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**MINUTES**  
***FIRST QUARTERLY MEETING***  
***COLORADO GROUND WATER COMMISSION***  
**FEBRUARY 25, 2005**

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The First Quarterly Meeting of the Colorado Ground Water Commission took place on February 25, 2005, at 1313 Sherman Street, Room 318, Denver, Colorado. Vice-Chairman Max Smith 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, Rich Huwa, Frank Jaeger, Robert Loose, Max Smith, Ted Kowalski, Russell George and Hal Simpson. Commissioners Earnest Mikita and Larry Clever were absent.

**Review and Approval of Agenda Items** - Mr. Simpson included an additional item to the agenda item, Report of the Republican River Water Conservation District, as item no. 11, which will become a permanent item on the agenda. Commissioner Loose moved to approve the agenda with the addition; the motion was seconded by Commissioner Bauerle and approved unanimously.

**Approval of Minutes for Meeting of November 19, 2004** – Vice Chairman Smith asked if there were any corrections or additions to the Minutes of the November 19, 2004 meeting. Commissioner Coryell moved to accept the Minutes; the motion was seconded by Commissioner Huwa and carried unanimously.

**Report of the Executive Director by Hal Simpson** – Mr. Simpson introduced Melissa van der Poel, the new engineer assigned to the Designated Basins Branch; and Ginny Brannon, of the Attorney General's Office, the new attorney representing the Ground Water Commission staff. Mr. Simpson reported on the statewide water supply conditions. The snowpack conditions in the southern-third of the state are at 150% of average, the middle is at 120%, and the northern-third is at 90%. There are dry conditions in one part of the state, and potential flooding conditions in the Rio Grande and San Juan basins if the snowpack stays at 150%. Mr. Simpson stated that there are three Commission Members whose terms will expire this May (namely, Earnest Mikita, Gene Bauerle, and Rich Huwa), and anyone interested in being considered for these positions, or reapplying, need to submit an application to the Governor's Office.

Mr. Simpson reported on some of the activities of the Republican River Water Conservation District (RRWCD). He stated that Stan Murphy is the new manager of the RRWCD, and his replacement for the Plains and East Cheyenne Ground Water Management Districts is Shawn Schulte. The RRWCD has voted to support and participate in a Conservation Reserve Enhancement Program. Mr. Scott Richrath, staff from the State Engineer's Office, is responsible for preparing the application for this program, and it has a good chance of being approved by the Department of Agriculture. A water use fee was implemented by the Board (\$5.50 per irrigated acre and \$4.40 per acre-foot pumped for municipalities) and the revenue will be collected and should produce \$3.5 million per year in revenue to fund permanent and temporary reductions in irrigated areas, both surface and ground water, in support of EQIP, CREP, or other programs.

With regard to activities related to the Arkansas River Compact Litigation, Mr. Simpson reported that the Supreme Court issued a decision in early December 2004 and supported the Special Master in all 11 recommendations. Ten of the eleven recommendations were favorable to Colorado, including how prejudgment interest would be computed as Colorado argued that it should, which significantly reduced what Colorado owes Kansas. Some of the recommendations included: Colorado use rules in providing replacement water were adequate and Colorado was in compliance with the compact; measurement rules are acceptable; endorsed that replacement plans could be approved by the Water Court in Colorado and not be under the jurisdiction of the U.S. Supreme Court.

**Presentation on South Platte River Decision Support System by Ray Alvarado of the Colorado Water Conservation Board Staff** – Mr. Alvarado reported that this is part of CWCB's as well as the State Engineer's Office's efforts to get decision support systems within the entire state. The SPDSS is a 6-year development plan and two years have been completed. The goals of the program are: to provide accurate and user friendly data bases; use existing models and data; have an open and general structure that is available to the public and is available on the website; it is maintainable by the state; and promotes information sharing. The DSS components include: surface water planning model, TS tools, field and historical data, and a water budget model. Mr. Alvarado discussed the objectives of the GIS component, the objectives of the ground water component, aquifer configuration, the aquifers included in the SPDSS (Alluvial, Dawson, Denver, Arapahoe, and Laramie-Fox Hills). As part of the effort, CWCB contacted various entities in the basin to obtain pump tests, and whether they are willing to participate in a pump test program. CWCB's future ground water work includes obtaining estimates of well pumping, additional water level measurements, stream gain-loss field studies, alluvial aquifer flow modeling, enhancement of modeling tools, and collaboration with USGS on bedrock modeling. Data from the South Platte system is being collected and stored in HydroBase, which can then be put in spreadsheets, graphs, etc. Access online information through website at [cdss@state.co.us](mailto:cdss@state.co.us). Mr. Alvarado is available to talk to individual ground water management districts if requested. CWCB is envisioning between \$10-12 million on this.

**Rulemaking hearing to allow the recognition of the permanent surrender through water conservation programs of the ability to develop future water rights and/or the ability to irrigate a given tract of land by Suzanne Sellers** -- The hearing was called to order by Chairman Smith. Ms. Sellers briefed the Commission on the discussion held at the last meeting regarding the NRCS EQIP program as well as the Republican River Conservation District's program for permanent dry-up of irrigated lands. The Commission directed staff to publish language for rulemaking that would create a rule to acknowledge the permanent surrender through these two programs. Commissioner Kowalski suggested including into the rules a website which will direct the public to the approved programs that are available. Commissioner Coryell added that the retirement of the irrigated acres are entered into a contractual agreement with the federal government and local water conservation district, and that this rule will ensure that those irrigated lands remain permanently retired. Following the discussions, Ms. Sellers stated that the two proposed changes include adding a reference to a website and a proposal to add the word "emphasis" after the words "permanently surrendered". A motion by Commissioner Jaeger was made to incorporate the above changes as stated by Suzanne Sellers; the motion was seconded by Dennis Coryell. This motion was retracted.

Discussion ensued from members of the audience and the Commissioners offered additional changes to the language. Commissioner Jaeger made a motion to reopen the hearing and that staff be given more time to consider the discussion and add specificity to the language and bring it back at the next meeting. This motion was seconded by Commissioner Bauerle and approved unanimously. Ms. Sellers requested that the Commission provide staff direction on the specific issues that were brought up in the discussions.

**Executive Session to discuss the Upper Black Squirrel Creek Ground Water Management District v. the Colorado Ground Water Commission, the State Engineer and Cherokee Metropolitan District, El Paso County, District Court Case No. 98CV2331, District Court Case No. 53483-B, and Division 2 Water Court Case Nos. 88-CW-049 and 98-CW-080 regarding the "Sweetwater Stipulation".** Mr. Pat Kowaleski stated for the record that the Commission went into Executive Session during lunch to discuss the litigation that was filed in the above case to enforce a stipulation that was entered into to resolve the litigation. The purpose was to update the Commission on the status of the matter and how to handle the matter. Commissioner Jaeger moved that the Commission go into Executive Session. The motion was seconded by Commissioner Bauerle and passed unanimously. Commissioner Huwa made a motion to come out of Executive Session, and was seconded by Commissioner Loose. Following the Executive Session, Mr. Kowaleski stated for the record that the discussion was limited to only the above subject matter.

**Discussion on potential rulemaking regarding abandonment proceedings for unutilized wells that have final permits** – Mr. Simpson stated that throughout the rest of the state where the Water Court has jurisdiction, an abandonment process has been established. This process is not set out in statutory guidelines for the Designated Basins, however, the Commission could move to abandon specific water rights under a clear cut process and notice. This is spelled out in the Attorney General's Opinion.

Discussion on this item included:

- If a water user intends to hold the water right for a period of time but with an intent to use it again, language should be drafted that the water user notify the entity that they don't have an intent to abandon.
- The language needs to include a standard for the abandonment of a ground water right.
- "Use it or lose it" may put a well back into production that might have been abandoned.
- If this is done prior to rules and/or legislation, there will be a lot of issues that will be litigated; abandonment is a question of intent and a question of fact
- The Commission should exercise great caution before going down this road as there may be a serious legal issue whether the Commission has the authority to do this.

The Commission took no action on this potential rulemaking issue.

**Discussion on potential rulemaking regarding prohibiting the withdrawal of ground water from wells within the Republican River Water Conservation District (RRWCD) boundary for failure to pay RRWCD fees** – Mr. Simpson stated that the county assessor is the collector of the fees and questioned whether a rulemaking by the Commission should go forward; Commissioner Coryell stated that they don't know to what extent the Commission will be

affected by this, but he doesn't believe that this will be a large problem, and could be only on an isolated basis. The concept of the use fee has received broad acceptance across the District in order to come into compact compliance. Commissioner Bauerle stated that this is tied together with the tax notice and he doesn't expect that this will become a problem. Mr. Simpson suggested that the Commission does not pursue rulemaking. Mr. Stan Murphy stated that the fees for irrigation wells are tied to the property taxes, and added that the concern may be with municipal or commercial wells.

**Staff Report by Suzanne Sellers** - Ms. Suzanne Sellers presented the Staff Activity Report for the last quarter, the written report 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. The cases in District Courts include: the Gallegos Case in Weld County and the Booker Case in El Paso County; the SEO is also a party to the Hunker Case that deals with the Upper Black Squirrel Creek, as well as the Cherokee matter which was discussed during the Executive Session. Ms. Sellers also reported on the enforcement items and actions that the staff were involved with. She welcomed Melissa van der Poel as the new PE I who will be working on the issuance of final permits. She reported that staff are working with the RRWCD in providing consultations on well permits that have applied to their conservation program, staff are working on migrating Denver basin aquifer information into GIS, and a staff member assisted other DWR staff members with revamping the DWR website. Mr. Simpson added that the Joint Budget Committee approved a decision item to have a full-time water commissioner in the Republican River basin for better enforcement.

**Report of the Attorney General by Ginny Brannon** – Ms. Brannon 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. Brannon provided an update of the report regarding the Appeal of Rules Adopted by the Upper Black Squirrel Creek Ground Water Management District and stated that the Cherokee Metropolitan District filed an appeal on the rules adopted by the Management District. The Hearing Officer determined that this rule is unreasonable as applied to Denver Basin Aquifer ground water within the District because it is not in compliance with applicable statutes. Based on this, the Cherokee Metropolitan District has appealed it and will be heard by the Ground Water Commission.

**Management District Reports** - Chairman Smith 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 two new managers, Roger Brenner of the Arikaree District, and Shawn Schulte was hired to replace Stan Murphy on the Plains and East Cheyenne Districts. Mr. Nein stated that they finished the static water level measurements throughout all four districts, there were no major declines this year, with one major increase of about eight feet in an irrigation well in the Sand Hills District. His districts were notified that they decided not to renew chemigation contracts through 2005 and Mike Shimmin will look into this to find out why.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that he checked 72 wells and provided a comparison of the wells that were down and those that were up between

2004 and 2005. He also stated that he has made attempts to get in touch with Mr. Schaffert with regard to getting his wells tested.

Mr. Roger Brenner, from the **Arikaree Ground Water Management District**, reported that he has returned after 18 years to assume the same position he previously held.

Mr. Shawn Schulte from the **Plains and East Cheyenne Management Districts**, introduced himself and did not provide a report.

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**, thanked staff for not having to publish in the El Paso County Gassette anymore, and now can publish in the smaller local newspapers. He reported on the comprehensive water study their District is involved with. They completed the geologic phase and are now working on the water balance of the study, which should be completed in March or April. He reported that Tom Cavanaugh will give a Power Point Presentation to the Commission at the May meeting on the results of that study to show the geology and the water situation. Their goal is to try to make it a sustainable aquifer and may be coming before the Commission for rule changes. They obtained a copy of the official decree that establishes their district, however, they need a clarification order on the boundaries from the Commission at the May meeting.

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

**Republican River Water Conservation District Report** – Mr. Stan Murphy thanked the staff for the assistance that was provided to him. Mr. Rich Cooper has been assigned as his liaison to get information from the staff. Mr. Murphy thanked Ken Knox and Scott Richrath for their efforts in putting the District together. The District has contracted with Hill & Robbins as the attorney, and Helton & Williamson Consulting Engineers are the engineers for the District. With regard to the fees, Mr. Murphy reported that the district has already collected one-tenth of the fees for the year.

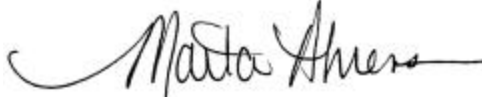
**Old Business** – Mr. Mike Shimmin, attorney, reported that at the last meeting, discussion took place on proposed legislation that would make amendments to the election statutes and small capacity well statute, but he has not seen any bill. Mr. Murphy responded to his question and stated that there is no sponsor for this legislation

**New Business** – Mr. Ruben Richardson from Yuma, reported on the well situation in Yuma. He owns two wells, dated 1959 and 1965, and one year ago he was notified by Jack Adams that he is not in compliance. In 1997, one of his wells went bad and he filed to have the well redrilled. He stated that if these wells are shut down, it will create a hardship. He was not given appropriate steps to get back into compliance. Ms. Sellers stated that Mr. Richardson's options are to apply for expanded acres, come to the Commission for a variance request, however, the request needs to meet the hardship standard for variance. Ms. Sellers cautioned the Commission that there may be similar situations in the district and, if the variance is granted, this could create a precedence for others.

**Next Meeting** – The next meeting is scheduled for May 20, 2005 at the Parker Water and Sanitation District facilities. There will be a tour of Reuter-Hess reservoir at 7:00 a.m. for anyone interested.

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