
MINUTES

FIRST QUARTERLY MEETING COLORADO GROUND WATER COMMISSION FEBRUARY 20, 2009

The First Quarterly Meeting of the Colorado Ground Water Commission took place on February 2, 2009, in Room 318, Centennial Building, 1313 Sherman St. Denver Colorado. Chairman Max Smith called the meeting to order at 10:00 a.m. Mr. Rick Nielsen called the roll and determined that a quorum was present. Commission members present were Grant Bledsoe, Carolyn Burr, Larry Clever, Dennis Coryell, Corey Huwa, Earnest Mikita, George Schubert, Doug Shriver, Max Smith, Alex Davis, Jennifer Gimbel and Dick Wolfe. Staff members present were Kevin Rein, Keith Vander Horst, Rick Nielsen, Chris Grimes, Justina Mickelson, David Keeler, Melissa Peterson, Megan Sullivan, Pat Kowaleski, A.G. and Devin Odell, A.G.

Approval of Minutes for Meeting of November 21, 2008 Chairman Smith asked if there were any corrections or additions to the Minutes of the regular November 21, 2008 meeting. Commissioner Coryell proposed a few corrections to the report on the Republican River Water Conservation District as presented by Stan Murphy.

Commissioner Shriver moved to approve the minutes as amended.
Commissioner Clever seconded the motion which carried unanimously.

Review and Approval of Agenda Items – the agenda was approved as proposed.

Report of the Executive Director by Dick Wolfe

Mr. Wolfe began his report by acknowledging the efforts of staff regarding the Republican River Compact compliance, specifically those working on the well measurement rules and testing verification with the March 1st deadline for compliance. He also acknowledged the efforts of private parties and staff working towards approval of the compact compliance pipeline, noting that few people see what goes on behind scenes.

Mr. Wolfe began his statewide updates with the Republican River Basin. On December 29, 2008, the Yuma County Water Authority PID closed on the purchase of the Colorado surface water rights in the Pioneer Ditch on the North Fork of the Republican. Discussions and negotiations of the past months seeking approval of the compliance pipeline became public in December. The proposal is being refined for submission to the technical officials from Kansas and Nebraska on March 2nd, to be followed in two or three weeks with a meeting to seek formal approval. It is hoped that a final decision will occur at this time. One reason that the meeting on the pipeline will be towards the end of March is because of an arbitration hearing between Kansas and Nebraska set to begin on March 9th and scheduled for two weeks. Though not a party, we are active participants.

In Water Division 2, the Arkansas River Basin, great progress is being made on the irrigation consumption rules. There is a meeting scheduled with the advisory committee to look at the final changes. Comments received from Kansas have been positive and ones that can be addressed. It is anticipated that the proposed consumption rules will be submitted to the Division 2 Water Court in the spring.

In Water Division 3, the Rio Grande Basin, the Water Court, remanded the Well Compliance Rules back for further work. This additional work was the reason for the creation of an advisory committee. Over one hundred and ten (110) people from the Basin were nominated to be on the committee. Of those, fifty-five (55) were appointed and the remaining were designated as alternates. It is expected that the first meeting will be in March. This is a large group, similar to the Arkansas Basin, that represents all interests in the basin.

In Water Division 4, the Gunnison River Basin, a final decree in the Black Canyon of the Gunnison case has been entered. At Mr. Wolfe's request Commissioner Davis briefed the Commission on the case. Ms. Davis said that it took two and one-half (2-1/2) decades and the efforts of sixty (60) people, in a room, for over a year, for the case to be resolved. Commissioner Davis believes that the ruling provides a meaningful right to the National Park Service to allow it to protect the Black Canyon, allows for the Aspinall project to operate and addresses the concerns of the other interested parties. She ended her remarks highlighting the disparity of the interested groups.

In Water Division 6, the White River Basin, Mr. Wolfe advised the Commission that the Shell Corporation has filed for initial water rights on the Yampa River as part of their oil shale activities. Their claim for 375 CFS and a 45,000 acre-foot reservoir is expected to receive a lot of opposition and scrutiny. There is the potential for energy development to need 400,000 acre-feet of water. It is of interest to the Commission because it deals with a statewide resource and efforts to fully develop our Colorado River appropriations.

In Water Division 7, the Animas and La Plata River Basins, the Animas and La Plata reservoir, begun in 1969, is built. It is now called Lake Nighthorse Reservoir. It is expected that the pumping station will be complete by April and that it will take two (2) years to fill the reservoir. By-pass flows and a desire to take water out of the river rather than the reservoir will lead to interesting administrative issues.

Mr. Wolfe next addressed personnel and budget matters. The Division remains under a hiring freeze by the governor. The Division has twenty-five (25) vacancies, two (2) of which are in the Republican River Basin. It is hoped that we can fill these position in the near future.

For the current fiscal year, the Division has been asked to cut over one million dollars from the budget. This is difficult because the Division is 90% funded from the general fund. These cuts have a direct impact on the Designated Basins because we were unable to fund the well measurement program on the Eastern Plains this year. For next fiscal year, starting July 1st, we have been asked to cut two and one-half (2-1/2) million dollars from our budget. In an effort to offset the general fund shortfall it has been proposed to raise the well permit, substitute water supply plan review and dam design review fees.

The Division is waiting for the legislature to appropriate the additional funding they have received to expand the satellite monitoring program.

He concluded his report by noting that the Division has proposed making all electronic data available on the internet. If approved they will need to surrender two (2) staff positions to make up for the loss in revenue received from the sale of this information.

There were no questions for Mr. Wolfe.

Chairman Smith called for agenda item no. 5, and opened the hearing on the request of the Republican River Water Conservation District for a variance to Rule 7.3, to allow the relocation of seven (7) permits over 300 feet to 15 existing well locations.

Commissioner Coryell recused himself from the discussion due to his involvement with the Republican River District. Commissioner Bledsoe also recused himself from the discussions.

Dennis Montgomery, attorney for the district, provided a map to the Commission showing the location of the seven (7) wells in question. Mr. Montgomery referred the Commission to the summary of the request as prepared by staff. He added that the permits in question were part of the original contract of the ground water rights for the pipeline. These permits were not included in the similar variance request last February because the consumptive use analysis had not been completed. He stated that there were no objections to the variance request as published. He concluded by reiterating the comments of Mr. Wolfe regarding the application for approval of the accounting procedures for the pipeline.

There were no questions for Mr. Montgomery.

Mr. Keith Vander Horst provided staff's position. He stated that the need for the variance is because the wells are being moved greater than 300 feet. All other changes will be done pursuant to the rules. This request is similar to the request submitted and granted in February 2008. Mr. Vander Horst said that allowing the request would make for more efficient construction and operation of the compliance pipeline. He also stated that there were no objections to the publication and that staff supports the variance request.

There were no questions for Mr. Vander Horst.

Commissioner Clever moved that the request of the Republican River Water Conservation District for variance for these wells to Rule 7.3 be approved.

Commissioner Mikita seconded the motion which carried unanimously.

Chairman Smith called for agenda item no. 6, and opened the hearing on the request of the Cherokee Metropolitan District for a variance to Rule 7.7, involving an application for a change in use of the well with permit no. 49988-F, to allow re-quantification and future use be based on standards other than historic depletion of the aquifer as determined under the provisions of Rule 7.10.

Commissioner Burr disclosed that her firm represents Rodney Preisser who holds an interest in the Sweetwater water rights. Commissioner Burr does not believe that this relationship will prevent her from making a fair decision in this matter.

Commissioner Clever disclosed that his company employs one of the objectors in this case. Commissioner Clever does not believe that this relationship will prevent him from making a fair decision in this matter.

Commissioner Davis disclosed that she represented the State Engineers office several years ago in a case against Cherokee but that she did not believe it would influence her on this matter.

Mr. Jim Culichia, attorney for Cherokee Metropolitan District, used a large aerial photograph display to show the Commission the boundaries of the District and the location of the wells owned by Cherokee. He explained how discharge of treated effluent into Sand Creek, outside of Black Squirrel District, is 100% depletion to the aquifer. He went on to show the location of the new waste water treatment plant and the pipeline to the re-charge ponds.

Mr. Culichia explained that the reason Cherokee was before the Commission is because staff determined that a change in water right to include augmentation was required. The purpose of this hearing is to request a variance to Rule 7 and the strict application of the ten (10) year historic average withdrawal in quantifying the water right allowed for the change application. If strict application is applied, the District will lose approximately 10% of its water right because the District has never pumped any of its wells to the maximum allowed. He provided a table of pumping for Cherokee Well No. 13, to show that it is capable of diverting its full decreed amount.

The District believes that it is a hardship, to lose part of its water right for the privilege of bringing water back into and recharging the Basin, 1000 acre-feet in the first years. He argued that the rules, as written, anticipate a change in use from irrigation to municipal use, not from municipal to municipal. The District would have no objection if the historic average withdrawal were to be charged against the new use. This is the first project of this kind and they think that the Commission should be encouraging projects of this nature. The District believes that strict application of Rule 7 discourages people from doing such projects.

Mr. Culichia concluded by saying that the Cherokee District wants to address only the variance request at this time.

Members of the Commission then questioned Mr. Culichia at length. Questions asked included the proximity of the recharge ponds to the lower end of the basin, who the benefactors of project would be, recapture of the recharged water, the size of the treatment plant, recharge ponds and

pipelines, the effect of the recharge on the water table, future operation of well no. 13 (the well in question), the status of the water as it relates to exportation, the effect water table fluctuations will have on future pumping abilities, the quality of the recharged water, historic average withdrawals, historic consumptive use, evaporative losses and terms of the original adjudication.

Mr. Hank Worley, attorney for the Farmer Family, an objector, used his map to show the Commission the location of the Farmer Family property and well locations at the Southern end of the Basin. He pointed out that the Cherokee well does not yet have a Final Permit and requested that the Commission, if the variance is granted, restrict withdrawals from this well to 1268 acre-feet. Mr. Worley went on to say that if the variance is granted and when combined with the replacement plan, Cherokee will be able to pump more of its first time alluvial water than it has historically and that will have a direct impact on the Farmer's water rights. They believe that Cherokee should be treated that same as any other water user that wants to effect a change of water right.

Mr. Worley called Mr. Farmer to testify. Mr. Farmer chronicled the development of the Farmer farm from 1950's to present. He explained land acquisition, irrigation practices, water development and use. He stated that there have been significant declines in the last nine (9) to ten (10) years. He concluded by saying that his concern is that any water Cherokee pumps is water that he cannot pump.

Mr. Farmer responded to questions by the Commission on topics such as water availability, well production, depths and yields.

Chairman Smith swore in Mr. Robert Longenbaugh, a witness for Mr. Farmer.

Mr. Longenbaugh provided his educational background and work history. Upon questioning by Mr. Worley, Mr. Longenbaugh provided his background with Designated Basins and Ground Water Law. He also stated that it has been known since the early 1960's that the Upper Black Squirrel Creek is over appropriated.

Mr. Longenbaugh proceeded to answer questions of Mr. Worley regarding the general hydrology of the Black Squirrel Basin since designation to the present using various hydrographs and data such as water level measurements. He explained how the lowering water table lowers the saturated thickness which results in a reduced yield from a well. Mr. Longenbaugh testified to his opinion of the effects of the recharge program on the water table and the pumping of Cherokee No. 13. He concluded by noting that the Farmer wells have final permits while Cherokee No. 13 does not.

The Commission members questioned Mr. Longenbaugh about his exhibits, saturated thickness and pumping abilities and if he thought well administration would raise the water table.

Mr. Keith Vander Horst provided staff's analysis. He reminded the Commission that the well is decreed for municipal uses and that augmentation is a use that does not fall under the umbrella of municipal uses. He further advised the Commission that Cherokee cannot apply for a new water right for augmentation purposes because the Basin is over appropriated. Therefore they

need to get a change in water right on existing uses which is analyzed under Rule 7. Rule 7 calls for ten (10) years of historic use to compute the average depletions to the aquifer. Staff does not believe that Cherokee should be given any consideration not given to any other applicant going through a change in water right analysis.

Staff believes that, with the replacement plan as described, these wells could, in fact hurt more in the future than in the past. This is possibly due to an increase in ability due to a rise in the water table or because the wells may be operated to capacity in the future. The reason the well was not operated to capacity in the past is not an issue, when you go through a change in water right, what you did in the past limits what you can do in the future.

The proposal by Cherokee to limit the recharge/replacement use to the historical rather than limiting the first or municipal use appears to be a roundabout way to get two water rights. Setting up two (2) standards or levels of use is in effect a way of granting two water rights. Initial or secondary, it is all one (1) right and should be viewed as such.

Mr. Vander Horst addressed questions and concerns of the Commission touching on dominion and control, water consumption and accounting of the water pumped.

Commissioner Bledsoe confirmed the issue before the Commission as being the requested variance to Rule 7.7 and whether Cherokee can keep the decreed appropriation or if they are limited to the historic average.

Mr. Culichia, in his rebuttal testimony, stated that they could have fully consumed the water by locating the project outside of the Basin. He stated that the goal of the project was to bring water back into the Basin, a proactive solution to halt declines in the water levels. He admitted that it is a change in water right but the first use is not changing, it is the reuse that is changing. Mr. Culichia reasserted his claim that the rule was not written for this type of change and that an applicant should not be penalized for being proactive. Mr. Culichia pointed out that studies have allocated 20% of the pumping in the Basin to Cherokee and 80% to the irrigators. Referring to charts provided by Mr. Longenbaugh he stated that the great declines in the Basin occurred before Cherokee started pumping. He concluded by asking for the Commissions assistance in being proactive.

Chairman Smith closed the hearing and opened Commission discussion.

Commissioner Clever opened the discussion by stating that despite all the testimony presented, all they were to decide was if Cherokee would be allowed to keep the decreed right of 1268 acre-feet a year or if they would be held to the average historic depletions of 1145 acre-feet as set forth in the Rules. He went on to say that when he wants to change a water right his attorney reminds him to get the average up. Commissioner Clever finished by stating that he does not believe the variance should be granted.

Commissioner Huwa applauded Cherokee for their efforts to get water back. He disagrees with their statement that they would be forfeiting their water right. He stated that farmers and

irrigators are forfeiting their water right because they cannot pump year round. He said that the Basin should live or die as a whole. He agrees with Commissioner Clever the variance should not be granted.

Commissioner Shriver moved to deny the variance.

Commissioner Schubert seconded the motion. The motion passed with Commissioner Burr voting nay.

Chairman Smith called for agenda item no.7, a hearing on Craig Kroskob's and Richard H. Uhrick's appeal of the initial decision of the Hearing Officer denying petitions to amend the boundaries of the Kiowa-Bijou Designated Ground Water Basin.

Mr. Tom Grant, attorney for the applicants, opened his comments by reading the definition of designated ground water from staff's brief. He proceeded with an interpretation of the tests for designated ground water and noted that the Hearing Officer determined that his clients had met the second part of the second qualifying prong, that ground water withdrawal is the principal water source for a period of fifteen (15) years. Mr. Grant discussed, at length, that portion of the prong dealing with adjacency to a nearby flowing stream, concluding that the initial study of Kiowa-Bijou Basin and the depiction by the U.S.G.S that Sand Arroyo is an intermittent stream demonstrate that the wells in question are not adjacent to a flowing stream, thereby meeting both aspects of the prong for designating the ground water.

Mr. Grant next discussed the interpretation and use of the de minimus impact as established in the 2006 Gallegos case. He stated that de minimus impact is not a prerequisite in deciding designation but is the responsibility of the surface right holder to demonstrate after designation.

Mr. Grant concluded by restating that the water in question meets the requirements to be considered designated ground water, cited statute in saying that nothing should preclude designation if the criteria are met and asked the Commission to follow the law as set forth in statute and reverse the decision of the Hearing Officer.

Commission members questioned Mr. Grant on the basis for his appeal, proximity requirement to Basin boundaries for lands to be included and what new information is being provided to allow for the adjustment of Basin boundaries.

Mr. Mike Shimmin, representing the Bijou Irrigation Company and Bijou Irrigation District, addressed the Commission. Mr. Shimmin opened his comments by describing the District and its purpose, providing water for direct irrigation and augmentation. He stated that the District is opposing the inclusion because they believe that their water rights will be injured and proceeded to describe how. The District also believes that the reason for the inclusion petition is to avoid the need for augmenting the depletions caused by the wells. Mr. Shimmin went on to state that neither of these wells is located in the Kiowa or Bijou Creek alluvial aquifers. They are located in the Sand Arroyo aquifer which is separated from Kiowa and Bijou Creeks by a shale ridge, the reason they were not included in 1966. Mr. Shimmin advised the Commission that the 1969 Water Rights Determination Act was adopted after the existing basin was designated. He

concluded by stating that the applicants had failed to meet the requirements for designation and asked the Commission to affirm the decision of the Hearing Officer.

Commission members questioned Mr. Shimmin on the use of de minimus standards at the formation of a basin and basins with more than one (1) alluvial source

Mr. Andrew McClary, representing for the North Kiowa-Bijou Ground Water Management District opened his address to the Commission by stating that his clients are in complete agreement with the arguments put forth by Mr. Shimmin. He further advised the Commission that the wells in question have been adjudicated as tributary water and that the owners have for a number of years gone through GASP or any number of augmentation plans, which the District believes to be acknowledgment that they are tributary wells. He went on to explain the concept of Judicial Estoppel which deals with the preclusion of inconsistent positions. He said that after what has Mr. Kroskob's and Mr. Uhrich's wells have been red tagged, meaning that they cannot pump because they are tributary and do not have augmentation water. He put forth that they now want to become part of the basin so that they do not need to augment their wells.

Mr. Devin Odell attorney for the Commission staff addressed the Commission. He stated that staff believes the Hearing Officer properly rejected the petition because the petitioners failed to support their petition with the information required to make factual findings that would have allowed the Hearing Officer to grant the petition. He agreed with Mr. Shimmin regarding who has the burden of proof. Mr. Odell said that the Gallegos case applies in this matter because it sets forth the principal that the party desiring to change the boundaries of a Designated Basin has the burden of proof. In addressing the question of Commissioner Davis regarding the statutory requirement to consider de minimus affects in designating ground water he stated that it is a constitutional matter because the constitution sets up a priority system and designated ground water is removed from that priority system. Water can only be designated if the affect of its removal from the priority system is so little as to not be worth worrying over. Mr. Odell pointed out that the petitioners own evidence indicates that the Sand Arroyo is adjacent to the South Platte River. He concluded by advising the Commission that staff's analysis showed that operation of these wells do have significant depletions to the South Platte River and asked the Commission to affirm the decision of the Hearing Officer.

Mr. Tom Grant gave brief rebuttal testimony. Regarding Mr. Shimmin's reference to the 69 Act he stated that the Act deals with tributary water making the assumption that the water is tributary but his clients are arguing that it is not and should be designated ground water. He revisited his arguments on adjacency and burden of proof and addressed the estoppels and res judicata arguments of Mr. McClary, disagreeing with them. He concluded by saying that his clients became members of GASP because it was economically more feasible but that they always believed they should be in the Designated Basin and now that they cannot pump their wells they want to make things right.

Chairman Smith closed the hearing and opened the floor to discussion of the matter by the Commission.

Commissioner Davis commented that the plaintives appeal was on the facts but their arguments were based on the law. She said that they had failed to provide anything showing that the weight of the evidence is sufficient to contradict the decision of the Hearing Officer.

Commissioner Huwa moved to affirm the decision of the Hearing Officer.

Commissioner Clever seconded the motion, which carried unanimously.

Chairman Smith called for agenda item no. 8, a hearing on the appeal of the North Kiowa-Bijou Ground Water Management District's appeal of the Hearing Officer's orders denying the NKBGWMD'S motion to set aside Final Permit Nos. 21152-R and 21152-S owned by Dale L. & Bonnie L. Arnold, case nos. 08-GW-070 & 08.

Mr. Don McClary, attorney, represented the management district. He opened his comments by stating he had filed a motion to vacate the hearing. He then provided a short history of the circumstances surrounding the appeal and concluded by asking the Commission to approve his motion because the appeal is now premature.

Mr. Matt Poznanovic appeared on behalf of Dale and Bonnie Arnold. He stated that the Commission needs to hear the appeal because the issue is whether the District, after entering into a settlement agreement with the Arnolds, gets a second chance to object to their Final Permits. He believes that the issue raised by Commissioner Mikita regarding the original existence of the wells was never raised by the District and that is why they want to reenter the case. Mr. Poznanovic went over the history of the case, the events surrounding the settlement agreement and the agreement itself before asking the Commission to order the Final Permits be issued and short of that direct that the District be barred from any further action on these permits.

The Commission received answers to their questions about the existence and beneficial use of the wells and exactly what was the Commission being asked to do.

Mr. Devin Odell presented staff's position on the matter. He asked for a ruling affirming the July 17th order of the Hearing Officer denying the motion to reinstate the objection and denying the application for reconsideration. The basis for this request is that the District unambiguously withdrew its objection.

Mr. Don McClary came before the Commission claiming fault for the withdrawal of the objection. He proceeded to describe the Districts objection process and reasoning. He went onto say the replacement wells were constructed by misrepresentation. He also stated that since there was a new publication they were allowed to object again. Mr. McClary quoted from a letter of staff to him and the Arnold's regarding the issuance of the replacement permits and potential issuance of Final Permits. He concluded by asking for the consideration of the Commission

Chairman Smith closed the hearing.

Mr. Pat Kowaleski, conflicts counsel, advised the Commission that he believed they should handle the motion to vacate before discussing the appeal.

Commissioner Burr moved to deny the motion to vacate the hearing.

Commissioner Davis seconded the motion. The motion carried unanimously.

Commissioner Burr moved to affirm the July 17th and 31st orders of the Hearing Officer.

Commissioner Clever seconded the motion. The motion carried unanimously.

Chairman Smith called for agenda item no. 9, a hearing on staff's appeal of the Hearing Officer's decision ordering six well permits owned by Freund and Co. to be cancelled and of no force or effect, case nos. 07-GW-27, 28 and 29 and 07-GW-34, 35, 36 and 37.

Mr. Devin Odell, attorney for staff, stated that staff agrees with the Findings of the Hearing Officer except for the decision being based on the "burden of proof". Staff contends that according to statute, owners of pre-1965 wells do not need to meet a "burden of proof", final permits for these wells are issued based on the information in the file. He also stated that staff agrees with the district, that the issue of abandonment should be considered where non-use and intent to abandon are demonstrated. Mr. Odell proceeded to brief the Commission on the history of the wells in question, on the issues of non-use and intent to abandon based on information in the file. He asked the Commission to affirm the Hearing Officer's decision but to have it based on the issue of abandonment rather than "burden of proof".

Mr. Odell answered queries from the Commission on statutory interpretation for processing pre-1965 permits, well owner response, non-use of a water right and intent to abandon

Mr. Don McClary, attorney for the management district, cited statute, administrative procedures rules and Commission Rules to support his client's opinion that the Hearing Officer properly cancelled the well permits for the well owner's failure to respond to notice.

Mr. Robert Loose, Vice President of NKBGWM, stated that there are 926 well permits in the basin, all prior to 1965. He stated that it is the mission statement of the basin to have accurate records and that the directors go out and meet with the well owners and staff to get the permits accurate. He asked if the directors should tell the people to disregard what the state sends them because they will give you the permit, it is in their rules or do they continue to try and get accurate records? He stated that Freund has planted the whole farm into native grass and that the last sprinkler fell down last October.

Mr. Mike Shimmin, attorney without party status, addressed the Commission. He provided a short history of legal decisions, the statutory provisions as enacted followed by his interpretation of how the statutes are intended and enforced.

Mr. Devin Odell, attorney for staff, stated that staff agreed with Mr. Shimmin on his interpretation. However, in this instance there was sufficient evidence to identify the elements for final permit.

Mr. Pat Kowaleski, conflicts counsel for the Commission, restated and staff agreed, that staff agrees with the decision of the Hearing Officer but believes that the basis of the decision should be abandonment rather than failure to meet burden of proof.

Mr. Keith Vander Horst, staff, advised the Commission of the procedures that staff uses in processing a well permit for final permit. He stated that when processing final permits staff is led by statute because the Commission Rules do not address final permits.

Mr. McClary addressed the Commission and stated that what they are dealing with is a hearing procedure not a permitting procedure.

Chairman Smith closed the hearing.

Commissioner Coryell asked conflicts counsel about Mr. McClary's final comments. Mr. Kowaleski responded saying that he understood the comments to mean that the Hearing Officer has the authority to rule as he did for non participation. He went on to state the Commission is being asked to set a policy decision on an individual case, that will have impacts in the future, without an opposing party to say why it is wrong. In the context of this case, staff is saying they want to handle similar situations in the future based on the concept of abandonment. If the Commission approves their appeal you will be giving direction that this is how you want them to proceed.

Commissioner Burr said that this case properly sets up the issue for a non contested case and thus the issue is not properly before the Commission.

Commissioner Davis agreed with Commissioner Burr and suggested that maybe the Commission should look at whether the principals of abandonment apply to water rights that have not received a final permit or if there is another process that should be followed.

Commissioner Coryell moved to affirm the Hearing Officers decision.

Commissioner Mikita seconded the motion.

Commissioner Davis suggested amending the motion to exclude paragraph 20.

Commissioners Coryell and Mikita accepted the proposed amendment to the motion. There being no further discussion, the motion passed unanimously.

Chairman Smith called for agenda item no. 10, the proposal by the Southern High Plains GWMD that the Commission initiate the process to amend Rule 5.2.3 to allow the aquifers in the Southern High Plains Designated Basin to be administered as a single geohydraulic system.

Chairman Smith presented to the Commission that the Southern High Plains has documentation from the McLaughlin study in 2000 that the aquifers are currently acting as one system. He also stated that they have conferred with staff and staff has no concerns.

Commissioner Clever moved to direct staff to initiate the process to amend Rule 5.2.3 to allow the aquifers in the Southern High Plains Designated Basin to be administered as a single geohydraulic system.

Commissioner Shriver seconded the motion which passed unanimously.

Commissioner Smith then called for agenda item no. 11, staff report.

Mr. Keith Vander Horst, staff supervisor, referred the Commissioners to the report in their packet. He addressed the final permit project, noting that staffing and other issues, as evidenced by the hearings, accounted for the low numbers. Mr. Vander Horst noted that there were some enforcement actions in the Northern High Plains. Under miscellaneous items he said that the amended Rule 7.7.4 became effective December 30th and that the State Engineer had signed the new policy, 2009-1, dealing with the evaluation of alternate points of diversion wells in Designated Basins. Mr. Vander Horst reminded the Commission that the Rules and Regulations for the measurement rules in the Republican River Basin became effective on December 1st, and that a new team, led by Megan Sullivan, was formed for enforcement of those rules. He praised Chris Grimes, Dave Keeler and Devin Ridnour on the effort they put in on developing the reporting forms that got the plan going. He reported that with Megan Sullivan's promotion, Melissa Peterson left the Designated Basins team and moved to Team 2, 3 and 7.

Ms. Megan Sullivan, Team Leader for the Republican River metering program, addressed the staffing concerns of her team. She noted that, due to the Governor's hiring freeze, there are two vacancies. Ms. Sullivan noted that as the team leader position is based in Denver, Dave Keeler has accepted the role of field supervisor for daily operations. Ms. Sullivan also praised Mr. Grimes, Mr. Keeler and Mr. Ridnour for their efforts in getting the program operational. She stated that the next phase is for staff to field locate all wells subject to the program with a GPS location and install identification tags.

Chairman Smith called for agenda item no. 12, the report of the Attorney General. Mr. Devin Odell referred the Commission to the report in their packet. He advised them that the

Connolly case had been settled and that he did not included four cases for a change in water right by PV-II that are in the Hearing Officers Report.

Chairman Smith called for agenda item no 13, the management district reports.

Mr. Nate Midcap, reporting for the **Marks Butte, Frenchman, Sandhills and Central Yuma GWMD's**, reported a dry winter until a week ago when they received about four (4) inches of wet snow. Mr. Midcap said that he had received a lot of calls for inactivation of wells because meters were not yet installed.

Mr. Jack Dowell, reporting for **W-Y GWMD** updated the Commission on the weed management in the Republican. They have cleared 69 acres of Russian Olive and Salt Cedar and have 90 more to go. They have determined that there are 351 acres infected with Russian Olive and Salt Cedar. Mr. Dowell reported that the chemigation systems have been repaired and that all farmers are working on either getting their wells metered or having a PCC test conducted.

Commissioner Clever said that beetles work well on the Tamarisk. They are cheap but do not work on Russian Olive.

Deb Daniel reported for **Plains and East Cheyenne GWMD's**, reported that it has been very dry in her districts, with the Plains District receiving no more than 0.65 of an inch of moisture and less than a half inch in the East Cheyenne District. The dry land wheat is fair but needs a drink. She thanked Mr. Wolfe for his efforts in writing the letter on the Republican River pipeline, for allowing her districts to have a voice in the issue and for being the key note speaker at the Water Preservation Conference sponsored by the Plains GWMD in Burlington. Ms. Daniel reported that she has been busy testing wells and verifying totalizing flow meters she also regrets that the static water level measurement program was not funded this year. She has been working with several individuals on applications to commingle their wells. She concluded noting that the East Cheyenne GWMD was considering having all wells with a yield greater than 50 GPM install totalizing flow meters or have a PCC calculated.

Max Smith reporting for the **Southern High Plains** remarked that the management district has elected to proceed with the static water level measuring. He also stated that the district is dry and unusually warm.

There was no report for the **North Kiowa-Bijou GWMD**.

There was no report for the **Upper Black Squirrel Creek GWMD**.

There was no report for the **Upper Big Sandy Creek GWMD**.

Cory Huwa reporting for **Lost Creek GWMD** said that the District has received a \$160,000 grant to conduct a study regarding the feasibility of using the basin for water storage.

Stan Murphy, reporting for the **Republican River Water Conservation District** brought to the attention of the Commission a situation concerning the metering requirements. When a farmer has entered into a contract with CREP to retire his well, he has 24 months to apply water to the

land for the establishment of native grasses. It can cost up to \$1,000.00 to install a meter on a natural gas pump. Mr. Murphy informed the Commission that in the past four years the District has, through the EQUIP program, permanently retired 11,000 acres and temporarily retired 5,000 acres. Through the CREP program they have permanently retired 20,000 acres. These 31,000 acres of permanent retirement make up over 5% of the entire irrigation in the basin. Even with this, there has been no impact on the river because of the lag effect. Mr. Murphy reported that because the district thinks conservation is so important they are applying for an AWEPP, Agricultural Water Enhancement Program, with the NRCS. The District has committed one million dollars this program and at \$390 per acre they should be able to retire 2500 acres. They continue to work with the CREP and EQUIP programs. He concluded thanking the efforts of those involved with getting approval for the pipeline.

Commissioner Davis advised the Commission to pay attention to proposed bills that may affect the CWCB funding because if the funding is reduced so will be the projects that the CWCB can approve.

Under new business the location of the next meeting was discussed. Secretary Nielsen advised the Commission that the Town of Parker has offered the Commission the use of a room in the Town Hall at no cost, if they so desired. The Commission decided to hold their next meeting in Parker.

There being no further business the meeting adjourned.

Respectfully submitted,



Richard A Nielsen, P.E.

Secretary to the Ground Water Commission