Ridge Park Ditch: Previous decrees: 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. Pt. of Diversion: The pt. of diversion for the N. Fork Feeder Conduit is located in the NW1/4 NE1/4 of Sec. 22, T. 1 N., R. 90 W. of the 6th P.M., at a pt. whence the NE corner of said Sec. 22 bears N 73° 00 E 2,350 ft. Exhibit C. Source: N. Fork of the White River, trib. to the White River. Date of Approp.: 10/7/1976. Amt: the rate of flow is 25 c.f.s. 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 pt. of diversion for the 25 c.f.s. to the N. Fork Feeder Conduit from its decreed location to Oak Ridge Park Ditch. The new pt. of diversion is located in NE 1/4 of the SW 1/4 of Sec. 14, T. 1 S., R. 93 W., with UTM Coordinates, Zone 13 NAD 83, X: 260575; Y: 4427738. Exhibit D. Applicant requests to change the uses to add aug. uses. The water storage right shall not be released and used for pisc. purposes below Kellog Gulch Reservoir absent an agreement with the CWCB for instream flow use or other legal argument with an entity holding legal authority for this type of beneficial use. Contemplated Draft. The N. Fork Feeder Conduit was Orig. decreed in the amt of 500 cfs. It was to provide an additional source of supply to the 80,000 AF reservoir known as Sawmill Mountain Reservoir located on Beaver Creek. This change in pt. of diversion will allow for the ability to fill reservoirs

located off-channel and located on the Oak Ridge Park Ditch. Early plans for the N. Fork Feeder Conduit in conjunction with the Yellow Jacket Project estimated ind. demands of up to 95,000 AF together with additional Irr. uses. This is a downstream move and no injury will result to other water rights from the change requested. 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 Cases No. 09CW48 and 09CW50, Dist. Court, Water Division 6. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool. The applicant must notify these persons that the applicant is applying for this water right, and certify to the Court that the applicant has done so. Kellog Gulch Reservoir and pump station, Colorado Division of Wildlife, 1313 Sherman Street, Denver, CO 80203; Bureau of Land Management, Northwest District Office, 2300 River Frontage Road, Silt, CO 81652; Bureau of Land Management, 73544 Highway 64, Meeker, CO 81641. Oak Ridge Park Ditch, M/R White River Ranch, P.O. Box 1860, Bentonville, AR 72712.

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 2020** 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/ Carmma L. Parkison
Deputy Court Clerk