
MINUTES

SECOND QUARTERLY MEETING COLORADO GROUND WATER COMMISSION

MAY 20, 2005

The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 20, 2005, 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 Grant Bledsoe, Larry Clever, Dennis Coryell, Ralph Curtis, Frank Jaeger, Robert Loose, Russell George, Ted Kowalski, and Hal Simpson. Commissioners Corey Huwa and Max Smith were absent.

Chairman Mikita welcomed Grant Bledsoe to the Commission.

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

Approval of Minutes for Meeting of February 25, 2005 - Chairman Mikita asked if there were any corrections or additions to the Minutes of the February 25, 2005 meeting. Commissioner Coryell 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 reported that the Senate Ag Committee approved two new members to the Commission, Grant Bledsoe and Corey Huwa, and Earnest Mikita was reappointed to serve his third term. Mr. Simpson sadly reported that staff member Rich Cooper was killed on April 25 in an auto accident three blocks from the office by a drunk driver who ran a red light. A Resolution in Memoriam for Mr. Cooper will be introduced under New Business.

Mr. Simpson reported that water supply conditions statewide have improved since the last meeting; most basins are above average except for the North Platte and Yampa/White river basins. Runoff is beginning, with flooding in several small streams in southwestern Colorado. There are numerous reservoirs on the Grand Mesa where there is work going on to keep the spillways open so that they won't overtop and fail. Dam safety engineers are monitoring the dams for potential damage to structures, particularly the larger dams that could cause loss of life if they failed.

With regard to the *Kansas vs. Colorado* litigation, Mr. Simpson stated that the Special Master decided that there will be no more hearings. He will give the states until October of this year to resolve the remaining technical issues dealing with modeling. If the states are not able to reach resolution, they will go to arbitration. He will issue a final report at the end of the year.

Mr. Simpson reported on the letter received from the Pioneer Irrigation District demanding that the State Engineer curtail wells in the North Fork of the Republican River Basin to the water supply to their Pioneer Ditch. This item was placed as a topic for the Executive Session.

Geo-Water Study for the Upper Big Sandy Designated Ground Water Basin by Thomas Cavanaugh, ASCG Incorporated – Mr. Cavanaugh stated that there was a tremendous amount of information that went into the preparation of this report. Previous studies were performed by McLaughlin Water Engineers in 1946, Willard Owens in 1971, Ted Zorich in 1989, and Spronk Water Engineers in 1998. The district was divided into seven divisions from Calhan east to Limon, and covers portions of Elbert, El Paso, and Lincoln Counties. The water in storage is in the deeper alluvium and most of the recharge is from annual precipitation. The project was done in phases to facilitate some of the funding efforts. Phase I of the study was the geologic study of the alluvial aquifer; Phase II was the hydrologic study of alluvial aquifer; and Phase III included the management of the aquifer. The aquifer ranges from 1,000 feet to about three miles in width, and the thickness ranges between 10 to 80 feet. The estimated annual municipal pumping is 897 acre-feet. The ground water moving through the alluvium at a given cross-section is about 1,436 acre-feet per year. Mr. Cavanaugh reported that the recommendation is to conserve, preserve and protect the alluvial aquifer in this area, and perform a closer analysis of the water quality.

Hearing on the appeal of the Findings of Fact, Conclusions of Law and Decision of the Hearing Officer on Remand (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, from the Attorney General's Office, was conflicts counsel. The following persons addressed the Commission:

Mr. Jason Downie, of Susemihl, McDermott & Cowan, P.C., who represented the original appellants in this matter. Mr. Downie asked the Commission to uphold the decision of the Hearing Officer due to the fact that they feel the rules are not reasonable, the rules don't apply to the Denver Basin aquifer, and are a taking of vested water use rights without just compensation.

Mr. Brad Grasmick, on behalf of Andrew Jones and the Upper Black Squirrel Creek Ground Water Management District, asked the Commission to uphold Rules 17, 18 and 19 in their entirety as they apply to all of the ground water within the boundaries of the management district; and to reverse the Hearing Officer's determination that those rules do not apply to Denver Basin water within the management district.

Ms. Ginny Brannon, from the Attorney General's Office, representing the staff, reported that the staff agrees with the Hearing Officer's finding that the rules are reasonable as stated in Orders 1 through 5. The staff respectfully disagrees with the Hearing Officer regarding his contention in Order No. 6 that the rule is unreasonable as it applies to Denver Basin aquifer ground water based on Section 37-90-107(7), which mandates that the Commission shall only allow the withdrawal of Denver Basin aquifer ground water on the basis of an aquifer life of 100 years. Although the Commission must issue permits that allow withdrawals based on a 100-year

aquifer life, there is nothing in this statutory provision that prohibits the District from further limiting the extraction beyond that which is allowed by the permit. Accordingly, the staff recommends that the Commission set aside the Hearing Officer's finding on that issue.

Mr. Kowaleski stated that the Commission's responsibility is to either adopt the findings, rescind the findings, amend them, or send them back to the Hearing Officer. Discussion ensued between the Commissioners and clarification was requested on which issues were before the Commission. Each order was handled separately as follows:

- Order No. 1 – Commissioner Clever made a motion to affirm the order on No. 1, that the rules were properly promulgated by the District and provided adequate notice to all affected parties. The motion was seconded by Commissioner Coryell, and passed unanimously.
- Order No. 2 – Commissioner Coryell made a motion to approve the Hearing Officer's ruling on item number 2. Commissioner Curtis seconded the motion, and the motion passed. Commissioner Jaeger abstained from voting.
- Order No. 3 - Commissioner Curtis made a motion that the Commission support the Hearing Officer's recommendation on No. 3; Commissioner George seconded the motion, and the motion passed. Commissioner Clever abstained from voting.
- Order No. 4 – Commissioner Jaeger made a motion to affirm the Hearing Officer's findings on No. 4; Commissioner Coryell seconded the motion, and was approved unanimously.
- Order No. 5 – Commissioner Coryell made a motion to affirm the Hearing Officer's ruling on No. 5; Commissioner Loose seconded the motion, and the motion was approved. Commissioner Clever abstained from voting.
- Order No. 6 - Commissioner Coryell made a motion to set aside the Hearing Officer's ruling on No. 6; Commissioner Jaeger seconded the motion, and it was approved unanimously.

Executive Session Concerning Potential Litigation: Demand from Pioneer Irrigation District. The Commission went into Executive Session during lunch to discuss potential litigation regarding a demand from the Pioneer Irrigation District. The request is appropriate under the open meeting statute. Commissioner Clever moved that the Commission go into Executive Session; the motion was seconded by Commissioner Jaeger and passed unanimously. Following the Executive Session, Mr. Kowaleski stated for the record that the discussion was limited to only the above subject matter. Commissioner Jaeger made a motion to come out of Executive Session, and was seconded by Commissioner Clever.

Continuation of the 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 – Ms. Sellers reported that she prepared a memo to the Commission recommending that the Commission not adopt the rule as proposed because there is no interest in the Southern High Plains, and the Republican River District program already has safeguards in place. Commissioner Clever moved that the Commission not adopt the rule on this recognition of permanent surrender through water conservation programs; the motion was seconded by Commissioner Coryell 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, final permitting activities, and hearings. Ms. Sellers stated that Dr. Purushottam Dass was hired as a temporary employee for two months to work on the final permits in the Upper Big Sandy basin. She stated that staff will be going to the Southern High Plains in late June to assist well owners fill out the required Statements of Beneficial Use and a notice will be placed in the local newspaper to let the well users know that they will be there. If time permits, staff will also try to perform field inspections while they are there. With regard to enforcement items, two complaints were dealt with in the Upper Black Squirrel Creek Basin, two matters were handled in the Plains District, one in the W-Y District, and one in the Arikaree District. Miscellaneous activities included a meeting with El Paso County to discuss subdivision reviews, working with the Republican River Water Conservation District on their water conservation program consultation process, migrating Denver Basin Aquifer permitting information into GIS format, and revamping the DWR website. Ms. Sellers also reported that staff were saddened by the death of Rich Cooper and stated that hopefully things will get back to normal soon.

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. She reported that several cases are in the pre-hearing stage and there will be updates at the next meeting.

Report of the Hearing Officer by Jody Grantham – Mr. Grantham stated that his report is included in the packet. He reported on the cases and hearings that he has worked on since being appointed as Hearing Officer, how pro se applications are handled, administrative matters, and he discussed the change in the approach for setting cases. Seventy-four cases have been assigned to him since he became Hearing Officer in 2001, and in all but two cases, his decisions went out in less than 30 days.

Management District and Conservation 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 they have been dealing with the 50-foot replacement rule for irrigation wells in the Marks Butte District. In the Frenchman District, this is the fifth year of additional administration for wells permitted for less than 2.5 acre-feet per acre. The Sandhills District is considering additional well administration. The Central Yuma District has new natural gas wells in the county, and the district issued a cease and desist order to one well owner who was selling water to a natural gas driller out of his irrigation well. As a result of this, the district posted an article in the local newspaper to notify residents that it is illegal to sell water to natural gas drillers from permitted domestic or stock wells.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that they received rain. He got hold of Mr. Shepard and got one flow meter in and the other is getting repaired. He also stated that he read wells for the first time before they irrigated.

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

Mr. Shawn Schulte, from the **Plains and East Cheyenne Management Districts**, reported that they are working on getting several commingled wells authorized.

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. Gary Hlatki, from the **Upper Big Sandy Ground Water Management District**, thanked staff for the information they contributed to Tom Cavanaugh for the report he presented this morning, and they hope to end up with something that will be useful.

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

Mr. Stan Murphy, from the **Republican River Water Conservation District**, reported that the District hired Helton-Williamson as their engineering consultant; Helton-Williamson participated in the development of the model that was agreed to by the three states. They are working on the EQIP program and they have 30 wells that will be taken out of production. Mr. Murphy discussed the issue regarding the property tax notices and fees that doubled as a result of some acres being assessed as irrigated acres and were actually dry land acres. They are going through an abatement process to correct about 4,000 acres. Mr. Murphy reported on the Conservation Reserve Enhancement Program (CREP), which takes the acres out of production, plant it back to grass, and there is a permanent retirement of the well. It is a 15-year program and the landowner receives payment for every year for 15 years. After 15 years, they can dry-land farm it, but will not have a water right.

Old Business – None

New Business –

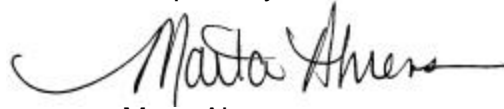
Location of August 19, 2005 Commission Meeting – Commissioner Curtis will host the August Commission meeting in the San Luis Valley, and he will arrange for a tour of the Closed Basin Project and the farming community, including a catered dinner.

Resolutions – Mr. Simpson read the following three Resolutions before the Commission:

- Resolution in Memoriam to the family of Richard Cooper for his service to the Ground Water Commission and the Division of Water Resources. The resolution was moved by Commissioner Clever; seconded by Commissioner Jaeger, and approved.
- Resolution for Commissioner Gene Bauerle's 12-year term on the Ground Water Commission. The resolution was moved by Commissioner Clever; seconded by Commissioner Coryell, and approved.
- Resolution for Commissioner Richard Huwa's 12-year term on the Ground Water Commission. The Resolution was moved by Commissioner Clever; seconded by Commissioner Coryell, and approved.

The meeting adjourned at 2:20 p.m.

Respectfully submitted,

A handwritten signature in black ink, reading "Marta Ahrens". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Marta Ahrens
Secretary to the Ground Water Commission