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## MINUTES

### **THIRD QUARTERLY MEETING COLORADO GROUND WATER COMMISSION**

**AUGUST 19, 2005**

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The Third Quarterly Meeting of the Colorado Ground Water Commission took place on August 19, 2005, in the Carson Auditorium, at Adams State College, 208 Edgemont Blvd., Alamosa, 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 Grant Bledsoe, Larry Clever, Dennis Coryell, Ralph Curtis, Corey Huwa, Frank Jaeger, Robert Loose, Max Smith, Russell George, and Hal Simpson. Ex-Officio Member Ted Kowalski was absent.

Chairman Mikita welcomed Corey Huwa to the Commission and thanked Commissioner Curtis for organizing the Closed Basin Project tour.

**Review and Approval of Agenda Items** - The Richardson hearing on a request for variance was postponed until 10:00 a.m.

**Approval of Minutes for Meeting of May 20, 2005** - Chairman Mikita asked if there were any corrections or additions to the Minutes of the May 20, 2005 meeting. Commissioner Coryell 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 thanked Commissioner Curtis for the tour of the Closed Basin Project and for organizing the dinner. He also expressed his appreciation to Senator Entz for holding the dinner at his farm. He stated that the tour was an educational opportunity for the Commission to view ground water issues in other areas of the state. Mr. Simpson stressed the importance of the Closed Basin Project to this part of the state, especially with regard to Rio Grande Compact compliance, and stated that the water provided by this project also assists the San Luis Valley in providing for augmentation of impacts from well pumping. He reported that the San Luis Valley is facing a crisis in the Closed Basin unconfined aquifer as more water is being pumped out than being recharged.

Mr. Simpson reported on Senate Bill 222 and its criteria for protection of compact deliveries, protection of senior water rights, and protection of aquifer water levels for either a ground water management subdistrict or rules promulgated by the State Engineer. Rules were promulgated in June 2004 that requires new confined aquifer wells to replace depletions to the stream and to the aquifer. In June 2005, another set of rules were promulgated requiring that all wells greater than 50 gpm install totalizing flow meters.

Mr. Simpson reported on the Republican River Conservation Reserve Enhancement Program (CREP). This program would provide incentives and cost-sharing to participants who enter their land into eligible conservation practices such as native vegetation for a period of 15 years. An application was submitted to the Natural Resources Conservation Service and staff are working

with the District to prepare a response to a set of questions and resolve them so that the plan can be approved.

**Biennial Election of Chair and Vice-Chair** - An election was held for the positions of Ground Water Commission Chair and Vice-Chair. Commissioner Max Smith was nominated and appointed unanimously as Chairman of the Commission. Commissioner Dennis Coryell was nominated and appointed unanimously as Vice Chairman of the Commission. There were no other nominations for either position.

**Hearing on a request for a variance to Designated Basin Rule 7.10.2 relating to applications by Ruben Richardson to expand the acres for the wells with Permit Nos. 2250-FP and 10239-FP, by Alan Curtis, attorney for Well Owner** – Newly-elected Chairman Smith called the hearing to order. Ms. Susan Schneider, from the Attorney General's Office, was conflicts counsel. The following persons addressed the Commission:

Mr. Tim Buchanan, attorney, representing Ruben Richardson, stated that the request for variance is under the terms and conditions of the rules. This is a change of use case, more acres were irrigated than were originally permitted. The variance is not a change in what has been going on for many years, it is continuing the practice that has been in place since the wells were constructed. He stated that this is a paperwork issue, and there was a misunderstanding. Circumstances indicate that the proper paperwork was not filed since the Richardsons are not aware of every detail concerning water law. He requested that the Commission grant the variance request. The Richardsons will continue using the same volume, they are asking the Commission to include the acres that were actually irrigated.

Mr. Ruben Richardson presented the situation that led up to this request for variance due to hardship. His future plans for irrigation are status quo to the previous years.

Mr. Jack Dowell, of the W-Y Ground Water Management District, reported that he has not heard of conflicts from other users that Mr. Richardson's wells are injuring others. They are in support of the variance request.

Ms. Suzanne Sellers, staff, reported that the questionnaire completed by Russell Richardson in 1973 does not constitute an application for expanded acres, a statement of beneficial use is required. The applicant has to prove that he is not injuring others. If the Commission approves this variance, it will set a precedent for others who are awaiting the outcome of this case to expand acres.

Ms. Ginny Brannon, from the Attorney General's Office representing staff, stated that staff never approved the expanded acres. She also stated that the rules do not define unusual hardship. Unusual hardship is distinct from other users and sets this applicant apart from other users in the area.

Mr. Mike Shimmin, attorney representing the Central Yuma GWMD, provided some history and framework to interpret and apply what has happened since 1965 regarding expanded acres. He stated that neither of the Richardson permits cover expanded acres. He also reported that in the case of the Richardsons, the expanded acres were not approved. The final permits were

issued for the exact number of acres as in the original permit, and no appeal was filed. There were three compelling differences between the Hayes case and this case: the Hayes had an approved permit for expanded acres; the Hayes were issued an amended final permit and they filed a timely appeal to the permit; and the Hayes' consumptive use as part of the variance was approved and was based on one year of lawful use of their well in 1977 while they were operating in complete compliance with the law. Mr. Shimmin fails to see how hardship applies for someone who has been told to stop doing something that is illegal, and he asked the Commission to deny the variance.

Mr. Roy Smith, President of the W-Y Ground Water Management District, stated that when these wells were drilled, they were put to beneficial use. He asked the Commission to approve the variance.

Discussion ensued between the Commissioners. Commissioner Jaeger stated that this is the case of a farmer who tried to rectify the mistake made by his father, and now he is being penalized for that. The Commission needs to come to a compromise since this has been going on for a long time. Mr. Simpson stated that the Commission needs to use the law to guide their decision. He's concerned that if this variance is granted, the door will be opened for many others who have illegally irrigated to the detriment of their neighbors who have properly irrigated. He feels that the Richardsons have had the opportunity to deal with this legally and properly. Commissioner Jaeger made a motion to deny the variance. The motion was seconded by Commissioner Coryell. Commissioner Curtis abstained from voting. The motion passed.

**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. There were several enforcement action items. Ms. Sellers also stated that a trip to Simla by staff is planned for October 5 through 7 to conduct field inspections. Staff continue to work with the Republican River Water Conservation District. She thanked the staff who went to the Southern High Plains.

**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 also reported that the Pioneer Irrigation District filed a petition for a hearing with the Ground Water Commission seeking to ascertain the accuracy of the boundaries of the Northern High Plains Ground Water Basin for excluding water that is tributary, curtail pumping of some of the wells, and in some cases cease pumping all together.

**Management District and Conservation 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 stated that with regard to the well administration program, they had cooperation from Mother Nature in the spring, and the reports were completed in July. In July, the weather was very hot and dry, and a lot of water was pumped through the

irrigation wells. A cease and desist order was issued to a well owner who exceeded his limit. He stated that there is a tremendous amount of natural gas drilling in Yuma County.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that they had moisture early and not as much water was pumped as in the previous year, but the weather dried up in June and more water was pumped. He also reported on the gas well pumping in Yuma.

**Arikaree Ground Water Management District.** – Roger Brenner reported on similar moisture conditions in his area and gas production in his area.

Commissioner Coryell, reporting for the **Plains and East Cheyenne Management Districts**, stated that Shawn Schulte is in the hospital with a severe case of pneumonia, a cyst was found in his lung, and he underwent surgery yesterday. Mr. Schulte conveyed his regrets for not being able to be at the Commission meeting. In the Plains District, they are updating the rules and hope to have them done by the end of the year. They started getting some large rain events and have noticed an increase streamflow in Bonny Reservoir.

Chairman Smith reporting on behalf of the **Southern High Plains Ground Water Management District**, thanked Mr. Simpson for letting staff come to his District. He reported that Dave Dunivan, one of his board members, was killed in a tragic farm accident this spring. He said that the weather has been similar as other districts in the plains.

Commissioner Loose, reporting for the **North Kiowa-Bijou Ground Water Management District**, stated they have had similar weather conditions. He stated that the district has been diligently working on cleaning up permits and getting ready for final permits.

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 several things happened in his District. They passed an extension on a one-year moratorium on wells. He reported on the water study by Tom Cavanaugh. They received work that Dr. Purushottam Dass has been working on with well permits that have not been integrated into the State Engineer's Office database. The District is working on cleaning up permits to get final permits to use in the water study so they know how much water they have in their District. They have 14 applications for new permits. He also reported on energy production wells for power plants for coal or natural gas.

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 put in a fee assessment for municipal and commercial wells, they looked at the tax bill and found out that they were being assessed for irrigated acres when it should be dry land. He reported on the EQIP program and the CREP program. Mr. Murphy reported that the District office is moving from Yuma to Wray within the next week, and they put a notification in the papers to accept applications for an administrative assistant.

**Old Business** – none

**New Business – Determine interest in a workshop for Commissions and Boards for the Colorado Ground Water Commission** – A workshop or training session was discussed which will be particularly useful for new members of the Commission. The sessions will be approximately one hour long and will be held prior to the start of meetings, with briefings by staff and the Attorney General's office.

**Next Meeting** – November 18, 2005, at the Parker Water and Sanitation District Administration Building, in Parker, Colorado.

**Executive Session Concerning Gallegos, et al. v. Colorado Ground Water Commission, and Mr. Hal D. Simpson, The Colorado State Engineer, as Ex Officio Executive Director of the Colorado Ground Water Commission (Case No. 03CV1335) in Weld County District Court** - The Commission went into Executive Session following the meeting to discuss the dispute that is subject to legal action. Ms. Schneider stated that the subject of discussion is the remanded Water Court order and to determine whether the designated ground water withdrawals affect surface water rights. The request is appropriate under the open meeting statute. Commissioner Jaeger moved that the Commission go into Executive Session; the motion was seconded by Commissioner Clever and passed unanimously.

Following the Executive Session, Ms. Schneider 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 Loose. Commissioner Clever made a motion that legal counsel appeal the case to the Supreme Court. The motion was seconded by Ex-Officio Member Russell George and passed unanimously.

The meeting adjourned at 12:45 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Marta Ahrens". The signature is written in black ink and is positioned above the printed name and title.

Marta Ahrens  
Secretary to the Ground Water Commission