
MINUTES
SECOND QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION
MAY 19, 2006

The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 19, 2006, at 1313 Sherman Street, Room 318, Denver, Colorado. 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 Grant Bledsoe, Larry Clever, Dennis Coryell, Corey Huwa, Robert Loose, Earnest Mikita, Doug Shriver, Max Smith, Hal Simpson, Russell George and Ted Kowalski. Commissioner Frank Jaeger was absent.

Review and Approval of Agenda Items - Commissioner Coryell moved, and Commissioner Mikita seconded, approval of the agenda.

Approval of Minutes for Meeting of February 17, 2006 - Chairman Smith asked if there were any corrections or additions to the Minutes of the February 17, 2006 meeting. Commissioner Clever 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 welcomed Doug Shriver to the Commission. Commissioner Shriver is a potato farmer and very active in water matters in the San Luis Valley. Mr. Simpson also introduced Mr. Keith Vander Horst as new team leader of the Designated Basins Branch.

Mr. Simpson reported on the following current legislation:

- Long Bill - replacement of \$3.2 million dollars of cash funds from the General Fund was approved, resulting in well permit fees being reduced from \$480 to \$100
- Received 11.5 new FTEs to deal with additional ground water administration responsibilities in the South Platte and Rio Grande basins - 4.5 well commissioners for the South Platte Basin and seven additional technical staff in the Rio Grande Basin to administer rules requiring meters on non-exempt wells
- Received \$50K increase in mileage appropriation to operate state vehicles
- Legal services were increased approximately \$59K to deal with the additional legal services workload
- Received additional lease space to deal with new and growing staff in Glenwood Springs
- House Bill 1124, Rotational crop management - has been approved and will allow fallowing as an alternative to permanently drying up agricultural lands

With regard to water supply conditions in the state, the majority of the basins except the Rio Grande and San Juan, were above average on April 1; the May 1 forecast showed that all basins were below average in snowpack/water content. The call on the South Platte yesterday was an 1866 call, and today it moved up to 1871, but is still very senior. Mr. Simpson reported

that the low water supply resulted in a decision he made to not approve substitute supply plans on a group of wells in the South Platte. The Conservation Reserve Enhancement Program (CREP) was approved by the Governor and the head of the Department of Agriculture for the Republican River Basin. A kick-off event will be held on May 26 in Wray for additional publicity. This will provide an opportunity to retire 30,000 irrigated lands to improve the conditions in the Republican River Basin.

Hearing on the Motion to Dismiss (Case No. 05-GW-14) in the matter of the Senior Water Rights of the Pioneer Irrigation District, Colorado Board and Laird Ditch located in the Northern High Plains Designated Ground Water Basins by Mike Shimmin et al, attorney for seven Ground Water Management Districts, et al .

Chairman Smith called the hearing to order. Ms. Susan Schneider, of the Attorney General's Office, was conflicts counsel. The following persons provided testimony before the Commission:

Mr. Steve Bushong, representing the Colorado Board of the Pioneer Irrigation District and the Laird Ditch, started with the motion to recuse Commissioners Coryell and Bledsoe. This motion is due to the fact that these two Commission members are owners of several wells within the boundaries of the Northern High Plains Basin that could be directly impacted by the litigation, and may create the appearance that these two Commissioners may not be able to objectively act on the Petition.

Mr. Mike Shimmin, representing seven of the ground water management districts in the Northern High Plains, stated that the Petitioner's motion to recuse should be denied. He stated that the recusal would defeat the legislative mandate of having residential agriculturists from designated basins serve as members of the Commission, and added that there is nothing concerning these two Commissioners that is any different than any other well owner in the Northern High Plains basins and they were appointed to represent the common interests of the basin as a whole.

Ms. Schneider stated that legally there is no requirement for Commissioners to recuse themselves. Commissioner Coryell stated that he does not intend to recuse himself based on the fact that he can be an unbiased person in this case and will base his decision on what is heard at the hearing today. Commissioner Bledsoe also stated that he did not want to recuse himself from this issue or any issues related to the petition and will make an unbiased decision based on the facts presented to the Commission. Chairman Smith ordered the hearing to continue with the motion to dismiss.

Mr. Shimmin reported that there are a number of parties that joined in the motion to dismiss because this petition affects every high capacity well in the Northern High Plains Basin. The implications of this decision are enormous and it will overturn 40 years of ground water administration in this basin as designated ground water. Mr. Shimmin stated that it has been previously decided numerous times that this basin includes designated ground water, not tributary water and, as a matter of law, should be dismissed in its entirety.

Ms. Ginny Brannon, of the Attorney General's Office, reported that staff joins the motion to dismiss, they fully support Mr. Shimmin's recommendations, and reiterated that the Republican River Compact administration ground water model was not designed to do anything other than administer the compact.

Mr. David Taussig, representing Robert Boyd and the Towns of Genoa and Flagler, urged the Commission to consider the notion of finality, security and liability, and that once something is litigated, it should not be done again.

Ms. Sara Klahn, representing Patty Stulp Investments, who have approximately 1100 acres of corn and some wheat in Yuma County, supports the motion to dismiss.

Ms. Ann Castle, representing client Five Rivers Ranch Cattle Feeding, stated that if the boundaries of the basin are redrawn and her client's wells are forced to shut down, the feed yard operation will shut down. Ms. Castle urged the Commissioners to grant the motion to dismiss.

Mr. Steve Bushong, representing the petitioners, stated that the ground water model indicates that there is tributary water in the basin and the new depletions are impacting the streamflows. He stated that the law mandates that the Commission consider new information and, therefore, can modify the boundaries as new information becomes available. Mr. Bushong asked the Commission to deny the motion to dismiss.

Ms. Annette Quill, from the Attorney General's Office representing the Division of Wildlife (DOW) and the Wildlife Commission, stated that the DOW became involved in this case because they are concerned about depletions to its surface water rights and how future administration may further affect those rights if ground water pumping is not curtailed to meet compact obligations. Ms. Quill stated that DOW feels that the Commission is legally obligated under the statute to consider the new evidence and to make a determination based on the new evidence, and that the petition should not be dismissed.

Following deliberation and discussion by the Commission, Commissioner George made a motion to continue this hearing at the August 18 meeting for purposes of further briefing on the motion to dismiss with the following timeline for submitting briefs 30 days from today (Monday, June 15, COB) and 15 days from that day (Wednesday, July 5, COB). The motion was seconded by Commissioner Clever and a roll call vote was held. The motion failed with 3 'yes' votes and 6 'no' votes.

Commissioner Mikita made a motion to dismiss this case before the Commission; the motion was seconded by Commissioner Huwa. A roll call vote was held and the motion to dismiss passed with 6 'yes' votes and 3 'no' votes.

Continued discussion on future rulemaking on proposed changes to the Colorado Ground Water Commission Rules of Procedure for all Adjudicatory Hearings by Joseph Grantham - Mr. Grantham asked whether the Commission wanted to proceed with the rulemaking at the next meeting. Since the last draft, the major change included reorganizing it so

that rulemaking hearings, adjudicatory hearings and administrative hearings are in separate sections. In addition, the rules will be edited to conform with the Secretary of State's formatting requirements. Mr. Kowalski commented that the discovery, cross-examination, issuing subpoenas, etc., should be removed from rulemaking because rulemaking is less controversial. Commissioner Coryell made motion to continue this hearing at the August meeting in Grand Junction; Commissioner Loose seconded the motion, and it passed on a unanimous vote.

Presentation on processing procedure for the Petition to Create the Box Elder Creek Designated Ground Water Basin by Keith Vander Horst – Mr. Vander Horst presented a summary of the proposed designation process for processing the proposed Box Elder Creek designated ground water basin, which was submitted to the Commission in the packets. He stated that currently the staff is in the process of developing the legal notice to be published, which will happen before the next Commission meeting.

Interested parties in the audience who wished to comment were given ten minutes to present.

Mr. Andy Jones, representing the petitioners, the Central Colorado Water Conservancy District and John Moser, wanted to make it clear for the record that it is their position that the petition must be published, that there is no legal alternative, and if the Commission wanted to make comments on this, a shorter time limit is appropriate. Mr. Jones also suggested publishing this immediately and to begin the hearing process.

Mr. Mike Shimmin, on behalf of a client on the South Platte River called the Bijou Irrigation District, asked the Commission to not publish this petition because it does not meet the statutory requirements to become a designated ground water basin. He stated that if the petition is published and there is a hearing on the merits, there will be numerous disputed facts. This is a surface water basin, not a ground water basin as defined in the statutes. More than half of the water in this basin is imported from diversions from the South Platte River through the FRICO and Henrylyn systems. The reason there is a good supply of water for the basin is because of the surface water brought in from the Platte, not ground water that is native to this basin. Mr. Shimmin stated that the Commission has an obligation to screen this before it is published.

Commissioner George interjected and stated that per the agenda, this is a presentation on processing procedure for the petition, it is not a hearing to determine whether or not a petition could be filed. Chairman Smith suggested postponing action on this to a future meeting.

Mr. Steven Jansen, attorney for the Henrylyn Irrigation District and one of the opponents in the wells cases, stated that if tributary ground water is taken out of the system and withdrawn without replacement, it reduces the amount of water in the South Platte River, and reduces water that is available to satisfy downstream priorities. It will directly affect the amount of water his clients can divert. He supports and adopts Mr. Shimmin's arguments.

Commissioner Clever moved that this matter be taken up at the August meeting and notice in the agenda that there will be a hearing on whether to publish this or not. Commissioner George seconded the motion and added that this requires due process to flush out the procedure.

Additional discussion ensued between the Commissioners and the attorneys who addressed the Commission on this matter, and Commissioner Clever's motion was withdrawn.

Commissioner Loose moved that the staff move forward with their processing procedures and publicize; the motion was seconded by Doug Shriver to open it up for discussion. Commissioner Mikita stated that he would not be comfortable if the Commission went ahead and publicized until the facts from the staff were provided to the Commission. Commissioner Simpson supported holding a "screening" or preliminary hearing as suggested by Mr. Shimmin to give everyone an opportunity to present their positions to decide whether it meets the threshold test for a designated ground water basin prior to a formal hearing. Additional discussion ensued.

Commissioner Coryell amended the motion to move forward and not publish until the Commission has a chance to review what the staff has done and make it a screening process and, if at the August Commission meeting the factual data is okay, they can make a decision and not force people to go to the expense of defending something that possibly may not be worth hearing. The motion was withdrawn, continued by further discussion. Mr. Kevin Rein, of the staff, clarified that the original assessment of this petition was performed in the manner of a checklist. Staff did not take a position on the petition or make a determination whether or not objectors would object to the factual data, but only made an assessment to move ahead on the process.

Commissioner Loose moved, and Commissioner George seconded, that staff proceed with the process including publication. Following discussion by the Commission, the motion failed.

Commissioner Clever made a motion that anyone who wants to dismiss the petition, based on the petition itself, make arguments in the form of a brief by July 1, response to that brief by July 15, a reply by July 25, and then it will be heard at the August meeting in Grand Junction, and staff evaluate whether the proposal meets prongs 1 and 2 in their report to the Commission. Commissioner Coryell seconded the motion. Commissioner George amended the motion by adding that the hearing will only go forward as outlined in the motion based upon an opinion from the Attorney General's Office that said procedure is allowed under the applicable statute. The amended motion was seconded by Commissioner Coryell and the motion passed with a unanimous vote.

Staff Report by Keith Vander Horst - Mr. Vander Horst presented the Staff Activity Report for the last quarter, the written report of which was included in the Commissioners' packets. He reported on the small capacity and large capacity well permit applications, changes of water rights, evaluating and clarifying permits, final permitting activities, hearings, and enforcement actions. He reported that staff made field trips to Hoyt and Kiowa to meet with water users and get SBUs. Mr. Vander Horst reported that they hired Mr. David Keeler, Water Commissioner for the Republican River Basin, and he has started his duties. He also stated that staff has been granted overtime to work on getting SBUs in Kiowa-Bijou in May and June.

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 was involved in is included in

the packets. She pointed out an error on page 3 of the report that the Wayne E. and Francis G. Booker hearing is on October 28, 2006 instead of December.

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 they are extremely dry in northeast Colorado. They finished the static water level measurements and he provided a summary on each district. Mr. Nein stated that he met with Dave Keeler and he will work on enforcement actions such as illegal acreage.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that it is dry and they had three to five inches of snow in March, followed by winds. The farmers were getting their crops in before he completed the chemigation report.

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

Commissioner Coryell introduced their new district manager, Ms. Deb Daniels, from the **Plains and East Cheyenne Management Districts**. Commissioner stated that Ms. Daniels has experience in water working with the irrigation research station in Yuma and she has background in agriculture and water.

Commissioner Smith reported for the **Southern High Plains Ground Water Management District**. He stated that it's been dry with lots of wind in March and April. They finished their static water level measurements and the effects of drought are affecting the static water levels.

Commissioner Loose reported for the **North Kiowa-Bijou Ground Water Management District**. He stated that they finished static well measurements and all wells are down approximately three feet. Some well owners are frustrated with the amount of terracing that has been going on in the upper reaches of the basin.

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

Mr. Dave Taussig, from the **Upper Big Sandy Ground Water Management District**, echoed everyone's report that it has been dry. He noticed a decline in their water table measurements and they are concerned. Mr. Taussig reported that he appreciated Mr. Simpson's work with the Legislature to get the permit fees back down, and they will help in getting final permits issued.

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

Mr. Stan Murphy, from the **Republican River Water Conservation District**, reported that to date only 40 out of the 70 EQIP contracts have been signed. About 36 of those wells are water retirements where they will give up their water rights and plug their wells, which was due to the water district increasing the money they will pay for permanent retirements by 67 percent. It will

take 5,000 acres out of production, some temporarily but most are permanent. The District hired a lobbyist to keep them informed.

Old Business – There was no old business.

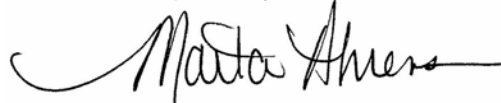
New Business – Mr. Simpson read a Resolution recognizing Commissioner Ralph Curtis' service to the Commission. Commissioner Clever moved, and Commissioner Mikita seconded, approval of the Resolution; it passed unanimously.

Selection of August meeting location – The August meeting will be held in Grand Junction, which will include a tour of the Grand Valley irrigation system and fish ladder; Peach Days in Palisade will start on August 19 and winery tours are also available.

Next Meeting – August 17-18, 2006

The meeting adjourned at 3:40 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