
MINUTES

SECOND QUARTERLY MEETING COLORADO GROUND WATER COMMISSION May 21, 2010

The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 21, 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 Grant Bledsoe, Carolyn Burr, Larry Clever, Dennis Coryell, Cory Huwa, Earnest Mikita, George Schubert, Max Smith, Virgil Valdez, Mike King, Ted Kowalski and Dick Wolfe. Staff members present were Keith Vander Horst, Rick Nielsen, Chris Grimes, Justina Farris, David Keeler and Jay Bloomfield. Also present were Jody Grantham, Hearing Officer, Scott Steinbrecher, 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

Commissioner Burr moved to approve the agenda as presented.
Commissioner Clever seconded the motion which passed unanimously.

Agenda item no. 3, Chairman Coryell read into the record a resolution recognizing the service to the Commission of Douglas Shriver.

Commissioner Clever moved to adopt the resolution.
Commissioner Smith seconded the motion which passed unanimously

Chairman Coryell then presented the resolution and a plaque recognizing the service of Douglas Shriver to Karla Shriver.

Approval of Minutes for Meeting of February 19, 2010 Chairman Coryell asked if there were any corrections or additions to the minutes. There being none:

Commissioner Mikita moved to approve the minutes as presented.
Commissioner Burr seconded the motion which carried unanimously.

Report of the Executive Director by Dick Wolfe

Mr. Wolfe welcomed Virgil Valdez, the new Commission member from the San Luis Valley and Mike King the new Executive Director of the Department of Natural Resources to the commission.

He then updated the Commission on the non-binding arbitration process for the Republican River compact compliance pipeline. The trial is set for July. The good news is that the State of Nebraska now supports the pipeline. In a related matter, Kansas has filed motions before the Supreme Court because against Nebraska an arbiter found only \$10,000.00 in damages when Kansas was seeking 72 Million. We will be participants in this matter.

Mr. Wolfe updated the Commission on the status bills from the 2010 legislative session:

SB-27 allowing for financial penalties (not to exceed \$500.00 per day) to be assessed against surface water user's (current statutes only allow for penalties against ground water users') that violate the terms and conditions of their water rights was signed by the governor.

SB-52 which changes the statute so that if a Designated Basin or portion thereof is de-designated any conditional or final permits are not affected was signed by the governor.

SB-165, giving the State Engineer an extra three months to process the thousands of permit applications and substitute water supply plans submitted by the oil and gas industry across the state was signed by the governor.

HB-1006 authorizing the Division of Water Resources to access the severance tax funds as a funding source and providing the Division some flexibility during economic downturns died in committee. This will cause the Division to eliminate six (6) positions by July 1st.

Mr. Wolfe concluded his report by informing the Commission that Jim Hall, Division Engineer for Division One, the South Platte Basin will be retiring in June. He then asked Commissioner King if he had any comments.

Mr. King greeted the commissioners. He said he will attempt to attend all the meetings but that may difficult as he sits on seventeen boards and commissions. He invited the commissioners to setup a personnel meeting with him at any time to discuss their concerns.

Chairman Coryell called for agenda item no. 6, a hearing of a petition by Morgan County Quality Water District to amend Rule 5.2.5.2 of the Rules and Regulations for the Management and Control of Designated Ground Water to make over appropriated that portion of the Lost Creek Designated Ground Water Basin known as the Hay Gulch Sub-basin and to require replacement plans for new large capacity wells therein, case no. 09-GW-12.

Mr. Jeff Kahn, attorney, representing Morgan County Quality Water District addressed the Commission. He pointed out that the District Board and many residents were present in support of the petition. A power point presentation was used throughout the presentation.

He opened his comments by orientating the Commission with the geographic and hydrologic layout of the basin and the location of the district wells which provide over one-half of the district's water supplies. He stated that the District wells are the only high capacity wells in the basin.

Mr. Kahn explained that staff had recently informed the District that Hay Gulch had never been officially determined to be over-appropriated but that for the past thirty years staff had treated the basin as over-appropriated and issued no new permits.

He stated that the Hearing Officer, as directed by the Commission, did over a period of seven days conduct a fact finding hearing. He went on to say that of the six parties in the hearing, only Yokum LLC., opposed closing the basin.

Mr. Kahn took a few minutes to discuss the proposed well locations, proposed uses of the water and the affects to their system by the requested permits of Yokum LLC.

He summarized the findings of the Hearing Officer before concluding his remarks with a request that the Commission support sustainability by amending the rule.

There were no questions of Mr. Kahn at this time.

Mr. Kip Barthlama, Morgan County Quality Water District board member, addressed the Commission. He provided a brief history of the formation of the District and requested that the Commission adopt the rule.

Mr. Steve Larson, attorney, for Yokum Land Holding LLC addressed the Commission after handing out some documents. His opening comments addressed the water balance in the basin. He proceeded to discuss interpretation of statute stressing the full economic development of an aquifer (C.R.S. 37-90-102) and withdrawal not being materially in excess of recharge (C.R.S. 37-90-111). Mr. Larson suggested an aquifer life of 100 years.

Mr. Eric Harmon a hydrogeologist for Yokum Land Holding LLC next addressed the Commission. He briefed the Commission on the hydrology of the basin. He mentioned that the basin is recharged by precipitation causing the effects of pumping to spread slowly throughout the basin. Mr. Harmon suggested that a monitoring program could be established that would provide an early warning for aquifer depletion leading to the curtailment of junior water rights. He also suggested that terms and conditions could be added to the well permits to better manage the aquifer.

Mr. Harmon and Mr. Larson answered questions of the Commission.

Ms. Jen Mele representing Staff addressed the commission. She opened her comments by stating that Staff does support the petition. She mentioned that both models (Morgan County Quality Water District and Yokum Land Holdings LLC.) are credible and both show depletions to the system. Ms. Mele pointed out that the models use current diversions and not the permitted diversions, which exceed recharge. She advised the Commission that they have latitude in determining allowable withdrawal and can set it below the current average rate of withdrawal making the basin over-appropriated. Regarding the monitoring program suggested by Mr. Harmon, Ms. Mele noted that due to lag time it takes a year or more to observe declining water levels in the monitoring wells. Ms. Mele concluded her remarks on an administrative issue. When rules are adopted or amended a basis and purpose is required, a copy of which is in their packets.

There were no questions of Ms. Mele.

Mr. Mike Shimmin, attorney, representing Lost Creek Land and Cattle addressed the Commission. He opened his comments with a description of the holdings of Lost Creek Land and Cattle. He then informed the Commission that his client would have applied for irrigation

wells twenty years ago except that they were told that the basin is closed to new appropriations. Mr. Shimmin discussed the applicant's model showing 54% depletion in 100 years, commented on the findings of the Hearing Officer and the concept of economically recoverable water. He concluded with the opinion that past policy of the Commission favoring economic development did not equal long term sustainability.

Mr. Mike Browning, attorney, representing Equus Farms addressed the Commission. He discussed operational policies especially as they relate to ground water management and sustainability.

Mr. Kent Kingsbury, a local rancher spoke in favor of the petition.

The parties were afforded five minutes for rebuttal testimony.

Mr. Kahn, Mr. Larson and Ms. Mele answered questions of the Commission.

Mr. Floyd Chapin, Ms. Dee Carpenter, local residents provided comments in support of the petition.

Mr. Andy Jones, Attorney for Lost Cree Ground Water Management District, stated that the District supports the petition.

Mr. Scott Steinbrecher briefed the Commission on their options and procedures at this time.

Commissioner Huwa moved to close the hearing.
Commissioner Clever seconded the motion which passed unanimously.

The hearing was closed.

Commissioner Clever moved that the Ground Water Commission approve the statement of basis and purposes, find that the Hay Gulch subdivision within the Lost Creek Designated Ground Water Basin is over appropriated and amend Rule 5.2.5.2 as proposed.

Commissioner Mikita seconded the motion.

After clarification of the motion and comments of the Commissioners the motion passed unanimously.

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

Mr. Keith Vander Horst, representing staff, went over the items in the handout. He noted that he was in the process of filling vacant positions on the team which will lead to increased activity with the final permitting. Mr. Vander Horst cited the CREP and EQUIP programs as the primary reason for the cancellation of 56 permits in the Northern High Plains.

Looking at pending hearings, he reported that the Weld County District Court has remanded the Gallegos case to de-designate a portion of the Upper Crow Creek Basin back to the Commission. The fact finding hearing on the Lost Creek Land and Cattle petition to make the northern portion of Lost Creek over appropriated has been scheduled for September and will come before the Commission in November. The fact finding hearing for creation of the Spring Creek Basin has been rescheduled for January. The Upper Big Sandy Ground Water Management District rule change fact finding hearing is scheduled for June and will come before the Commission in August.

As to enforcement action there have been several show cause letters sent regarding well operation, irrigated acreage and the plugging of cancelled permits.

Mr. Vander Horst concluded his presentation with the report of Ms. Megan Sullivan covering activities of the well measurement team. Of the 350 notices of violations and orders to comply sent in February approximately 95% of the owners have responded. The remaining letters were undeliverable and staff will follow up to determine the current owner and address. The owners and testers of the 200 meter verifications tests that failed will receive notice of the failure. Staff is in the process of reviewing over 2000 annual diversion reports for 2009. Of those, discrepancies have been found in approximately 30% which will be returned for additional information. A notice of violation will be sent to those well owners that did not comply with the rules and submit annual diversion records.

Mr. Vander Horst responded to a question of Chairman Coryell regarding the Gallegos case.

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 lease case has been continued until August and that the fact finding hearing for their replacement plan is continued due to questions of jurisdiction.

There were no questions for Ms. Mele.

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**, reported that planting in his districts was slowed because of significant rain fall last month, between ¼ inch and ½ inch. He noted that he had begun the chemigation inspections for the year. Mr. Midcap also notified the Commission he has been attending meetings of the Republican River sustainability coalition, the conservation aspect of the basin.

Mr. Jack Dowell, reporting for the **W-Y GWMD** advised the Commission that his district had received a half inch of rain in the last three days and that he was beginning to inspect the chemigation systems, paying particular attention to those that failed last year.

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

Mrs. Deb Daniel reporting for the **Plains and East Cheyenne GWMD's**, reported that with the recent good moisture the corn is up and the pastures are greening up. She reported that the East Cheyenne District approved measurement rules similar to those of the Republican River. Implementation will be for the northern half of the Townships to be in compliance this year and the southern half next year.

Max Smith, reporting for the **Southern High Plains GWMD** stated that his district has had a cool, damp spring, that the wheat looks good and that 90% of the corn is in the ground.

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

Mr. Dave Doran reported for the **Upper Black Squirrel GWMD**. He said that they too have had a cool, damp spring. He reported that their recent election went well. There is a new board member, and a mill levy increase was approved. Unfortunately the attempt to de-Tabor the District failed. Mr. Doran stated that the State was very helpful in dealing with a pollution issue in the District. A party was using containment ponds located in the District to store over 100,000 gallons of water contaminated with heavy metals.

He informed the Commission on concerns that they have with a waste management company located just outside the basin boundaries. The primary concern now is the export of bedrock water, circumventing District Rules. Mr. Vander Horst responded that the rule adopted last year dealt only with existing wells, not new appropriations.

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

Mr. Andy Jones reporting for the **Lost Creek GWMD** said that there had been three inches of rain in the last month.

Mr. Stan Murphy reporting for the **Republican River Water Conservation District** advised the Commission that most of the easements for the pipeline are in place and progress is being made in other areas as well. They are waiting for the results of the arbitration hearing, the decision of the Sandhills Board to allow export and he is talking with the managers of the CREP program in relation to the wells to be utilized for the pipeline.

Chairman Coryell called for agenda item no. 10, old business. There was none.

Chairman Coryell called for agenda item no. 11, new business. There was none.

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

There being no further business before the Commission, the meeting adjourned.

Respectfully submitted,



Richard A Nielsen, P.E.

Secretary to the Ground Water Commission