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## MINUTES

### SECOND QUARTERLY MEETING COLORADO GROUND WATER COMMISSION MAY 20, 2016

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The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 20, 2016, at Castle Rock Town Hall, 100 N Wilcox, Castle Rock, Colorado. Chairwoman Carolyn Burr called the meeting to order at 10:00 a.m. Secretary Nielsen called the roll and determined that a quorum was present. Commission members present were Carolyn Burr, Larry Clever, Dan Farmer, Blake Gourley, Steve Kramer, Greg Larson, Scott Tietmeyer, Dick Wolfe and Suzanne Sellers (on behalf of James Eklund). Staff members present were Kevin Rein, Keith Vander Horst, Rick Nielsen, Chris Grimes, Shannon Johnson, David Keeler and Neelha Mudigonda. 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**, Commissioner Tietmeyer noted that Mr. Andy Jones would provide the Upper Crow Creek report. Commissioner Wolfe suggested that the record reflect that as Commissioners Burr and Clever have not been replaced as of this date that agenda items 2 & 3 were skipped. The agenda was approved with the suggested changes.

**Approval of Minutes for Meeting of February 19, 2016**, Chairwoman Burr asked if there were any corrections or additions to the minutes. Commissioner Farmer noted that on page 4, under District reports where Ms. Lisa Thompson was reporting for Upper Black Squirrel, he noted that Cherokee requested 600 ppm. Commissioner Tietmeyer noted on page 4 that it is the local irrigators not the State of Wyoming that is creating the water district. He also mentioned that it was Commissioner Valdez, not Commissioner Arnusch who moved, on page 6, for the Commission to work with staff to develop a resolution to be submitted to the WQCC. There being no further comments, the minutes were approved as amended.

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

#### **Report of the Executive Director by Dick Wolfe**

Mr. Wolfe opened his remarks with the Republican River. He said that the Republican River Conservation District was created in 2004 in accordance with the 2003 settlement of the 1998 lawsuit by Kansas. Mr. Wolfe said that the District has used buyouts and following programs together with the Republican River Compact Compliance Pipeline, which is in its third year of operation, to help Colorado be in compliance with the compact. He said that he had hosted a meeting in Burlington the previous Monday to discuss rule making for the Basin. Mr. Wolfe advised the Commission that an advisory committee will be created to help with additional rulemaking for compact compliance. The goal is to ensure equity between the users in the Basin.

Mr. Wolfe closed his comments speaking on the Rio Grande Basin. He reported that the Basin had received 250% of average annual precipitation for the year, leading to a two week late potato harvest. He said that this second year of above average precipitation is helping to recharge the aquifers which have been in decline since 2002. Mr. Wolfe said that progress is

being made in the negotiations with the thirty groups objecting to the proposed rules. He said that an eight week trial is scheduled to begin in January of 2018.

**Chairwoman Burr called for agenda item no. 7, Commissioners' reports:**

Commissioner Kramer thanked Commissioner Wolfe for the meeting in Burlington the past Monday to discuss the advisory committee.

Commissioner Burr talked about the past legislative session and the De Novo Review legislation. She thanked the Commissioners, Districts and users for their support but that it died in the judiciary committee. She said that the interim water committee may take it up again.

Commissioner Wolfe took this time to add to his executive director's report, he advised those gathered that the terms of Commissioners Burr and Clever expire this month. He thanked them for their service and said that a more formal send-off will happen when their replacements are appointed.

**Chairwoman Burr called for agenda item no. 8, the staff activity report.**

Mr. Keith Vander Horst went over his written report. He noted that there had been no change in the list of cases pending before the Commission. Mr. Vander Horst said the Gallegos and Front Range Resources are still under appeal. He did say that a recent application had been objected to but that the objection was quickly withdrawn. On a similar note, Mr. Vander Horst reported that a small capacity well owner has ceased the illegal use of his well and is now seeking a Determination of Water Rights. He also reported that staff continues to work with the homeowners in Blue Spings subdivision, in the Upper Black Squirrel Creek Basin, to resolve the matter of the ponds on their property.

Mr. Vander Horst closed his remarks introducing a new staff member, Neelha Mudigonda to the Commission and reporting on other staffing changes.

**Chairwoman Burr called for agenda item no. 9, the Attorney General's report.**

Ms. Jennifer Mele opened her comments by advising the Commission of the Einspahr matter and that the Hearing Officer had ruled in our favor. She also spoke to the Front Range matter which is now before a District Judge and is set for a two week trial in June. On the Hutton case Ms. Mele said that she has not seen much movement. She said that she will get questions of the Commissioners to the proper person for an answer.

**Chairwoman Burr called for agenda item no. 10, Management District Reports**

Mr. Nate Midcap, reporting for the **Marks Butte, Frenchman, Sandhills and Central Yuma GWMD's**, reported that they have had good moisture with most of the crops in. He has been very busy with meetings on the rules that Dick Wolfe talked about, meetings to stay up on the Hutton matter and the WPP on top of his duties as manager of the Big 4.

There was no report for the **W-Y GWMD**.

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

Ms. Brandi Baquera, reporting for the **Plains GWMD** noted that she also attended Monday's meeting regarding the advisory group and believes that it was well received. She reported that all of the crops are in and that recent rainfalls have allowed the user's to turn their pivots off for awhile.

Commissioner Burr read the report of Caroline Talbert for the **East Cheyenne GWMD**. As the new manager Ms. Talbert was busy moving into a new office, becoming familiar with the District and meeting the well owners. The District had several rainstorms that have limited the field work. Ms. Talbert reported that the District and the user's are working to be compliant with the rules.

Mr. Blake Gourley, reporting for the **Southern High Plains GWMD** said that things are green because of a lot of moisture. He also reported that the corn is going into moist ground and that the planting of sorghum and sunflowers is about to begin.

Mr. Robert Loose reporting for the **North Kiowa Bijou GWMD**, thanked Commissioner Burr, all Commissioners and parties for their efforts on with the De Novo legislation. Mr. Loose reported that they have been busy trying to educate the small well owners. He noted that Kiowa-Bijou again has from a quarter to a third of the quarterly permitting activity and that the Axton pond enforcement action is in the upper end of the Basin. He thanked staff for their efforts.

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

Mr. David Tausig reporting for the **Upper Big Sandy GWMD**, began his report thanking Commissioner Burr for her efforts on the De novo legislation, noting that the Denver Metro Chamber of Commerce supported the bill. He said that his District had received a grant to study the interaction between the alluvial aquifer and the deep aquifers. He also said that the District is amending their small capacity rules. Mr. Tausig concluded his remarks noting that Commissioner Cleaver had been nominated for the Getches award for his efforts to bring water out of Rudi Reservoir to help endangered fish in the Colorado River. The award will be presented on June 14<sup>th</sup>.

Mr. Andy Jones, reporting for the **Lost Creek GWMD**, said that there is plenty of moisture. He informed the Commission that the big effort of preparing for the Front Range Resources replacement plan trial in June is consuming a lot of time and money. Mr. Jones concluded his report thanking the Commission for their efforts on the De Novo legislation.

Mr. Andy Jones, reporting for **Upper Crow Creek Basin**, advised the Commission that some residents are looking into amending Rule 5.2.9 to close the Alluvial, Fan and White River aquifers within the Basin to appropriation. He noted that wells producing 900 to 1200 gpm are only producing 20 gpm at the end of the season. Mr. Jones reported that residents are also considering creating a management district after the rule change is complete.

Ms. Deb Daniel, reporting for the **Republican River Water Conservation District**, opened her comments by thanking Commissioners Burr and Clever for their service. She also thanked Commissioner Wolfe for the meeting on Monday. Ms. Daniel advised the Commission that the first meeting of the advisory group will be in June. She reported that she has heard from those users within the Republican Water Conservation District that the boundaries of the District should be enlarged to include all lands that are in the domain of the model used in the

Republican River court case. Ms. Daniel finished noting that participation in the conservation districts has slowed down.

**Chairwoman Burr called for agenda item no. 11, old business.** Discussion on a resolution regarding water quality and changes to the Water Quality Control Commission's regulations regarding water quality standards within designated basins.

Ms. Jen Mele addressed the Commission regarding the resolution she had prepared as requested. She noted that the deadline to file the resolution with the Water Quality Control Commission ("WQCC") is July 27, 2016.

In response to Commissioner Wolfe's query on whether it was no degradation (absolute) or no degradation beyond the standards as written, Ms. Mele said it is beyond standards as written.

Commissioner Clever thought the resolution should read that the Commission is opposed to Cherokee's plan, plain and simple.

Ms. Mele responded that it could be done that way but that it might be better to be more general in case a similar issue arises in the future.

Commissioner Farmer said he likes the thought as expressed by Commissioner Clever but that he is also pleased with the resolution as written.

Commissioner Burr believes that individualizing the resolution is best.

The discussion was opened to the floor for comments.

Connie King, attorney for Cherokee Metropolitan District approached the Commission. Ms. King stated that all uses of water (irrigation, domestic leach fields, fertilizers, etc.) raise the TDS levels. She also said that if the standards were not raised that Cherokee would need to implement very expensive forms of treatment and even with the increase in limits they would need to incorporate reverse osmosis into the treatment system.

Commissioner Farmer asked Ms. King why the cost to Cherokee has been discussed at the stakeholder meetings but not the cost to the alluvial aquifer and the cost to clean it up. He asked if there had been a study regarding the effects on the value and quality of the water in the Basin. Ms. King responded that those items will be discussed at the WQCC hearing on August 8<sup>th</sup>.

Commissioner Farmer asked Ms. King about the 20% of water lost during the reverse osmosis process being a loss to Cherokee or the Basin. Ms. King said that whether it is a loss to Cherokee or the Basin it is lost. She also said that Cherokee may have to spend upwards of seven million dollars to replace water that is lost. Pete Johnson, attorney for Cherokee, said that they cannot speak to the intent to replace the water.

In response to a question by Commissioner Wolfe, Ms. King stated that the 400 ppm value was a compromise many years ago for the entire state and that the August hearing will focus on Black Squirrel Creek. Commissioner Wolfe asked if there should be a different standard between a alluvial system such as the South Platte and a closed basin like Black Squirrel. Ms. King stated that there is disagreement on if Upper Black Squirrel is a closed basin and that will

be discussed during the hearing on August 8<sup>th</sup>. When asked, Ms. King said that the current background TDS is 250 to 300 ppm.

Commissioner Clever said that raising the standards will only pass the cost of treatment to downstream users.

Mr. Robert Longenbaugh addressed the Commission. He urged the Commission to become a party in the case and noted that the deadline to do so is May 28, 2016. He also told the Commission that the act creating the WQCC specifically requires that the State Engineer advise and work with the WQCC to protect the water rights of the State of Colorado.

Commissioner Wolfe advised the Commission that he had received information that the WQCC will consult with the State Engineer as required in statute. He said that he will respond as State Engineer but that the request has not yet been received. Mr. Wolfe stated that what direction the Executive Director is given today will not be part of the State Engineer's consult with the WQCC.

Chairwoman Burr reminded the Commission of the decision at the February meeting to file a resolution rather than seek party status.

Commissioner Clever moved that the Ground Water Commission oppose Cherokee's proposal to relax the TDS standards for its discharge effluent into Upper Black Squirrel Basin.

Commissioner Kramer seconded the motion and requested clarification of the wording to be used in the resolution. Commissioner Clever said be simple and say that we oppose it because it will degrade the water quality in the Basin.

Chairwoman Burr called for the vote;  
The vote was unanimous with Commissioner Farmer abstaining.

Mr. Andy Jones addressed the Commission. He reminded the Commission that there are two proposals before the WQCC in August. One, by the Commission itself, is to amend Rule 41 to allow for entities to request site specific changes to the Rules and two, Cherokee's proposal. He said that Lost Creek is concerned about the first proposal and wanted to know if the Commission was opposing both proposals.

Chairwoman Burr opened the discussion on the second proposal, amending Rule 41 to allow for requests for site specific changes to agricultural standards to be brought before the WQCC. Following public input and Commission discussion, Commissioner Clever amended his motion to state that the Commission is also opposed to any change to Rule 41 that would allow for changes that degrade the agricultural standards as they currently exist in Rule.

Commissioner Kramer seconded the amendment.

Chairwoman Burr called the vote which passed unanimously with Commissioner Farmer abstaining.

**Chairwoman Burr called for agenda item no. 12, new business.**

a. Review and possible amendment of the Designated Basin Rules.

Mr. Keith Vander Horst presented the Commission with an update on the proposed rule changes. He informed the Commission that five parties are going to participate with two already providing suggested changes. Mr. Vander Horst advised the Commission that we are now at the point of talking with the stakeholders. He believes that the process will continue into next year. Mr. Vander Horst assured Commissioner Farmer that he and the Commission will have an opportunity to see the changes as they occur, they will be advised of all meetings before they occur and be generally informed as the process moves forward.


b. Selection of August Meeting location.

After discussion it was decided that staff would forward potential locations to the Commission seeking their preference within three weeks.

**Chairwoman Burr called for agenda item no. 11, public comment, there was none.**

There being no further business the meeting adjourned.

Respectfully submitted,

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