
MINUTES
FOURTH QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION
NOVEMBER 21, 2003

The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 21, 2003, at 1313 Sherman Street, Room 318, Denver, Colorado. Chairman Earnest Mikita called the meeting to order at 10:00 a.m. Marta Ahrens called the roll and determined that a quorum was present. Commission members present were Eugene Bauerle, Larry Clever, Dennis Coryell, Ralph Curtis, Richard Huwa, Frank Jaeger, Robert Loose, Earnest Mikita, Max Smith, and Hal Simpson. Ex-Officio members Ted Kowalski and Frank McNulty were absent.

Review and approval of agenda items - Under *Old Business*, Mr. Simpson stated that Ken Knox will report on the impact of wells in the Northern High Plains. Commissioner Coryell moved to approve the agenda with the additional item; the motion was seconded by Commissioner Smith and approved unanimously.

Approval of Minutes for meeting of August 15, 2003 - Chairman Mikita asked if there were any corrections or additions to the Minutes of the August 15, 2003 meeting. Commissioner Curtis asked that his name be added to those who attended the meeting. Commissioner Bauerle moved to accept the Minutes with the correction; the motion was seconded by Commissioner Loose and carried unanimously.

Report of the Executive Director by Hal Simpson – Mr. Simpson reported that Kent Holsinger, Ex-Officio Member of the Commission, resigned to go into private practice as an attorney. His replacement is Frank McNulty, who plans on being an active member of the Commission. Mr. Simpson stated that Suzanne Sellers was promoted to Team Leader of the Designated Basins Branch and will be the point source of contact for the Commissioners. In addition, Megan Sullivan transferred out of Designated Basins and into the Division 1 Team. This leaves two vacant positions in the Branch, which will be filled as quickly as possible.

Mr. Simpson reported on the Core Mission Project, which is the study within the Department to look for ways to become more efficient and save money. The project is nearing completion with the final ideas narrowed down for savings and revenue generation. The Division will move forward with removing the requirement of filing a Statement of Beneficial use in areas outside of the Designated Basins, providing water commissioners with PDA's to enter diversion data which can then be transferred into their computers, and reducing the number of copies of well permits that are distributed. Mr. Simpson reported that there is a possibility that there will be new or increased fees to fund parts of the Division's program that are not properly funded; i.e., increasing fees for inspection of dams, subdivision plan reviews, and review of substitute water supply plans. The Division of Water Resources and Colorado Water Conservation Board will not be consolidated since there will be very little savings. Still under scrutiny is the proposal to move 65 IT positions to the Department for a centralized IT program.

Mr. Simpson reported on the meeting that was held with Senator Hillman and Representative Brophy regarding Colorado's obligations under the settlement agreement on the Republican River Compact litigation. A public meeting will be held on December 10th at Wray High School to discuss the implementation of the settlement over the use of water within the Republican River Basin, addressing pumping depletions from the Ogallala aquifer, and methods to deal with shortages and dry years. This will be the first of several meetings.

The Ogallala Aquifer Symposium will be held on February 23, 2004 at Wray High School. Mr. Simpson proposed holding the February Ground Water Commission meeting in conjunction with this Symposium. The Symposium will focus on the settlement agreement and some of the water issues in the basin with speakers from the federal government and other states.

Mr. Simpson reported on the Arkansas River Compact litigation and stated that he received a report from the Special Master, which brings to closure the issues that they have been dealing with. The report will go to the U.S. Supreme Court and Kansas is expected to file exceptions to parts of the report. There will be a hearing sometime next spring with a decision by the Court late next summer or fall. The Special Master recommended that the 1996 rules regarding replacing well depletions are adequate, the 1994 measurement rules are acceptable, and there will be changes to the HI model. Colorado's obligation to Kansas is around \$30 million, which is less than the \$300 million originally requested by Kansas.

Mr. Simpson reported that Mr. George Van Slyke is retiring the end of December after 30 years as geologist with the Division, and stated that his expertise will be greatly missed.

Motion for reconsideration of May 16, 2003 Commission decision concerning the petition for reinstatement of a well permit regarding expanded acres of well permit no. 11744-FP, owned by Steve and Ronda Hayes, by Mike Shimmin, attorney for well owners – Mr. Pat Kowaleski, conflicts counsel with the Attorney General's Office, updated the Commission on what occurred during the previous proceedings on this matter. Mr. Mike Shimmin stated that the Hayes didn't attend the May meeting because they didn't know there was a hearing scheduled for that meeting. The staff does not object to Mr. Shimmin's motion to reconsider. Commissioner Smith moved to reconsider the Hayes' request; the motion was seconded by Commissioner Coryell and approved unanimously.

Mr. Shimmin asked that the Commission take a procedural step to rescind the action that was taken at the May meeting and send this case to the Hearing Officer on the merits that there was procedural confusion on what the request was. He stated that there are some legitimate issues that need to be resolved by the Hearing Officer, and that the Hayes have a statutory right to an administrative hearing to present all the facts and legal issues of this matter.

Mr. Matt Poznanovic, attorney representing the staff, stated that the staff recommends that the Commission deny the request for the expanded acres issue, and that the Hayes need to go through the application process under the current statutes. The staff requests that the Commission uphold its decision from the May meeting.

Following deliberation by the Commission members, Commissioner Bauerle recommended that this issue go before the Hearing Officer. Commissioner Jaeger agreed since a lot of time has

passed. Commissioner Jaeger moved to send this matter back to the Hearing Officer; Commissioner Bauerle seconded the motion. Commissioner Clever added that it be remanded to the Hearing Officer, but to rescind the decision that was made at the May meeting. Commissioner Bauerle seconded the amended motion by Commissioner Clever and it was approved unanimously.

Update on Eagle Peak Farms Ltd. v. Colorado Ground Water Commission (Case No. 99CV0097) and Eagle Peak Farms Ltd. v. Lost Creek GWMD (Case No. 98CV1727), both in Adams County District Court by Bill Fronczak -- Mr. Fronczak, from the staff, updated the Commission regarding activities on the Eagle Peak litigation since the August meeting. The staff, along with the applicant, proceeded with putting together information and finalizing the language in the Stipulation and it was signed on November 12, 2003. Furthermore, Mr. Fronczak indicated that the court accepted the stipulation by issuing an order on November 17, 2003. This means that the Commission is out of the litigation; however, per the conditions in the Stipulation, the Commission still has the ability to review briefs and file motions.

Discussion on the whether the Ground Water Commission should seek the authority to levy fines for illegal uses of designated ground water by Bill Fronczak -- Mr. Fronczak reported that the staff generated a draft document to enforce Ground Water Commission and State Engineer orders issued for illegal diversion or use of ground water so that cease and desist orders are taken seriously. The Plains and East Cheyenne District brought this forward upon frustration that orders issued needed to be taken seriously and prosecuted timely. The intent is to present this document to the Commission to see if they concur and, if it goes forward, to find a legislative sponsor. The proposal is to add provisions to and supplement Section 37-91-110, the powers of the State Engineer, and enact a new Section 37-90-111 to allow the Ground Water Commission to post orders on wells, the authority to seek energy records on diversions of water in the Designated Basins, and the ability to collect attorney fees and litigation costs. Mr. Simpson stated that through discussions with Stan Murphy on this issue and e-mails with Senator Hillman, that Senator Hillman may be a possible sponsor for this legislation.

Commissioner Jaeger expressed his concerns about adding language to include areas outside of the Designated Basins. Commissioner Curtis stated that if this is proposed to go forward, it should be approved prior to the February Commission meeting to avoid having to request late-bill status. Commissioner Jaeger moved that the Commission support this concept and move forward with the language, but not include the outside the Designated Basins clause; Commissioner Coryell seconded the motion.

Mr. Shimmin stated his concerns with the language that, before the motion was voted on, it be made clear whether this authority is given solely to the State Engineer or if it is shared with the Ground Water Management Districts. He stated that he polled the Ground Water Management Districts he represents and in attendance at the meeting, and they feel they have shared and equal authority to handle these enforcement activities.

Chairman Mikita stated that the motion has been made and that the Commission is proceeding with the issue, and the wording will be clarified through the Ground Water Management Districts and the Ground Water Commission before it is finalized. Mr. Fronczak stated that he will remove the word "sole", which will resolve the issue. The motion was approved unanimously.

Commission in Executive Session concerning Reinaldo Gallegos, Marianne Gallegos, Harold I. Gallegos, Ellen Gallegos, and Gene J. Gallegos v. Colorado Ground Water Commission, an administrative agency of the State of Colorado, and Mr. Hal D. Simpson, The Colorado State Engineer, as Ex Officio Executive Director of the Colorado Ground Water Commission (Case No. 03CV1335) in Weld County District Court – Mr. Kowaleski stated that there is pending litigation on the Gallegos matter that the Commission proposed to discuss during Executive Session. Commissioner Clever moved to go into Executive Session, seconded by Commissioner Jaeger and approved unanimously. The sole subject of discussion was the litigation.

Discussion and decision on the processing of changes of water rights in Designated Basins where ground water is available for appropriation by Bill Fronczak – Mr. Fronczak stated that this topic was per direction from the Commission at the last meeting. He provided the Commission with the following two proposals:

- Proposal No. 1 is an increase in appropriation and irrigated acres – The staff's recommendation is that it applies to the Southern High Plains Designated Basin. The rule change would allow the Commission to issue new permits under Section 107 for existing wells that are multiple-completed.
- Proposal No. 2 enters into a resolution whereby allowing the State Engineer and staff to have flexibility in issuance of change of water right applications in basins that are open for appropriation; this includes publication, review analysis of injury, and issue a change of water right for the new use. The change would allow a new priority date.

Mr. Fronczak stated that proposal number one would be easiest for staff because 95% of the wells were constructed prior to 1987, but they should be able to pass both proposals. Commissioner Clever made a motion that the staff take both proposals and run it by the Ground Water Management Districts that are affected and report back to the Commission. The motion was seconded by Commissioner Smith and passed unanimously.

Staff Report by Suzanne Sellers - Ms. Suzanne Sellers presented the Staff Activity Report for the last quarter that was included in the packets. She reported on small capacity well permits, large capacity permits, changes of water rights, final permitting activities, objections and hearings (Eagle Peak Farms was settled and the Gallegos matter is in Weld County District Court), appeals (the Booker matter is being appealed back to the Commission), enforcement actions (complaints included small capacity wells for unpermitted uses, Upper Black Squirrel irrigation wells, Kiowa Bijou District livestock wells, Camp Creek District wells, and a Southern High Plains large capacity well). With the help of Stan Murphy, the staff is close to resolving an ongoing issue with Kenneth Potteroff in the Plains District.

Report of the Attorney General by Matthew Poznanovic - Mr. Matt Poznanovic stated that the report that provides a summary of the matters that the Attorney General's Office is involved in was included in the packets. In addition to the two appeals to the Commission in February, the next hearing with the Hearing Officer is scheduled for January 23, 2004 regarding an objection to RMBG's application for determination of water right.

Management District Reports - Chairman Mikita called for the Management District reports.

Mr. Aaron Nein reported from the **Frenchman, Sandhills, Marks Butte and Central Yuma Ground Water Management Districts**. Mr. Nein reported on the enforcement activities and stated that his districts are being proactive with regard to well permit enforcement. Within the past three years, they have adopted mandatory well administration rules; all four districts have adopted rules for paying back water that is over-pumped; and three out of the four districts will have a 2 to 1 payback policy in place.

Mr. Jack Adams, from the **W-Y Ground Water Management District**, stated that it is a good idea to get Senator Hillman to carry the bill.

There was no report from the **Arikaree Ground Water Management District**.

Mr. Stan Murphy, from the **Plains and East Cheyenne Management Districts**, reported on the enforcement issue regarding Mr. Potteroff. He reported on the joint meeting with the Plains and East Cheyenne Districts and Senator Hillman to discuss the proposed language and stated that the Senator expressed interest in carrying the bill. Mr. Murphy discussed the proposed bill by Kansas which will pay farmers to not irrigate.

Commissioner Max Smith, reporting for the **Southern High Plains Ground Water Management District**, stated that it is still dry in his districts.

There were no reports from the **North Kiowa-Bijou Ground Water Management District**, the **Upper Black Squirrel Creek Ground Water Management District**, or from the **Upper Big Sandy Ground Water Management District**.

Ms. Cheryl Wailes, from the **Lost Creek Ground Water Management District**, reported on the litigation with Sweetwater and expressed her displeasure with the state regarding the lack of support to the district in the litigation process.

Old Business – Impact of wells in the Northern High Plains by Ken Knox – Mr. Knox reported on the potential for new appropriations in the Republican River basins and how that might prevail into litigation and compliance efforts. The ground water model was used to look at what each appropriation sought in terms of their impact to the streams. Mr. Knox stated that the thrust of the argument is the tenure (the recommendation is to look at 100 years), the amount for long-term depletions, and the aquifer levels. Commissioner Clever recommended that staff proceed, using the recommended 100 years, and come back to the next meeting with a report.

New Business – Selection of Meeting Dates for 2004 – Marta Ahrens reported that the meeting dates scheduled for 2004 are as follows: **February 24**, Tuesday, in Wray, held in conjunction with the Ogallala Symposium on Monday, February 23; **May 21** in Denver; **August 19-20** (location to be determined) – a recommendation was made to hold the meeting at the new Northern Water Conservancy District building in Berthoud and tour their project on the Front Range; **November 19** in Denver.

Commissioner Bauerle moved to set these meetings dates; seconded by Commissioner Jaeger and approved unanimously.

Next Meeting - The next meeting is scheduled for Tuesday, February 24, 2004, in Wray.

The meeting adjourned at 1:30 p.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission