
MINUTES
FOURTH QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION
NOVEMBER 18, 2011

The Third Quarterly Meeting of the Colorado Ground Water Commission took place on November 18, 2011, 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. Richard Nielsen called the roll and determined that a quorum was present. Commission members present were Grant Bledsoe, Carolyn Burr, Dennis Coryell, Corey Huwa, Earnest Mikita, George Schubert, Max Smith, Virgil Valdez, Mike King, Dick Wolfe and Suzanne Sellers. Staff members present were Kevin Rein, Keith Vander Horst, Richard Nielsen, Chris Grimes, Jay Bloomfield, Justina Farris, Ivan Franco, David Keeler, Matt Sares and Ralf Topper. Also present were Jody Grantham, Hearing Officer, John Cyran, A.G. for the Commission and Jennifer Mele, A.G. for staff. Members of the public were also present.

Review and Approval of Agenda Items, Item no. 5, presentation by Matt Poznanovic regarding the Final Permitting of municipal wells was removed and a discussion on “vendetta calls” was added under new business.

Commissioner Valdez moved to accept the amended agenda.
Commissioner Burr seconded the motion which carried unanimously

Approval of Minutes for Meeting of August 19, 2011, Chairman Coryell asked if there were any corrections or additions to the minutes. Commissioner Wolfe noted Ralf Topper’s name on page 2 was misspelled as was that for Bonny Reservoir. There being no further comments,

Commissioner Huwa moved to approve the minutes as amended.
Commissioner Bledsoe seconded the motion which carried unanimously.

Report of the Executive Director by Dick Wolfe

Mr. Wolfe opened his remarks congratulating Commissioners Schubert and Smith on their re-appointments. He also acknowledged the work of Commissioner Davis who was leaving.

On the Republican River Mr. Wolfe took the opportunity to thank Mr. Dave Keeler for his creative ideas and efforts to keep the pipeline moving forward. He noted that it was expected that the remaining 5% of storage in Bonny Reservoir would be drained by the end of December. Mr. Wolfe pointed out that negotiations with Kansas are on hold, at the request of Kansas, because of litigation between Nebraska and Kansas. Colorado does have concurrence with Nebraska over the operation of the pipeline.

On the Rio Grande River, Mr. Wolfe noted that the model is being refined with the latest data and that completion of the well compliance rules is expected in early 2012. He also pointed out that in September the Supreme Court heard oral arguments on the appeal of the Lower Court's ruling in the first sub-district. If that ruling is upheld the first sub-district will be in operation in May of 2012.

Mr. Wolfe advised the Commission that his staff was working with the CWCB to address the causes of the high ground water levels being experienced along the South Platte River.

Commissioner King addressed the topic of "fracking", a process used to increase production of natural gas and oil. He said that the industry has proposed a ground water monitoring program. The second portion which the industry also supports is the disclosure of the chemicals being injected into the ground. There will be a hearing on December 5, 2011 to promulgate rules on disclosure.

Commissioner Mikita questioned Mr. King regarding legislation proposed by Representative Looper. Commissioner King responded stating that Ms. Looper is concerned about protection of the ground water and about the volume of water used in the process. He also said that before extensive legislation is enacted he would like to see rules and regulations, which are more pliable, be given an opportunity to address the concerns of citizens.

Commissioner Coryell requested a presentation on fracking for the next Commission meeting.

Commissioner Smith questioned Director Wolfe regarding a new Denver Basin study that he heard about at the Arkansas Roundtable meeting. Mr. Wolfe stated that the USGS study was an update to the 1985 Denver Basin model created in response to SB-5. He went on to say that it will be used in the South Platte Decision Support System model that his office is working on.

Chairman Coryell called for a new agenda item, Commissioners Report, where Commissioners could bring an item of interest or concern to the Commission.

Chairman Coryell called for agenda item no. 6, an update by Mr. Mike Shimmin regarding potential statutory changes to allow local management districts enforcement authority over well permits and the ability to impose fines. Mr. Shimmin informed the Commission that he poled the Districts to determine support for the legislation. He found that five (5) were in favor and five (5) see no need at this time. In response to a question by Commissioner Coryell, Mr. Shimmin stated that the Districts have the authority to enforce their rules but that the legal process of doing so can be long and expensive.

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

Mr. Vander Horst summarized his written staff activity report. He noted that of the 271 large capacity applications submitted the majority are for a determination of water right. Mr. Vander Horst stated that this large number may be due to inaccurate information in Elbert County that is advising people to file for a determination to protect their water right. Regarding final permit

activity, there are approximately 131 final permits remaining to be issued in the Southern High Plains. He noted that five (5) of fourteen (14) cases before the Hearing Officer have been completed. Enforcement matters include an irrigation well being used for livestock watering in the Northern High Plains. In the Upper Black Squirrel Basin, Mr. Goss has received a cease and desist order and Mr. Booker and Mr. Schubert have brought their operations into compliance. In the Kiowa-Bijou Basin there is a pond that exceeds its permitted size.

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

Ms. Jen Mele advised the Commission that right now she was focusing her time on the Gallegos case which starts November 28th and is expected to last two (2) weeks. She also stated that there are nine (9) new cases on her desk.

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

Mr. Nate Midcap, reporting for the **Marks Butte, Frenchman, Sandhills and Central Yuma GWMD's**, stated that recent snow has slowed the harvest on the final 10% of the corn crop. The inspection of 480 chemigation back flow preventer valves is complete, there was a 5% failure rate. Mr. Midcap stated that his districts do not have a lot of experience with fracking but that their problem is the drillers believe that they can get any water and are paying a pretty penny for irrigation water. He reported the Sandhills District had initiated procedures for the hearing on export of water for the pipeline. Mr. Midcap closed his report by advising the Commission that his districts were not in favor of the proposed legislation as discussed by Mr. Shimmin.

Mr. Jack Dowell, reporting the **W-Y GWMD**, reported that of 259 chemigation inspections five (5) failed due to the back flow valve. Just a year earlier he had inspected 168 wells, being 50% of those permitted for chemigation as required by the rules. He stated that the corn in his district has yet to be harvested but the sugar beets are all in with good numbers of 25 to 30 tons per acre and 15% sugar. Mr. Dowell advised the Commission that he was told that there was a good kill on the cattails along Hwy 385 near Wray and that the team removing the salt cedar would begin downstream of Bonny in January. He said that his district was waiting to see what other districts were doing regarding the legislative action as discussed by Mr. Shimmin.

Rod Mason, reporting for the **Arikaree GWMD**, reported that there were some happy corn farmers who had record harvests of 250 bushels per acre while others that had been hailed out were at dry land levels. He said that 9 of 121 wells failed the chemigation inspection. Mr. Mason advised the Commission that two election items, an increase in the mill levy and getting rid of term limits both failed by a margin of 2 to 1. His district does not have a lot of rules so it is in favor of legislation for enforcement and imposition of fines as discussed by Mr. Shimmin. He closed by stating that the draining of Bonny Reservoir has removed some pressure from his district.

Ms. BreAnn Ferguson, reporting for the **Plains and East Cheyenne GWMD's**, informed the Commission that the harvest is mostly complete in the Plains District while the East Cheyenne is behind because of some wet weather, also the wheat is looking good. Ms. Ferguson reported that her field inspections have gone well in both districts. She concluded her report stating that

the Plains District is in favor of the suggested enforcement legislation while East Cheyenne is taking a wait and see approach.

Mr. Max Smith, reporting for the **Southern High Plains GWMD** reported that the Southern High Plains did not have much of a harvest. There were hardly any dry land crops and though the irrigators that managed their water wisely had a good crop most of the corn was cut for silage. Recent rains have brought the wheat, which was planted to dry ground, up and everyone is hoping the wind will leave them alone. His district will discuss the enforcement legislation next week but the districts biggest problem is the lack of income, the only income is from the well measurement program. Without revenue it is difficult to enforce the existing rules and regulations or re-write them as is on the agenda because an attorney will be needed. Personally he is in favor of the enforcement legislation.

Mr. Robert Loose reporting for the **North Kiowa Bijou GWMD**, reported that this was a year to remember. The southern part of the basin was dry and lost most of their grass and wheat but the northern part had good moisture and a good harvest. He reported that the wheat looks good and that the district is in favor of the proposed enforcement legislation.

Mr. Dave Doran, reporting for the **Upper Black Squirrel GWMD**, reported that his district had spent close to \$30,000 on the redistricting map. They believe that the map is fair in that each board member represents each use, from agricultural to municipal, within the basin. Mr. Doran advised the Commission that the co-operative study with the county regarding water quality in the alluvial channel continues. His district is in favor of the proposed enforcement legislation.

Commissioner Wolfe reported for the **Upper Big Sandy GWMD**. He informed the Commission that well measurement rules had been revised, based on comments at a hearing, and published. Further, that implementation of the rules will be delayed until funds for their administration and to pay part of the metering costs are received.

Mr. John Cordiss, reporting for the **Lost Creek GWMD**, said that the corn harvest was just getting started. He advised the Commission at the request of the district, Mr. Ralf Topper was checking the end of season water levels. He also advised the Commission that a study of Lost Creek for potential water storage, conducted by Mr. Topper, has been completed and will go to publication soon. Mr. Cordiss concluded his remarks stating that the district supports the legislation as discussed by Mr. Shimmin.

Ms. Deb Daniel, reporting for the **Republican River Water Conservation District**, reported on progress of the pipeline. She stated that the dirt work at the outflow structure is complete and concrete will be poured soon. Ms. Daniel advised that almost one and one-half miles of the 12 miles of pipe have been laid. They hope to be to the collection tank by February. She is working with the Sandhills District on the export application and informed the Commission that there were no objections to their application. Ms. Daniel added that they were anxiously awaiting answers regarding the compliance plan from Kansas.

Chairman Coryell called for agenda item no. 10, old business.

Chairman Coryell opened a discussion among the commissioners regarding the proposed enforcement legislation. He noted that there was no real opposition expressed by the districts, just concern over the costs involved in passing the legislation and enforcing their rules through the enforcement process. He raised the questions of cost of the legislative process, when it would commence and if the Commission would support legislation giving each district its own independent authority. Chairman Coryell asked Mr. Shimmin if he would address the matters of cost and timing.

Mr. Shimmin stated that it would be difficult for him to arrive at an estimate of the cost to put the legislation forward because he does not work for the districts most interested in it. He could estimate his time but realizes that most districts have their own legal counsel. Mr. Shimmin did say that the majority of the cost would be for the lobbyists. As to the timing issue he said that if it was to be done this year the sooner the better as bills cannot be submitted past one month after the session begins excluding those approved under late bill status.

Commissioner Wolfe spoke to the matter suggesting that rather than rush into poor legislation, they take a year to work through the issue by discussing how the Commission can assist the districts on their enforcement efforts. He sees rule making or reallocation of states resources as avenues to help before the legislative process is looked at. In response to a question of Commissioner Coryell, Mr. Wolfe advised the Commission that with the end of the final permit project in sight that perhaps staff could re-allocate resources towards compliance efforts with education preferred over enforcement.

Mr. Cyran, council for the Commission, raised the question of when any fine that was imposed would be assessed. Currently fines are assessed after the injunction is set by the courts, which is no incentive to comply. Mr. Wolfe restated his position on working together to coordinate efforts between the districts and the state before pursuing legislation.

In response to Commissioner Smith's suggestion of a memorandum of understanding between the districts and the staff Mr. Wolfe responded that there should be more discussion before something like that is written. He stated that the enforcement policy presented to the Commission at the August meeting about the relationship between the district and staff, what each does, shows that it is being worked on and the process should be completed before legislation is enacted.

Commissioner Schubert said that the district rules sit on top of the state rules but the state does not recognize the district rules. He said the state says we will take care of our rules and you take care of yours. Mr. Schubert agreed with Commissioner Wolfe in that it will take time to bring the two together.

Chairman Coryell said that he has seen the state and the districts come together, unfortunately that was because of enforcement of an interstate compact, which he would not wish on anyone. He also said that he thinks the districts along the Front Range have reached the point where the issue needs to be resolved.

Director Wolfe offered to bring something to the Commission in February that looks at the issue.

Mr. Dave Doran, Upper Black Squirrel, asked why it had to be a legislative matter for districts to be able to assess a fine. He said that the Supreme Court has ruled that districts can promulgate rules so they should be able to promulgate a rule that creates a fine. Commissioner Wolfe responded by saying that it had been discussed as an option to be looked at but cooperative rulemaking was the first choice. Mr. Duran asked if his district wrote its own rule if they would receive the state's assistance. Mr. Cyran offered to put together the legal options by the February meeting.

Chairman Coryell called for agenda item no. 13, new business.

Commissioner Schubert addressed the Commission on the matter of vendetta complaints. He questioned whether it would be necessary or appropriate for staff to establish a written policy on how complaints of violations are looked into and if it is determined that a complaint is egregious that a penalty be assessed. Mr. Wolfe responded that he believes that the system currently in place, that of administrative discretion, is working appropriately, it needs to be tweaked but it is working.

Secretary Nielsen suggested the following dates and locations for the 2012 meetings of the Commission, February 17th in Denver, May 18th in Castle Rock, August 17th in Wray or Castle Rock and November 16th in Denver. The proposed dates and locations were approved by the Commission. Commissioner Coryell and others discussed the dedication of the compact compliance pipeline during the August meeting in Wray.

There being no further business the meeting adjourned.

Respectfully submitted,

Richard A Nielsen, P.E.
Secretary to the Ground Water Commission