
MINUTES

FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION NOVEMBER 3, 2017

The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 3, 2017, at Town of Castle Rock Utilities Department, Building 183, 175 Kellogg Ct., Castle Rock, 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, Kevin Rein, Lauren Ris (on behalf of Robert Randall). Staff members present were Keith Vander Horst, Rick Nielsen, Chris Grimes, Shannon Johnson, David Keeler, Matt Hardesty, Devin Ridnour, BreAnn Ferguson, Andy Flor and Kevin Donegan. Also present were Jody Grantham, Hearing Officer, Pat Kowaleski, A.G. for the Commission and 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 August 11, 2017, Chairman Valdez asked if there were any corrections or additions to the minutes. Commissioner Noble noted a couple of typographical errors.

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

Report of the Executive Director by Kevin Rein

Mr. Rein opened his remarks noting that he has, pursuant to tradition, been attending the Division offices fall meetings. He said that they are an opportunity for executive staff in Denver to connect with the Staff of the Divisions and to learn what their concerns are.

Mr. Rein reported that with the trial set for January there remain one or two objectors to the proposed rules in the Rio Grande Basin.

The rulemaking procedures for the protection of agricultural water rights move along. Spurred by legislation, these changes allow an irrigator to quantify his/her water right now for a future change. This allows municipalities to enter into a contract with an irrigator when the water is actually needed. If the water is not needed, it may be used to grow crops.

Mr. Rein advised that there may be legislation again this year to adjust the boundaries of the Republican River Basin Conservation District so that they follow those used in the domain model. He closed his remarks by informing the Commission of staffing changes in the Denver Office, mainly that Ms. Tracy Kosloff is now the Assistant State Engineer for water supply over Basins, essentially his old position.

In response to a question of Commissioner Valdez, Mr. Rein said that the State had reached a stipulated settlement with 2-Way Ranch in the Rio Grande rule making.

In reply to Commissioner Farmer, Mr. Rein said that the Office of the State Engineer always wants more staff but that getting additional staff is not a reality. He reminded the Commission of the recent staffing changes in the office that were designed to spread the work out more.

Commissioner Farmer questioned if perhaps the Commission should approach the Legislature for more money for staff.

Chairman Valdez called for agenda item no. 5, Commissioners' reports, there were none.

Chairman Valdez called for agenda item no. 6.

A hearing on a proposal to amend Rule 7.4 to prevent a well from increasing depletions of designated ground water beyond the well's historical depletions when changing the description of irrigated acres allowed to be irrigated by the well, Case no. 17-GW-04.

Mr. Pat Kowaleski briefed the Commission on the rule making procedures followed to-date, and the procedures to be followed during the hearing. Mr. Kowaleski also identifies those who had acquired party status.

Mr. Philip Lopez, on behalf of Staff, approached the Commission. He said that the proposed amendment to the Rules will require an historical consumptive use analysis. This is to limit depletions to the aquifer caused by irrigating new lands over the historical lands. He then covered the statutory and legal authority for the Commission to adopt or amend rules, (under 37-90-108). Mr. Lopez stated that it is Staff's perspective, the amendments to the rules are reasonable from a policy and a factual perspective, as demonstrated in the Basis and Purpose to be adopted at the same time as the Rule amendments. He said that the proposed changes are consistent with the state of law regarding change of water rights. Mr. Lopez said that these amendments, if adopted, will make users in the Designated Basins subject to the same standards throughout the State.

Commissioner Blake questioned Mr. Lopez, asking if an appropriator applied to change his water right without asking for more acres, would he be subject to re-quantification. Mr. Lopez replied that he would be if there was a potential for an increase in the historic consumptive use as quantified on the original irrigated acres.

Commissioner Farmer asked Mr. Lopez if a well had historically irrigated 125 acres under a sprinkle could the owner go to 250 acres under drip irrigation because there is no increase in water use. Mr. Lopez answered that to the extent that the consumptive use is not increased you may.

Commissioner Noble clarified that it would also be to the extent that the irrigated acres do not change from those that are permitted. Mr. Lopez agreed.

Responding to a question of Commissioner Tietmeyer, Mr. Lopez confirmed that an irrigator can change the method of application on those lands as currently permitted.

Mr. Keith Vander Horst addressed the Commission. He said that a change in the description of irrigated acres is a change of water right. Mr. Vander Horst said that this process is controlled by Rule 7.4, which does not apply to wells located in the Denver Basin. Mr. Vander Horst said that an application to change the description of irrigated acres is approved on the standard of no material injury. He said that the current evaluation process does not include a historical consumptive use analysis (HCU). Mr. Vander Horst noted that all other applications to change a water right, excluding an application to commingle water rights, require an HCU analysis. He also noted that outside of a Designated Basin, a change in the description of irrigated acres does require an HCU analysis, therefore, the proposed rule change would bring the evaluation standards of an application to change the description of irrigated acres inside a Designated Basin in line with those standards outside of the Basins and also bring the change application process in line with other change applications inside of the Designated Basins.

Mr. Vander Horst, using recent applications received by Staff to change the description of irrigated acres described the common theme. He gave an example of where the final permit allows for the irrigation of 160 acres typically described as a quarter section. Now the well owner wants to change the description and Staff discovers during the evaluation process that the well had been used to irrigate only 130 acres for decades. Now the well owner wants to maintain the 130-acre circle and move the 30 acres of corners to a different quarter and install a small pivot. This is an effective increase in the number of acres historically irrigated and an effective increase in depletions to the aquifer over the historical. Mr. Vander Horst said that the standard evaluation under the current Rule 7.4 adversely affects the vested water rights of other appropriators.

Mr. Vander Horst said that the proposed rule change will prevent an increase in depletions to the aquifer caused by a change in description of irrigated acres, the proposed rule eliminates any adverse impact. The proposed change also includes administrative requirements, including metering, 3-year banking and third party administration. He said that the proposed rule does allow for the correction in the description of irrigated acres so long as those acres are the originally irrigated acres, as requested by Mr. Dave Taussig of Upper Big Sandy GWMD at the August meeting. Mr. Vander Horst identified Marks Butte, Frenchmen, Sandhills and Central Yuma (the "Big 4") GWMD's and the Lost Creek GWMD as agreeing with the proposed change. He said that the proposed rule will not affect any existing water right. The terms of the proposed amended rule will only apply to those permits where a change is asked for.

He advised the Commission that the Upper Black Squirrel Creek did submit a pre-hearing statement that included proposals to amend Rule 7.4. The first proposal is to give consideration to the well owner that can demonstrate that the reduction in irrigated lands experienced by the well is due to declining water levels. Mr. Vander Horst said that Staff does not agree with the proposal because all Basins have experienced a decline in water level and the belief that the majority of applicants to change the description of irrigated acres would say that they had not irrigated all of the permitted lands because of a declining water table. Therefore the permits would remain and more lands would come under irrigation as shown in his example.

Mr. Vander Horst continued that Staff disagrees with another proposal from the August meeting, that the Rule be limited to those Basins that want it, the Basins could opt out. He said that because most of the aquifers affected by this rule are determined to be over-appropriated and have experienced a water decline. He said that Staff is of the opinion that the amendment should apply to all Basins to protect all water rights. Mr. Vander Horst closed saying that the best policy for the Commission is to be consistent throughout the Basins.

Responding to a question of Commissioner Noble regarding the effect on compact compliance, Mr. Vander Horst stated that the current standards of evaluation could have a negative impact on Colorado's compact compliance because administration of the Republican River Compact centers on the number of irrigated acres.

Ms. Lisa Thompson, representing the Upper Black Squirrel Creek GWMD, addressed the Commission. She said that the Board generally supports the proposed changes to Rule 7.4. Ms. Thompson noted that the Board does believe that there may be some unintended consequences for irrigators in their District that have had their ability to irrigate reduced due to declining water levels. She said that based on these concerns she had submitted a pre-hearing statement that contained some proposed language to address the matter. Ms. Thompson said that these are local concerns and that the Board would rather see the proposed Rule pass than be delayed by lengthy consideration of their local concerns.

Ms. Leila Behnampour, representing Marks Butte, Sandhills, Frenchman and Central Yuma GWMD's, addressed the Commission. She said that the Districts are concerned about declining water levels and vested water rights, therefore they support the proposed rule change. Ms. Behnampour said that in the Northern High Plains, CREP funds are being used to retire acres from irrigation for compact compliance but that changes like the example that Mr. Vander Horst provided hurts that effort.

Chairman Valdez opened the hearing to public comment.

Mr. Nate Midcap, representing Marks Butte, Frenchman, Sandhills and Central Yuma GWMD's, addressed the Commission. He said that the Districts support the rule change because making these changes is consistent with the Districts goals in reducing ground water withdrawals and doing so helps support the Republican River Compact.

Mr. John Buchanan, representing the East Cheyenne GWMD, addressed the Commission. He said that the District would like to see the Commission deny the proposed change. Mr. Buchanan continued that the District agrees with the Upper Black Squirrel Creek District about declining water table but also believes that the irrigators will be harmed if they have been conserving water or if the irrigation of un-permitted lands began a few years after the permit was issued. He stated that an irrigator using surface water can change the description of acres irrigated without a consumptive use analysis. Mr. Buchanan continued that if the Commission wants to amend the rule they should do so using the historical acreage rather than the historical consumptive use, a less expensive analysis, and limit the change to those Districts that want it. Responding to a question of Commissioner Rein, Mr. Buchanan said that he was referring to a ditch scenario where the irrigated lands are not specifically described. He added that the current rule allows farmers more flexibility in managing their operations.

Mr. Dave Taussig, representing the Upper Big Sandy GWMD, addressed the Commission. He thanked the Commission for their consideration of his comments at the August meeting regarding the original irrigated acres being different from those permitted.

Chairman Valdez closed the public comment portion of the hearing, opening it to Commission deliberation.

Commissioner Farmer asked if he would be able to move 62 acres (the E1/2 of a circle) to the W1/2 of the section without being subject to the proposed changes. Mr. Vander Horst said that if he remained within the currently permitted acres he could but if he went outside of the currently permitted acres he would be subject to the proposed changes. Commissioner Farmer said that he felt that the change was a hindrance to farmers.

Commissioner Fowler asked if the Commission approved rule 7.4.6.1.a, as proposed by Upper Black Squirrel, would the compact be impacted. Mr. Vander Horst said that the compact would be affected because obligations of Colorado are calculated on actual irrigated acres, not the permitted number of acres.

Responding to a question of Commissioner Arnusch, Mr. Vander Horst said that the method of historical consumptive use was chosen after consideration of a request of the Big 4 Management Districts.

Commissioner Arnusch stated that in the eyes of a landowner, the process could be viewed as an attack on private property rights. He asked Mr. Vander Horst to address that concern. Mr. Vander Horst said that the proposed rule change is not a taking. He added that the irrigator can continue to use his or her water right as currently permitted, but that if a change is requested that right is placed at risk. Mr. Vander Horst stated that this concept is well established in Colorado law.

Commissioner Gourley asked why it was necessary to do a consumptive use analysis if the request is to only change the acres without increasing the number of acres. Mr. Vander Horst responded that such a change should not result in a big change for the operator. He can continue to irrigate the same number of acres and crops using the same application method.

Responding to a description of the consumptive use analysis by Mr. Vander Horst, Mr. Gourley said that it appeared to be costly and time consuming and should not be for a change in description of acres that does not include an increase in acres.

Commissioner Noble commenting that the rules require no injury noted that growing 160 acres of alfalfa on one side of the line would have the same consumptive use as growing 160 acres of alfalfa on the other side of the line. He asked Mr. Vander Horst if that scenario was considered. Mr. Vander Horst responded that in that scenario, a consumptive use analysis should not result in a big change for the operator. He added that proposed rule 7.4.2 requires that the provisions of rule 7.4.10 apply to determine the historical withdrawal.

Commissioner Rein asked Mr. Kowaleski how the Commission could amend the proposed rule. Mr. Kowaleski said that this is a hearing on the proposed rules and the Commission may change them as they see fit without the need for additional public comment.

Commissioner Larson suggested that no HCU be required if there is no increase in the number of acres but that one would be required if there is an increase in acres.

Commissioner Arnusch requested that Mr. Midcap join the discussion to help explain matters.

Mr. Midcap said that if 130 acres are irrigated and moved then there is also a need to reduce the annual appropriation to correspond to the 130 acres. He said that the state has a form for that and that it can and has been done. Mr. Midcap said the Districts decided to go for the HCU analysis because that is the norm for all other changes except commingling.

Commissioner Arnusch said that in his District the farmers started with 160 acres and went down to 130 acres. He said that this proposed rule could potentially hurt the farmers in future changes to their practice. Mr. Arnusch continued that he does not think that the solution for the Northern High Plains is a one-size-fits-all scenario.

Commissioner Farmer said that he does not think that the compact should have an impact on the deliberations of the Commission. He went on to say that the historical irrigated acreage should be used not the HCU and that each District should be able to opt out of the rule, to allow for more local control.

Commissioner Gourley said that he too would prefer evaluation under historical acres and not HCU.

Commissioner Tietmeyer asked Mr. Lopez if they could change the proposed rule and meet statute. Mr. Lopez referred the question to Mr. Kowaleski who said that the Commission could change what was presented to them.

Commissioner Gourley moved to have Staff consider the historical acres and not the historical consumptive use.

Commissioner Farmer seconded the motion which failed.

Commissioner Noble moved to amend rule 7.4.1 to read ...a change of description of irrigated acres shall not result in an increase over the historical acreage irrigated by the well. The future average irrigated acreage from a well under this rule shall not exceed the average annual legal irrigated acres by the well and be less than this amount to ensure no increased depletions to the aquifer...

There was no second.

Commissioner Noble moved to amend rule 7.4.1 to read ...a change of description of irrigated acres shall not result in an increase over the historical average irrigated acreage by the well. The future average irrigated acreage from a well under this rule shall not exceed the average annual legal, historical average irrigated acres by the well and be less than this amount to ensure no increased depletions to the aquifer by a need to compensate for any reduction in the return flows back to the aquifer, and Rule 7.4.2 is amended to read ... it shall be the burden of the applicant to demonstrate the historical average irrigated acreage by the well...

Commissioner Farmer seconded the motion which failed.

Commissioner Arnusch moved that Staff review the rule making, considering adopting historical irrigated acres rather than historical consumptive use.

Commissioner Kramer seconded the motion which passed unanimously.

Commissioner Arnusch moved to continue the hearing until the next scheduled meeting.
Commissioner Larson seconded the motion which passed unanimously.

Chairman Valdez called for agenda item no. 7.

A hearing of consolidated cases, nos. 16-GW-01 and 16-GW-02.

16-GW-01, an appeal by the Strasburg Sanitation and Water District to the Initial Decision of the Hearing Officer concerning issuance of a Final Permit, permit no. 2642-F.

16-GW-02, an appeal by Kiowa Water and Wastewater Authority to the Initial Decision of the Hearing Officer concerning issuance of a Final Permit, permit no. 2794-F.

Mr. Pat Kowaleski briefed the Commission on the procedures followed to-date, and the procedures to be followed during the hearing. He briefed the Commission with his understanding of the issues for each case, citing statutes and arguments of both parties. Mr. Kowaleski reminded the commission that they can accept the Hearing Officers decisions or reject his decisions in part or in whole. He noted that though they will be hearing the cases at the same time they will be acting on them individually.

Mr. Matt Poznanovic, representing the Strasburg Sanitation and Water District and the Kiowa Water and Wastewater Authority, approached the Commission. He opened his comments asking the Commission to confirm that the permits, issued in 1960, over 50 years ago, under the 1957 law, were final permits at the time of issuance. Mr. Poznanovic stated that the wells had perfected their water right by pumping at the permitted flow rate of 60 GPM (Strasburg) and 360 GPM (Kiowa). He said that at these flow rates and pumped 24 hours-a-day for the full year, Strasburg would pump 96 acre-feet and Kiowa would pump 575 acre-feet. Mr. Poznanovic said that now Staff wants to change the rules and issue new final permits which would reduce the annual acre-feet from 96 to 15.4 for Strasburg and from 575 to 132.5 for Kiowa.

Mr. Poznanovic said that Strasburg and Kiowa want the Commission to set aside the Hearing Officers initial decision, to confirm that the "65" act does not apply retroactively, that Strasburg and Kiowa perfected their water right in 1960 at a rate of 60 GPM for Strasburg and 360 GPM for Kiowa and that the Strasburg and Kiowa permits be found to be final when they were issued. He went on to say that a water right is based on appropriation which means that water is diverted and applied to beneficial use. Mr. Poznanovic said that there was no dispute that Strasburg and Kiowa constructed their wells, diverted the water and placed it to beneficial use, all according to their permits, therefore by the definition of appropriation they have a water right. He continued that a vested water right exists when the permit holder takes steps to rely on it.

Mr. Poznanovic said that what is at question is if applying the final permit statute retroactively was intended or even constitutional. He then went on to say that statutes are normally prospective, meaning they concern only in the future but that occasionally a retroactive law is approved but normally does not allow retrospective administration. He said that there is no legislative intent to apply the "65 Act" to rights that existed before the effective date of the "Act", there is nothing in the "65 Act" that imposes the two step conditional permitting process on pre-law permits. Mr. Poznanovic went to say that 37-90-107 ("107") deals with future actions, proposed uses and proposed wells with no reference to existing wells. He went on saying that 37-90-108 ("108") deals with final permitting, construction and beneficial use of the wells. However, it only concerns conditional permits issued after May 17, 1965. He said that neither 107 nor 108 mention existing wells or existing permits. If it had been the legislative intent to include existing permits to the final permit procedure, it would have explicitly said so.

Mr. Poznanovic next discussed 37-90-109 ("109"). He said that paragraphs 1 – 3 concern setting the priority date for pre-65 wells. He then said that priority lists and final permitting are separate processes. Continuing, Mr. Poznanovic stated that paragraph 4 says final permits are issued pursuant to 108 but

108 requirements only apply to conditional permits. He said that it was unfair to allow people to rely on their permits for 55 years then change the rules.

Mr. Poznanovic advised the Commission that if they believed a final permit was necessary, they could invoke 108(3)(b) and, by invoking the Staff, issue final permits for future demand to meet future growth, future growth like Kiowa's four (4) approved annexations. He continued saying that the towns relied on their water rights for 55 years, almost a lifetime, before Staff decided to issue final permits. Mr. Poznanovic said that Strasburg and Kiowa should not be punished for Staff waiting 55 years to act.

Responding to questions of Commissioner Tietmeyer, Mr. Poznanovic said that the Basin was created after the 65-Act and the cities thought they were obeying the rules when they became a part of the Basins.

Commissioner Fowler asked about what occurred in 2005. Mr. Poznanovic advised the Commission that the replacement permit approved by Staff was a part of the five million dollars spent by Kiowa to refurbish the water system.

Responding to Commissioner Noble, Mr. Poznanovic said that the 2005 replacement permit provided for an annual appropriation of 575 acre-feet of water. In another question, Commissioner Noble asked for an opinion on the apparent contradictory handling of the great and growing cities doctrine in an early ruling of the Hearing Officer and the latest initial decision. In response, Mr. Poznanovic said that he thought the Hearing Officer read the statute, 108, too narrowly when he issued his latest Findings and Order and Initial Decision.

Responding to a question of Commissioner Arnusch, Mr. Poznanovic said that he thought the Strasburg and Kiowa wells were the last in this position of being evaluated for final permit. He continued that he did not know how municipal wells in a similar position were dealt with.

Mr. Michael Toll, representing Staff, addressed the Commission. He first responded to a couple of earlier questions, noting that the Basin was designated in 1965 and that it was due to the structure of the final permit process (processing permits township by township for each Basin), that it took so long to get to the permits that are the subject of the hearing.

Mr. Toll then advised the Commission that Staff wants the Commission to affirm the Hearing Officers initial decision and issue a final permit to Strasburg in the amount of 15.4 acre-feet and to Kiowa in the amount of 132.5 acre-feet, being the volume of water that Strasburg and Kiowa were able to demonstrate that they diverted and placed to beneficial use. He went on that none of the facts of the cases, the yield, the priority date or even the volume of water that was placed to use, and for Kiowa, the future demand, are disputed.

Mr. Toll informed the Commission that according to several Supreme Court cases, a final permit is equal to an absolute water right and that an appropriation is made by pumping the water and placing it to beneficial use, a water right is not perfected by merely pumping the water.

He went on to say that the actual text of the 1957 law says that the issuance of a permit under the 1957 law shall not have the effect of granting or conferring a ground water right on the user but shall be prima facie evidenced of that water right. Therefore, the Strasburg and Kiowa permits cannot be a final permit because a final permit is equal to an absolute water right and permits issued under the 1957 law do not confer a water right. Mr. Toll continued that after the 65-Act, all permits, including those issued

before the Act could only establish a confirmed, vested water right through the final permit process which specifies the priority and the amount of water diverted.

Mr. Toll went over 37-90-109 by paragraph to help explain the connection between pre-65 permits, 108 and 109. He said that 37-90-109(3) addresses the quantity of water placed to beneficial use by requiring the Commission to establish the water right by using the information required for a final permit as shown under 108(5), which includes the maximum volume of water placed to beneficial use which is determined under 108(3)(b). He also advised that 109(4) requires that the Commission issue final permits for all wells to appropriate ground water pursuant to the standards of 108.

Mr. Toll summarized his arguments from the beginning, concluding by noting that the delay in asking for information to issue a final permit actually was to the benefit of Kiowa whose maximum annual beneficial use occurred in 2012.

Mr. Toll next spoke to the claim of Kiowa that 37-90-108(3)(b) gives the Commission the authority to issue a water right for water that has not been placed to beneficial use, being the difference between what they have used, 132.5 acre-feet and the volume the well could divert if pumped 24-7-365 at 360 GPM. He noted that the very statute qualifies the ability of the Commission to increase or decrease the volume of water is limited by the actual extent of beneficial use, therefore, the Commission does not have statutory authority to increase the quantity of water on a final permit beyond the extent of actual beneficial use. Though sympathetic to Kiowa's projected demands, it is a fact that they have not placed 575 acre-feet of water to beneficial use so the Commission, bound by law, cannot approve a final permit in an amount greater than 132.5 care-feet.

In conclusion, Mr. Toll said that the Supreme Court has held that the great and growing cities doctrine applies only to conditional water rights, and does not allow for a city to get an absolute water right or a final permit for a projected amount of water.

In response to a question of Commissioner Noble, Mr. Toll said that he is unaware of the Supreme Court discussing the great and growing cities doctrine in relation to 37-90-108(3)(b). He went on to say that it is not necessary as the Supreme Court has found that the doctrine applies only to conditional water rights and that 108(3)(b) applies to water that has been placed to beneficial use. Commissioner Noble then asked that in light of 108(5), what is the need for 108(3)(b). Mr. Toll replied that 108(3)(b) allows the user or Staff to present evidence to support the claim being made. He also cited the statute which says that the Commission may not increase or decrease the annual appropriation beyond that authorized before designation. He said that in the case of Strasburg and Kiowa that would be the volume of water demonstrated to have been placed to beneficial use. Commissioner Noble said that statute allows for the presentation of evidence and it is clear that Kiowa relied on the permit and committed to serve areas based on what the permit said and that the statute does not limit the type of evidence that may be considered to only that amount of water previously used. Mr. Toll replied that because a final permit is limited to the amount of water actually used that it does limit the type of evidence that can be considered by the Commission.

Chairman Valdez asked for a motion on the matter of 16-GW-01, an appeal by Strasburg Sanitation and Water District to the initial decision of the Hearing Officer. Commissioner Arnusch moved that the Commission uphold the initial decision of the Hearing Officer and for Staff to issue a final permit.

Commissioner Kramer seconded the motion which passed unanimously.

Chairman Valdez asked for a motion on the matter of 16-GW-02 an appeal by Kiowa Water and Wastewater Authority to the initial decision of the Hearing Officer.

Commissioner Arnusch moved to affirm the Initial decision of the Hearing Officer.

Commissioner Larson seconded the motion which passed with Commissioners Fowler and Noble voting nay.

Commissioner Noble said that he thinks that some relief under 108(3)(b) for Kiowa is warranted because they relied on a permit with no volumetric limit and had no knowledge of final permit limits when they committed to serve lands annexed into the town.

Commissioner Tietmeyer said that relying on historical pumping rates and water levels without proof would be poor planning. Commissioner Noble responded that towns have to appropriate water to plan for future growth. Commissioner Tietmeyer said that the Town has no proof that the well could produce 360 GPM if it ran 24 hours a day 365 days. Commissioner Arnusch said that the Town took a risk committing to serve when they did not have a firm yield, the Town never pumped the well 24-7 at 360 GPM for a year to see what the well will produce. He agrees with Commissioner Tietmeyer that this is the way to go.

Chairman Valdez called for agenda item no. 8, the Staff activity report.

Mr. Keith Vander Horst went over his written report, slowing in the enforcement section so that he could identify each complaint, the action taken and the resolution of that complaint, if any. He reported working with the Hearing Officer to initiate the formal process on amending Rules 5.6 and 5.8. The hearing is scheduled before the Hearing Officer for a week in June. Mr. Vander Horst advised the Commission that on October 4, 2017, Staff had sent, via e-mail, an initial draft of the proposed changes to the overall rules. The first public/stakeholder meeting will be held on November 13, 2017. He reported that to-date he had not received any comments or questions.

Chairman Valdez called for agenda item no. 9, the Attorney General's report.

Mr. Michael Toll updated the Commission on the Meridian Case, 17-GW-05. He said that negotiations have been successful enough to ask the Hearing Officer for an extension which was granted.

Philip Lopez updated the Commission on the Woodman Hills Metro District matter in 03-GW-20, advising the Commission that even though the parties are in active negotiations, it appears that they will be going to the 5-day hearing beginning December 4, 2017.

Chairman Valdez 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 his Districts were watching the progress of the attempt to have the Republican Water Conservation District (RRWCD) boundaries adjusted to coincide with those

boundaries used in the Republican River Model domain. He said that if the effort is a success it would bring about 360 wells into the RRWCD. Mr. Midcap reported that his Districts are working with the Water Preservation Partnership (WPP) to achieve the goal of the WPP to reduce irrigation pumping by 25% by 2025. This reduction is based on the total volume of water pumped in the previous 5 years.

Mr. Kyle Sprouse, reporting for the **W-Y GWMD**, advised the Commission that he had assumed the duties as manager of the W-Y District on October first and had nothing to report.

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

Ms. Brandi Baquera, reporting for the **Plains GWMD**, reported that she has been busy with meter enforcement and chemigation inspections. Ms. Baquera advised the Commission that now, with things slowing down, the District is restarting its conservation conversation.

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

Mr. Blake Gourley, reporting for the **Southern High Plains GWMD** reported that there had been some good rains this fall and that the sprinklers are turned off.

Mr. Robert Loose, reporting for the **North Kiowa Bijou GWMD**, reported that the District will support any actions that will increase Staff numbers. He said that his District thinks that any changes to Rule 7.4 should be specific to the Northern High Plains. Mr. Loose closed his comments noting that Kiowa-Bijou had 40 of 120 small capacity applications and that the District would like to see permits issued with an annual appropriation of 1 acre-foot or less.

Mr. Dan Farmer, reporting for Ms. Doran on the **Upper Black Squirrel GWMD**, advised the Commission that the District was working on settling the Woodman Hills matter as well as other old business issues that are before the District. He noted that some of them had been around for 17 years. Mr. Farmer also mentioned that the District had been asked to be a part of the El Paso County water management plan, he will keep the Commission updated. Mr. Farmer reported that the District continues to see a number of domestic wells being used for marijuana grows and now hemp. The District would like to be a part of the State marijuana task force. It was also reported that there are numerous surface diversions and ponds being built.

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

Mr. Tom Sauter, reporting for the **Lost Creek GWMD**, reported that the District is involved with the City of Aurora in an aquifer storage pilot project. He also said that the District has applied for a grant from the Water Conservation Board to purchase devices to monitor water levels in the aquifer. Mr. Sauter introduced Board member Todd Denning who wrote the grant request.

Mr. Scott Tietmeyer, reporting for **Upper Crow Creek Basin**, reported that the increased oil field activity is supported by water from Wyoming.

Ms. Suzanna Cure, reporting for the **Republican River Water Conservation District (RRWCD)**, introduced herself to the Commission, informing them that she had been with the District for about 5 months. Ms. Cure reported that the District has been working on components of the 2006 amendment to the CREP program, specifically to allow CREP to request recent cropping history from applicants, to increase the total number of acres allowed and to allow for the conversion of an

irrigation well into a small capacity well. She said that the District has instituted a new payment schedule to allow for a larger payment per acre for those wells in the South Fork of the Republican. Ms. Cure reported that the Board continues to work on adjusting the District boundaries to coincide with those of the model domain. She also said that the District had joined the South Fork Republican River restoration project between Flagler and the state line. Ms. Cure closed her report with a power point presentation about interviews with water users and the users thoughts on the conservation discussion going on.

Chairman Valdez called for agenda item no. 11, old business.

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. Lopez advised the Commission that this item was discussed under the report of the Attorney General.

Chairman Valdez called for agenda item no. 12, new business.

Selection of next year's meeting dates and locations.


Secretary Nielsen advised the Commission that room accommodations for the quarterly meetings of the Commission have been made for February 16th in room 318 of the Centennial building in Denver and for May 18th, August 17th and November 16th in Castle Rock. At the request of Commissioner Arnusch, the November 16th meeting was moved to November 2nd.

Chairman Valdez called for agenda item no. 13, public comment.

There were no public comments

There being no further business the meeting adjourned.

Respectfully submitted,


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