
MINUTES

FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION NOVEMBER 17, 2006

The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 17, 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, Frank Jaeger, Robert Loose, Earnest Mikita, Doug Shriver, Max Smith, Hal Simpson, Russell George and Ted Kowalski.

Review and Approval of Agenda Items – The agenda as written was approved.

Approval of Minutes for Meeting of August 18, 2006 - Chairman Smith asked if there were any corrections or additions to the Minutes of the May 17, 2006 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 reported that the Colorado Supreme Court issued an opinion on the Gallegos Case, in the Upper Crow Creek Designated Ground Water Basin, and Alexandra Davis will provide a briefing on the opinion during the Attorney General's report and will give the Commission additional guidance on what to consider in modifying the boundaries of a designated ground water basin.

Mr. Simpson reported on the rules for new appropriations from confined aquifers in the San Luis Valley. A six-week trial was held in early 2006 and Judge John Kuenhold issued a 191-page decision a week ago upholding the proposed promulgated rules restricting new ground water withdrawals from the valley's confined aquifer ruling that the valley has no water to spare. This ruling is available on the Water Court's website in several large Adobe pdf files at <http://www.courts.state.co.us/supct/watercourts/wat-div3/casesofinterest/04CW24/04cw24.htm>

Mr. Simpson stated that Scott Richrath, a valuable DWR staff person, recently transferred to the Department of Transportation. Mr. Richrath was particularly valuable with getting the Conservation Reserve Enhancement Program approved by the Federal government. The Republican River Water Conservation District prepared a resolution recognizing the efforts of Scott.

Mr. Simpson reported on meetings with Kansas to resolve the outstanding issues on proper administration of the Arkansas River Compact, particularly the accounting for evaporation and releases from John Martin Reservoir. In December, Colorado will present to the Compact Administration four agreements for approval as well as the major unresolved issues. The states are slowly working on controversial issues and making significant progress without attorneys.

Regarding compact compliance in the Republican River Basin, there have been on-going discussions and concern due to the effects of drought as well as soil and water conservation measures. It is hopeful that next year with normal conditions there will be good runoff to deal with the current shortage of 35,000 acre-feet.

Hearing on staff's appeal of Hearing Officer's Final Orders for consolidated Case Nos. 05GW15, 05GW16, and 05GW17, in the matter of denial of the applications for Determinations of Water Rights (AD-14669 through AD-14671, and AD-14673 through AD-14678) to allow withdrawal of ground water from the Laramie-Fox Hills, Arapahoe, and Denver Aquifers by Cherokee Metropolitan District in the Upper Black Squirrel Creek Designated Ground Water Basin.

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:

Ms. Ginny Brannon, of the Attorney General's Office, provided a summary and procedural background. She stated that this case involves nine determinations of water right applications for the withdrawal of Denver Basin ground water on the basis of overlying land ownership in the Upper Black Squirrel Creek Designated Ground Water Basin. There are approximately 30 landowners. Staff denied these applications as they did not have signed landowner consent statements which are required by Rule 5.3.2.2. The signed lease does not give sufficient evidence of landowner consent and does not allow a provision to apply for a water right. Ms. Brannon stated that what matters is the language in the decree, not the language in the lease. The Hearing Officer denied the motion filed by staff and remanded the staff to make determinations and vacated the hearing. The staff filed a motion for clarification by the Hearing Officer. The three primary issues are: whether there is sufficient evidence of landowner consent; whether the decrees grant rights to alluvial water only or also allows the use of Denver Basin water; and whether the landowners should individually be notified. The staff requests that the Commission remand this case to the Hearing Officer.

Mr. James Culichia, of Felt, Monson & Culichia LLC, attorney for applicant, reported that the Hearing Officer twice ruled that the applicant has met the requirements of Rule 5.3.2.2, the applications should be published, and they should be allowed to proceed with the determinations. They disagree with the issue raised by staff that the leases are inadequate under the rule. He stated that the Hearing Officer ruled that Cherokee's leases are sufficient to establish consent and ownership of water. At issue is also whether the leases themselves grant the right to apply for the determinations.

Mr. Jim Burnside, property owner for over 22 years, stated that he owns property on two of the major wells under Cherokee and he has three agriculture irrigation wells. He stated that they have not received any notification. Cherokee has a lease on 1,591 acres of his ranch and he feels that this is a maneuver by Cherokee to obtain different transportation rights on this water.

Ms. Darlene Williams, representing Springs East Airport, stated that they owned the land for 14 years and have run it as an airport, and she has not seen any lease. The water they have is designated for use on the airport and if Cherokee is interested, they will need to change the water right.

Discussion ensued among the Commission members and clarification was made on what action the Commission is asked to take. Commissioner George expressed concerns regarding the ambiguous language and interpretation of the lease. Commissioner Loose agrees with staff that they need to notify the landowners. Commission Jaeger stated that the Commission's concerns are the rules under which they operate. Mr. Kowaleski stated that the Commission's position is to affirm or deny the initial decision of the Hearing Officer. Commissioner Jaeger moved to deny the request for appeal and affirm the order of the Hearing Officer; the motion was seconded by Commissioner Clever. A roll call vote was held and the motion was denied with four in favor and six against. The motion was amended. Commissioner Clever made a motion that the Commission deny the staff's appeal of the determination of water rights for the Cherokee Metro District and affirm that staff will make every attempt to notify the legal landowners of the application at the same time it is published. The motion was seconded by Commissioner Coryell. The motion passed with nine in favor and one against.

Executive Session – Pioneer Irrigation District, Colorado Board v. Colorado Ground Water Commission, Yuma County District Court, Case No. 06CV31 – Commissioner Clever moved to go into Executive Session, seconded by Commissioner Mikita, and passed unanimously. For the record, Alexandra Davis stated that the Ground Water Commission discussed litigation strategy in the Pioneer and Laird Ditch Petition litigation.

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, determination of water rights, changes of water rights, final permitting activities, objections/hearings, and enforcement actions. The Booker application went to trial two weeks ago, and a ruling from the District Court will be forthcoming. Under miscellaneous items, Mr. Vander Horst reported that staff are working on enforcement of meter requirements within the Republican River Basin, they are working with the RRWCD on water conservation programs, migration of some Denver Basin aquifer permitting information into digital format, and staff have been performing field inspections for changes of water rights and large capacity applications.

Report of the Attorney General by Alexandra Davis – Ms. Davis reported on the Gallegos decision. The case was a question of jurisdiction of the Commission and the State Engineer's Office. The District Court held that the Commission was required to administer designated ground water wells pursuant to prior appropriation and that they have jurisdiction over surface water rights for this purpose, however, the District Court put several conditions on such administration. The Supreme Court overturned the jurisdictional findings of the District Court and stated that the Commission has jurisdiction over surface water rights only to the extent that they need to revisit boundary designations based on new information. The Supreme Court remanded this back to the

District Court, and the District Court should remand it to the Ground Water Commission, but has not yet, to see if there is any further work to be done.

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 there are new natural gas developments in Yuma County. Regarding the well administration program, they administered 200 wells in 2006 for the four districts. They had five cases of over-pumping in the Central Yuma District, and four of those wells were administered under district rules, and the owners of those wells will be subject to a 2 to 1 payback penalty in 2007. Mr. Nein stated that he attended a Republican River meeting in Nebraska. Mr. Nein inquired whether there are any investigations on whether or not water municipalities could supply water outside their boundaries. Mr. Simpson responded that the matter regarding municipal by-laws is currently being researched by the State Engineer's Office with additional guidance from the Attorney General's Office. Mr. Nein stated that 1,200 to 1,500 wells will be metered and he questioned whether all wells in the Northern High Plains will be required to have meters. Mr. Simpson responded that the Commission will need to promulgate rules to require meters on all designated ground water wells.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that they had pretty good year, some moisture, and good crop production. He also stated that they have had a couple of applications for small capacity commercial wells that the owners want to sell or give water to gas companies for fracking. Mr. Simpson responded that the State Engineer's Office can work with his district to promulgate rules to put a limit on the volume pumped.

Mr. Roger Brenner, from the **Arikaree Ground Water Management District**, stated that it was their district that sent the letter to Mr. Simpson regarding selling water to gas producers. There is a lot of natural gas activity and stated that this could net a considerable amount of money to individuals, ranging from \$500 to \$2500 per well.

Ms. Deb Daniels, from the **Plains and East Cheyenne Management Districts**, reported that they have had 16 inches of precipitation in the Burlington area and approximately 17 inches in Cheyenne Wells. Most of the crops have been harvested. She reported on a couple of violations of pumping in the Plains District. Ms. Daniels reported that she also attended the Republican River Compact meeting in Nebraska. She stated that she has been measuring wells, monitoring change of use, co-mingled, and expanded acre wells. During the next two months, they will be measuring over 200 large capacity wells and will have a better idea of the static level in the district area. Finally, Ms. Daniels stated that Dennis Coryell received an award at the Ground Water Foundation's Annual Conference in Michigan for his efforts in working with irrigators, environmental organizations and state and local officials in conserving ground water.

Commissioner Smith reported for the **Southern High Plains Ground Water Management District**. He stated that they had enough moisture to get the winter wheat crop in the ground. There are not many dry land crops due to the dry summer. Between the hail and dry weather, the yields were below normal for irrigated crops.

There was no report for the North Kiowa-Bijou Ground Water Management District.

Mr. Keith Vander Horst read the district report from Kathy Hare of the **Upper Black Squirrel Creek Ground Water Management District**. The district is waiting for the Supreme Court ruling regarding the Cherokee stipulation. The district finished a 4-day trial in El Paso County District Court objecting to the relocation of several wells by Wayne and Frances Booker. The district published proposed Rule 21 Metering Rule and had a hearing on November 7, 2006, received two objections, and voted to continue the hearing until the December meeting.

Mr. Dave Taussig, from the **Upper Big Sandy Ground Water Management District**, reported that they received their first batch of final permits, and the second batch has been published. They hired Martin-Wood to perform additional studies on the water balance. In Phase 5 of the study, they will try to determine whether they are in the alluvium recharging the Denver Basin aquifers, or whether the Denver Basin aquifers are contributing to them, and determine whether or not they can sustain the alluvium. Mr. Taussig reported that they held a hearing to approve an application to allow hauling water for dust control. With regard to the Gallegos case, Mr. Taussig reported that it is a serious problem and the Commission and the districts need to look at the provision that allows for making or adjusting boundaries. He suggested that it may take legislation to find a way to address this concern or it will continue to arise.

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

Mr. Stan Murphy, from the **Republican River Water Conservation District**, also reported on the issue of small capacity wells, hauling water out of communities, and water for gas wells. Between the EQIP and CREP programs in 2006, they have applications and contracts for about 36,000 acres to be taken out of production. They have expectations for 2007 to see some changes in their allotment used in the compact. They leased 117 acres of surface water on the Laird Ditch from August to December and options for leasing it for the next three years. The District also acknowledged Commissioner Coryell for his achievement for the award.

Old Business – There was no old business.

New Business – Marta Ahrens reported on the selection of meeting dates for 2007. The dates and location are as follows:

- February 16 – Parker Water and Sanitation District
- May 18 – 1313 Sherman Street, Denver
- August 16-17 – location to be determined
- November 16 – Parker Water and Sanitation District

The meeting adjourned at 2:40 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