
MINUTES
THIRD QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION
AUGUST 20, 2004

The Third Quarterly Meeting of the Colorado Ground Water Commission took place on August 20, 2004, at the Northern Colorado Water Conservancy District Headquarters, 220 Water Avenue, Berthoud, 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, Richard Huwa, Frank Jaeger, Robert Loose, Max Smith, Russell George, and Hal Simpson. Commissioners Ralph Curtis and Ted Kowalski were absent.

Review and Approval of Agenda Items - There were no additions or changes to the agenda.

Approval of Minutes for Meeting of May 21, 2004 - Chairman Mikita asked if there were any corrections or additions to the Minutes of the May 21, 2004 meeting. Commissioner Jaeger moved to accept the Minutes; the motion was seconded by Commissioner Coryell and carried unanimously.

Report of the Executive Director by Hal Simpson – Mr. Simpson thanked Brian Werner of the Northern Colorado Water Conservancy District for the tour of the Colorado Big Thompson Project and the use of their facility for the Commission meeting. Mr. Simpson reported that he and Ken Knox have been deeply involved in the initial activities of the Republican River Water Conservation District. Commissioner Coryell was elected as Chairman of the District, and Commissioner Bauerle as Board Member. Mr. Jack Dowell, of the W-Y Ground Water Management District is also a Board Member. Mr. Simpson stated that there's a lot of work to be done in a very short period of time to try to come up with cost estimates to fund programs to bring Colorado back into compliance over the initial five-year period, especially if the state faces another dry year. Mr. Simpson stated that a lot of effort is going on to solving problems and protecting that part of the state's agriculture.

Mr. Simpson also reported on the water supply conditions through the state, the upcoming State Fair that is scheduled to open on Saturday, August 21, and DWR's water exhibit at the State Fair. He also stated that Mr. Bill Fronczak resigned from DWR to take on new opportunities and challenges in the private sector.

Hearing on the appeal of the Hearing Officer's Initial Decision (Case No. 03-GW-14) in the matter of an appeal to district rules adopted by the Upper Black Squirrel Creek Ground Water Management District by Andrew Jones, Attorney for the District. Chairman Mikita called the hearing to order. Mr. Pat Kowaleski, Assistant Attorney General, was Conflicts Counsel representing the Commission. The following persons addressed the Commission:

Mr. Andy Jones, representing the Upper Black Squirrel Ground Water Management District, provided an overview of the legal foundation for the rule; the devolution of authority; the district's rulemaking authority; the development of the rules; the new rules 17, 18, and 19; the Hearing Officer's lack of considering the determination and administration of the right, and the purpose of the District. Mr. Jones asked the Commission to reverse the Hearing Officer's decision.

Mr. Jason Downie, attorney with Susemihl, McDermott & Cowan, located in Colorado Springs, representing the Cherokee, Meridian Ranch, Meridian Service, Paint Brush Hills and Woodmen Hills Metropolitan Districts, requested that the Commission uphold the decision of the Hearing Officer and stated that all the arguments that were made by the District were considered in the Hearing Officer's decision. He stated that the sole authority to administer rules should be under the jurisdiction of the Commission.

Ms. Tanya Light, attorney with the Attorney General's Office representing staff, stated that they believe that the Hearing Officer was incorrect in his decision and asked that the rules be remanded back to the Hearing Officer to determine the reasonableness of the rules. Ms. Light stated that the district can and should have the authority to enact and control conservation measures.

Mr. Mike Shimmin, attorney, believes that the management act gives the Commission authority to issue permits, then it's up to the management districts to implement management and conservation techniques in accordance with the rules established by the district board. He stated that the Commission should delegate authority to the management districts to manage conservation measures.

Mr. Tim Buchanan, attorney, representing Gateway American Properties located in the Lost Creek Ground Water Management District, asked the Commission to adopt the decision of the Hearing Officer.

Discussion took place whether to affirm the Hearing Officer's decision, or reject it and remand it back to the Hearing Officer. After deliberation by the Commission Members, Commissioner Clever moved that the Commission overturn the Hearing Officer's determination that, as a matter of law, the District has exceeded its statutory authority and decisional law authority, and thus Rules 17, 18, and 19 are null and void; second, to remand to the Hearing Officer to hear whether Rules 17, 18, and 19 represent a taking by the District without just compensation in violation of the Fifth Amendment of the United States Constitution and Article 2, Section 15 of the Colorado Constitution; and third, consider on remand whether Rules 17, 18, and 19 are in violation of the equal protection clause of the United States and Colorado Constitutions. The motion was seconded by Commissioner Jaeger 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 provided the history on the proposed language and summarized the two options for Rule 5.2.2 and Rule 7.5. Staff has not received comments from the district on the proposed language.

Commissioner Coryell commented on Option 2 of Rule 5.2.2 and stated that there should be no new appropriations in the Northern High Plains within the drainage of the Republican River basin.

Mr. Aaron Nein reported on his Boards' decisions on the rules and stated that his boards are not in favor of the Commission supporting the proposed language on the options on Rules 5.2.2 or 7.5. Regarding the moratorium, he knows of only one location in all four districts within the 3-mile circle calculation that if a moratorium goes through, one individual would apply for a permit prior to the moratorium.

Mr. Stan Murphy stated that in regard to Option 1 and issuing new permits in the Northern High Plains basin, that as long as the 3-mile circle criteria is met there is no problem unless it's going to effect the Republican River Compact, and suggested including a phrase that it has to comply with the compact on a 100-year plan. Regarding Rule 7.5, he stated that this rule is a result of paperwork not being submitted. He said that the only one his district would support is Option 1 on Rules 5.2.2.

Commissioner Bauerle moved that the Commission select Option 1 on Rule 5.2.2, and that Rule 7.5 should be left as is. Mr. Kowaleski stated that they will publish Option 1 as proposed. The motion was seconded by Commissioner Coryell and passed unanimously, with the exception of Commissioner Jaeger who abstained from voting on this issue.

Discussion on future legislation the Commission or Districts may wish to pursue - Mr. Stan Murphy stated that he drafted language for the election problems that they are having. He stated that there are no provisions in the statutes for irrigating football and baseball fields at school districts based on domestic use only on well permits. Many schools are currently illegally watering their sports fields.

Staff Report by Suzanne Sellers - Ms. Suzanne Sellers presented the Staff Activity Report for the last quarter, the written report of which was included in the Commissioners' packets. She reported on the small capacity and large capacity wells, new replacement permit applications, change applications, final permitting activities, objections to hearings, enforcement activities, and miscellaneous. Ms. Sellers reported that Chris Grimes transferred to a Division 1 team and Sandy Johnson has been working on small capacity wells. She introduced Sarah Reinsel, the new EIT working on termination of water rights and new well permits, and stated that the Designated Basins Branch will sorely miss Bill Froncak.

Report of the Attorney General by Tanya Light – Ms. Light 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. Ms. Light also reported that the Upper Black Squirrel District adopted Rule 20, concerning priority enforcement, and stated that a rules hearing was held in early August and that decision was appealed to the Hearing Officer; the AG's office will be participating in that hearing in mid-October. Ms. Light also reported on an objection to determination of water right and that hearing is set for October 6. She thanked the Commission for their support of SB-225, which enabled them to settle on an enforcement case.

Mr. Mike Shimmin, attorney, noted that today was the first that he learned about the appeal of the Upper Black Squirrel District rule process. They received no notice that it was appealed or that it was going to be heard before the Hearing Officer. He questioned whether a hearing could be held prior to the other parties being notified that there is an appeal and that there might be a hearing.

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 introduced John Eubanks from the Sandhills Ground Water District, and stated that their dear friend and colleague Ben Saunders passed away in June. Mr. Nein stated that rainfall has been above average and they should be able to bank water this year. He reported on the appointments to the Republican River Water Conservation District. Mr. Nein complimented the staff regarding the re-drill permits for high capacity wells.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, stated that this is his first meeting. He stated that the district will meet the following week to discuss the new rules. He reported that things are looking up and they've had a little more rain. He mentioned that the District's President, Roy Smith, was in a serious accident in May and is in a Denver hospital.

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

Mr. Stan Murphy, from the **Plains and East Cheyenne Management Districts**, thanked Bill Fronczak for all the work he has done with and for his district and wished him the best of luck. Mr. Murphy stated that they are reviewing their rules and regulations. He stated that down the road they are looking at the possibility of finding a way to split irrigation well appropriations of historic use where part of the water can be used for municipalities or schools and retain the other part for irrigation. This would involve creating two wells structures, one to take care of irrigation needs and the other would be a high-pressure system. Mr. Murphy also reported on the well EQIP project proposal that both of his districts are involved with. He stated that Hal Simpson and Ken Knox are attending their public hearing on September 23 to speak about the Republican River Compact, the Conservation District, SB-225, and other issues.

Commissioner Smith, reporting for the **Southern High Plains Ground Water Management District**, stated that no irrigation wells went dry and things should look good through the end of the summer.

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

Mr. David Taussig, from the **Upper Big Sandy Ground Water Management District**, congratulated Bill Fronczak and Suzanne Sellers for their assistance with helping the water districts and water users and providing solutions. The district sent out 13 requests for proposals for geologic and hydrologic studies and narrowed the selection to three engineering firms who submitted excellent proposals. They will interview the firms and go forward with the selection.

Ms. Cheryl Wailes, reporting for the **Lost Creek Ground Water Management District**, stated that they are getting moisture and they had wheat to cut this year. They are progressing on seeking a consulting firm to work with the district on doing a water study that was part of the settlement with Eagle Peak. Ms. Wailes reported that they are putting an item on the election ballot to get rid of term limits. All of their vacancies are filled and they have a full board. The district is working with the conservation district on different programs that includes capping abandoned wells, and also working with the state and different entities to deal with growth in their area.

Old Business – There was no old business.

New Business

Mr. Simpson stated that a Resolution will be prepared to recognize Bill Fronczak's service for the Division and the Commission and will be presented to him at the next meeting.

Commissioner Clever moved to adopt the Minutes of the special telephone conference meeting held on August 6, 2004 to designate a representative of the Commission to serve as a board member to the Republican River Water Conservation District. The motion was seconded by Commissioner Huwa and approved unanimously.

Commissioner Smith commented on the land use conversion or wells set aside under the EQIP program discussed by Stan Murphy. He said that there are three options under the proposal, which include temporary, extended and permanent. Under the permanent, where a person gives up their water right and abandons the well, they need to work with Mr. Simpson and staff on the process of permanently surrendering the permit back to the state. Commissioner Smith encouraged Mr. Simpson to contact Alan Green with regard to adopting this proposal.

The meeting adjourned at 11:50 a.m.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Marta Ahrens', with a long, sweeping horizontal line extending to the right.

Marta Ahrens
Secretary to the Ground Water Commission