
MINUTES
FIRST QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION
FEBRUARY 16, 2007

The First Quarterly Meeting of the Colorado Ground Water Commission took place on February 16, 2007, at the Parker Water and Sanitation District Facilities, 18100 E. Woodman Drive, Parker, 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, Dennis Coryell, Corey Huwa, Frank Jaeger, Robert Loose, Earnest Mikita, Doug Shriver, Max Smith, and Hal Simpson. Commissioner Larry Clever and Ex-Officio Members Harris Sherman and Ted Kowalski were absent.

Review and Approval of Agenda Items – Commissioner Mikita moved, and Commissioner Jaeger seconded, approval of the agenda.

Approval of Minutes for Meeting of November 17, 2006 - Chairman Smith asked if there were any corrections or additions to the Minutes of the November 17, 2006 meeting. Commissioner Loose moved to accept the Minutes; the motion was seconded by Commissioner Coryell and carried unanimously.

Report of the Executive Director by Hal Simpson – Mr. Simpson reported that Harris Sherman is the new Director of the Department of Natural Resources and could not be at the meeting today but plans to participate in future Commission meetings. He stated that Russell George is now the Director of the Colorado Department of Transportation and a Resolution will be read later on the agenda thanking Mr. George for his service to the Ground Water Commission.

Mr. Simpson reported that Hearing Officer Jody Grantham completed the hearing on the Box Elder request to create a designated basin and the report will be out tomorrow. Mr. Simpson thanked Mr. Grantham for the work he put into conducting nine days of hearings and finishing on time, and he also thanked the staff and the Attorney General's Office for providing support. Mr. Simpson also stated that he received notification that the San Luis Valley rules that were promulgated to deal with new appropriations from the confined aquifer were upheld completely by Judge Kuenhold, and the objecting parties may file a notice of appeal which will go to the Supreme Court for review.

Mr. Simpson reported that the states of Colorado and Kansas continue to meet to discuss the remaining technical issues related to compact administration procedures and they are expecting a final report from the Special Master in about a month. There were 60-plus unresolved issues that the states were working through of which two-thirds have been addressed. They will meet again in April to hopefully wrap up those that are resolvable.

Mr. Simpson stated that the snow-water content from the recent blizzard in the southeastern part of the state has been remarkable. John Martin and Blue Tooth Reservoirs are looking at possibly spilling, and there's potential for flooding if there is rapid melting.

With regard to the Republican River Basin in the Northern High Plains, there will be a briefing later on the agenda, and there may be legislation introduced regarding issues related to final permits and issues related to the Gallegos decision. The issues before Judge Peterson on the Pioneer case to modify the basin's boundaries may be remanded back to the Commission.

Finally, Mr. Simpson reported that he intends to retire at the end of May and the May meeting will be his final Commission meeting.

Proposed processing procedure for two "Petitions to Amend the Boundaries of the Northern Kiowa-Bijou Ground Water Management District" by staff – Mr. Vander Horst reported that both petitions appear to involve one square mile of land owned by each party. The staff performed a preliminary review of those petitions under Section 37-90-106(1)(b)(2), C.R.S., which requires the basic information that are required to perform a designation or amendment of boundaries. The staff is asking the direction of the Commission whether to publish the petition or to wait. Mr. Pat Kowaleski reported that he spoke to Mr. Thomas Grant, attorney for the two applicants, who stated that the request of the staff is reasonable and appropriate, that he has no problem with waiting until the applications were complete to publish, and he does not object to a hearing being scheduled after that time. Commissioner Coryell made a motion to wait until all of the pertinent information has been received and then proceed with a hearing. The motion was seconded by Commissioner Mikita and approved unanimously.

Discussion concerning the de minimis standard referred to in the Gallegos case, and direction from the Commission on rulemaking related to this standard by Ken Knox – Mr. Knox reported that staff conducted a cursory research of the technical aspects of the Gallegos decision and a research of historical documents of the Northern High Plains. He asked the Commission for direction on how to proceed and to focus exclusively upon the Northern High Plains Designated Basin, and any proposed rule be crafted carefully to reflect the unique attributes of that basin. Mr. Knox asked that staff be allowed to review all options in depth in light of all of the hydrogeologic and physical evidence as well as applicable law that now exists in consultation with the Attorney General's Office, and then to craft a draft proposed rule for consideration by the Commission.

Mr. Kowaleski stated that it is possible to craft a definition of de minimis that can uphold scrutiny and could be helpful in processing applications. He stated that starting this process does not prompt the Commission to adopt the rule. He stated that the staff would develop a draft proposed rule to bring to the Commission. The Commission would not be approving the rule, but it would be a starting point for discussion to determine de minimis. He stated that if a draft rule is brought before the Commission at the May meeting, the rulemaking could be conducted in August, then the rule could be effective in December.

Mr. Knox stated that the focus is on the 2008 irrigation season, they are not recommending an aggressive schedule, but something that would allow thorough review by staff. The draft rule would be a starting foundation, which may be different than what will actually be published.

Commissioner Coryell stated that they have a CREP program in place now in the Republican River Water Conservation District and they expect that this will be filled up and they will not be able to process any more applications; therefore, they are anticipating looking at an additional

program to provide irrigators an opportunity to voluntarily retire their wells. He stated that he would like the Commission to move forward to adopt a rule prior to or by the November meeting.

Ms. Ann Castle, representing Five Rivers Cattlefeeding, stated that simply by defining de minimis, the Commission has not made the decision on determining injury and how the boundaries need to be redrawn.

Mr. Mike Shimmin, who represented seven of the eight Ground Water Management Districts in the Pioneer litigation, stated that this issue is very complex and it would be a good idea not to move too quickly into this. He stated there are complex legal issues on how a rulemaking proceeding interfaces with the pending litigation and the decision by Judge Peterson. He added that adopting a rule to establish a quantitative definition for the de minimus standard to be applied to the Northern High Plains will not prohibit future litigation or determine the outcome of the pending litigation. Mr. Shimmin urged that the Commission proceed very cautiously.

Commissioner Jaeger made a motion to instruct staff to start the process of defining de minimis and bring it back to the Commission. The motion was seconded by Commissioner Mikita.

Mr. Shimmin suggested that the motion be rephrased to authorize the staff to investigate whether a rule should be proposed and to come back in May with a recommendation, and that the motion would not presume that there should be a rule. He stated that if the staff puts something in writing, it will become admissible evidence in the proceeding. After further discussion, and based upon Mr. Shimmin's suggestion, Commissioner Jaeger amended the motion to authorize or direct the staff to investigate the possibility of a proposed rule on the issue of de minimis in the Northern High Plains and to come back at the May meeting with a recommendation on that issue. The motion was seconded by Commissioner Mikita 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 permitting activities, objections/hearings, and enforcement actions. Under miscellaneous items, Mr. Vander Horst reported that staff continues to work on enforcement of meter requirements within the Republican River basin, and the replacement plan workload has increased due to an increase in the number of plans submitted.

Report of the Attorney General by Devin Odell – Mr. Odell 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. He stated that the opinion of the Booker case is also included in the packet and provided updates on Cargill Cattle Feeder and Yuma Ethanol cases. Mr. Odell stated that he did not attend the Box Elder Designation Hearing but noted that an initial decision will be out today and an appeal process will be according to Commission's rules. Mr. Kowaleski stated that the initial decision of the Hearing Officer will most likely be appealed and will be brought before the Commission.

Management District and Conservation District Reports - Chairman Smith called for the Management District reports.

Mr. Aaron Nein, from the **Frenchman, Sandhills, Marks Butte and Central Yuma Ground Water Management Districts**, stated that they completed administration of 200 irrigation and commercial wells in 2006. There were five cases of over-pumping and they are in the process of working on a settlement agreement with those individuals. He stated that they had quite a bit of snow in the area and it was tough to obtain meter readings and static water level measurements. They are working with well owners on enforcement to resolve matters. He discussed the proposed mandatory metering of irrigation wells in the Northern High Plains and questioned the cost and necessity. Mr. Nein reported that he is resigning as District Manager in March to go back to his family farm and do consulting work.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that they had quite a bit of snow. They looked at half of the wells but haven't determined the levels. They approved two wells for ethanol, two small capacity commercial wells, and are waiting for paperwork on the Cargill Feedlot. He said that they want to use it as a substitute well, and when not using it for the feedlot, they want to irrigate with it.

Mr. Roger Brenner, from the **Arikaree Ground Water Management District**, reported that they also had snow and measured half of the static water levels, completed inspections of wells that they could find in their district, half of documentation will be submitted to staff, and will complete the remainder in two weeks. They are working with Dave Keeler on his inspections.

Mr. Dave Keeler reported for the **Plains and East Cheyenne Management Districts** and stated that they have snow and ice and are dealing with snow cover, which makes it difficult to get accurate measurements. The total rainfall in 2006 was 17.5 inches. Numerous wells in the Plains District were entered into contract with the CREP Program. He stated that the Plains District did not have an election of board members as they all elected to remain on board. The East Cheyenne District will have board elections next year. Mr. Keeler reported that it is difficult to do well administration due to mechanical difficulties with vehicles and the current snow conditions.

Mr. Max Smith reported for the **Southern High Plains Ground Water Management District** and stated that they had more snow than he's ever seen. Three weeks ago, an employee took an official rain gage and melted it down and produced five inches of moisture from the snow. Well level measuring has been put on hold. Livestock owners are experiencing difficult times. There are very poor road conditions and some roads have yet to be plowed.

Commissioner Loose reported for the **North Kiowa-Bijou Ground Water Management District** and stated that the expansion in the basin is over-appropriated which creates problems. The District will work with staff to proceed with requests, but they are not favorable for it.

There were no reports 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 their current CREP program was successful, however, the issue is whether to take a risk and get in the program or not. With regard to the EQIP Program, they are looking at only seven applications throughout the basin. On the surface water contract, they have one producer who signed up 180

acres on the South Fork for a five-year retirement, and one producer on the North Fork who signed up 117 acres on three-year lease. They have a board meeting next week and two of the main topics are the expanded CREP program, and the possible drainage of Bonnie Reservoir to repair the leakage and seepage. Additionally, they are having problems with the Tamarisk and Russian Olives.

Old Business – None

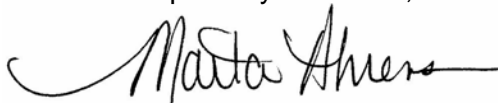
New Business – Mr. Simpson read a Resolution for former Ex-Officio Member Russell George. Commissioner Mikita moved to accept the Resolution; it was seconded by Commissioner Jaeger, and approved unanimously.

Executive Session: Pioneer Irrigation District, Colorado Board v. Colorado Ground Water Commission, Yuma County District Court, Case No. 06CV31 – Commissioner Coryell moved to go into Executive Session, it was seconded by Commissioner Mikita and passed unanimously. Commissioner Mikita made a motion to come out of Executive Session, seconded by Commissioner Coryell and passed unanimously. For the record, Mr. Kowaleski stated that the Ground Water Commission discussed the Pioneer Irrigation District litigation and that the discussion was limited to that topic.

Next Meeting – May 18, 2007, in the Centennial Building, at 1313 Sherman Street, Room 318, Denver, Colorado.

The meeting adjourned at 12:40 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