
MINUTES
SECOND QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION

MAY 21, 2004

The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 21, 2004, at 1313 Sherman Street, Room 318, Denver, Colorado. Chairman Earnest Mkita called the meeting to order at 10:08 a.m. Marta Ahrens called the roll and determined that a quorum was present. Commission members present were Eugene Bauerle, Dennis Coryell, Ralph Curtis, Frank Jaeger, Robert Loose, Max Smith, Ted Kowalski, Russell George, and Hal Simpson. Commissioners Larry Clever and Richard Huwa were absent.

Review and Approval of Agenda Items - No additions or corrections were made to the agenda.

Approval of Minutes for Meeting of February 24, 2004 - Chairman Mikita asked if there were any corrections or additions to the Minutes of the February 24, 2004 meeting. Commissioner Bauerle moved to accept the Minutes with a correction on page 5 to delete "to testify" from the second paragraph. The motion was seconded by Commissioner Coryell and carried unanimously.

Report of the Executive Director by Hal Simpson – Mr. Simpson reported that Commissioner Clever and Commissioner Coryell were reappointed to the Commission and confirmed by the Senate on May 3, 2004 to serve another term.

With regard to activity in the Republican River basin, a Republican River Water Conservation District was created by SB-235 as the legal entity to help implement the provisions of the Republican River Compact settlement. This bill was introduced by Senator Mark Hillman, sponsored by Representative Greg Brophy in the House, and approved by the Legislature. At the time of this meeting, it was still waiting for the Governor's signature. The District will be managed by a 15-person board and will be charged to develop a mechanism to fund actions to reduce consumptive use in the basin in dry years to ensure that compact allocations are not exceeded. Mr. Simpson stated that at the August meeting, a representative of the Ground Water Commission will be designated to serve as a board member to the Republican River Water Conservation District. Mr. Simpson thanked Commissioners Coryelle and Bauerle for taking the time out of their busy schedule to serve on the Republican River Coordinating Committee.

Mr. Simpson reported on SB-225, which will provide additional enforcement authority to the Commission and the State Engineer to deal with illegal or unauthorized uses of ground water in the designated basins.

Mr. Simpson reported that the Republican River Compact administration will meet on June 8 and 9 in Burlington, Colorado. The meetings will include a work session, followed by the formal annual meeting of the Compact Administration.

With regard to the water supply statewide, Colorado is going into another dry year, which will be the sixth consecutive year that the snowpack has been below average.

Mr. Simpson suggested that if the Ground Water Management Districts or the Commission desire to develop new legislation for the next session, that it be started sooner so that the legislation can be presented to the Commission for approval and, if needed, assistance obtained from the Attorney General's Office.

Presentation on Subsurface Drip Irrigation (SDI) and Potential Benefits by Jim Phene of Netafim USA – Mr. Phene stated that he is on the board of directors for the Central Plains Irrigation Association. He stated that their system fits in with the mission of the Division of Water Resources and the Colorado Ground Water Commission.

Mr. Phene reported that the SDI system is a production tool used to precisely and uniformly deliver water, plant nutrients, and protection from chemicals. He stated that the greatest benefit of drip irrigation was to be able to efficiently irrigate and put the fertilizer directly into the root zone. It can maximize crop yield, and provides a 30 to 50 percent savings on water use. Some of the benefits of using SDI include increased water use efficiency, reduced water percolation through the root zone, reduced runoff from the tail end of a field, reduce evaporation from the soil surface, better crop yields, increase in aquifer life, nutrients can be put through the system with the water, return on investment, lower salt accumulations, and decrease use of herbicides.

Hearing on the Appeal of the Hearing Officer's Initial Decision (Case No. 02-GW-20) in the Matter of Objections to the Applications to Relocate Wells with Well Permit Nos. 16265-R, 16271-R, 16272-R, 27560-F and 27585-F, located in the Upper Black Squirrel Creek Ground Water Management District in El Paso County, by Richard Mehren and Timothy Beaton, Attorneys for Wayne and Francis Booker – Chairman Mikita called the hearing to order. Ms. Linda Bassi, First Assistant Attorney General, was Conflicts Counsel representing the Commission.

The following persons addressed the Commission:

Mr. Tim Beaton, representing the Bookers, stated that the Bookers' request to change the wells is consistent with Rule 7.3.2. The Bookers feel that if they are allowed to recapture their historic diversion, that they are complying with the rules and not injuring anyone. He stated that the Hearing Officer's decision is not consistent with the rule.

Mr. Mike Shimmin, attorney, representing Schubert Ranches, Inc., stated that the interpretation of the second and third sentences of Rule 7.3.2 is the reason for this appeal. As long as there is no water physically available at the old location, there is no water available for the new location. He asked the Commission to affirm the decision of the Hearing Officer and stated that it is clearly and obviously supported by the evidence in the record and the application for the rule was correct and appropriate.

Mr. Andy Jones, attorney, representing the Upper Black Squirrel Creek Ground Water Management District, asked the Commission to uphold the Hearing Officer's decision in its entirety. Ms. Kathy Hare, board member of the Upper Black Squirrel Creek Ground Water Management District, stated that the District is in severe stress due to the drought and moving the wells would cause injury to other water users in the district. Mr. Forrest Leaf, district engineer for the Upper Black Squirrel Creek Ground Water Management District, stated that all the facts have been presented concisely and that moving the wells would set cause others in the district to follow suit.

Ms. Susan Schneider, of the Attorney General's Office, representing staff, stated that the rule should require consideration of factual historical consumptive use at the existing location before change is considered. She presented the "walking to water" theory. Ms. Schneider stated that the Commission should remand the case to the Hearing Officer to uphold Rule 7.3.2 to require that future withdrawals be limited so as to not exceed the amount water physically divertible.

Ms. Suzanne Sellers, of the staff, presented a theoretical diagram of replacing a well and discussed the saturated thickness of the relocated well. She reported that there are conditions that can be added by the staff to the Findings of Order in changes of use in lieu of denying the application.

Ms. Bassi provided the Commission with options on the Hearing Officer's decision and asked the Commission for clarification on interpretation of the second sentence of Rule 7.3.2. Commissioner Jaeger recused himself from the hearing due to conflict in another matter he is involved in with Mr. Beaton.

Discussion between the Commissioners ensued regarding the second sentence, what is economically feasible, and the 50-foot rule. After deliberation by the Commission Members, Commissioner Coryell moved that the Commission affirm the Hearing Officer's decision. The motion was seconded by Commissioner Bauerle and passed unanimously.

Discussion on Proposed Language for Future Rulemaking Regarding New Appropriations and Expansion of Acres in the Republican River Basin within the Northern High Plains by Suzanne Sellers – Ms. Sellers reported that staff prepared the language with two options for eliminating new appropriations in the Northern High Plains. The language was sent to the district managers for their comments. Staff recommended that for option 1 to remove Rule 5.2.2.8 regarding the three-mile prohibition against wells because it would be redundant to a Republican River Compact rule already in place. Staff also proposed a definition for the alluvium of the Ogallala aquifer.

Mr. Mike Shimmin stated that there is no unappropriated water anywhere in the basin and he in favor of using option 1 as it is legally more defensible.

Mr. Simpson stated that the district should provide input prior to making a decision. Commissioner Jaeger moved to table this until the district has had an opportunity to provide input and revisit this at the next meeting, and then set a rulemaking hearing after the Commission received input from the affected parties. The motion was seconded by Commissioner George and approved unanimously. Commissioner Jaeger added that the district provide their comments to the staff to bring to the Commission.

With regard to the proposed language on expanded acres, Commissioner Jaeger moved to table the discussion and revisit this along with the first topic at the next meeting; the motion was seconded by Commissioner Loose and approved unanimously.

Staff Report by Suzanne Sellers - Ms. Suzanne Sellers presented the Staff Activity Report for the quarter, which was included in the packets. She reported on small capacity well permits, large

capacity wells, new applications for changes of water right, final permit activities, enforcement issues, the Gallegos matter, and the lawsuit in the Upper Crow Creek basin.

Report of the Attorney General by Susan Schneider - Ms. Schneider reported on several cases in which the Attorney General's Office was involved. This report was included in the packets.

Mr. Bill Fronczak reported on three activities that were not included in the report that involve the Attorney General's Office: (1) The designated basin judge granted a motion for summary judgment in the Eagle Peak Farms case involving only the district and that Eagle Peak is close to resolving all the issues in the Commission case. (2) There was a motion for extension of time filed by a designated basin well owner in the Gallegos matter. (3) A motion was filed with the Hearing Officer by the Upper Black Squirrel Creek Ground Water Management District for reconsideration of the original Hearing Officer's order on the Upper Black Squirrel rules.

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 stated that SB-118, which would have taken lands in the designated basins out of newly formed water conservancy districts, did not pass and was postponed indefinitely. On behalf of the Frenchman Ground Water Management District, he thanked the Southern High Plains Ground Water Management District, Commissioner Smith, Mr. Simpson, and Commissioner Bauerle for their support of this bill. With regard to SB-235, his four boards have all recommended that the new Republican River Water Conservation District retain Mike Shimmin as their attorney. Mr. Nein reported that SB-225 passed and the boards were disappointed by the decision to exclude the Ground Water Management Districts from the bill. Regarding HB-1010, the Tabor Amendment, and Amendment 23 restrictions, they hope to put something on the ballot to relax the restrictions. Mr. Nein reported that he has discovered numerous flaws in the Department of Agriculture chemigation inspection system. He stated that there are a lot of wells that are not in the system and are not getting inspected.

There were no reports from the **W-Y Ground Water Management District** or from the **Arikaree Ground Water Management District**.

Mr. Stan Murphy, from the **Plains and East Cheyenne Management Districts**, agreed with Aaron Nein regarding the problems concerning chemigation inspections. He stated that he appreciated the efforts of those who testified on SB-225. Mr. Murphy stated that he would like to start preparing language for new legislation because what they currently have is not working.

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

Mr. David Taussig, from the **Upper Big Sandy Ground Water Management District**, reported on a study to determine the amount of water that is available in his district. He district is considered under-appropriated. He sent a draft letter for a scope of work for engineering studies similar to what Southern High Plains did. They would look at three phases: the geology of the alluvial aquifer; perform a water balance for basin to look at what is being recharged and what is being

consumed to determine what is sustainable in the aquifer; and come up with management and rule changes that might be necessary to implement those goals.

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

Old Business – None

New Business – Mr. Ted Kowaleski reported that at the next meeting of the Colorado Water Conservation Board, the Colorado Geological Survey is providing a presentation on artificial recharge of ground water in Colorado. He proposed that if the Commission is interested, a similar presentation could be done for the Commission at the November meeting.

Location of the August 20, 2004 Commission Meeting – Marta Ahrens reported on previous discussions regarding holding the meeting at the Northern Colorado Water Conservancy District Headquarters in Berthoud. The NCWCD would provide a tour of the Colorado-Big Thompson Project on the front range on Thursday, August 19, 2004.

Commissioner Jaeger offered to hold the November meeting at the new Parker Water and Sanitation District facilities in Parker.

The meeting adjourned at 2:40 p.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission