
MINUTES

FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION NOVEMBER 21, 2014

The fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 21, 2014, at Castle Rock Town Hall, 100 N Wilcox, Castle Rock, Colorado. 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 Carolyn Burr, Marc Arnusch, Larry Clever, Steve Kramer, Greg Larson, George Schubert, Max Smith, Scott Tietmeyer, Virgil Valdez, Lauren Ris (on behalf of Mike King), Dick Wolfe and Suzanne Sellers (on behalf of James Eklund). Staff members present were Keith Vander Horst, Richard Nielsen, Chris Grimes, Jay Bloomfield, 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 August 15, 2014, Chairwoman Burr asked if there were any corrections or additions to the minutes other than those she had presented to Secretary Nielsen. There being none,

Commissioner Steve Kramer moved to approve the minutes as amended.
Commissioner George Schubert seconded the motion which carried unanimously.

Report of the Executive Director by Dick Wolfe

Mr. Wolfe opened his remarks with an update on the ongoing discussions with Kansas regarding compact compliance on the Republican River Basin. He advised the Commission that the monthly meetings with Kansas and Nebraska are working. He noted that at the October 27th meeting, operation of the compact compliance pipeline in 2015 was agreed upon. Mr. Wolfe reported a renewed spirit and effort to resolve the remaining issues on the Republican between Colorado, Kansas and Nebraska these past few months, ever since Jackie McClasky became Secretary of Agriculture in Kansas and changed their approach. Mr. Wolfe informed the Commission that the Special Master wants the states to work together to resolve the issues. For Colorado those issues are the South Fork of the Republican and Bonny Reservoir.

Mr. Wolfe informed the Commission that proceedings for the amendment of the well measurement rules in the Republican River are progressing as expected. The proposed Rules have been published with an objection date of November 30th followed by a hearing, in Burlington, on December 16, 2014. He reminded the Commission that the purpose of these amended rules is, among other things, to include 340 wells at the southern end of the basin that were omitted from the original Rules.

Addressing issues in the Rio Grande Basin, Mr. Wolfe advised the Commission that they are close to finalizing the last model changes on the Rio Grande Decision Support System Ground Water Model. Mr. Wolfe informed the Commission that a Special Master had been appointed for the recent suit by Texas against New Mexico and Colorado regarding deliveries of project water from Elephant Butte Reservoir. He closed his remarks saying that Colorado is acting as facilitator/mediator between New Mexico and Texas hoping to avoid a protracted litigation.

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

Commissioner Sellers informed the Commission that the Colorado Water Conservation Board (CWCB) had approved the draft Colorado Water Plan on November 18th. She said that there was minimal discussion of Commission and the Designated Basins in the report and encouraged the Commission and all Designated Basin representatives to provide input for the final report.

Ms. Sellers noted that the Forest Service who administers the Pawnee National Grasslands in Upper Crow Creek Designated Basin and the Comanche National Grasslands in the Southern High Plains Designated Basin has come up with a directive on ground water. The governor has sent a letter to the Forrest Service expressing concerns raised by the Division of Water Resources and the Colorado Water Conservation Board. Some of the concerns identified in that letter are: failure to recognize the State and Commission as sovereign authorities over ground water, the directive appears to treat ground water as a riparian right, the intent to modify existing water rights and the creation of Federal Reserve rights.

Commissioner Tietmeyer brought up the decision of the Interim Water Committee to sponsor legislation on the matter of de novo review. He thanked Commissioner Burr for her representation at the Committee hearings.

Commissioner Burr referring to the de novo legislation and Interim Water Committee thanked, Ms. Jen Mele, Mr. Pat Kowaleski and Mr. Kevin Rein for efforts in deciding on the language within the bill and their support throughout the process. She said that now the Commission needs to track the progress through the legislative season.

Commissioner Clever noted that the recent issue of Headwaters Magazine covers ground water on the Eastern Plains.

Chairwoman Burr called for agenda item no. 6, the staff activity report. Mr. Keith Vander Horst discussed his written report. He covered the objections and hearings section of his report noting that two cases, the Meridian case for surface water rights and the Gallegos case are on appeal. Mr. Vander Horst also noticed two cases, Gourley, for a new well in the Southern High Plains and Meridian to change Denver Basin water rights, were closed. Mr. Vander Horst updated the Commission on the enforcement actions in the Basins: in the W-Y District, Yuma Ethanol over pumped by 24 acre-feet and Horse LLC was using a commercial well for unpermitted uses in a feedlot, in the Arikaree District, staff met with Mr. Steve Beedy to discuss the ongoing violations associated with his wells. Also, the District reported that a Mr. Richards

was using a stock well in a feedlot. Finally in the Plains District, Buol Farms is suspected of using three small capacity wells for irrigation purposes.

Mr. Vander Horst closed his comments advising the Commission that staff member Ms. Sandy Johnson had taken a different position at the Office of the State Engineer and that Ms. Shannon Johnson had been selected to replace her.

Chairwoman Burr called for agenda item no. 7, the Attorney General's report. Ms. Jen Mele updated the Commission on several matters that are of interest. First, the Cherokee replacement plan from 2008 will be before the Supreme Court in December. She also expects that the decision from the Division 1 Water Court in the Gallegos matter will be forthcoming. Ms. Mele said that preparation is ongoing for the Meridian trial which starts in January and the Front Range Resource trial which will begin in February.

Commissioner Wolfe took the opportunity to note that oral arguments before the Supreme Court had occurred regarding the abandonment of surface water rights on Tip Jack Ditch just below Bonny Reservoir.

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**, informed the Commission that he had completed over 650 chemigation inspections. He also reported a dry, warm fall helped the corn to finish in historic fashion with 25 bushels over the historic high. Mr. Midcap further reported that the wet season allowed most irrigators to use one-half of their allotted water. Mr. Midcap indicated that his Districts had some concerns over the language in the proposed Rules but that they were working with staff on their concerns.

Mr. Dave Keeler, reporting on behalf of the **W-Y GWMD**, said that the sugar beets are all in with good yields and good sugar. He also stated that the corn is not entirely in yet because it has not dried down.

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

Ms. BreAnn Ferguson, reporting for the **Plains and East Cheyenne GWMD's**, informed the Commission that the corn has yet to dry down but everything else going well. She also reported that the Plains Board plans to have another producer meeting to discuss conservation methods.

Mr. Max Smith, reporting for the **Southern High Plains GWMD** advised the Commission that the harvest is 95% complete. The corn yields are average or just below average and the milo (5 year high) and sorghum dry land did get a crop because of early rains. He closed noting that the wheat was up and looking good.

Mr. Robert Loose reporting for the **North Kiowa Bijou GWMD**, reported that his basin is eighteen (18) short of being done with the final permits. Referencing Mr. Vander Horst's written report, Mr. Loose noted that 24% of the small capacity applications, 77% of the large capacity applications received and 34% of those permits issued were located in North Kiowa-Bijou, all to

be administered with the .032 mill levy. He closed noting that the Basin had had good rainfall, fall calving was rough in the 16 below cold snap.

Mr. Dan Farmer, reporting for the **Upper Black Squirrel GWMD**, advised the Commission that the several legal cases they are handling (two against Cherokee and two against Meridian) have a total legal costs to-date of \$145,832 and engineering fees of \$61,752. He also stated that the District would like assistance from the Commission in handling two waste water treatment plants discharging into Black Squirrel Creek Basin.

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

Mr. Tom Sauter, reporting for the **Lost Creek GWMD**, informed the Commission that the legal costs for Lost Creek stood at \$69,000 or the year, probably because they are mainly observing. Their big concern is with the Front Range Resources replacement plan and a new change in use application. He mentioned that the wheat looks good, the sunflower yield was good but the corn, for the most part, is still in the ground with some farmers getting 160 to 180 bushels.

Mr. Dan Lloyd, reporting for **Upper Crow Creek Basin**, reported that they had received a lot of rain but that when it was added up they were below normal. He did say however, because of the rain they had really good crops. Mr. Lloyd also reported that they had received a lot of hail and an early frost on September 11, 2014 which damaged the corn. He said that the hail also damaged beet yields and that the bitter cold hurt the wheat but they are hopeful it will recover. Mr. Lloyd informed the Commission that Crow Creek was running at 20cfs. He further informed the Commission that the majority of the oil activity has moved toward Sterling, reducing the volume of water exported from the basin. Mr. Lloyd closed his remarks indicating that the state of Wyoming has opened a proposed moratorium on well drilling to public comment. They are also seeking comments and ideas for conservation. Mr. Lloyd stated that a recent water level study showed drastic declines in the water table. He said that if a working conservation plan is not established soon, the State Engineer will handle things and in an effort to stabilize the water table call for up to a 90% reduction in well pumping in some areas.

Chairwoman Burr asked Commissioner Wolfe to coordinate with the state of Wyoming on water issues.

Commissioner Smith remarked on a 60 Minutes program dealing with declining water tables worldwide. He noted that a California driller, when asked by the reporter what his clients' neighbor would think of him drilling to 1200 feet, responded saying I am going there next. The report also showed a USGS monitoring well in California in which the static water level had dropped 200 feet in one (1) year.

Commissioner Kramer, reporting for the **Republican River Water Conservation District**, reported that he, Ms. Daniels and a lot of others have been in Greeley for the annual Republican River Water Conservation District Meeting. He thanked Commissioner Wolfe and Division of Water Resources staff for their presentations at the special board of directors meeting. Mr. Kramer spoke again to the recent publication of the Headwaters magazine on the Northern High Plains. He noted that the District had submitted its' final proposal to the Regional Conservation Partnership Program aiming for the \$2,500,000.00 award. Mr. Kramer also expressed his thanks to Mr. Mike King and Mr. James Eklund for their support of an effort to get

state funding of \$500,000 for the Republican River Project. Mr. Kramer expressed the appreciation of the Republican River Water Conservation District Board of Directors to Mr. Scott Steinbrecher, Commissioner Wolfe and his staff for their attaining, from Kansas and Nebraska, approval to receive 100% credit for water delivered to the river from the pipeline. He said that the pipeline is currently delivering, and has been since November 11th, approximately 60 acre-feet of water per day with a goal of 3,000 acre-feet by December 31st giving a total of 7,000 acre-feet delivered in 2014. Mr. Kramer closed his remarks saying that the pipeline will deliver 4,000 acre-feet between January and March of 2015.

Chairwoman Burr called for agenda item no. 9, old business.

- a. Coordination of enforcement actions between the Commission and the Ground Water Management Districts under HB 14-1052.

Mr. Keith Vander Horst addressed the Commission. He reminded the Commission that HB-1052 gave enforcement authority to local management districts. He also reminded the Commission that multiple enforcement actions should not be filed for the same violation. Referencing a previously distributed memorandum, Mr. Vander Horst summarized the key operating guidelines of coordination between the Commission and the Districts;

Ground Water Management districts will enforce violations of District rules.
Ground Water Commission will enforce violations of its rules and permits.
Ground Water Commission will take the lead in enforcing violations of District and Commission rules when there are multiple violations.
Communication is a must.

In response to a question by Commissioner Burr, Commissioner Sellers noted that the Districts may impose and collect fines beginning five (5) days after the cease and desist order is approved.

- b. Procedure for appeal of permit interpretation and administration by Staff.

Referencing a previously distributed memorandum, Mr. Keith Vander Horst explained to the Commission the procedures and steps afforded those users who disagree with action taken on their permit applications or existing permits.

Small capacity permits are issued by and administered by the State Engineer. Statute allows for those users who are aggrieved by a decision of the State Engineer in the processing of their application for a well permit to appeal that decision to the State Engineer. Once written notice is received by the State Engineer, he will choose to either hear the matter himself or assign it to the Hearing Officer. If the user is dissatisfied with the decision he may appeal that decision from the Hearing Officer to the State Engineer and from the State Engineer to the District Court. Though not addressed in statute, the same procedures will be used for users objecting to the administration of their small capacity well.

Large Capacity permits are issued by and administered by the Commission. By resolution of the Commission on May 21, 1993, the Commission delegated to the

executive director all powers granted to the Commission in the Ground Water Management Act of 1965 except those powers specifically reserved to the Commission under section 37-90-104(6), C.R.S. (2014). Statute allows for those persons who are aggrieved by a decision of the Executive Director and/or staff to appeal that decision, typically before the Hearing Officer. Also, objections of those persons objecting to an application pursuant to 37-90-112, C.R.S. (2014) are heard by the Hearing Officer. Persons aggrieved by the decision of the Hearing Officer may appeal that decision to the Commission. Once the Commission rules, final agency action has occurred. Any appeals are to the District Court.

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

Secretary Nielsen informed the Commission of the dates and room availability for the Commission's 2015 meetings are February 20th in Denver and May 15th, August 21st and November 20th in Castle Rock. Commissioner Wolfe added that should they want to hold the August meeting out of town, as recently done, they should think of where they would like to go. Commissioner Kramer stated that he had spoken with Mr. Lou Entz who invited the Commission to the San Luis Valley.

Chairwoman Burr noticed the Commission that the American Ground Water Trust is hosting their annual Colorado Ground Water Conference on December 4th at the Stapleton Holiday Inn.

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

Mr. Harold Eurich approached the Commission to express his concerns about one of his neighbors operations. He said that the Rocky Mountain Roosters Club has dug deep channels in Bijou Creek (on what used to be grassed in creek bottom) taking all of their ground water.

Mr. Keith Vander Horst advised the Commission that complaints have been received and are being followed up on. He also said that the augmentation plan submitted in August continues to be evaluated. In response to a question of Commissioner Clever, Mr. Vander Horst indicated that the area in question is in the Kiowa-Bijou Designated Basin but that he did not know about any 404 permits.

Mr. Earnest Mikita addressed the Commission. He expressed his concerns and those of neighbors about the activities at the Club. Mr. Mikita stated that they have excavated and trenched upstream of what used to be a flood control dam and dug twelve (12) new holes. But have no new permits that he saw, pumping to the ponds, only to evaporate. He was curious if the wells were permitted and when something was going to be done.

Mr. Vander Horst stated that there is no specific time line at this time but that he will push the matter.

Commissioner Wolfe asked Mr. Mikita if the District had considered any action against the club and implementing HB-1052. Mr. Makita responded that the area is in the Kiowa-Bijou Basin but not within the District so no action has been taken.

Mr. Steve Beedy approached the Commission. He reminded the Commission of the issues he is dealing with because of decisions made by staff regarding the operation of his wells. Mr. Beedy told the Commission that the County Commissioners are in favor of him selling his water to wind farms and for use in oil and gas production. Mr. Beedy ended his comments by requesting that the Commission rescind the cease and desist order issued by staff and allow the use of the wells as originally intended.

Chairwoman Burr advised Mr. Beedy that the Commission cannot make a decision about his concerns at this meeting and that he should follow the prescribed path for a hearing before the Commission.

Mr. Pat Kowaleski advised Mr. Beedy that he should appeal the decision of staff in writing, specifying the relief he wants. He said that the Commission needs to hear his arguments and those of staff.

Commissioner Wolfe emphasized that the procedures need to be followed to maintain the integrity of the process.

Commissioner Larson asked Mr. Beedy if he had looked into a change in use of his permits. Mr. Beedy responded that he had but with no historical use the new permitted volume would be too small to do anything.

Mr. Adam Davenport, legal counsel for Mr. Beedy, addressed the Commission. Mr. Davenport suggested that the Commission should try to determine where the new definitions for commercial and industrial use came from and when. He suggested that the Commission rescind the August 2014 memo which defines commercial and industrial use and change the law through rule making and/or legislation. Mr. Davenport also suggested that the Commission revisit the process for an aggrieved well owner to seek recourse when staff determines the legal uses of their well. He also suggested that the Commission develop a policy as to what satisfies as evidence for the well owner's intended use of the water.

Chairwoman Burr advised Mr. Davenport as she did Mr. Beedy, that the commission cannot make a decision today and that Mr. Beedy should follow procedures and file an appeal to be heard by the Commission. She also advised Mr. Davenport that if he is suggesting a rule making that he contact and proceed through staff.

There being no further business the meeting adjourned.

Respectfully submitted,



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