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**MINUTES**  
**THIRD QUARTERLY MEETING**  
**COLORADO GROUND WATER COMMISSION**  
**AUGUST 18, 2006**

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The Third Quarterly Meeting of the Colorado Ground Water Commission took place on August 18, 2006, at the Double Tree Hotel, 743 Horizon Drive, Grand Junction, Colorado. Chairman Max Smith 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, Corey Huwa, Frank Jaeger, Robert Loose, Earnest Mikita, Doug Shriver, Max Smith, Hal Simpson, Russell George and Ted Kowalski.

**Review and Approval of Agenda Items** – Chairman Smith stated that items 5 and 6 of the agenda will be reversed. Commissioner Mikita moved to approve the agenda change; the motion was seconded by Commissioner Coryell and approved unanimously.

**Approval of Minutes for Meeting of May 19, 2006** - Chairman Smith asked if there were any corrections or additions to the Minutes of the May 19, 2006 meeting. Commissioner Coryell suggested changing “irrigation districts” to “ground water management districts” in the fifth paragraph of page 2. Commissioner Coryell moved to accept the Minutes with the change; the motion was seconded by Commissioner Mikita and carried unanimously.

**Report of the Executive Director by Hal Simpson** – Mr. Simpson thanked Dick Proctor with the Grand Valley Water Users Association for organizing the tour of the various irrigation projects in Grand Valley, he thanked Larry Clever for providing water for the tour, and Marta Ahrens for arranging for bus transportation and the barbeque dinner at the park.

Mr. Simpson reported that water supply conditions statewide continue to be dry, and most of the state is under drought conditions with senior calls throughout the river basins in Colorado.

Regarding Kansas v. Colorado, Mr. Simpson reported that they are meeting with the state of Kansas this month to discuss accounting of releases from John Martin Reservoir and administration of the Arkansas River Compact. They are continuing to make good progress toward resolving issues that are not related to the litigation but are important to interstate ability to get along and operate under the provisions of the compact.

Mr. Simpson reported that the Republican River Compact Administration met in Kansas last week. The accounting for 2005 was received and indicates that the situation has slightly improved, but still had a deficit of about 10,000 acre-feet for 2005, and Colorado is using half of its compact entitlement under average water supply conditions. Mr. David Pope, Kansas Commissioner, stated at the end of the meeting that Kansas expects Colorado and Nebraska to be in compliance by the end of 2007. Colorado needs to initiate internal discussions on various options to address compliance.

Mr. Simpson reported that the CREP program was approved earlier this year; around 25,000 acres were enrolled initially and enrollment continues into August. The goal is 30,000 acres and the district put interesting incentives into the program to pay an amount greater than what the Federal government will pay for retiring irrigated lands. At the end of 15 years, some producers would receive \$2,400 per irrigated acre to not to irrigate over that 15-year period and would not bring that land back into irrigation. In addition, the District entered into the EQIP program and permanently retired approximately an additional 6,000 acres in the basin.

**Hearing on Petitioners' Exceptions to Hearing Officer's Order Concerning Publication Costs and Submission of Publication Costs Payment, 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 (Case No. 05-GW-14)**

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

Mr. Steve Bushong, attorney representing the Pioneer Irrigation District, Colorado Board and Laird Ditch, participated via telephone conference call. He stated that they are proceeding under the understanding of the agreement to temporarily stay the issue of publication costs on appeal. They are objecting to being billed approximately \$3400 in publication costs. He stated that the Commission does not have the authority to collect these types of publication costs. CRS 37-90-116(1)(f) provides for costs for applications and permits, and does not authorize publication costs associated with petitions. Mr. Bushong stated that there is a publication fund for all types of petitions or other types of publication costs where the Commission does not have the statutory authority to request those costs from either the applicant or the petitioner, and he is requested that that fund be used to pay for these costs.

Ms. Ginny Brannon, of the Attorney General's Office, stated that CRS 37-90-116(1)(f) states that the State Engineer's Office or Commission can collect the publication costs under "other fees," and the petitioners should pay the cost for notice of publication. She stated that was the key point in the Hearing Officer's order, and the staff requests that the Commission uphold the Hearing Officer's decision.

Commissioner Huwa made a motion to affirm the decision by the Hearing Officer to have the petitioners pay the publication costs; the motion seconded by Commissioner Jaeger and passed unanimously.

**Hearing on rulemaking on proposed changes to the Colorado Ground Water Commission Rules of Procedure for all Adjudicatory Hearings, by Joseph Grantham**

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

Mr. Joseph (Jody) Grantham, Hearing Officer, presented the proposed adjudicatory rules. He stated that he requested and received public comment, which were incorporated into these rules and regulations, and there were no protests or changes from the last version. Mr. Kowaleski stated that the rules would become effective 20 days following publication following final adoption, depending on when it was published. Commissioner George added that these rules discuss how hearings will be conducted.

Mr. Mike Shimmin, representing several ground water management districts, stated that they appreciated that staff circulated the rules for public comment before proceeding with the formal rulemaking procedure. They were given an opportunity to provide comments and work out their concerns, and their suggested changes have been incorporated into the rules.

Commissioner Clever made a motion that the Commission adopt these rules and procedures for all hearings before the Colorado Ground Water Commission; the motion was seconded by Commissioner Loose and was approved unanimously.

#### **Hearing on whether to proceed with publication of the Petition to Create the Box Elder Creek Designated Ground Water Basin (Case No. 06-GW-23)**

Chairman Smith called the hearing to order. Mr. Pat Kowaleski, of the Attorney General's Office, was conflicts counsel. Mr. Kowaleski stated that the motion today should be whether or not adequate factual data has or has not become available as a result of the submittals to justify the Commission's initiation of the proceedings to create a new basin. The Commission should not decide whether the basin should or should not be created, that matter will be determined only after a public hearing is held. He clarified that what should be considered, as decided at the last meeting, was to act on and consider the petition and supporting materials that were submitted by the applicant. This is not an evidentiary hearing, the Commission should not be hearing new testimony, but will decide whether or not the motion to dismiss should be granted.

The following persons provided testimony before the Commission:

Mr. Andy Jones, attorney, noted for the record that this hearing process is improper, that the petition should have been published three months ago, the petitioner submitted all of the materials that are required by CRS 37-90-106, the staff recommended publication, and this proceeding puts the petitioner in the untenable position of trying to demonstrate whether adequate factual data is available to create a new basin and responding to allegations that the data is not adequate because it does not meet one or two of the prongs of the definition.

Mr. Mike Shimmin distributed a color cross-section map that shows the location of irrigation land in relation to the proposed basin boundary. Mr. Shimmin questioned the Commission whether they have adequate facts and data to put everyone through the process which may cost upwards of a million dollars; and, if not, the case should be dismissed. The petitioners have to prove that ground water was the principle use of water for the past 15 years. He stated that the factual data before the Commission does not meet the definitions of Prongs 1 and 2 of the statutes. Mr. Shimmin stated that this basin is not a natural ground water basin and will never be a ground water basin, it is predominately a surface water basin.

Mr. Andy Jones, representing petitioners Central Colorado Water Conservancy District and John Moser, provided a summary of the report that was attached to the petition. He stated that Central is concerned with augmenting wells in the South Platte River basin that are subject to curtailment. He also stated that the Box Elder boundary is not adjacent to a continuously natural flowing stream, and that ground water has been the principle water source for at least 15 years prior to designation. Mr. Jones stated that many wells in Box Elder would meet Prong 1 and that tributary water can be designated, and cited the Southwestern Colorado Water Conservancy District case. He requested the Commission to make a motion to publish the petition and to set a hearing date before the next meeting. He added that it will not take millions of dollars or four to six weeks.

Mr. Jon Ford, Vice President of Leonard Rice Engineers, registered professional engineer and geologist and author of the report, responded to a question regarding the Nine-Mile Reach and stated that in many cases there was limited or no flow.

The following individuals testified and concurred that the creek has been historically dry and asked the Commission to allow them to have their day in court:

- ◆ Mr. Eric Millage - his interest in the matter is his family farm is at the top of the boundary. He stated that Box Elder Creek is not a continuously flowing creek and is dry most of the time. He is Vice President of Lower Latham Reservoir and Latham's filling is through the Union Ditch off of the Platte River.
- ◆ Mr. Steve Foos – farmer, grew up near Box Elder Creek; stated that other than releases from reservoirs, no water fills the creek.
- ◆ Mr. Bill Coyle – he owns a farm near Box Elder Creek and stated that there is no flow in the creek.
- ◆ Mr. Dave Dacon – owns wells in Box Elder; he is a member of Central, Henrylynn and FRICO; he doesn't feel the Closed Basin designation will affect him.
- ◆ Mr. Gerald Redhammer – farmer, stated that water never flows through the farm from Box Elder; even when the reservoir broke, the water never reached his farm.
- ◆ Mr. Paul Sater – has a farm in the bottom of Box Elder east of the drainage ditch; stated that because the basin was not designated before, does not mean that it should not be now.

Mr. Tom Cech, manager of the Central Colorado Water Conservancy District in Greeley, stated that Central's board of directors spent \$200K to 300K for Leonard Rice to do a report and said that engineers should describe the physical nature of Box Elder Creek instead of lawyers. He asked the Commission to deny the motion to dismiss this and to set a date because this is important to the farm families in the area.

Commissioner Clever stated that the petitioners presented adequate data to justify publication and will give the petitioner the right to a hearing and the objectors the right to dispute the facts; therefore, he made a motion to deny all of the motions to dismiss pending before the Commission. The motion was seconded by Commissioner Loose. Commissioner Jaeger stated that this is an important enough issue that sending this to hearing makes sense and the motion that was made is appropriate because this needs more time, there is a lot of confusion,

and both sides have a right to be heard before an informed decision is made. Commissioner Coryell added that interpretation of factual data will be debated for a long time, even after a finding. A roll call motion was held and the motion passed unanimously.

Commissioner George made a motion that the Commission publish notice of the petition to create a new designated ground water basin to be known as the Box Elder Designated Ground Water Basin, and to begin the process for formal hearing on the petition granting to the Hearing Officer discretion in determining the date and location of the hearing. The motion was seconded by Commissioner Clever and was passed unanimously.

**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, change applications, final permit activities, the fourteen pending cases before the Hearing Officer or the court, the eight completed hearings, and enforcement items and actions. Regarding miscellaneous items, Mr. Vander Horst reported that staff are working on metering requirements and plans are to require installation of acceptable metering by March 2007. They are also working on dry-up of irrigated lands under the CREP program.

**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. Main issue for this meeting was publication of Pioneer which was heard this morning.

**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 thanked Sandy Johnson for assisting with emergency permits and Jay Bloomfield for assisting with well file documents. He reported that it has been extremely hot and dry and precipitation has been below normal. Regarding well administration, they are currently administering 173 high capacity wells; six wells were over the 90 percent mark on water used this year, five wells were over the 80 percent mark, and he was still waiting for 52 more power readings from the power companies. Mr. Nein reported that regarding enforcement, he is working with staff on finding and correcting illegal expanded acres. Regarding the new metering requirements, the cost is approximately \$1,000 per well, and if there is any funding to assist well owners pay for installation, he would like to know. Mr. Nein questioned how the \$500 per day fine for cease and desist orders are enforced.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that he checked 140 wells for chemigation this summer; of which five failed, the flapper was not working on three, and two were never chemigated before. The crops look good considering sporadic rains and wind, and the corn and sugar beets are ahead of normal and they are considering shutting their wells off.

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

Commissioner Coryell reported on behalf of the **Plains and East Cheyenne Management Districts**. Deb Daniels was not able to attend, so he read her faxed report. The average change in static level wells is less than one-half foot for the combined districts. Regarding well administration, the majority of growers are far from using their allocated amount of water for irrigation. There was an enforcement issue with a grower who is not in compliance with his permit. It's been a hot and dry year, the corn is looking better than last year and other crops are more mature than normal at this time of year. Commissioner Coryell added that the Plains District held a rulemaking hearing on small capacity wells on areas less than 35 acres, and the district promulgated rules requiring meter administration.

Commissioner Smith reported for the **Southern High Plains Ground Water Management District**. He stated that he gave a presentation using data from the Natural Resources Conservation Service that showed precipitation in the 1930's during the dust bowl, the 1950's, and currently. Commissioner Smith said that prior to last week, they were drier than the 1930's or 50's.

Commissioner Loose reported for the **North Kiowa-Bijou Ground Water Management District**. He stated that irrigators are complying, but the "pilgrims" want to irrigate non-stop.

There was no report from the **Upper Black Squirrel Creek Ground Water Management District**, from the Upper Big Sandy Ground Water Management District, or from the **Lost Creek Ground Water Management District**.

Mr. Stan Murphy, from the **Republican River Water Conservation District**, reported that the NRCS acquired more funds and offered 5-year contracts, resulting in approximately 7100 acres in the EQIP program. Not all wells will be shut down this year, they will be spread over this irrigation season and some in 2007. This year, almost 75 percent are permanent retirements. He reported that in 2006 they offered a one-year lease program because the CREP program was not available, and shut down 1400 acres. They collected 85 to 90 percent of the water use fees. They billed the Department of Natural Resources for \$33,000 and are still waiting for the money.

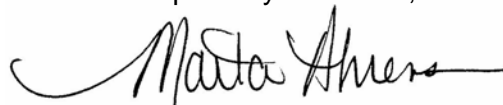
**Old Business** – None

**New Business** – None

**Next Meeting** – November 17, 2006, in Denver.

The meeting adjourned at 12:25 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