
MINUTES
THIRD QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION
AUGUST 17, 2007

The Third Quarterly Meeting of the Colorado Ground Water Commission took place on August 17, 2007, at the Crowne Plaza Hotel, 2886 South Circle Drive, Colorado Springs, Colorado. Chairman Max Smith called the meeting to order at 8:30 a.m. Ms. 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, Alex Davis, Dick Wolfe, and Ted Kowalski. Commissioner Frank Jaeger was absent.

Review and Approval of Agenda Items – Commissioner Shriver moved, and Commissioner Clever seconded, approval of the agenda.

Approval of Minutes for Meeting of May 18, 2007 - Chairman Smith asked if there were any corrections or additions to the Minutes of the May 18, 2007 meeting. Commissioner Clever moved to accept the Minutes; the motion was seconded by Commissioner Shriver and carried unanimously.

Report of the Executive Director by Assistant State Engineer Dick Wolfe – Mr. Wolfe expressed his appreciation to Ms. Marta Ahrens for setting up the meeting and organizing the tour of the McCullough Water Treatment Plant and the Tesla Hydropower Plant and the group dinner arrangements at the Flying W Ranch.

Mr. Wolfe reported on the status of filling the State Engineer position. He stated that the deadline for submitting applications for the position closes on August 20. All those interested in the position who have submitted their applications will be considered through the review process by Mr. Harris Sherman, Executive Director of the Department of Natural Resources. At this time, there is no actual timeline on filling the position.

Mr. Wolfe reported on the various issues and matters throughout the state:

Division 1 – South Platte River Basin

- Had a great runoff year, the basin is in better shape than any other basin throughout the state; had seven weeks of free river from April 25 to June 12, which was the first significant runoff free river conditions since 2001; allowed mainstem reservoirs to be filled and put the agricultural users in good shape throughout the season with carryover storage into the next irrigation season.
- Issues with regard to wells in the South Platte Basin in terms of administration and curtailment since the 2002 drought, and legislation enacted in 2002 and 2003. Governor Ritter appointed a South Platte River Task Force to try to provide relief to junior well users in the basin as result of a public meeting held in Wiggins in May. The Task Force consists of 26 members, a total of six meetings will be held, four of which have already taken place. Mr. Wolfe is a technical advisor on the committee, as well as Alex Davis

from the Executive Director's Office. They are dealing with 8200 high capacity wells in the basin, 5800 are currently operating under approved plans, and about 2400 are currently curtailed. This group is looking at options and solutions to address issues in the South Platte River Basin. Information regarding the Task Force is posted on the Department of Agriculture website or via a link on the Division of Water Resources' website and includes all presentations and handouts. The final report of the Task Force is due to the Governor at the end of September.

- With regard to Republican River Basin, there will be discussions later during the meeting on the Pioneer Case; moving forward with measurement use rules in an effort to meet compact compliance.

Division 2 – Arkansas River Basin

- Good runoff year
- Colorado continues its efforts to regulate post-compact pumping operations. The Special Master is anticipated to make his decision this Fall and will address any remaining disputed issues.
- Tri-state Generation Transmission Association has filed a change in water right application in July involving one-half of the Amity Canal water right; the water will be used as part of an augmentation plan to augment depletions from pumping of the well field for process water for two power plants near Holly.

Division 3 - Rio Grande Basin

- Implementation metering of the regulations for ground water withdrawals is continuing, and for wells with production greater than 50 gpm requires totalizing flow meters in place as of March 1 of this year. Division III staff continue to inventory and inspect wells for compliance with measurement rules. The inventory process found problems with well users and they are coming to Water Court to legitimize the uses of their wells, resulting in significant increase in water court filings.
- Judicial authorization of the first ground water management subdistrict occurred this year. The subdistrict drafted a water management plan which is being reviewed by the State Engineer's Office. The subdistrict will file with the water court in the next few months. As long as the subdistricts compensate for injury to the river and recover aquifer levels, they will not be subject to well administration. Rules and regulations for well administration will be promulgated by the State Engineer in the near future.
- Continue to meet compact obligation under the Rio Grande Compact.
- Confined aquifer rules were appealed to the Supreme Court and briefs are due by the end of August. It will be three to four months before oral arguments are heard by the Supreme Court.

Division 4 – Gunnison River Basin

- Gunnison River RICD Case - reached an agreement and filed a stipulation with the applicant. The change case will allow upstream depletions up to 2% of the lowest decreed flow amounts and will allow people in the Upper Gunnison Basin to purchase augmentation water upstream from Blue Mesa Reservoir.
- Black Canyon Water Right – entered into stipulation that gets rid of the selective subordination; agreement allows for general subordination and protection of the water rights from 1933 to 1957; currently a stay in litigation in that case until 2008.

Division 5 – Colorado River Basin

- On June 20, the Shoshone Power Plant penstock ruptured; there is no timeline on when the Power Plant will be brought back on line; no river call from the Power Plant for the remainder of the season. Interim plan was developed by a number of parties in the basin in effect through October 31 and will release water from Wolford Mountain, Granby and Williams Fork Reservoirs for the Recovery Program to provide water for the endangered fish and provide water for rafters.
- Parts of the basin are experiencing drought conditions, however, there is good reservoir storage in the basin.

Division 6 – Yampa/White River Basins

- This basin is experiencing the worst drought conditions in the state. As of August 1st, it is considered moderate to severe. The flow at Yampa River is down which created concerns not only for the Recovery Program but also for the city's RICD right.
- Recovery Program – the Elkhead Reservoir Enlargement was completed and dedicated. Part of the water from the enlargement will be used by the Colorado River Water Conservation District for release for fish habitat.
- Piceance Creek Basin – over-appropriated basin; active administration with regard to oil and gas activities.

Division 7 – La Plata River Basin

- RICD filing by the City of Durango - negotiating settlement; the basin has been operating under free river conditions for several years and there has not been active administration on the Animas River.
- Complaint and declaratory relief was sought by a couple of ranchers on coal bed methane operations; they filed action against the State Engineer and ruled that the OGCC does not have exclusive jurisdiction over coal bed methane wells and they are subject to the Ground Water Management Act. The State Engineer filed two motions with the court, one was for clarification of the order (which was denied), but court granted the motion for stay of the actual order while this is on appeal to the Supreme Court.

Biennial Election of Chair and Vice-Chair - Commissioner Clever made a motion to reappoint Commissioner Max Smith as Chairman and Commissioner Dennis Coryell as Vice Chairman; the motion was seconded by Commissioner Loose and passed unanimously.

Hearing on the request by the Town of Bennett for a Variance to Rule 5.3.7, to allow the withdrawal of water that is subject to the Town's currently pending Determinations of Water Right (Receipt Nos. 518590 A-D; in the Laramie-Fox Hills, Lower Arapahoe, Upper Arapahoe, and Denver Aquifers) not only from wells located on the overlying land area, but also from wells located on land subsequently included or annexed into the Town - 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. Matt Poznanovich, attorney representing the Town of Bennett, reported that the Town filed several applications for Determinations of Water Right which are currently pending with the Commission to quantify the Denver Basin ground water underlying 2,689.9 acres of land within the Town. The applications were published and one objection was filed by the Lost Creek District. The Town has discussed the variance request with staff and the staff indicated they do not have objections provided certain terms and conditions are included on the variance request if approved. The Town wants to withdraw all water underlying 2,689 acres from a central well field under that land. The staff indicated that if the Town wanted to do this without a variance, they would have to file new applications that would include not only the new acres but also the previously determined land and then cancel the existing Determinations of Water Right at the same time. Mr. Poznanovich stated that the Town is seeking a variance from strict application of Rule 5.3.7 as it will cause unusual hardship on the Town. If the variance is approved, it will not change the amount of water that the Town can use, how the water can be used or where it can be used. It will now authorize the withdrawal of any water right now, but will protect the Town's existing water rights. Mr. Poznanovich stated that the staff recommended that certain conditions be placed on the variance, and the approval of the variance would keep staff from having to redo all the work that they have been doing before.

Mr. Devin Odell, from the Attorney General's Office, representing staff, stated that staff feels that granting the variance request will not prevent the Town from operating the well fields and believes this would streamline the process and reduce the amount of time and paperwork both for the Town and the staff. The State Engineer's Office is, pursuant to the 2006 Guidelines, allowing decrees to be entered in Water Court outside of Designated Basins that would allow essentially the same process. Mr. Odell stated that the three conditions were accurately stated by Mr. Poznanovich and stated that the staff would be willing to put together a written statement of conditions.

Commissioner Coryell suggested that rather than dealing with these types of variance requests in the future to address this through new rules and regulations. Mr. Wolfe responded that the State Engineer's Office has considered that and is looking at the possibility of amending the existing rules to include additional terms and conditions.

Commissioner Clever made a motion that the Commission grant a variance to Rule 5.3.7 for the Town of Bennett that includes the three staff conditions as stated. The motion was seconded by Ex-Officio member Alex Davis and passed unanimously. For the record, Mr. Odell stated the three conditions as follows:

1. Wells that are not on the overlying land of the pending applications are limited to locations on overlying lands of other Determinations of Water Rights which the Town owns.
2. Operation of a well field(s) on the lands other than the overlying lands of the pending determinations, which are noncontiguous to the overlying lands of the pending determinations, shall be limited to by the provisions of Rule 5.3.7.2.
3. The replacement requirements for the withdrawal of the water of the pending determinations by wells located on other than the overlying lands of the pending determinations shall meet the provisions of Rule 5.3.6.3.

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 is in the process of processing the petitions by Messrs Uhrick and Kroskob to amend the boundaries of the Kiowa-Bijou Designated Ground Water Basin; the State Engineer signed Guideline 2007-1 dealing with publication and evaluation of replacement plans; and team member Eric Thoman is leaving DWR and his position will be filled as soon as possible.

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 also reported that the Pioneer Case was remanded back to the Commission by Judge Peterson for evidentiary hearing and finding of conclusions; the Cargill Cattle Case is now completed; Apex Ranch Estates has been settled and will be vacated; PV water will be vacated to give additional time to look at site specific information. Mr. Odell also stated that the Cure Land Case has been filed, served and attempt made to settle and get Mr. Cure back into compliance with his permit.

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

Mr. Nate Midcap, the new manager from the **Frenchman, Sandhills, Marks Butte and Central Yuma Ground Water Management Districts**, reported that the districts are trying to get through the chemigation inspections. They have 485 inspections to do, have completed 220 of them, and had 16 that did not pass inspections. Most of his areas have experienced rainfall. The number one concern in his district is compact compliance.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that they have had good rain this year and the crops are looking good. They have about 250 chemigation wells to inspect and have looked at 150, two of the wells did not pass. He stated that he is trying to get the farmers to go out with him.

Mr. Roger Brenner, from the **Arikaree Ground Water Management District**, distributed a written report to the Commissioners (*attached at the end of these Minutes*). He stated that his is one of the two districts that are directly affected by the Republican River Compact. Mr. Brenner stated that these comments are taken from the July 31st meeting of the Board. Commissioner Clever suggested that the State Engineer's Office be given time to review these comments prior to responding. Commissioner Coryell provided clarification regarding the discussions held during the July 30 and 31 meeting. Mr. Brenner stated that they have concerns regarding the Compact rules because several individuals' livelihoods are being destroyed due to some individuals. They are also concerned that all future correspondence will have to be done through the internet and not all of their local residents have computers. Mr. Ken Knox clarified that there have been revisions to the Compact rules and they will be made available on the internet and they will work with attorneys and local management districts.

Ms. Deb Daniel, manager from the **Plains and East Cheyenne Management Districts** reported that their area is hot with no rain in sight. The moisture they were blessed with early in the year provided a good wheat yield but in some areas the lack of moisture will depress the dryland corn fields. Ms. Daniels commended the Republican River Water Conservation District for their efforts to try to find avenues to assist the state in reaching compliance. The Plains District published a board policy for illegal irrigation to report illegal activity to the district manager. Ms. Daniel reported that she attended the Ground Water Management District Association summer conference in Estes Park in June entitled, *Well Curtailment Throughout the Country*, which dealt with how the state is dealing with declining water levels. She stated that irrigation continues, dryland crops are suffering, there is a dark cloud in the future for many of them in eastern Colorado that is not going to go away, and they hope to prepare themselves to minimize the damage.

Mr. Max Smith reported for the **Southern High Plains Ground Water Management District** and stated that it is hot and dry, particularly the last month, with very little rainfall. They are thankful for last winter's moisture and they had a good wheat crop.

Commissioner Loose reported for the **North Kiowa-Bijou Ground Water Management District** and stated that the basin is working with the staff on final permits, they found a few surprises, and have a few challenges to overcome. With regard to expanding the basin, they hope the staff and the Hearing Officer exercise caution. He stated that part of basin experienced good rainfall, and some have been sporadic or dry.

Ms. Kathy Hare, from the **Upper Black Squirrel Creek Ground Water Management District**, reported that they are participating in the Upper Black Squirrel recharge study. House Bill 193 set up roundtables and the Arkansas Basin Roundtable was encouraged to review the economic, legal, technical feasibility of underground storage in alluvial aquifers. The Upper Black Squirrel was rated No. 1 as an alluvial aquifer that had all the conditions of being recharged. Ms. Hare reported on the conference to be held on August 27-28 in Colorado Springs and invited the Commissioners. She stated that the district is progressing on the metering rule. She reported that the status report on Cherokee was incorrectly stated in the Attorney General's report. She asked for clarification from the Commission if the state notified people only on the lands or also the adjoining landowners so every landowner is aware and has an opportunity to object or not object. Mr. Kevin Rein responded that the staff will provide information to how landowners will be notified. The District voted at the last meeting to change attorneys, and stated that Pete Nichols will be their attorney handling everyday business and Bob Trout will be their litigation attorney.

There was no report 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 regarding compact accounting, Colorado is approximately 11,000 acre-feet short of compact compliance. The District applied through the CREP program for an additional 30,000 acres. The sign-up deadline for the EQIP Program is November 1. Approximately 27,000 acres have been permanently retired between the CREP and EQIP programs. Mr. Murphy reported that at the Board meeting in July, they selected GEI consultants to perform a preliminary study to develop a pipeline and, from a network of wells, bring water down to the river, and the study will be funded by

the Colorado Water Conservation Board. He reported on the five informational meetings held by the State Engineer's office to discuss the curtailment possibilities for 30,000 acres to be taken out of production and had over 800 people attend the meetings. Mr. Murphy reported on the Compact meeting held in Kansas this week.

Old Business –

Assignment to the Hearing Officer of the Petition by Pioneer et al to alter the boundaries of the Northern High Plains Designated Ground Water Basin (Case No. 05-GW-14) – Mr. Kowaleski reported this is procedural matter and requested a motion that this be assigned to the Hearing Officer to conduct a hearing and giving the Commissioners the findings. Commissioner Clever moved, seconded by Commissioner Mikita and approved unanimously.

Miscellaneous –

Commissioner Mikita introduced Representative Marsha Looper who reported on the concerns of water issues in the Denver Basin. Representative Looper reported on a proposed bill that will require that anytime there is a residential transaction on small capacity well, that buyer submit transfer of well ownership. The closing companies will be required to assure that the document is part of the closing documents or there will not be closing on property. This will also give authority to the Division of Water Resources to require a usage fee for change of well ownership. In addition, Representative Looper stated that she has been working with the Colorado Water Congress and the Colorado Water Conservation Board to secure funds for a comprehensive ground water study for the Denver Basin for ground water depletions, ground water quality, and the impacts due to depletion of ground water.

New Business –

Appointment of Commission representative to the Republican River Water Conservation District, by Stan Murphy – Mr. Murphy reported that Commissioner Coryell has been President of the Board and Commissioner Bledsoe is also a board member, whose three-year terms will expire. He asked the Commission to reappoint Commissioner Coryell to serve on the District Board. Commissioner Clever moved to appoint Commissioner Coryell as the Commission representative on the Republican River Conservation District; the motion was seconded by Commissioner Shriver and approved unanimously.

Executive Session - Commissioner Mikita moved to go into Executive Session, it was seconded by Commissioner Huwa and passed unanimously. Commissioner Loose made a motion to come out of Executive Session, seconded by Commissioner Smith and passed unanimously. For the record, Mr. Kowaleski stated that the Ground Water Commission discussed the following two cases and that the discussion was limited to the two matters below:

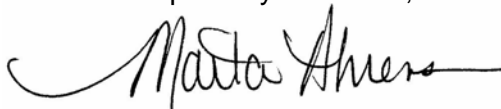
- a. Pioneer Irrigation District, Colorado Board v. Colorado Ground Water Commission, Yuma County District Court, Case No. 06CV31

- b. Appeal of Upper Black Squirrel Creek GWMD Rules 17, 18, & 19 by Cherokee, Meridian Ranch, Meridian Service Paint Brush Hills, and Woodmen Hills Metropolitan Districts, El Paso County District Court, Case No. 04CV4457

Next Meeting – November 16, 2007, at the Parker Water and Sanitation District.

The meeting adjourned at 12:03 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