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## MINUTES

### **FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION NOVEMBER 20, 2009**

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The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 20, 2009, at Castle Rock Town Hall, 100 N Wilcox, Castle Rock, Colorado. Chairman Dennis Coryell 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 Carolyn Burr, Larry Clever, Dennis Coryell, Earnest Mikita, George Schubert, Doug Shriver, Dick Wolfe and Jennifer Gimbel. Staff members present were Keith Vander Horst, Rick Nielsen, Chris Grimes, David Keeler and Jay Bloomfield. Also present were Jody Grantham, Hearing Officer, Pat Kowaleski, A.G. for the Commission and Jennifer Mele, A.G. for staff.

**Review and Approval of Agenda Items** – Chairman Coryell suggested amending the agenda to include item 6(a), a proposal by the Yuma County Water Authority to support legislation by Senator Greg Brophy to amend statutes regarding “Altering the boundaries of Designated Ground Water Basins”. Mr. Coryell also suggested amending item no. 7, Staff Activity Report, to recognize an update on the Republican River Administration team by Chris Grimes.

Commissioner Mikita moved to approve the agenda as amended.  
Commissioner Schubert seconded the motion which passed unanimously.

**Approval of Minutes for Meeting of August 21, 2009** Chairman Coryell asked if there were any corrections or additions to the minutes. Commissioner Clever noted the absence of his name as being in attendance and Commissioner Gimbel noted the misspelling of her name. There being no further corrections,

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

#### **Report of the Executive Director by Dick Wolfe**

Mr. Wolfe opened his remarks by addressing the Republican River drainage. Settlement discussions with Kansas and Nebraska over the pipeline and augmentation plan continue. They are close to agreeing on the arbiter. The hearing scheduled in early February may need to be moved back a few weeks depending on when the final selection is made. He advised the Commission that stream flow at the Binkelman gage has picked up to 15cfs and that he has requested the release of additional waters from Bonny Reservoir.

In Water Division 2, the Arkansas River Basin, Mr. Wolfe reported that the proposed Irrigation Improvement Rules had been submitted to the Water Court in September and that there had been 3 or 4 statements of opposition. He believes that the trial should be late next year. Mr. Wolfe also noted that additional information is available on the Division of Water Resources web site.

In Water Division 3, The Rio Grande Basin, Mr. Wolfe reported good progress in the monthly meetings with the advisory committee on the Well Compliance Rules. He also reported that the second leg of the trial on sub-district one is complete. He stated that the judge has been paying close attention and that a ruling may come by the end of the year.

Mr. Wolfe updated the Commission on the Produced Water Rules. He stated that this set of Rules is also moving along at a fast pace. There is an eight (8) day hearing set to begin on December 2<sup>nd</sup> for those wells producing coal bed methane and a ten (10) day hearing has been scheduled for all other wells beginning January 10th. Mr. Wolfe advised the Commission that there have been seventy (70) filings for party status.

Mr. Wolfe concluded his report by addressing budget and personnel issues. He advised the Commission that \$800,000 needs to be cut from next year's budget. He reported that of the existing thirty (30) vacancies six (6) will need to be made permanent unless alternative funding can be located. There is legislation proposed to use the severance tax as one possible source of alternative funding. Mr. Wolfe closed by informing the Commission that the CWCB is also seeing a significant fiscal impact.

**Chairman Coryell called for agenda item no. 5**, being a petition by the Upper Big Sandy Ground Water Management District to initiate rulemaking to amend Rule 5.2.7.1, to redefine the extent of the alluvial aquifer in the Upper Big Sandy Basin, and to amend Rule 5.2.7.2 so as to determine that the alluvial aquifer in the Upper Big Sandy Basin is over-appropriated.

Mr. Scott Krob, attorney for the District addressed the Commission. He informed the Commission that the existing alluvial boundaries are based on a 1946 map. Mr. Krob stated that the District's petition is based on a 2009 study conducted by Martin and Wood who found fingers of alluvial material not previously identified. The 2009 study also found that the basin loses 2,090 acre-feet of water annually in a normal year. In a dry year the loss is 5,590 acre-feet and in a wet year there is a net gain of 7,510 acre-feet. However, the study found that if all wells were used at their permitted levels the basin would lose 10,000 acre-feet annually. The management district is therefore seeking to amend the Rules to redefine the extent of the alluvial aquifer and declare the Basin as over appropriated based on the 2009 Martin and Wood study.

Mr. Kowaleski advised the Commission that they are not taking any substantive testimony at this time. That their only decision is whether or not to accept the petition and send it to the Hearing Officer for fact finding.

In response to a question from Commissioner Burr, Mr. Dave Tousig stated that the Basin boundaries are not being adjusted.

Mr. Keith Vander Horst for staff addressed the Commission. He stated that though the staff geologists have some questions on the boundaries of the alluvial aquifer, the evidence submitted indicates that the process should move forward.

Commissioner Clever moved that the matter proceed to rule making with the Hearing Officer conducting fact finding.

Commissioner Shriver seconded the motion which passed unanimously.

**Chairman Coryell called for agenda item no. 6**, being a petition by the Upper Big Sandy Ground Water Management District to correct clerical errors in the Commission's Final Order and Decree forming the Upper Big Sandy Ground Water Management District.

Scott Krob, attorney for the District addressed the Commission. He informed the Commission that the 2009 Martin and Wood study showed that the Division boundaries within the Basin are not consistent with the Basin boundaries. There are some sections outside of the Basin that are identified as being within a Division. He said that this action is only to clarify the Division boundaries and that the Basin boundaries are not being amended.

Mr. Pat Kowaleski advised the Commission that the matter does not appear to require a vote of the people but that a public hearing would be appropriate. He further said that the Hearing Officer is not needed in this matter.

During discussion it was brought up that though procedures were followed in 1994, there is no order of the Commission expanding the boundaries of the District to match the 1988 expansion of the Basin.

Mr. Kowaleski advised the Commission that acknowledgment of the new boundaries would be an administrative or procedural process and that again a public hearing before the Commission would be advisable.

Commissioner Clever moved that the petition be set for a public hearing.  
Commissioner Burr seconded the motion which passed unanimously.

**Chairman Coryell called for agenda item no. 6a**, being a proposal by the Yuma County Water Authority to support legislation by Senator Greg Brophy to amend statute regarding "Altering the Boundaries of Designated Ground Water Basins", SB08-219.

Mr. Mike Shimmin provided members of the Commission with a copy of the proposed legislation. He noted that the proposed legislation was brought about by the 2006 Court decision in the Gallegos case. Essentially the changes to statute allow land to be removed from a Designated Basin only so long as the removal does not remove from a basin wells for which permits have been issued.

Commissioner Clever moved that the Commission support Senator's Brophy proposed legislation.  
Commissioner Schubert seconded the motion.

After discussion, Commissioner Clever amended his motion to be that the Commission supports the concept of the legislation. Commissioner Schubert agreed with the amendment which passed unanimously.

**Chairman Coryell called for agenda item no. 7**, the staff report.

Mr. Keith Vander Horst reviewed the staff activity report as submitted. He pointed out that staff is catching up on the backlog of determinations due to the hard work of Justina Farris. He stated that though the number of cases is large, most are not active due to appeals and there are a number that are resolved before going to a hearing. On enforcement matters, Mr. Vander Horst noted that a number of violations are being resolved because of cooperation by the well owners. Mr. Vander Horst updated the Commission on the status of the Lost Creek and Upper Spring Creek petitions. The petition for Hay Gulch has been published with the fact finding hearing set for March and the rulemaking hearing set for the May meeting. The petition on the main stem has been published but the fact finding hearing is not yet set. The Upper Spring Creek petition is in publication.

Mr. Chris Grimes updated the Commission on the Republican River Measurement Program. He reported that with the addition of two new Water Commissioners the team is now fully staffed. Mr. Grimes advised the Commission that 3200 wells have their paper work in and that there are approximately 1000 remaining to account for. The Water Commissioners are going to concentrate on these 1000 wells and either get the PCC's/meter reports or tag them. He reported that the required annual pumping reports are being submitted. Mr. Grimes closed his report by informing the Commission that this year the Water Commissioners will begin to affix brass identification tags to well heads and get a GPS location for each well.

**Chairman Coryell called for agenda item no. 8**, the report of the Attorney General's Office.

Ms. Jennifer Mele reporting for the Attorney General's Office referred the Commission to her written report. She noted that the Cherokee hearing is set for January. She also informed the Commission of two motions filed by the Upper Black Squirrel GWMD in regards to Cherokee. First they are seeking a declaratory judgment regarding a stipulation in an earlier case dealing with return flows and recharge to the alluvial aquifer. They are also seeking a preliminary injunction on the same matter prior to a ruling on the motion.

**Chairman Coryell called for agenda item no. 9**, the Management District Reports.

Mr. Nate Midcap, reporting for the **Marks Butte, Frenchman, Sandhills and Central Yuma GWMD's**, reported that his districts have received a lot of moisture this year and that the moisture and lower temperatures have delayed the corn harvest and contributed to a problem with mold on the corn. Mr. Midcap concluded his report by thanking Mr. Wolfe for finding the money to fully fund the static water level measurement program this year.

Mr. Roy Smith, reporting for the **W-Y GWMD** echoed Mr. Midcap's comments on moisture and the corn crops. He also noted that the yield is down for the irrigated land but up for the dry land corn. He concluded his report by indicating that he expects the water levels to be up this year due to the wet year.

There was no report for the **Arikaree GWMD**.

Mrs. Deb Daniel reporting for the **Plains and East Cheyenne GWMD's**, reported that the Plains District has received 25 inches of moisture this year with some areas receiving as much as 30 inches while the East Cheyenne District has received between 17 and 23 inches. Mrs. Daniel reported that the Plains District has received an application by the Town of Siebert to change the use of a well and to export water out of the basin. She is following up on a verified complaint of the irrigation of excess acres. The East Cheyenne District has sent their proposed measurement rules to their legal counsel for an opinion. She stated that the district has received only positive comments from the well owner's. Mrs. Daniel concluded her report by stating that the Plains and East Cheyenne districts support Senator Brophy's proposed legislation.

There was no report for the **Southern High Plains GWMD**.  
There was no report for the **North Kiowa Bijou GWMD**.

Mr. Dave Doran reporting for the **Upper Black Squirrel GWMD** noted that the snow was early this year. Mr. Doran detailed his efforts to have the board of directors for the Upper Black Squirrel District and the Cherokee Metropolitan District meet face to face to resolve the issues and limit litigation. The Cherokee Metropolitan District has decided not to meet.

Mr. Dave Tausig reporting for the **Upper Big Sandy GWMD**, commented on the abundance of moisture but expressed concern on the effects of El Nino in the coming months.

Mr. Andy Jones reporting for the **Lost Creek GWMD**, said that the corn harvest is just beginning. He noted a lot of activity going on in the basin due to the requests to change the use of wells and a replacement plan submitted by PV Water II and PV Water III. Mr. Jones stated that the District supports the proposed legislation of Senator Brophy.

Mr. Stan Murphy reporting for the **Republican River Water Conservation District**, noted that the addendum for the CREP program was approved. The initial CREP approval allowed for 30,000 acres to be retired, to-date 19,000 acres have been retired. The amendment to the CREP program allows credit for the land even if the water is being used for other purposes such as the Republican River augmentation plan. Mr. Murphy reported that the other changes to the plan are all favorable. He also provided an up-date on the pipeline project. Mr. Murphy concluded his report by reminding the Commission that when the wells and land are first enrolled in CREP that the irrigators have a period of time in which they may continue using the wells to establish a native grass cover before the well permits are canceled. That time period is now over and there are a lot of wells that will be canceled.

**Chairman Coryell called for agenda item no. 10, old business.** Mr. Wolfe updated the Commission on the resolution creating a task force dedicated to the sustainability of the Ogallala Aquifer in the Republican River Basin. He informed the Commission that he and Commissioner Davis had received comments from the Plains, East Cheyenne, W-Y, Central Yuma, Frenchman, Sand Hills and Marks Butte GWMD's all recommending that the task force not be formed. Based on these recommendations the Department will not move forward with the creation of the task force but will support existing entities in the endeavor.

**Chairman Coryell called for agenda item no. 11**, new business. Secretary Nielsen presented the Commission with meeting times and places for the year 2010: February 19<sup>th</sup> in Denver, May 21<sup>th</sup>, August 20<sup>st</sup> and November 19<sup>th</sup> in Castle Rock. The Commission determined that those dates are acceptable.

**Chairman Coryell called for agenda item no. 12**, public comment. There was none.

There being no further business the meeting adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard A Nielsen".

Richard A Nielsen, P.E.

Secretary to the Ground Water Commission