
MINUTES

FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION NOVEMBER 19, 2010

The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 19, 2010, 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 Grant Bledsoe, Carolyn Burr, Larry Clever, Dennis Coryell, Earnest Mikita, Max Smith, Virgil Valdez, Mike King, Mike Sullivan and Suzanne Sellers. Staff members present were Kevin Rein, Keith Vander Horst, Rick Nielsen, Chris Grimes, Jay Bloomfield, Ivan Franco, David Keeler and Tracy Kosloff. 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 – the agenda was approved as proposed.

Approval of Minutes for Meeting of August 20, 2010 Chairman Coryell asked if there were any corrections or additions to the minutes. There were none.

Commissioner Smith moved to approve the minutes.

Commissioner Burr seconded the motion which carried unanimously.

Report of the Executive Director by Mike Sullivan

Mr. Sullivan reported that transition teams for the new governor are active planning the first hundred days and preparing to interview candidates for cabinet level positions.

Mr. Sullivan then brought the Commission up to-date on the Republican River negotiations. He noted that though the arbiter determined that the pipeline proposal and model are appropriate he also determined that Kansas was not being unreasonable in their position. Consequently, Colorado has reached an agreement with Nebraska but remains in negotiation with Kansas over the accounting procedures.

There were no questions for Mr. Sullivan.

Chairman Coryell called for agenda item no. 5, being a Hearing on a petition by Lost Creek Land & Cattle Company, Equus Farms Inc., and Lost Creek Ground Water Management District to amend Rule 5.2.5.2 of the Rules and Regulations for the Management and Control of Designated Ground Water to make overappropriated that portion of the alluvial aquifer of the Lost Creek Designated Ground Water Basin located north of the line between Township 2 North and Township 3 North and west of the line between Range 61 West and Range 62 West, and to require replacement plans for new large capacity wells therein.

Mr. Mike Shimmin, representing Lost Creek Land and Cattle Company, addressed the Commission. He began by providing a history of the petition and the primary land holdings in this area of the basin. Mr. Shimmin proceeded to describe events surrounding the fact finding hearing held in September, noting that the objectors to the petition decided not to participate in the hearing. In his discussion surrounding the findings of fact, he noticed that the northern part of the Lost Creek main stem has a depletion factor of 79% in 100 years. This is twice the factor allowed for the Northern High Plains and also twice that of the Hay Gulch portion of Lost Creek that was determined over appropriated just this year. Mr. Shimmin closed his presentation by asking the Commission to adopt the findings of fact, the basis and purpose and the proposed rule change. The questions of the Commission centered on the status of pending well permit applications in the area and if the rule change, if adopted, would apply. Mr. Shimmin stated that in his opinion the amended rule would apply to all pending applications.

Mr. Mike Browning, representing Equus Farms, next addressed the Commission. He provided a short background on his client prior to seconding the comments of Mr. Shimmin. In closing, Mr. Browning asked the Commission to protect the resource for future generations.

Mr. Andy Jones, representing the Lost Creek Ground Water Management District advised the Commission that the District supports the petition.

Mr. Jeff Kahn, representing Morgan County Quality Water District, advised the Commission that his client supports the petition.

Ms. Jen Mele, representing staff, advised the Commission that staff supports the rule change.

There were no public comments and the hearing was closed.

Commissioner Clever moved to adopt the findings of the Hearing Officer, adopt the statement and purpose of the Hearing Officer and amend Rule 5.2.5.2 of the Rules and Regulations for the Management and Control of Designated Ground Water to make overappropriated that portion of the alluvial aquifer of the Lost Creek Designated Ground Water Basin located north of the line between Township 2 North and Township 3 North and west of the line between Range 61 West and 62 West, and to require replacement plans for new large capacity wells therein.

Commissioner Mikita seconded the motion which passed unanimously.

Chairman Coryell called for agenda item no. 6, the staff activity report.

Mr. Keith Vander Horst reviewed the staff activity report as submitted. He pointed out that with the additional staff, final permit activity has increased and good progress is being made. Mr. Vander Horst noticed that the case load before the Hearing Officer and the Commission has been rather static. He then addressed permit and enforcement activity before updating the Commission on the status of the fact finding hearing regarding the proposed Spring Creek Designated Basin.

There were no questions of Mr. Vander Horst.

Mr. Vander Horst concluded his report with a power point presentation on the Denver Basin aquifer system and how staff evaluates applications within the Denver Basin.

Chairman Coryell called for agenda item no. 7, 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, noting that she has been working on the Lost Creek petition, the Cherokee matters and the Gallegos case in Crow Creek. There were no questions of Ms. Mele.

Chairman Coryell called for agenda item no. 8, 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 no rain for 3 months, causing some sprinklers to run until the last two weeks. He noted that the dry weather has allowed for an easier harvest than last year and most of the crops are out. Mr. Midcap said that he is pleased with the new website. He informed the Commission that he has completed 602 chemigation system inspections with only 18 failures, all but 3 of which have been repaired. Mr. Midcap stated that his district boards continue to discuss conservation measures and that uncertainty over the Republican River settlement continues to bother the boards. He concluded his report questioning the status of the static water level measurement contracts.

Mr. Jack Dowel, reporting for the **W-Y GWMD** reported that his chemigation system inspections of 126 well are complete and that there was only 1 failure due to a malfunctioning back flow valve. He said that it has been hot and dry since the end of July. Mr. Dowel said that moisture is needed for the newly planted wheat. He stated that the South Fork phreatophyte eradication program is on hold while funding is located. They hope to start it up again in January. Mr. Dowel reported that CSU and the Appalachian State University are conducting a water and vegetation study on the South Fork regarding the Russian Olive, Salt Cedar and Cattail.

Mr. Rod Mason, reporting for the **Arikaree GWMD** said that his area has received sporadic rain this year. He reported that the board would like to see Bonny Reservoir drained and removed from the Republican River Compact.

Ms. Deb Daniel reporting for the **Plains and East Cheyenne GWMD's**, reported that her districts have had little moisture since the first of August and that everything is brown. She said that the dry land wheat is hurting. Ms. Daniel reported that her districts had an early harvest that was a record setter with good prices. She stated that a lot of wells are still running to help with the fall fertilizer application. She issued 23 repair orders on 240 chemigation systems. Mrs. Daniel reported that farmers in the East Cheyenne district have been installing totalizing flow meters. She concluded her report by addressing the conservation advantages of aqua view technology.

Mr. Max Smith, reporting for the **Southern High Plains GWMD** stated that though most of the dry land corn burned up his area had an above average harvest. He reported that the grain crops, especially the milo were abundant.

Mr. Robert Loose, reporting for the **North Kiowa Bijou GWMD** reported that crop yields were down 20% due to the lack of moisture. He thanked Mr. Grimes for his enforcement efforts in the basin and concluded his report saying that most of the Districts work is now related to domestic wells.

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

Mr. Dave Tausig reporting for the **Upper Big Sandy GWMD**, reported that their lack of moisture has affected the cattle ranchers and kept them from weaning the calves. He advised the Commission that a rough draft of the new District rules has been forwarded to staff for comments.

Mr. Tom Sauter reporting for the **Lost Creek GWMD**, thanked the Commission for their action on the rule amendment. He said that his district, like all others has been dry.

Mr. Stan Murphy reporting for the **Republican River Water Conservation District** reported that the district had acquired two more surface water rights and continues to look for more. He noted that the board needs to decide soon if it will begin construction of the pipeline prior to any agreement on the proposal because the funding may be lost. Mr. Murphy discussed the District's proposal to amend the CREP program to allow for the enrollment of the pipeline wells and to allow the land associated with those wells to be planted to grass and still use the water in the pipeline. Concerns of the residents in the target area about the amendment have led the board to modify the proposed program by adjusting the number of acres involved and lowering the reimbursement rate. The board is listening to the citizens. He concluded his report by announcing his retirement.

Chairman Coryell called for agenda item no. 9, old business being the petition by the Gallegos's to de-designate portions of the Upper Crow Creek Basin, case no. 03-GW-06. Mr. Pat Kowaleski, conflicts council for the Commission, briefed the Commission on the matter. He stated that it was his opinion and the opinion of staff that the petition met all the criteria and that it should be published and sent to the Hearing Officer. He also noted that there had been a petition to dismiss the matter and that Mr. Andy Jones would like to address the Commission on the matter.

Mr. Andy Jones, representing several well owners in the Basin addressed the Commission. He provided a history of the case, touched on the deficiencies he believes are present in the petition and ended in a request that the Commission hear his associate on the merits of their petition.

Mr. John Justus, representing the Gallegos', stated that the motion to dismiss should be denied in whole. He believes that the motion to dismiss is in error on several matters and that the alternate proposal, that the Commission decide on the petition now, is inappropriate because the Commission needs time to consider the pleadings of both sides. He believes that the petition to de-designate should move forward to the Hearing Officer.

Ms. Jen Mele, representing staff, advised the Commission that staff believes that this matter should be placed before the Hearing Officer, that it is the role of the Hearing Officer to address these matters.

Mr. Pat Kowaleski summarized the positions just presented to the Commission.

Commissioner Clever moved that the petition to de-designate be published and that the petition and the motion to dismiss go before the Hearing Officer.

There was no second, the motion failed.

Commissioner Burr moved to hear the motion to dismiss today.
Commissioner Smith seconded the motion which passed by voice vote.

Commissioner Davis recused herself from the matter.

Mr. David Jones, representing the owners' of wells in the Basin that would be affected by the petition, addressed the Commission. He stated that his clients are opposed to the de-designation because their wells would be excluded from the Basin and would become subject to curtailment by the State Engineer. He told them that the standard required for the petition to succeed was set forth by the Supreme Court, which said that the petitioner must present evidence not available at the original designation hearing. He further stated that the purpose of this hearing is to decide if the applicant has that new information or not, not to interpret that information. Mr. Jones stated that the claimed new information, the narrowing and thinning of the aquifer, is information contained in the report used in the designation hearing and as such is not new but simply a reinterpretation of the same information.

Mr. John Justus, representing the petitioners, advised the Commission that his clients are the owners of surface water rights dating back to 1895, rights that have not been met for the past 10 years. He detailed the actions taken by the Gallegos family as they tried to maintain the surface water rights. Mr. Justus stated that the new evidence was the inability for the Gallegos' to obtain their surface rights, a new alluvial well field in Wyoming and the effect of the "alluvial neck" (narrowing and thinning of aquifer) at the Gallegos diversion structures. He concluded saying that the Gallegos must have the opportunity to present their case.

Ms. Jen Mele, representing staff, stated that the new information alleged in the petition to de-designate needs to be examined by a fact finding body and urged the Commission to deny the motion to dismiss.

Mr. Pat Kowaleski, conflicts council, provided the Commission with his comments that mirrored those of staff.

Commission Burr moved to deny the motion to dismiss, remand to the Hearing Officer and proceed to publication.

Commissioner Clever seconded the motion which passed unanimously.

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 18th in Denver, May 20th, August 19st and November 18th 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