
MINUTES
SECOND QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION
MAY 18, 2017

The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 18, 2017, at the Centennial Building, 1313 Sherman St, Room 318, Denver, Colorado. Chairman Valdez 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 Marc Arnusch, Dan Farmer, Angela Fowler, Blake Gourley, Steve Kramer, Greg Larson, Jim Noble, Scott Tietmeyer, Virgil Valdez, Dick Wolfe, Amy Laughlin (on behalf of Robert Randall), and Craig Godbout (on behalf of Lauren Ris). Staff members present were Kevin Rein, Keith Vander Horst, Rick Nielsen, Chris Grimes, Neelha Mudigonda, David Keeler, Matt Sares, Andy Flor and Kevin Donegan. Also present were Jody Grantham, Hearing Officer, Pat Kowaleski, A.G. for the Commission, Michael Toll and Philip Lopez, 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 February 17, 2017, Chairman Valdez asked if there were any corrections or additions to the minutes. There being none,

Commissioner Larson moved to approve the minutes as presented.
Commissioner Tietmeyer seconded the motion which carried unanimously.

Report of the Executive Director by Dick Wolfe

Mr. Wolfe opened his remarks commenting on the progress in the Republican River Basin. He said that the parties had reached a resolution in the accounting procedures for water short years in the Beaver Creek allocation. Mr. Wolfe said that because of this agreement they can now finalize the accounting back to 2007. He noted that though this was not the entire reason for not closing the books from 2007 on, it was a big part of it. Mr. Wolfe said that with this closing of the allocation books that we can hopefully demonstrate, by the end of 2017, that Colorado is in compact compliance, which we have not been since 2003. He said that discussion continues on Bonny Reservoir and the potential to store water there for recreational and fishery purposes.

In the Rio Grande Basin, Mr. Wolfe said that great progress continues to be made in the negotiations with the objectors to the rules originally proposed in September of 2015. He hopes that these negotiations will eliminate the need for the trial scheduled to begin in January of 2018 or at least shorten it to something less than the 8 weeks currently scheduled. Responding to a question of Commissioner Valdez, Mr. Wolfe said that a meeting of experts has taken place to discuss the effects of 2-J Ranches on Diamond Springs.

Mr. Wolfe closed his remarks advising the Commission that this would be his last meeting because he is retiring on June 30, after ten (10) years as State Engineer and Executive Director of the Commission.

Responding to a question from Commissioner Farmer, Mr. Wolf said that the 25,000 acres to be taken out of production in the South Fork of the Republican River Basin was part of the original vision following the Republican River Compact settlement stipulation in 2003. He said that it was envisioned as part of the plan

to bring Colorado into compliance with the compact on the 5-year running average. Mr. Wolfe went on to say that another method of reducing the depletions to the stream is to reduce the number of irrigated acres on a well or set of wells, as demonstrated by the conservation programs we are hearing about from the Districts.

In a follow-up question, Commissioner Farmer asked if Kansas and Nebraska had to sacrifice like Colorado so that all states get their share of water under the Republican River Compact. Mr. Wolfe said that each state has an allocation that they need to live within. He noted that Nebraska has acknowledged that there are years when the allocation is not sufficient to meet its needs due to drought conditions. Mr. Wolfe said that when these conditions occur Nebraska has a series of pre-approved plans they can implement on an as needed basis from year to year. He also noted that though Kansas has not yet had to implement any conservation plans the potential is there that they will.

Chairman Valdez called for agenda item no. 5, Commissioners' reports.

Chairman Valdez presented Mr. Wolfe with a plaque and resolution expressing the Commission's gratitude for his service.

Commissioner Kramer thanked Mr. Wolfe for regularly meeting with the people of the Northern High Plains to answer their questions regarding the Republican River or any other questions.

Chairman Valdez called for agenda item no. 6, the staff activity report. Mr. Vander Horst went over his written report. He noted that a hearing case, not in the written report, regarding Progressive Ag. Management to change the description of irrigated acres was resolved quickly when the objector withdrew his objection soon after filing it.

Mr. Vander Horst advised the Commission on the enforcement activity the past quarter, noting that the El Paso County Sheriff has provided Mr. Grimes with a list of marijuana grows where he suspects that a domestic well permit is being used, he wants Chris to look into them for violations of their well permit. After review of the file, a show cause letter is sent to those of concern. Mr. Vander Horst said that he and the State Engineer do not want Mr. Grimes to enter into a dangerous zone so there are few field inspections of these wells. Responding to a question of Commissioner Valdez, Mr. Vander Horst said that there are 33 properties identified on the list from the Sheriff.

Commissioner Wolfe took a moment to add to his report. He said that the advisory committee for the Republican River Basin Rules has taken a break in its discussions. The reason is that a question arose over enforcement authority between Water Court, Ground Water Commission, Management Districts and the State Engineer. It was deemed necessary to have legislation passed to clearly identify who has enforcement authority for violation of the Republican River rules.

Chairman Valdez called for agenda item no. 7, the Attorney General's report. Mr. Michael Toll briefed the Commission on the Strasburg and Kiowa cases, noting their similarity. He identified the questions of legal issue and actions concluding with the advisement that the case will be heard the following week. Responding to a question of Commissioner Noble, Mr. Toll responded that he was not sure when an initial decision will be issued and was unsure if the matter would come before the Commission on appeal at the August meeting.

Mr. Pat Kowaleski took a moment to introduce Chris Stark a new attorney with AG's office and Paul Bennington, the First Assistant in the Water Rights Unit, his supervisor.

Commissioner Arnusch requested an update on the Hutton matter. Mr. Kowaleski informed the Commission that oral arguments may be in the fall.

Chairman Valdez called for agenda item no. 8, Management District Reports.

Mr. Nate Midcap, reporting for the **Marks Butte, Frenchman, Sandhills and Central Yuma GWMD's**. Mr. Midcap, in an effort to demonstrate the discussions on conservation being held in his districts, used a few of the Commissioners in his scenario. One is a farmer with several wells each permitted to irrigate 160 acres but have for the past 30 years, only irrigating 130 acres, the second is a person who replaced irrigated land with a feedlot, and the third a farmer permitted to irrigate 240 acres with 400 acre-feet. After providing this "background", he asked them decide who was the most conservative and if they were willing to do more. Mr. Midcap said that these conversations, both frustrating and fruitful, are what his District meetings are like. Mr. Midcap said that the Districts are working on conservation projects on less than \$80.00 per well or 50 cents per acre. In response to a question of Commissioner Arnusch regarding District funding, Mr. Midcap stated that he can collect a tax of 15 cents per acre or \$60.00 per well plus there is a \$15.50 Republican River fee and even with pumping costs, water is cheap in his area.

Mr. Mc Call, reporting for the **W-Y GWMD**, reported that his board continues to work on compliance matters. He says that though the board is torn in many different directions he hopes they can reach a decision this month.

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

Ms. Brandi Baquera, reporting for the **Plains GWMD**, reported that the spring moisture has put the farmers behind in their planting. She further reported that the static water levels across the basin have declined. Ms. Baquera informed the Commission that her District, though being the first to start conservation discussions, has not progressed very far. They are looking at their rules and trying to collect and analyze data, anything to help move the discussion along.

There was no report for the **East Cheyenne GWMD**.

Mr. Blake Gourley, reporting for the **Southern High Plains GWMD** reported that his basin had been hit with a blizzard a few weeks past. He said that the moisture was good but it put people way behind in their planting. Mr. Gourley said that people continued to recover as they pull livestock out of the fields so that they could plant.

Mr. Glen Frihauf reporting for the **North Kiowa Bijou GWMD**, reported that they had lower water levels. He said the number of domestic wells going in is concerning and they are keeping an eye on it.

Ms. Lisa Thompson, legal counsel for the **Upper Black Squirrel GWMD**, advised the Commission that the Board had just finished an export hearing that went very smoothly because they had negotiated with the user during the change in use application process. She mentioned that the applicant had provided the 10 years of record required by Rule but that the opposers wanted 30 years of record. Ms. Thompson said that the opposers used the information provided to negotiate the applicant down. She also mentioned that Districts interest in 2 replacement plans, one by Meridian which was just completed and the other by Woodman Hill Metropolitan District. Ms. Thompson mentioned that these 2 plans are very similar. She reported that she believed settlement was pending in another matter involving the Cherokee Metropolitan District and the legal use of 8 wells in the center of the Basin. Ms. Thompson closed her comments noting that the County Sheriff wants to know if the Division of Water Resources will visit a site after the grow

operation has been shut down by removal of the electric supply. After discussion is decided that the Division of Water Resources will look at language to tag a well that is no longer in use, thus not in violation, to help keep the property from reverting to another grow operation.

Responding to a question of Commissioner Noble, Ms. Thompson affirmed that some of the wells may have actual domestic use and so each one must be handled on a case by case basis.

Commissioner Farmer suggested that the new legislation, limiting the number of plants per household may help. He said that previously they could have 99 plants per person which led to 1 house on a domestic well with 15 family members so they could have 1485 plants.

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

Commissioner Arnusch informed the Commission that many of the **Lost Creek GWMD**, board members had testified for the passage of SB-36, regarding De Novo trials, that was recently signed by the Governor.

Mr. Scott Tietmeyer, reporting for **Upper Crow Creek Basin**, reported that there is an increase in oil exploration activity. There are four companies working in the area. He noted that in Wyoming, when water is sold to the oil companies irrigated acres are retired. In the Upper Crow Creek Basin the oil companies are seeking bedrock water, putting together contracts of thousands of acres. He is concerned because these contracts do not have terms for specific sales of water being in his opinion more speculative and they are perpetual.

Ms. Deb Daniel, reporting for the **Republican River Water Conservation District**, reported that the executive committee and several board members went to Washington D.C. in February to speak with members of the USDA to garner more support for the conservation programs. She expects that they will return to Washington D.C. this coming summer. Ms. Daniel noted that the CREP program was established in 2006 and is due for some updating. Ms. Daniel reported that the District had pumped 10,800 acre-feet between October and March. She also informed the Commission that the District had purchased some property on the Arikaree River at the state line with plans to retire the three irrigation wells that are on the property.

Ms. Daniel closed her comments with a video tribute to Dick Wolfe.

Chairman Valdez called for agenda item no. 9, old business.

- a. Status on joint proposal regarding the “Petition For Determination of Jurisdiction Over Surface Water Within the Upper Black Squirrel Creek Designated Ground Water Basin”, from Meridian Service Metropolitan District.

Mr. Mason Brown, representing the Meridian Service Metropolitan District addressed the Commission. He advised the Commission that the parties had met for the first time on the previous Monday. Mr. Mason said that all parties were hopeful of an agreement and asked the Commission for more time before the matter came before them.

Chairman Valdez, noting no opposition, set the matter for the August meeting.

- b. Status of stakeholder process on proposal to amend Rule 5.6 regarding replacement plans, and Rule 5.8 regarding artificial recharge, storage, and recovery plans.

Mr. Keith Vander Horst advised the Commission that the stakeholder process is ongoing. He noted that after three stakeholder meetings there had been significant changes to the proposed changes. Mr. Vander Horst plans to get a revised draft out and hold a fourth stakeholder meeting. In response to a question of Commissioner Valdez, Mr. Vander Horst said that there are 15 to 20 participants at the stakeholder meetings.

- c. Status of proposed amendments to 2 CCR 402-3, Rules of Procedure for All Hearings Before the Colorado Ground Water Commission.

Mr. Jodi Grantham addressed the Commission. He stated that the purpose of this item on the agenda was to receive permission to proceed with publishing the proposed rules and filing them with the Secretary of State. Mr. Grantham said that there would then be a hearing before the Commission, either in August or November, probably November because the location of the August meeting, if out of town, may prevent an interested party from participating.

Responding to a question of Commissioner Noble, Mr. Grantham said that the proposed changes had been sent to those attorneys that practice before him, they were published twice in the Substitute Water Supply Plan notification list and they are on the website, there has been adequate notification to water users.

Commissioner Wolfe suggested that the draft as presented before them be sent out for comment one last time.

Mr. Kowaleski advised the Commission that they are not giving their stamp of approval at this time. He said that once the proposed rule changes are published, that publication will set a date and time for a hearing before the Commission. Mr. Kowaleski said that the Commission may change the proposed rules if they choose to do so at that hearing before voting on them. He said that this process of publication and filing with the Secretary of State push the process to the hearing stage.

Commissioner Noble moved to proceed to formal approval with the Secretary of State. Commissioner Larson seconded the motion which passed unanimously.

Chairman Valdez called for agenda item no. 10, new business.

- a. Introductory discussion on Commission's involvement with conservation measures, by Commissioner Farmer.

Commissioner Farmer said that he has received feedback from a few of the Basins saying that there is a conflict between the Basins and staff. He went on to say that he believes this conflict revolves around conservation. Commissioner Farmer would like to open a discussion on the matter so that everybody believes they are on the same page. He referenced the material he provided at the February meeting for the Texas Ground Water Management District operations. Commissioner Farmer ended his comments opening the item up to discussion.

Chairman Valdez asked the Districts if they had any comments on Commissioner Farmer's thoughts. There was no response.

Responding to a question from Commissioner Wolfe, Commissioner Farmer said that, as he sees it, there are two items for continuing discussion, conflict and conservation. He went on to say that he would like to have an informal session for the Districts to say how they view the Commission and staff and vice-versa. Commissioner Farmer went on to say that as a layman he does not always understand the reasons for the complex paths chosen by staff when in his mind something simpler will do. He wants more open conversation between staff, the Commission and the Districts.

Commissioner Wolfe said that he is aware of the strained relations that Commissioner Farmer was talking about. He said that it was his opinion that communication was the root cause of the strained relationships and that there is a training session planned for the lunch period, with more to follow, that he believes will educate the Commission and the Districts on staffs procedures. Commissioner Wolfe asked for input from the Commissioners and Districts, noting that his door is always open.

Chairman Valdez asked Commissioner Farmer if he would want this as an item under old business at future meetings. Commissioner Farmer said that would be a good idea. He added that he would like to see the Commission more involved in the legislative activities.

Mr. Robert Longenbaugh addressed the Commission. He advised the Commission that he was actively involved in the "65" legislation that created the process for creating a Designated Basin and Management District. Mr. Longenbaugh said that the statutes support the individual Districts efforts to create conservation practices for that District. He said that what is good for one District will not be good for all. He noted that this variety then makes matters difficult for staff.

Responding to Chairman Valdez, Commissioner Farmer said that he would like for everybody to think about it then discuss it at the next meeting.

- b. Proposal to initiate a change to Rule 7.4 to require a historical withdrawal and depletion analysis for a change of description of irrigated acres, by Staff.

Mr. Keith Vander Horst approached the Commission. He said that staff is requesting Commission approval to allow a proposed change to Rule 7.4 be taken ahead of the general proposed changes. Mr. Vander Horst advised the Commission that Rule 7.4 covers applications to change the description of irrigated acres. He went on to explain the current process of how Rule 7.4 is implemented, noting that there is no historic use analysis conducted to change the description of irrigated acres. He said that if you are permitted to irrigate 160 acres you may change the permitted description to any 160 acres. Mr. Vander Horst said that there are more applications being received to change the description of acres, a typical example being a well permitted for 160 acres but, based on aerial photographs, has for the past 30 years appeared to only irrigate 130 acres. The applications received are to change the description to a different 160 acres, normally described as 130 acres in a pivot and 30 acres in a small pivot in another quarter, essentially increasing the number of irrigated acres over the past 30 years. Mr. Vander Horst said that this action runs contrary to the conservation programs put forth by the Districts, the CREP, EQUIP and dry-up programs.

Mr. Vander Horst added that this adversely effects Colorado's compliance with the Republican River Compact. He said that the computations in the compact are based on actual irrigated acres and if the number of irrigated acres is going up it has an effect on compact compliance. He said that he has heard from Management Districts, especially in the Northern High Plains that this rule needs to be changed so as to stop the effective expansion of irrigated acres.

Mr. Vander Horst stated that his memo included suggested wording. He is asking that the Commission give permission to proceed with the informal stakeholder process as dictated by statute. Responding to a question of Commissioner Noble, Mr. Vander Horst said that he had not received any opposition at this point, noting that the proposal just came out with the meeting packet so there was not a lot of opportunity to comment.

Commissioner Wolfe re-stated that there is a lot of support for this change from the Districts and user's, especially in the Northern High Plains. He said that he supports the proposal.

Ms. Leila Behnampour addressed the Commission. She said that the four districts, the Central Yuma, Frenchman, Marks Butte and Sand Hills Districts support the change and the expedited procedure. Commissioner Farmer asked Ms. Behnampour why each District could not make their own rule rather than making it a statewide rule. Ms. Behnampour said that the Statutes are written such the Commission handles changes of use and that the Districts do not have the resources to handle that. She added that if during the process it may be decided that the Districts would not object if, in the end the change applied only to the Northern High Plains. Commissioner Farmer said that he would like to see as much control as possible to remain with the Districts. Ms. Behnampour said that the decision before the Commission is to expedite the rule change or not and that the issue could be discussed during the stakeholder process.

Commissioner Farmer asked the reason for Mr. Vander Horst to relate the action of changing the description of irrigated acres to the Republican River Compact since all Designated Basin wells are considered non-tributary. Commissioner Wolfe explained that it came down to a matter of intrastate vs. interstate administration. Mr. Wolfe said that the United States Supreme Court had ruled that the pumping of the wells in the Northern High Plains affected the surface flows of the Republican River.

Mr. Vander Horst addressed the Commission to clarify his comments. He said that the standard for a change of water right is that there should be no material injury. He went on to say that the current rules have a different standard of material injury based on the type of change you want.

Commissioner Arnusch moved to approve the initiation of the stakeholder process to amend Rule 7.4.

Commissioner Kramer seconded the motion which passed unanimously.

c. Selection of August Meeting location.

Secretary Nielsen was directed to plan for the August meeting to be held on the West Slope.

Chairman Valdez called for agenda item no. 11, public comment.

Ms. Leila Behnampour approached the Commission. She said that she was representing North Kiowa LLC. Ms. Behnampour referenced a letter she wrote requesting that the changes to Rules 4, 5, 7 & 11 be expedited. She said that the letter was written because her client does not know what the process is or what the time line is because some changes are being taken out and expedited. Ms. Behnampour stated that her clients concerns included how small capacity wells are issued.

Mr. Vander Horst explained that the issue of the small capacity wells revolved around a determination of water right and the need to cancel a portion of that right to obtain a small capacity livestock permit. He said that this required the development of a new process which took some time but that North Kiowa LLC

received the permit requested. Mr. Vander Horst said that considering the issuance of the permit that staff does not understand the necessity of expediting the requested rule changes. Responding to Commissioner Wolfe, Mr. Vander Horst said that due to the heavy work load and hearings that are in progress that he has not had time to pursue the general rule change.

Responding to a question of Commissioner Noble, Mr. Vander Horst said that staff disagreed with the concept of the letter that a small capacity well can be issued on lands where the water is part of a determination. He also said that if the processes was expedited that there would be no hearing until November which will not help North Kiowa LLC for this summer.

Responding to a Commissioner Wolfe, Ms. Behnampour said that her clients would be willing to agree to the process as set forth by Mr. Vander Horst.

There being no further business the meeting adjourned.

Respectfully submitted,

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