
MINUTES
THIRD QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION
AUGUST 15, 2014

The Third Quarterly Meeting of the Colorado Ground Water Commission took place on August 15, 2014, at the Embassy Suites Hotel and Conference Center, 4705 Clydesdale Pkwy, Loveland Co 80538. Chairwoman Carolyn Burr 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 Marc Arnusch, Larry Clever, Steve Kramer, Greg Larson, George Schubert, Scott Tietmeyer, Virgil Valdez, Robert Randall, Dick Wolfe and Suzanne Sellers. Staff members present were Kevin Rein, Richard Nielsen, Chris Grimes, David Keeler. Also present were Jody Grantham, Hearing Officer, Pat Kowaleski, 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, the agenda was approved as presented.

Approval of Minutes for Meeting of May 16, 2014, Chairwoman Burr asked if there were any corrections or additions to the minutes. Commissioner Wolfe advised the Commission that he had already provided Secretary Nielsen with a few minor corrections. There being no additional comments,

Commissioner Kramer moved to approve the minutes as amended.
Commissioner Valdez seconded the motion which carried unanimously.

Report of the Executive Director by Dick Wolfe

Mr. Wolfe opened his remarks by welcoming Commissioner Arnusch to the Commission. He also informed the Commission that Katie Radke, the CREP coordinator among other duties, had left employment with the Division of Water Resources.

Mr. Wolfe informed the Commission that there have been considerable changes in our talks with Kansas involving the Republican River Compact. Kansas has a new Secretary of Agriculture, Jackie McClaskey, and the Chief Engineer's office is in the Department of Agriculture. Mr. Wolfe said that Colorado had a productive meeting with the Kansas Secretary of Agriculture and representatives of the Governor's Office in Kansas on July 29 of this year. They intend to meet monthly for up to five (5) months, hopefully to work through resolution of the concerns of Colorado and Kansas on Republican River Compact. The next meeting will take place on August 27th, just before the annual Republican River Compact Administration meeting in Lincoln Nebraska. Mr. Wolfe advised the Commission that Colorado will be seeking approval for, at the minimum, another year of operation of the Compact Compliance Pipeline (CCP) and hopefully a longer period of operation or general approval of the CCP and Bonny Reservoir resolution.

In closing, Mr. Wolfe informed the Commission that the San Luis Valley Advisory Committee for the has been meeting monthly and anticipates submitting the new well use rules to the court within the next couple of months.

Chairwoman Burr introduced Mr. Robert Randall, Deputy Director for Department of Natural Resources and opened the floor to him.

Commissioner Randall took this time to thank Commissioner Wolfe and his staff for the ride along with a Division 1 Water Commissioner. He said that the staff of the Executive Director's Office were appreciative to observe the daily operations of a water commissioner and had learned a lot.

Chairwoman Burr called for agenda item no. 5, Commissioners' reports.

Commissioner Kramer commented that he enjoyed the tour of the previous day. He said that he came away with an added layer of confidence that the oil and gas companies are protecting our water resources. Mr. Kramer thanked staff for attending the monthly meeting of the ground water management districts, noting that the boards and user's present at those meetings are very grateful for the outreach and the information provided. Mr. Kramer stated that the Water Preservation Partnership is still working to get organized. At a producers meeting they, the producers, expressed disappointment at the reported static water levels. He mentioned that the some producers are looking forward and trying to figure out a way to enforce self imposed pumping reductions when that day comes.

Commissioner Tietmeyer reported that a lot of water was going to the oil fields and that there are concerns from residents with the volume of water. Mr. Tietmeyer noted that the large volume of water could be explained by water from wells two miles across the border into Wyoming selling water for oil and gas development in Colorado. He stated that in his talks with the producers they indicated that they felt they were being fairly regulated.

Commissioner Wolfe reminded the Commission that a rule making hearing on the proposed amended well measurement rules for the Republican River Basin will be held in Burlington at the end of October.

Commissioner Burr thanked staff for organizing the tour. She said that it was good to be able to get so close and hands on in getting a good view on the different aspects of the activity in the area.

Chairwoman Burr called for agenda item no. 6, the staff activity report.

Mr. Kevin Rein informed the Commission the Mr. Vander Horst was unable to attend the meeting because he is on jury duty. He then suggested that the Commissioners contact Mr. Vander Horst directly if they had any questions regarding his written report. Mr. Rein concluded his comments by mentioning the success Mr. Chris Grimes has had in handling sensitive enforcement issues.

Chairwoman Burr called for agenda item no. 7, the Attorney General's report.

Ms. Jen Mele reported that the Gallegos and Meridian cases are both fully before the court and that there is no timeline for when a decision will be made. At Ms. Mele's prompt, Mr. Pat Kowaleski informed the Commission that the judge in the Meridian matter had requested proposed findings from the attorneys within ten (10) days which implies a speedy decision time. Ms. Mele closed her report by advising the Commission that trial will begin August 25th in the matter of Front Range Resources application to change the place of use of ten (10) wells.

Chairwoman Burr called for agenda item no. 8, Management District Reports

Mr. Nate Midcap, reporting for the **Marks Butte, Frenchman, Sandhills and Central Yuma GWMD's**, reported that his districts are quiet which means something is going to happen. He noted that there had been good rain all around. Mr. Midcap thanked Mr. Wolfe for his work with the Republican River Compact and noted that he was working with the Water Preservation Partnership.

Mr. Jack Dowell, reporting for the **W-Y GWMD**, reported that his district too had had good rain which allowed the producers to pump about a third less water than normal. He said that they had 50 – 60 bushel wheat and that the corn, beans and beets all look good. Of the 157 chemigation inspections that he has conducted three wells failed due to back flow preventers not functioning properly. He also noted that he had found 65 un-permitted wells. In response to a question by Commissioner Burr, Mr. Dowell said there are two categories of unpermitted wells. The first is for those that are new, never having been registered. Owners of these wells need to complete the paper work and pay a fee of \$35.00. Owners of those wells that had been previously permitted must complete all necessary paperwork and pay a fee of \$70.00. Once the wells had been registered he will then inspect the wells to confirm proper installation of the back flow preventer and electrical wiring.

Rod Mason, reporting for the **Arikaree GWMD**, reported that his district too, had had good rain producing 50 and 60 bushel wheat, in parts. Other parts had the white combine come through. He said that he is kept busy with the chemigation inspections and third party administration. Mr. Mason advised the Commission that his district was very interested in the final item on the agenda, use of commercial wells.

Ms. BreAnn Ferguson, reporting for the **Plains and East Cheyenne GWMD's**, informed the Commission that the East Cheyenne District has been quiet and that she is confirming totalizing flow meter installation on all the wells according to the schedule put in place last year.

For the Plains District, Ms. Ferguson was pleased to report that the producers meeting had upwards of 98% attendance for a 1:30 p.m. meeting. She said that all of the producers are open to preservation and conservation and that the brainstorming approach taken stretched the meeting till 5:00, 3 1/2 hours.

Secretary Nielsen, reporting for the **Southern High Plains GWMD** reported that he had spoken with Commissioner Smith and that his report would have been good rain in the northern part of the county with Two Buttes Reservoir up about 5 feet. The southern part of the county has been mostly dry but they did receive enough rain recently that they may plant wheat in October.

Mr. Robert Loose reporting for the **North Kiowa Bijou GWMD**, reported that it has been a normal farming year, good rain in some parts of the basin and the white combine in others. He reported that the district is working with staff to finalize the last 19 final permits, get the Rooster Club squared away with their unpermitted ponds and finally get Magnum Feed yard properly permitted. Mr. Loose also said that his district had been in contact with a group from Elbert County that is trying to quantify the water resources in the County. He noted that 90% of the homes in the Elizabeth area, the southern tip of the Basin, have alluvial or Laramie Fox-Hill wells. Mr. Loose will provide more information as it becomes available.

Mr. George Schubert, reporting for the **Upper Black Squirrel GWMD**, reported on the Meridian case and its cost effect on the district. He said that the District had to pay for two trials both very expensive. Because of this the District strongly supports proposed legislation to change the standard of review for De Novo hearings. Mr. Schubert next discussed the precipitation in the basin, noting that the north and west were wet while he was in the donut hole. They had had 0.5 inches of precipitation since September 2013. Then in July his area received from 4 – 5 1/2 inches in 45 minutes and in a week had 9 inches of rain. Mr. Schubert concluded his remarks speaking of the tour, stating that he will probably give a report at the next board meeting.

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

Mr. Andy Jones, reporting for the **Lost Creek GWMD**, reported that the biggest thing going on in the Basin is a replacement plan proposed by Front Range Resources. The plan uses thirty plus wells to export up to 20,000 acre-feet from the basin. He also stated that Lost Creek Board is happy with the way staff has handled the implementation of HB-1052.

Mr. Scott Tietmeyer, reporting for **Upper Crow Creek Basin**, reported that they have had over 13 inches of rain giving close to 60 bushel wheat on dry land and near 100 bushel for irrigated land and up to a 40% reduction in pumping costs. He also reported that after 6 months Crow Creek is back within its banks and that springs dry since the 70's are flowing again. Mr. Tietmeyer closed with comments about the tour and the transparency of the oil company.

Ms. Deb Daniel, reporting for the **Republican River Water Conservation District**, opened by commenting on Justice Hobbs, his presentation the night before and thoughts that his successor needs to know water because it will come before the Supreme Court more and more. She next noted that the Water Preservation Partnership has been active for the one year of its existence. She expressed hope that it will continue and make the tough decisions. She informed the Commission that the Water Preservation Partnership had applied for and been approved for a CSU study on the economic impact to the region if they do not implement water conservation programs. Ms. Daniel also reported that the Republican River District is actively pursuing the purchase of the remaining surface water rights on the river, especially the north fork, and hopes to convert them to in stream flow rights this fall. In speaking on the Republican River Compact negotiations, Ms. Daniel expressed hope that the new Secretary of Agriculture for Kansas will be more open to the negotiations. She reported that the Republican River District had been selected by the USDA (1 of the 230 selected out of 600 applications) to proceed to the next stage of the process in receiving funding for conservation studies. These studies will not only include well retirement but also conversion from sprinkler to drip irrigation and other measures. In closing, Ms. Daniel informed the Commission that they would be running the pipeline from October through December and if Mr. Wolfe is successful on into January.

Chairwoman Burr called for agenda item no. 9, old business, coordination of enforcement actions between the Commission and the Ground Water Management Districts under HB 14-1052.

Mr. Kevin Rein addressed the Commission, providing a short history of the timeline for this topic. He then touched on the meeting held between staff and the districts before discussing the memo. Mr. Rein said that the memo identifies various violation scenarios of Commission and District rules or both and details which entity is in charge of or leads the resolution of the violation. Mr. Rein indicated that with Mr. Vander Horst on extended jury duty staff would make a full presentation at the November meeting.

Chairwoman Burr called for agenda item no. 10, new business.

a. Proposed statutory changes regarding “de novo” appeals of Commission decisions.

Commissioner Wolfe spoke to this agenda item. He directed the Commission to a memo in their packet. On the memo, Mr. Wolfe identified the existing statutory language and that which, based on previous Commission discussion, is being proposed. He said that it was being kept simple to minimize scrutiny. Mr. Wolfe also identified language suggested by Ms. Lisa Thompson received via e-mail from her yesterday. He pointed out that her suggestions are more extensive than what had been discussed. Mr. Wolfe continued, explaining that it was the Commission, not the State Engineer, who should present this proposal to the interim Water Resource Review Committee. Following minimal discussion on the logistics of getting the proposal before the interim water committee;

Commissioner Clever moved to present the language presented in the memo to the committee.

Commissioner Valdez seconded the motion which passed unanimously.

Commissioner Randall stressed the necessity of avoiding confusion that it is the Commission not the Executive Director’s Office that is proposing the change.

Mr. Robert Longenbaugh advised the Commission that the interim water resource review committee takes on ground water matters on September 4, 2014.

Mr. Andy Jones, approached the Commission to request that due to the pending appeal in the Gallegos case that the memo be worded to stress that the proposal is a clarification of existing statute rather than a change. Chairwoman Burr said that it could be incorporated into the memo.

b. Uses allowed under the category of commercial.

Mr. Kevin Rein directed the Commissioners attention to a memo in their packet regarding the allowed use for commercial wells. He then provided a background for the clarification of allowed uses for the commercial classification of a well which could affect a water right. Mr. Rein reminded the Commission of the tour the day before where they saw dozens of trucks lined up with fresh water for the hydraulic fracking of oil wells. He mentioned that he speaks to concerned groups on a monthly basis about the water used for fracking, assuring them

that the water is being used as permitted. Mr. Rein said that he is working to assure that the Division of Water Resources has a 48 hour notification window before fracking occurs to ensure staff can confirm the source of water. He said that this decision to clarify the uses of commercial water came about in the last few months not just because of the fracking issue but also because water is used in wind farm construction, fertilizer manufacturing or other industrial uses.

Mr. Rein questioned if commercial use included anything involving a profit or had a more limited interpretation. If it were true that commercial encompassed anything involving profit then it would include irrigation, municipal etc. If a more limited interpretation is used, one involving legal guidance and common sense then commercial would be along the lines of supporting a building involved in a business with drinking and sanitary uses.

Chairwoman Burr clarified that the Commission was to take no action on this memo.

Commissioner Wolfe advised the Commission that after public input, if they wanted, they could ask for additional information and discussion on the issue.

Commissioner Tietmeyer asked about wells permitted for multiple purposes. Mr. Rein responded that without looking at the actual permit a full answer is difficult but that the permit would be restricted to the volumetric limits stated on the permit.

Responding to a question by Commissioner Sellers, Mr. Rein stated that the new interpretations also applied to small capacity commercial wells.

Chairwoman Burr opened the discussion to the public.

Mr. Steve Beedy approached the Commission with his story. He has three multiple use wells permitted for irrigation, commercial, piscatorial, livestock and domestic. He stated that at the time the wells were applied for it was intended to sell the water in the future. Mr. Beedy has been selling the water for road and wind farm construction. His wells are within 5 miles of the construction site while the municipal sources are 40 miles away. Mr. Beedy also said that his district allows for the sale of up to 25 acre-feet and he felt that the district should have some say in the matter at least on a case by case basis.

Responding to a question by Commissioner Valdez, Mr. Beedy said that it was the state, not the district that told him he could not sell the water. He went on to say that he was told over a year ago that he could sell the water.

Commissioner Wolfe asked Mr. Beedy if the district had adopted a policy or other rule defining commercial use. Mr. Beedy said it was discussed many years ago but no official policy had been adopted.

Chairwoman Burr asked Mr. Rein if the districts had any input into the issuance of the permits. He said that they do but as these permits are not recently issued he would ask staff to answer.

Mr. Chris Grimes, of staff, apprised the Commission of the matter, more clearly explaining the present situation as staff sees it. Responding to a question from Commissioner Wolfe Mr. Grimes set before the Commission the options that Mr. Beedy has regarding his two high capacity and one small capacity wells. There is no ability to add industrial to the small capacity well but the large capacity he could add industrial use if the 3-mile circle appropriated or he could change the type of use.

Mr. Rein, answering a question from Commissioner Wolfe, stated that the amended interpretations are based on statute, not Commission Rules.

Commissioner Burr clarified that with the scrutiny the new permit applications are receiving this memorandum only applies to existing wells classified as commercial.

Commissioner Clever asked why the well owner does not ask for an additional use. Mr. Rein stated that if the Basin was open for appropriation he could, otherwise the application would be denied.

Mr. Andy Jones addressed the Commission. He stated that the concept is cut and dry for the small capacity wells because it is evident that selling the water was never the intent. He argued that high capacity wells, because of the many layers (intent, use, decrees etcetera), need to be handled on a case by case basis.

Mr. Robert Longenbaugh approached the Commission and advised them that another factor has to be considered and that is what the final permit says.

Chairwoman Burr, restated that this memo was an informational memo and that the Commission need not take any action. She asked what the pleasure of the Commission was.

Commissioner Valdez asked if decisions based on this memo would go before the Hearing Officer if there was disagreement. Commissioner Burr said yes they would.

Responding to comments and questions from Hearing Officer Grantham, Mr. Kowaleski said that the case would go before the Hearing Officer.

Mr. Andy Jones addressing the Commission stated that pursuant to 37-90-114 C.R.S. all actions are appealable to the Commission.

Chairwoman Burr directed staff to provide additional information at the next meeting on the proposed procedure for both large and small capacity wells.

Chairwoman Burr called for agenda item no. 11, public comment.

Mr. Robert Longenbaugh updated the Commission on the South Platte Roundtable. He showed them the draft report which predicts the water needs till 2050. Mr. Longenbaugh noted that there was little discussion on ground water and even less on Designated Ground Water. He asked about the water supply for the small towns in the basins. Mr. Longenbaugh also advised

that the Commission be actively involved in the development of the land in the basins, noting that subdivisions are being approved by the counties and though these decisions impact the Commission and Basins, the Commission has no input. He urged the Commission to be proactive, not reactive in basin development. He believes that the commissioners should contact the office of the State Water Plan and provide input into the report.

There being no further business the meeting adjourned.

Respectfully submitted,

Richard A Nielsen, P.E., Secretary
Colorado Ground Water Commission