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**MINUTES**  
***FIRST QUARTERLY MEETING***  
***COLORADO GROUND WATER COMMISSION***  
**FEBRUARY 24, 2004**

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The First Quarterly Meeting of the Colorado Ground Water Commission took place on February 24, 2004, at the Wray Community Hall, 245 4<sup>th</sup> Street, Wray, Colorado. Chairman Earnest Mikita called the meeting to order at 8:30 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, Robert Loose, Earnest Mikita, Max Smith, Hal Simpson, Russell George and Ted Kowalski. Commissioner Frank Jaeger was absent.

**Review and approval of agenda items** - Mr. Ted Kowalski moved to approve the agenda items; the motion was seconded by Commissioner Clever, and carried unanimously.

**Approval of Minutes for meeting of November 21, 2003** - Chairman Mikita asked if there were any corrections or additions to the Minutes of the November 21, 2003 meeting. Commissioner Clever moved to accept the Minutes; the motion was seconded by Commissioner Loose and carried unanimously.

**Report of the Executive Director by Hal Simpson** – Mr. Simpson introduced Mr. Russell George, the new Executive Director of the Department of Natural Resources. He thanked the members of the Commission who were able to attend the informative and educational Ogallala Symposium and expressed appreciation to Mr. Joel Schneekloth for organizing the symposium. Mr. Simpson reported that the Republican River Coordinating Committee, established by Senator Hillman and Representative Brophy, held its first meeting January 31, 2004. Commissioners Gene Bauerle and Dennis Coryell are the Commission's representatives on the Committee, and there are a number of representatives from the Ground Water Management Districts. The Committee was briefed on the current situation, the short-term and long-term issues, and discussed possible ways to fund solutions that will involve retirement of irrigated lands. The Committee will meet again in Brush following today's Ground Water Commission meeting.

With regard to the Kansas v. Colorado litigation, Mr. Simpson reported that Kansas filed exceptions, as expected by Colorado. The primary exceptions were that they did not believe that a 10-year moving total was appropriate in determining compact compliance, they did not agree that there was no need for a Federal River Master, they did not agree with the procedure to computer pre-judgment interest, and did not agree that Colorado was in compliance from 1997-1999. Oral arguments may be held in the fall.

Mr. Simpson reported on SB-118, which is sponsored by Senator Entz, and is a result of action that took place in the Lower Arkansas River Basin when the Lower Arkansas Water Conservancy

District was established, and an additional water conservancy district was established in Logan County. The boundaries overlie portions of the Southern High Plains and Northern High Plains designated basins. The bill will allow the districts or the Commission to be able to exclude lands that were claimed by these water conservancy districts. The bill passed the Senate Ag Committee, and passed a second reading of the Senate and no amendments were made. There was opposition to it by the Conservancy Districts and the Colorado Water Congress.

Mr. Simpson stated that at the next Commission meeting in May there will be a fairly intense hearing on the Booker appeal.

**Biennial Election of Chair and Vice-Chair** – Commissioner Coryell moved that the Commission retain the Chairman and Vice Chairman for another year term. Commissioner Clever seconded the motion. Commissioner Loose moved that the nominations be closed, which was seconded by Commissioner Curtis. Chairman Earnest Mikita was elected to serve as Chairman and Commissioner Smith as Vice-Chairman for another term.

**Hearing on a request for a variance to Designated Basin Rule 7.10.1 relating to an application by Steve and Ronda Hayes to expand the acres for the well with Permit No. 11744-FP, by Mike Shimmin, attorney for well owners** – Mr. Mike Shimmin stated that this case has been before the Commission at two previous meetings. Mr. Shimmin provided a brief background of the case for the benefit of new ex-officio member Russ George. As suggested by Commissioner Kowalski at the last meeting, a recommendation was made to consider an expanded acres application which would be based on the statement of beneficial use and power records. Mr. Shimmin stated that granting this variance would not create an adverse precedence for the future. A strict application to the rule would cause an unusual hardship to the Hayes as it would cause them to dry up 65 acres and they would suffer financially. On the question of no injury, nothing new will happen if the variance is approved, the acres that have been irrigated will continue to be irrigated, and no injury will result. Mr. Shimmin asked the Commission to find that under these circumstances this variance request is justifiable.

Ms. Suzanne Sellers, of the staff, reported on how the staff would process this change of water right application. The staff would look at what was pumped, divide it by a ratio of what was allowed and what was irrigated. Ms. Sellers stated that there are no records from the last ten years.

Mr. Matt Poznanovic, from the Attorney General's Office, representing staff, discussed the procedure of a variance request and stated that it may only be granted upon evidence of unusual hardship and the facts causing the hardship must be unique.

Following deliberation by the Commission members, Commissioner Clever moved that the Commission grant the variance request to Designated Basin Rule 7.10.1 to Steve and Ronda Hayes to allow them to use 1979 as the irrigation year of record instead of the last ten years. The motion was seconded by Commissioner Smith and passed unanimously.

**Rulemaking hearing on allowing additional appropriations of existing wells completed in multiple aquifers in Designated Basins where ground water is available for appropriation by Suzanne Sellers** - Ms. Tanya Light, of the Attorney General's Office representing staff, discussed the legal requirements of the rule change. Ms. Sellers discussed the impetus and substance of the rules. The proposed amendments to the rules were to Rule 5.2.1, 5.2.3, 5.2.8, and 5.2.9.

Mr. Doug Melcher, from the Southern High Plains Ground Water Management District, reported that his district supports the rule change. Commissioner Clever made a motion to approve the amendments to the rules as published. 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 new and replacement applications, small capacity well permits, large capacity permits, change applications, final permitting activities, pending and completed hearings, and enforcement actions. Ms. Sellers stated that Mr. Dave McElhaney will be taking over Mr. George Van Slyke's position on the Commission, who retired in December 2003. Discussion ensued on the Schubert Ranches curtailment hearing being conducted by the Upper Black Squirrel GWMD, which has been scheduled for June 3, 2004.

**Report of the Attorney General by Tanya Light** – Ms. Light reported that the matters that the Attorney General's Office is involved in was included in a report in the packets, and also stated that there will be a hearing with the Upper Black Squirrel Ground Water Management District. Ms. Light reported that there were two cases that were set to be heard today and were withdrawn, so the initial ruling of the Hearing Officer became the Final Order of the Commission. Mr. Simpson added that Matt Poznanovic will be leaving the Attorney General's Office for private practice and that this was his last meeting.

**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 that they finished up the static water level measurements of his four districts and he provided a preliminary report of the measurements. The largest decline was 6.4 feet. Mr. Simpson noted that the measurements performed by the Ground Water Management District are compensated for by the State Engineer's Office.

Mr. Jack Adams, from the **W-Y Ground Water Management District**, reported on the water level measurements of the irrigation wells in his district and the inconsistencies and fluctuations in results based upon who was performing the measurements.

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

Mr. Stan Murphy, from the **Plains and East Cheyenne Management Districts**, reported on water level measurements in his districts and their process for elections for board members.

Mr. Doug Melcher, reporting for the **Southern High Plains Ground Water Management District**, introduced two board members from Springfield, and stated that they worked on the proposed rule, term limit elections, water level measurements, and SB-118.

Commissioner Loose, reporting for the **North Kiowa-Bijou Ground Water Management District**, thanked the Commission for their support of irrigation wells that were out of compliance.

There was no report from the **Upper Black Squirrel Creek Ground Water Management District**.

Mr. Dave Taussig, reporting for the **Upper Big Sandy Ground Water Management District**, stated that Don Nichols resigned from the district after 30 years. He stated that he agrees that the election problem needs clarification. Their district is setting aside money to perform a water study and will be sending out RFP's for a geologic and hydrologic study of water that is available in their aquifer.

Ms. Cheryl Wailes, from the **Lost Creek Ground Water Management District**, reported on problems with rules on elections and agreed that clarification is needed. The District settled with Eagle Peak and Sweetwater and they are no longer part of these cases.

**Old Business – Discussion on the issuance of new appropriations within the Republican River Basin by Hal Simpson** – Mr. Simpson stated that under the settlement stipulation in the Republican River lawsuit, it is not necessarily required that the Commission impose a moratorium at this time, the existing rules are appropriate. The question is whether new well permits can be granted and, if not, the rules should be amended accordingly. The Republican River Committee is dealing with short-term and long-term issues to prevent compact violation; shutting off wells will not be the solution.

Discussion ensued by the Commission members and others from the audience regarding adopting a moratorium on new wells and starting the rulemaking process. It was agreed that it does not make sense to grant new permits in an area that is already over-appropriated.

Mr. Pat Kowaleski, of the Attorney General's Office, suggested reviewing the rule for an amendment to allow a moratorium and hold a public rulemaking hearing. He stated that the Commission couldn't act on this issue today and allow for public discussion since it was not included on the agenda. Mr. Simpson suggested that this issue be properly noticed for the May meeting.

Mr. George affirmed that that this is major public policy and he would be uncomfortable with any expedited process, however, the Commission can start with the routine rulemaking process. He stated that the public that will be affected need to be made aware of this as it would have an affect on the communities.

Mr. Fronczak stated that language will be drafted by working with the districts, and it can be brought to the May meeting. The rulemaking process can start at the August meeting.

**New Business** – Mr. Simpson inquired the Commissioners regarding testifying and taking a position in support of SB-118. The concern is that some of the water conservancy districts feel this would set a precedent that land owners could opt out of conservancy districts. Mr. Shimmin reported that he wrote amendments that this bill would only apply to only non-tributary designated basins. He asked the Commission members to contact their Senators and Representatives in support of this bill.

Commissioner Coryell made a motion to authorize the State Engineer to testify in support of the bill; Commissioner Bauerle seconded the motion. Mr. George added that Mr. Simpson be given latitude for amendments. The motion was modified to authorize the State Engineer to exercise discretion with regard to any proposed amendments with regard to the legislation. The motion passed. Commissioner Clever noted for the record that he abstained from voting on this motion.

**Next Meeting** - The next meeting is scheduled for Friday, May 21, 2004, in Denver.

The meeting adjourned at 11:15 a.m.

Respectfully submitted,

Marta Ahrens  
Secretary to the Ground Water Commission