
MINUTES
SECOND QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION
MAY 18, 2007

The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 18, 2007, 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, Alex Davis, Hal Simpson, and Ted Kowalski.

Review and Approval of Agenda Items – The agenda was amended to include an Executive Session during lunch to discuss the Pioneer Irrigation District Case. 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 February 16, 2007 meeting. Commissioner Coryell moved to accept the Minutes; the motion was seconded by Commissioner Shriver and carried unanimously.

Report of the Executive Director by Hal Simpson – Mr. Simpson welcomed Ms. Alexandra Davis to the Commission. She was appointed by Harris Sherman as the new Assistant Director for Water for the Department of Natural Resources two weeks ago. Ms. Davis served the state for a number of years at the Attorney General's Office as lead water attorney on a number of cases for the Division of Water Resources. She will be the Department's representative and a voting member on the Commission.

With regard to the water supply conditions, Mr. Simpson reported that they are not good for most of the state and will be experiencing low streamflows. The South Platte is above average at 102% and flowing 250 cfs at the stateline; the San Juan is at 55 percent of average; the Yampa/White is at 40 percent of average; and the Upper Colorado River is at 63 percent of average. However, in northeastern Colorado, they are starting to see consistent flows in some of the streams in the Republican River basin, which is encouraging because it's the first time in five years that there are flows somewhat similar to what has historically occurred out there.

Mr. Simpson reported that they are meeting and negotiating on two fronts on the Arkansas River litigation. They are working on resolving the on-going accounting disagreements on releases of water from John Martin Reservoir. The states have resolved the majority of the 60 issues that were remaining; and, more recently, have drafted appendices to the final decree which discusses how to repay a shortfall if Colorado would have a shortfall when an accounting is performed after each ten-year period. Colorado's accounting that was presented to Kansas in March showed a 13,000 acre-foot credit over the 10-year period 1997-2006, Kansas' accounting shows a 3,000 acre-foot credit. One of the items under negotiation will be whose version will be used to show what the final credit will be. A final report is expected from the Special Master approximately two months after the negotiations are finished.

With regard to the Republican River Compact, Mr. Simpson stated that the allocation for 2007 is better due to higher streamflows. The Republican River Water Conservation District is looking at augmentation pipelines to take water from the dry-up acreages. The CREP program is coming into full production to help reduce depletions close to the North Fork and the South Fork. A second CREP is being considered for additional dry-up.

Mr. Simpson concluded by stating that one of the greatest experiences in his tenure was working with the Commission and he thanked them for their hard work and dedication. He stated that the hearing today will be one of the most difficult decisions that the Commission has had to deal with since he's been Executive Director of the Commission.

Hearing on appeal of the Initial Decision of the Hearing Officer concerning the Petition to Create the Box Elder Creek Designated Ground Water Basin, John Moser and the Central Colorado Water Conservancy District Petitioners (Case no. 06-GW-23) - Chairman Smith called the hearing to order. Mr. Pat Kowaleski, of the Attorney General's Office, was conflicts counsel. Each side was allowed 45 minutes for testimony. The following persons provided testimony before the Commission:

Mr. Andy Jones, representing the petitioner, CCWCD and John Moser (well owner), summarized the history of the basin that was used as evidence during the hearing. He stated that ground water has been the predominant usage since 1951 (ground water use is 70 percent, surface water is 30 percent), Box Elder Creek does not have a continuously flowing natural stream, water pumped from the wells provided the principal supply for the irrigation basin in the last 15 years, and historical records show that Box Elder never flowed. He asked that the Commission reverse the Hearing Officer's decision in this matter today and not defeat the intent of statute 37-90-103(6)(a).

Mr. Bill Coyle, who has had a farm south of I-70 for 22 years, stated that the basin meets the requirements of the closed designated basin, there is no surface water that comes into the basin, it is not adjacent to a continuously flowing stream, the wells are less than non-tributary and should be permitted as non-tributary wells.

Ms. Sarah Klahn, representing the City of Sterling, spoke on behalf of the opposers. She stated that this is a case about a ground water basin in which the wells are either the subject of decreed augmentation plans or are included in pending augmentation plans before the Division 1 Water Court. The wells are not pumping native ground water; the wells are pumping return flows and seepage from South Platte River diversions made by FRICO and Henrylyn. Ms. Klahn stated that the water in question is presumed tributary and this case should never have come before the Commission. She stated that the Hearing Officer's Order is proper and asked the Commission to affirm the decision of the Hearing Officer.

Mr. Devin O'Dell, of the Attorney General's Office, representing staff, reported that staff feels that the Hearing Officer correctly determined, based on evidence presented and expert testimony that in the absence of wells, surface water would flow back into the South Platte River and there would be a continuously flowing stream. Mr. O'Dell urged the Commission to take into consideration the changes in water use and water administration in considering this particular petition and stated that the Commission is not bound by decisions made in the 1960's, and to uphold the initial decision of the Hearing Officer and deny the petition.

Mr. Mike Shimmin, representing the Bijou Irrigation System, stated that the primary source of water in this basin is surface water imported from the South Platte River. This ground water does not meet the definition of designated ground water because it is not depletable, natural, non-renewable ground water. The ground water being pumped by these wells originates as surface water in the South Platte River, and the ground water in this basin does not meet the definition of ground water in the 1965 Act and does not meet the policy intended to be covered by designated ground water in that Act. The ground water in this basin does not qualify for designation and asked the Commission to affirm the decision of the Hearing Officer.

Mr. Kowaleski referred to the Hearing Officer's decision dated February 20. He stated that the relevant issues are the statute and the decision of the Hearing Officer. The options are: (1) to accept the decision of the Hearing Officer and deny the designation request; (2) to reject the determinations of the Hearing Officer individually and designate the basin as requested; (3) to send it back to the Hearing Officer if the Commission disagrees or has concerns or questions about an individual issue that he raised; or (4) send it back if the Commission felt it would be appropriate to look at a different area than was presented to the Hearing Officer and to look at a more restricted area than was originally presented in the petition.

Commissioner Clever made a motion to affirm the decision of the Hearing Officer and deny the designation request. The motion was seconded by Commissioner Coryell. Additional discussion ensued among the Commission members and the motion passed; one Commissioner opposed (Loose) and one abstained (Davis).

Executive Session: Pioneer Irrigation District, Colorado Board v. Colorado Ground Water Commission, Yuma County District Court, Case No. 06CV31 – Commissioner Shriver moved to go into Executive Session, it was seconded by Commissioner Coryell and passed unanimously. Commissioner Loose made a motion to come out of Executive Session, seconded by Commissioner Huwa 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.

Presentation on a proposed de minimis standard for the Northern High Plains Basin by Ken Knox – Mr. Knox reported that staff recommended that the hearing process for the proposed de minimis standard be deferred at this time due to the pending Pioneer litigation. He stated that this matter will be revisited at a later date.

Status on Petitions to Amend the Boundaries of the Kiowa-Bijou Designated Ground Water Basin, Richard H. Uhrick and Craig Kroskob Petitioners by Keith Vander Horst – Mr. Vander Horst reported that the two petitions were submitted last January and posted on the Ground Water Commission website. He stated that staff performed an initial review of those petitions and the review indicated that the petitioners did not provide the information required for addressing a finding for designation as required by statute; therefore, staff determined they were incomplete. The staff requested additional information from the petitioners and received two amended petitions; however, staff has not had time to perform a complete review of the petitions. Staff proposed the following three recommendations: allow additional time for staff to make the determination of whether the applications are complete for purposes of proceeding to publish; the Commission clarify that the staff has the authority to publish the applications without further Commission

direction once staff determined that they are complete for purposes of publication; and direct the Hearing Officer to initiate the hearing process once the applications have been published. Commissioner Clever moved to accept staff's recommendation on this matter; seconded by Commissioner Jaeger 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, working with the RRWCD on their water conservation programs, and drafting guidelines dealing with evaluation of replacement plans.

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 reported that in regard to Paint Brush Hills Metro District, staff has contacted counsel for the applicant to get an update on the status of those applications; and in regard to the Cherokee Metropolitan District case, the staff received the applications and are reviewing them diligently. In addition, he stated that there are two new cases that came in; two applications were received for replacement plans in Kiowa Bijou Designated Ground Water Basin, and the other case is an application for determination of water right in the Lost Creek Designated Ground Water Basin and the Lost Creek Ground Water Management District objected to it that the application might harm rights in the district.

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

Mr. Nate Midcap, new manager from the **Frenchman, Sandhills, Marks Butte and Central Yuma Ground Water Management Districts**, first provided some background about himself. He stated that they have had an increase in rainfall through the districts and corn planting is going on in most of the districts. The number one issue in his districts is the Republican River Compact compliance.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that things are looking good; some wheat fields are getting dry in some areas; a lot of farmers had to replant sugar beets; and corn should all be in. He reported on the well measurements that he performed and started that there may be a turn-around. The Cargill Feedlot enforcement has been resolved.

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

Ms. Deb Daniel, manager from the **Plains and East Cheyenne Management Districts** reported that they have had some sub-moisture but could use more rainfall. The winds they have been experiencing is showing stress in the wheat. She reported on the well measurement projects in both districts. The Plains District will be enforcing a new penalty regarding overage of appropriation and any well pumping over its allotment will be penalized on a one-to-one basis and it goes into effect in 2008. She stated that the Plains District is very concerned about the Republican River Compact compliance. They have completed the initial meter administration on expanded acres.

Mr. Max Smith reported for the **Southern High Plains Ground Water Management District** and stated that their situation is similar to what Jack Dowell reported. The majority of corn is in the ground; wheat has spots due to the shallow root system; and they completed well level measurements.

Commissioner Loose reported for the **North Kiowa-Bijou Ground Water Management District** and stated that they had one enforcement action. Regarding expanded boundaries within basin, they did own preliminary engineering work, and there is sandstone ridge that separates their basin from the proposed boundaries and believes that they will not be included.

There were no reports from the **Upper Black Squirrel Creek Ground Water Management District**, 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 they are continuing to process EQIP and CREP applications. The FSA office sent out notification that they are giving their producers 30 days to act on the 2006 CREP applications to close them out. The CREP program for 2007-08 would be for wells only within four miles of the North Fork and the South Fork in the Arikaree. They are working with Katie Radke of the State Engineer's Office to help the District put out RFPs to engineering firms for proposals for an initial study for installation of an augmentation pipeline. He reported that the executive committee board members took a trip to Washington D.C. in April to meet with Legislators and the USDA NRCS office to get additional financial support and number of acres for the EQIP and CREP programs and the need for a possible augmentation pipeline. He also reported that they need to increase the rental rate for the programs due to the high cost of corn.

Old Business – None

New Business –

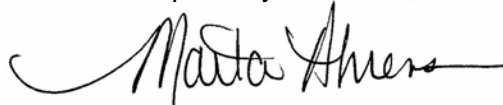
- Mr. Simpson reported that the Department is having a Budget and Legislation Planning Retreat later during the month and they were asked to come forward with ideas for new legislation. One suggestion would be to have John Stulp, Commissioner for Agriculture, be an Ex-Officio, non-voting member of the Commission. The other would be regarding the language in 37-90-106 which states that the Commission can amend basin boundaries based upon new information; this language is creating concern to the members of the Designated Basins and asked the Commission to support consideration to amending the language to allow basins to be expanded but not undesignated it or de-designate it. Mr. Simpson offered to place these two topics on the agenda with the Department.
- Commissioner Bledsoe wanted to disclose that he was contacted to meet with surface water users on the North Fork of the Republican River including the Laird/Pioneer Ditch to discuss purchasing or leasing surface water rights to the RRWCD for compact compliance. He stated that he sees no conflict with his duties as a member of the Commission in meeting with the surface water users for this purpose.

- Chairman Smith introduced Mary Lou Smith, facilitator of the Arkansas Roundtable. She invited the Commission members and audience to an interactive water conference regarding aquifer storage and recharge. The forum organizers are the American Ground Water Trust and the Arkansas Basin Roundtable.
- Chairman Smith presented Mr. Simpson with a plaque from the Ground Water Commission and read a Resolution for Mr. Simpson. Commissioner Mikita moved to accept the Resolution; it was seconded by Commissioner Clever, and approved unanimously.
- Selection of August meeting location – Marta Ahrens suggested holding the meeting at the Sheraton in Colorado Springs with dinner at the Flying W Ranch on Thursday night. Mr. Simpson suggested either touring the Upper Black Squirrel Creek Ground Water Management Basin or contacting the Colorado Springs Utilities for a possible tour.

Next Meeting – August 16-17, 2007, at the Sheraton Hotel in Colorado Springs.

The meeting adjourned at 2:35 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