
MINUTES
FOURTH QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION

NOVEMBER 19, 2004

The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 19, 2004, at the Parker Water and Sanitation District Facilities, 18100 E. Woodman Dr., Parker, 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, Dennis Coryell, Ralph Curtis, Frank Jaeger, Robert Loose, Max Smith, Ted Kowalski, and Hal Simpson. Mr. Frank McNulty, Assistant Executive Director of the Department of Natural Resources, attended the meeting on behalf of Ex-Officio Member Russell George. Commissioners Richard Huwa and Larry Clever were absent.

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

Approval of Minutes for Meeting of August 20, 2004 - Chairman Mikita asked if there were any corrections or additions to the Minutes of the August 20, 2004 meeting. Commissioner Smith moved to accept the Minutes; the motion was seconded by Commissioner Jaeger and carried unanimously.

Report of the Executive Director by Hal Simpson – Mr. Simpson stated that two staff were recently assigned to the Designated Basins Branch to assist in dealing with well permitting issues – Chris Grimes returned after working on another team, and Jay Bloomfield transferred from the Records Section. In addition, a vacant PE1 position will be filled soon to assist in final permitting. He also reported that Ken Knox received his PhD in Civil Engineering at CSU and his dissertation was on interstate compacts. Mr. Simpson reported on the Division's recent reorganization to better focus on future activities. Ken Knox will take over technical studies and issues that include the San Luis Valley Rules, Arkansas River Compact compliance issues, Republican River Basin issues and rulemaking, and a potential compact call on the Colorado River that may result in promulgating rules for administering the call. As a result, Dick Wolfe has been put in charge of the Water Supply Section, which includes well permitting, support of the Ground Water Commission, approval of substitute supply plans, and review of subdivision water supply plans. Mr. Simpson stated that this is part of the Division's succession planning and an effort to have competent managers and leaders in anticipation of his retirement in a few years.

Mr. Simpson reported on the Arkansas River Compact dealing with compliance issues and provided an update on the oral arguments and the major issues before the Supreme Court in the hearing on October 4, 2004. The arguments went well and the U. S. Department of Justice supported Colorado in the arguments on two of the issues. The case was remanded to the Special Master for a final decree, and a hearing will take place before the Special Master in early 2005 on compact compliance. Staff are working closely with CSU and CWCB to move forward on studies to adjust the Penman-Montieth method on determining crop consumptive use.

Mr. Simpson reported on the Republican River Water Conservation District and stated that a board was appointed and are taking proactive steps. The board is looking at water use fees of \$5 to \$6 per irrigated acre to generate about \$3 million per year to fund programs to reduce consumption in the basin by wells and lease agreements to pay owners not to irrigate. Mr. David Robbins, attorney from Hill and Robbins, was hired as the District's legal counsel, and the process for interviewing for a District Manager has started.

Mr. Simpson stated that precipitation in September and October has been good statewide, and in the mountains it has produced good soil-moisture profiles. The state is currently above average on snowpack.

Presentation on “Aquifer Storage and Artificial Recharge – A Statewide Assessment” by Ralf Topper of the Colorado Geological Survey – Mr. Topper gave an excellent presentation on the results of a recent study completed by the Colorado Geological Survey on recharge of ground water in Colorado. The results of this study were published in CD format and each Commission member was provided a copy of this CD. Mr. Topper stated that artificial recharge is an engineered or designed system that puts water on or in the ground for the purpose of infiltration and migration in underlying aquifers. The need for storage has been a consistent theme of many talks in recent years. He reported that Colorado's drought cycle is the worst that has been seen in the last 100 years.

Mr. Topper provided an illustration of various recharge types and the objectives of artificial recharge. There are currently 19 active artificial recharge sites in Colorado. The technologies of artificial recharge are surface infiltration, subsurface infiltration, direct injection into confined and unconfined aquifers, and modification of natural resources. Mr. Topper stated that the major aquifers in Colorado were ranked based on aquifer properties, which include areal extent, depth, saturated thickness, head freeboard, storage coefficient, and hydraulic conductivity.

The conclusions of the study include: sustainable water management relies on the ability to store water; a viable alternative to construction of new surface water reservoirs is the storage of water below ground in aquifers; artificial recharge technologies are proven and have been implemented in Colorado on an individual local basis; in addition to managing water supplies, the application of artificial recharge can meet a number of water resource objectives; Colorado's aquifers have the additional capacity for storage hundreds of millions of acre-feet of water; and eastern Colorado contains the top five bedrock aquifers defined in the artificial recharge study.

Mr. Topper provided the recommendations of the study, which are as follows: to promote and encourage artificial recharge as a water storage option in Colorado; promulgate statewide rules and guidelines to facilitate implementation of artificial recharge; identify/organize entities to implement artificial recharge; and to address the critical components necessary for project implementation which include define objectives for artificial recharge, identify source water, identify project location, begin conceptual design, and collect hydrogeological data to make sure project will be a success.

Discussion on permanent well set aside through the EQIP Program by Dennis Alexander of NRCS - Mr. Alexander stated that he works for the Natural Resources and Conservation Service of the U. S. Department of Agriculture. He reported that they are the federal partner

working for the local conservation districts and the state conservation board and offer technical assistance and financial assistance to Colorado producers on a multitude of issues. Mr. Alexander stated that they will work with the State Engineer's Office regarding the possibility of permanently retiring a number of wells or water rights. The EQIP program will be offered in the Republican River and Rio Grande watersheds. They are offering \$150 an acre per year for a three-year period for a total of \$450 and are taking applications through December 17, 2004.

Mr. Pat Kowaleski referred the Commission to the draft language that was developed and clarified that the Commission was not asked to adopt the language today, but that it would be on the table at a rulemaking hearing. Commissioner Smith moved to set up a rulemaking hearing for the February Commission meeting in regard to the permanent well set aside; the motion was seconded by Commissioner Coryell and approved unanimously.

Rulemaking hearing regarding new appropriations in the Republican River Basin within the Northern High Plains by Suzanne Sellers – Chairman Mikita called the hearing to order. Pat Kowaleski, Assistant Attorney General, was Conflicts Counsel representing the Commission. Ms. Light, representing staff, distributed information regarding the hearing and stated that all requirements for the rulemaking have been met and no comments or objections were received.

The following persons addressed the Commission:

Ms. Suzanne Sellers, of the staff, stated that proposed rules changes to Rule 5.2.2 are identical to the language that was presented to the Commission in August. Some of the changes included language that was added to clarify that the alluvial aquifer is considered part of the Ogallala aquifer for administrative purposes, and language was added that would limit new appropriations in the Northern High Plains that would cause a depletion to the Republican River.

Mr. Purushottam Dass, from the audience and representing himself, suggested preserving rule number 5.2.2.8, and to not renumber the rules as there is a lot of history behind this rule. With regard to the language in Rule 5.2.2.9, he suggested removing "no new application for a permit" and substituting it with "no new appropriation to withdraw ground water." Mr. Kowaleski responded that the numbering aspect stay the same to be consistent with what has been done in the past.

Mr. Mike Shimmin, attorney, stated that inserting the word "appropriation" has conceptual inconsistency with Section 107, which is the statute that authorizes the Commission to grant the well permit application, and then the appropriation results only when the well is drilled and a statement of beneficial use is filed.

Further discussion ensued regarding the proposed changes in the language of Rule 5.2.2. Ms. Sellers summarized the application process if this rule was passed, and stated that the staff would evaluate the three-mile circle, then the Republican River model would be run prior to approving the application to ensure there are no depletions. Mr. Simpson stated that it is important this rule be adopted today as there has already been one illegal well drilled, and is currently under investigation, in an area trying to obtain a right and to put it in EQIP. After deliberation by the Commission Members, Commissioner Coryell made a motion to adopt the rules changes as

amended and presented during the hearing; the motion was seconded by Commissioner Loose and passed unanimously.

Executive Session to discuss Hunker et al v. Upper Black Squirrel Creek Designated Ground Water Management District, and Cherokee Metropolitan District et al v. Upper Black Squirrel Creek Designated Ground Water Management District. The Commission went into Executive Session during lunch to discuss the two pending litigation matters in which lawsuits have been filed recently to which the Commission is a party. Commission Jaeger moved that the Commission go into Executive Session; the motion was seconded by Commissioner Bauerle and passed unanimously. Commissioner Jaeger made a motion to come out of Executive Session, and was seconded by Commissioner Smith. Following the Executive Session, Mr. Kowaleski stated for the record that the discussion was limited to only the above subject matter.

Follow-up discussion on future legislation the Commission may wish to pursue:

- a. **Potential changes to statute regarding GWMD elections by Stan Murphy of the Plains and East Cheyenne GWMDs.**
- b. **Potential changes to Section 37-90-105, C.R.S. to allow 1) schools with small capacity wells to irrigate more than one acre of lawn by Stan Murphy and 2) ground water remediation as a use for small capacity wells by Suzanne Sellers.**

Mr. Murphy distributed a copy of language that was drafted by Mr. Shimmin and himself regarding elections and irrigating one acre of lawn for athletic fields at schools. It was noted for the record that all districts had an opportunity to comment on this language.

Mr. Dave Taussig, representing the Upper Big Sandy Ground Water Management District, reported that his district supports the legislation. Mr. Mike Shimmin, attorney, stated that if the districts have existing rules limiting commercial wells, they would not apply to these school wells. Mr. Simpson suggested including the language in the handout that the limit would not exceed five acre-feet unless the district allowed more.

Ms. Sellers briefed the Commission on how the Designated Basins Branch currently handles remediation wells, and the proposed changes to Section 37-90-105 to allow ground water remediation as a use for small capacity wells.

Mr. Simpson proposed that the Commission make a motion directing the staff to work with Mr. Murphy and local legislators to move forward on drafting legislation. Discussion ensued regarding Mr. Shimmin's suggestion to add language to include a consumptive use limit of five acre-feet. Commissioner Jaeger made a motion to approve the proposed language and proceed with drafting legislation with the stipulation that the Commission has the opportunity to see the legislation before it goes through the process. 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 last quarter, the written report of which was included in the Commissioners' packets. She

reported on the small capacity and large capacity well permit applications, changes of water rights, and final permitting activities. She also reported on pending litigation in the Hunker case in El Paso County, the Booker case in El Paso County, the Gallegos curtailment issue in Weld County, and an El Paso County determination of water rights case. She stated that Chris Grimes returned to Designated Basins and will perform Water Commissioner duties in addition to assisting with issuance of final permits; and Jay Bloomfield recently joined the team and will perform data entry, will work with the administration data base, and assist with final permits.

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. She reported on two new cases that came up this last quarter, the Hunker case and the appeal of rules adopted by the Upper Black Squirrel Creek, which was appealed to District Court and a motion was filed to dismiss that case. With regard to the Eldringhoff case, a motion for summary judgment was granted by the Hearing Officer and the hearing was vacated.

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 the most important topic that they are dealing with in northeast Colorado is the Republican River Compact. The Republican River Water Conservation District assessed a charge of \$5.50 per irrigated acre and the full implication of this is not known at this time. Mr. Nein thanked the staff for the CD Rom that contained the final permits for the Northern High Plains. He reported on the district's well administration and stated that they are getting ready to do static water level measurements.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that Roy Smith, their president, is on the road to recovery. Mr. Dowell stated that they lost, Ted Toole, a board member of the Republican River Water Conservation District in a tragic accident. He reported that he also has mixed feelings on the assessment that was set, but the judge didn't give them much time and they had to do what was best.

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

Mr. Stan Murphy, from the **Plains and East Cheyenne Management Districts**, reported that an information meeting was held in the Plains district with over 260 people attending. Some of the speakers included Mr. Simpson who provided a history of the Republican River Compact, Commissioner Coryell who spoke about what they were doing to correct the problems, and Mike Shimmin who presented information on SB-225.

Commissioner Smith, reporting for the **Southern High Plains Ground Water Management District**, thanked the staff and Mr. Simpson for being receptive to NRCS and trying to work out the EQIP process.

Commissioner Loose, reporting for the **North Kiowa-Bijou Ground Water Management District**, reported on the beneficial investigative report by Chris Grimes' and stated that they are looking forward to his written report in the mail. He stated that the District extended an invitation to Ms.

Sellers and her staff, and attorneys from the Attorney General's Office, to attend their regularly scheduled meeting which is held the first Wednesday of each month, followed by dinner.

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

Mr. David Taussig, from the **Upper Big Sandy Ground Water Management District**, reported that they selected Tom Cavanaugh, of ASGS Engineering, for the study that he reported on at the last meeting. Phase 1 of the report has been completed and final recommendations are forthcoming, and will proceed to Phases 2 and 3. Mr. Taussig acknowledged Mr. Simpson and Ms. Sellers for their efforts to get funding from the CWCB for a \$24K severance grant to complete their study.

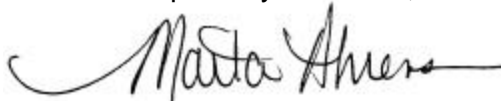
No report from the **Lost Creek Ground Water Management District.**

Old Business – On behalf of the Republican River Conservation District, Commissioner Coryell thanked Mr. Simpson, Mr. Ken Knox, Mr. Peter Ampe of the Attorney General's Office, and Scott Richrath of DWR, for the assistance they provided to the Conservation District and getting them up to speed.

New Business – Selection of meeting dates for 2005 – Ms. Ahrens provided the dates for the 2005 Commission meetings. The dates are as follows: February 25, May 20, August 19, and November 18. Commissioner Smith moved to set the dates, seconded by Commissioner Coryell and approved unanimously.

The meeting adjourned at 2:30 p.m.

Respectfully submitted,

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

Marta Ahrens
Secretary to the Ground Water Commission