
MINUTES

FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION NOVEMBER 16, 2007

The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 16, 2007, at the Parker Water and Sanitation District, 18100 E. Woodman Drive, Parker, Colorado. Chairman Max Smith called the meeting to order at 10:00 a.m. Ms. 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, Alex Davis, Dick Wolfe, and Ted Kowalski. Commissioner Larry Clever was absent.

Review and Approval of Agenda Items – Representative Looper asked to be moved up on the agenda following the Executive Director's report. Commissioner Mikita moved, and Commissioner Coryell seconded, approval of the agenda.

Approval of Minutes for Meeting of August 17, 2007 - Chairman Smith asked if there were any corrections or additions to the Minutes of the August 17, 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 Assistant State Engineer Dick Wolfe – Mr. Wolfe provided updates to the report that he presented at the last meeting. He reported on the following:

Division 1 – South Platte River Basin

- Judge Klein issued an order on the augmentation well case for the well augmentation subdistrict for the Central Colorado Water Conservancy District. This was issued on October 18 and deals with 215 wells on their augmentation plan that were shut down in 2006 due to lack of sufficient water in their plan to operate. They have been in the process of trying to get a decree through the Water Court. The Judge's order required the District to submit a proposed decree within 30 days and this week is the end of the 30-day period. Once the final decree is entered by the Water Court, DWR will be able to provide an estimate on the pumping that the wells will have in 2008.
- The South Platte Task Force final report is available from a link on DWR's website or on the Department of Agriculture's website. The recommendations from the Task Force are available in the report. Ten of the 20 recommendations were approved by the Task Force on a two-thirds vote. Three items were proposed for potential legislation. Ms. Davis reported on the bill passed on post-pumping depletions and excess augmentation credits.
- Activity continued on the Republican River Rulemaking and public meetings were held in Burlington, Holyoke, Wray, Yuma and Idalia on the measurement rules.

Division 2 – Arkansas River Basin

- Water Efficiency Rules – deals with a provision in the Arkansas River Compact concerning improving irrigation systems that may have a detrimental affect of return flows and ultimately to stateline flows to Kansas. Division Engineer Steve Witte and others from the Denver office have drafted a set of rules dealing with increased irrigation efficiency of surface water systems.
- The Division Engineer met with the local water districts for their input on the draft rules. A series of public meetings will start in 2008 for public input before rulemaking.

Division 3 - Rio Grande Basin

- On October 24, 2007, the Rio Grande Water Conservation District held a public hearing and endorsed the ground water management plan for the first subdistrict in the Rio Grande basin. Those were filed with the District Court, there were three objections to the rules, and they will be filed with the Water Court before the rules are ultimately adopted. There is ongoing development with other subdistricts in development of additional rules that may be similarly adopted. Commissioner Shriver added that the confined rules case will go before the Supreme Court in December.

Division 7 – La Plata River Basin

- Settlement of RICD case between all the parties, the applicant and the objectors, which involved settlement of two companion cases that were filed by La Plata County and the Southwest Water Conservancy District. The cases allowed for development of water rights ahead of the RICD that had senior claims filed. The objective was to settle all the cases simultaneously. The two companion cases will allow 48,000 acre-feet of development into the future that will be senior to the RICD.
- Vance and Fitzgerald case regarding the State Engineer's Office authority and permitting of coalbed methane wells; SEO filed an appeal of that order to the Supreme Court in September and will file briefs in January or February 2008.

Presentation on legislation affecting small capacity well ownership by Representative Marsha Looper, House District 19 – Representative Looper presented proposed legislation to require on all residential transactions at the time of closing that the change of ownership transfer application form be completed. If the change of ownership application is not completed, the closing will not occur. The enforcement of the application process will be through the closing companies. It will be the buyer's responsibility and the current obstacle are the title companies. Representative Looper encouraged the Ground Water Commission to support this legislation. The fee provision was removed from the bill.

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 the petitions by Richard Uhrick and Craig Kroskob to alter the

boundaries of the Kiowa-Bijou Designated GW basin have been published, and the Pioneer request has been set for hearing before the Hearing Officer during the first three weeks of June.

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 three fairly significant hearings are scheduled for March, April and June. Regarding an enforcement action in District Court against William Cure, they have filed a motion for contempt of court on that case and a hearing is set in early February.

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

Mr. Nate Midcap, manager from the **Frenchman, Sandhills, Marks Butte and Central Yuma Ground Water Management Districts**, reported that this is his third Commission meeting and ninth month on the job representing the districts. He feels that education of the public in his districts regarding compact compliance issues have led to many people coming together to resolve issues. He appreciates the willingness of the folks in his districts and his board members to work towards common solutions. The districts have signed resolutions in support of the concept of the possibility of a pipeline to meet compact compliance. Mr. Midcap stated that most of the harvest is completed and, with the good weather, the farmers have been getting their fall work done. Chemigation inspections went well and the district is looking forward to working with the Division on completing static water levels this winter.

Mr. Jack Dowell, from the **W-Y Ground Water Management District**, reported that he inspected 291 wells for chemigation this summer, six did not pass, two have been cleared and four are waiting on repairs. It's been a good season for sugar beets and corn, but they need moisture. Mr. Dowell stated that there have been discussion regarding starting an ethanol plant in Yuma in 2008 and are waiting to see what ethanol is worth and corn prices.

Mr. Roger Brenner, from the **Arikaree Ground Water Management District**, reported that they met last Tuesday night, they wrote a resolution in support of the pipeline and looked at the authorized compact compliance well proposal that is coming before the Commission. They wanted to be on record that they support the pipeline.

Ms. Deb Daniel, manager from the **Plains and East Cheyenne Management Districts** reported that harvest is completed and many farmers are in the field doing tillage and fertilization. The average rainfall this year in the Plains District has been 14.5 inches and 14.24 inches in East Cheyenne. Ms. Daniel stated that she gave ground water presentations to a third grade class in Burlington and Stratton. She traveled to Alamosa to evaluate various types of flow meters. On September 27 and 28, she attended the Colorado Water Forum held in Colorado Springs. Ms. Daniel reported that the Plains District agreed to recommend approval of commingling of wells as applied for by Burlington Farms Inc. She has received several complaints of suspected illegal irrigation in two ground water districts and plans on performing several field inspections with Dave Keeler. The Plains District asks that the Pioneer Ditch hearing scheduled to begin on June 2, 2008 be held in the basin since it is the area that will be affected by the outcome of the hearing. Ms. Daniel reported that she attended the public meetings of the Republican River Water Conservation.

Mr. Max Smith reported for the **Southern High Plains Ground Water Management District** and stated that their area is similar to rest of the state. They had excellent wheat crop, fall corn and some milo, but the dry land crops didn't fair as well.

Commissioner Loose reported for the **North Kiowa-Bijou Ground Water Management District** and stated that they have worked with Melissa Peterson. Found wells in their basin have been taken out due to low water tables and they have not paid any taxes on the well. Now they want their wells back but they don't want to pay back taxes on wells.

Mr. Dave Dorn, from the **Upper Black Squirrel Creek Ground Water Management District**, reported that it's been dry with no noticeable moisture in a long time, the sod farmers are still irrigating and the corn has been harvested. They have seen increases in water levels and an increase in static levels in areas that were curtailed in the Cherokee Supreme Court case. The Board is working with Cherokee and reported that Cherokee is supportive to bringing a recharge facility to the north end of the basin. More determinations of water rights are being filed for a culmination of reasons.

There were no reports 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 Ken Knox came out to speak about the proposed rules for compact compliance. Mr. Murphy distributed a map of the Republican River drainage basin and a map of the area affected by curtailment rules. He reported on the Board's discussions regarding increasing the permanent retirement, and discussed the EQIP and CREP programs. The deadline for signup for the EQIP program is November 2 and there has been quite a bit of activity for applications at the NRCS office. The District is trying to find a way to keep the farmers in production. The main priority for the Water District is the approximately 10-mile compliance pipeline to bring water as close the state line of the North Fork as possible, which will result in delivery of approximately 15,000 acre-feet of water to the state line per year. The project is estimated around \$100 million and will be funded by revenues through fees, mill levy and low interest loans. Projections were performed by engineers using a model under different scenarios for cutting back or shutting down wells, and the only viable solution is to install the 36-inch, gravity-flowing pipeline to fulfill compact compliance obligations. The wells will pump about six to nine months, on a rotational basis, not year-round.

Old Business – None

New Business –

Legislation by Representative Looer regarding well ownership – Commissioner Kowalski suggested having the Commission endorse a Resolution supporting legislation by Representative Looer as follows:

“WHEREAS the Division of Water Resources needs timely and accurate data regarding water rights and well ownership in order to efficiently and fairly administer water rights and ensure that wells are properly constructed and maintained; and

WHEREAS that current data concerning well ownership is inadequate and a

substantial number of residential real estate transactions that transfer ownership of a well are not reported to the Division; and

NOW, THEREFORE, BE IT RESOLVED that this Commission endorses and supports the Track Residential Well Ownership Records Bill and instruct the Division of Water Resources and the Ground Water Commission staff to take appropriate actions to support the legislation as well.

DONE at the regular meeting of the Colorado Ground Water Commission, November 16, 2007, in Parker, Colorado.”

Mr. Wolfe clarified that the intent of this bill is to put the responsibility on the title company at the time of closing that the paper is completed and transmitted to the Division of Water Resources, and that the new owner has 60 days to get well late-registered if it is not already registered. Commissioner Coryell made a motion to pass a resolution to support Representative Looper's legislation; the motion was seconded by Commissioner Huwa and passed unanimously.

Presentation on potential amendment to the Ground Water Commission Rules to authorize compact compliance wells by Mr. Michael Shimmin – Mr. Shimmin explained the concepts regarding the rule amendment for allocating designated water via compliance wells and the pipeline for compact compliance. He has drafted language that would need consent from owners of wells within three miles of these compact compliance wells. New wells cannot be drilled after the compact settlement, however, there is an exception for compact compliance wells and they have to be approved by the compact administration. In addition, this has to be done without physically injuring existing water rights.

Mr. Steve Sims, representing the City of Wray, addressed the Commission. He stated that the Republican River Water Conservation District has done a good job enrolling farms in the CREP and EQIP programs, which amounts to about 35,000 acre-feet of pumping that is no longer occurring due to their efforts.

Mr. Shimmin requested that the Commission instruct the staff to commence a rulemaking and publish this proposal and start the administrative hearing process to have a formal rulemaking hearing at the Ground Water Commission meeting in February. Commissioner Loose reported that he is not opposed to this but views it from the perspective of a landowner and interprets it as a takings issue. Commissioner Coryell supports the rules as long as there is adequate protection for existing water rights. Commissioner Jaeger requested assurance that this will not result in injury prior to recommending that staff to go forward with the rulemaking. Commissioner Jaeger made a motion to move forward to instruct staff to begin drafting the rulemaking procedures and follow all the guidelines. The motion was seconded by Commissioner Huwa and passed unanimously.

Selection of meeting dates and locations for 2008. Ms. Ahrens reported that the dates for the 2008 meetings are: February 15, May 16, August 15, and November 21. The location of the August meeting will be determined at the May meeting. Commissioner Loose made a motion to hold the 2008 meetings at the Parker Water and Sanitation District, the motion was seconded by Commissioner Coryell and approved unanimously.

Next Meeting – February 15, 2008, at Parker Water & Sanitation District.

The meeting adjourned at 12:20 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "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