

---

## **MINUTES**

### ***FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION NOVEMBER 20, 2015***

---

The fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 20, 2015, 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 Marc Arnusch, Carolyn Burr, Dan Farmer, Blake Gourley, Steve Kramer, Greg Larson, Scott Tietmeyer, Virgil Valdez, Robert Randall (on behalf of Mike King), Mike Sullivan (on behalf of Dick Wolfe) and Ted Kowalski (on behalf of James Eklund). Staff members present were Kevin Rein, Keith Vander Horst, Richard Nielsen, Chris Grimes, Geoffrey Davis, Shannon Johnson, Justina Mickelson, David Keeler, Kevin Donegan and Andy Flor. 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 21, 2015**, Chairwoman Burr asked if there were any corrections or additions to the minutes. Commissioner Farmer advised of an error under agenda item no. 6 on page 3. He noted that the current standard in Black Squirrel Creek prior to effluent introduction is 250 ppm and they want to lower it to 600 ppm. There being no further corrections,

Commissioner Steve Myers moved to approve the minutes as amended.  
Commissioner Marc Arnusch seconded the motion which carried unanimously.

#### **Report of the Executive Director by Mike Sullivan for Dick Wolfe**

Mr. Sullivan opened his remarks advising the Commission that Commissioner Wolfe was attending a meeting in Pueblo regarding the Arkansas River Compact. He reported that the amended metering rules were approved by the Hearing Officer after the September 10, 2015 hearing in Burlington. The rules became effective on November 15, 2015 and require those well owners newly under the rules to have meters installed and operational by April 1, 2016.

Mr. Sullivan informed the Commission that the Republican River Compact Authority had approved the operation of the Compact Compliance Pipeline for the 2016 year and that it had also approved the operation of the Harlan County Reservoir plan in Nebraska for the same period. Further, he said that the states continue to meet monthly to resolve issues.

On the matter of the Hutton case (15-CW-3018) filed with the water court Mr. Sullivan informed the Commission that this law suit over the administration of surface water rights could lead involve litigation over the de-designation of portions of the Republican River Basin. He said that the court had ordered individual service to all well owners so they could decide to become a party or not. Mr. Sullivan said that because the State Engineer is a named party in the matter he could not go into more detail.

Mr. Sullivan next spoke to the Rio Grande Groundwater Rules. He noted that they had been filed with the water court on September 23, 2015 and had been published. Mr. Sullivan said that the matter will be in the hands of the Water Court for a final ruling at the end of November when the objection period for filing statements of opposition ends. He also said that the special master appointed in the New Mexico law suit with Texas, of which Colorado is a party, over the operation of Elephant Butte Reservoir on the Rio Grande River had not ruled on a motion to intervene filed by the Elephant Butte Irrigation District.

Mr. Sullivan concluded his remarks advising the Commission that mediation over the Animas La Plata water rights had been successful and that the water judge would review the proposed settlement and respond in the month of December.

There were no questions of Mr. Sullivan.

**Chairwoman Burr called for agenda item no. 5,** Commissioners' reports, there being none,

**Chairwoman Burr called for agenda item no. 6,** being a presentation on the Colorado Water Plan by Ted Kowalski.

Mr. Kowalski opened his comments noting that over 30,000 comments from interested parties had been received, reviewed, answered and incorporated into the final report. The topics of concern in those remarks were the environment, water infrastructure and economic concerns among others. Mr. Kowalski handed out an executive summary of the report for reference as he used a power point presentation to highlight and discuss the main features of the plan. In response to a question of Commissioner Farmer, Mr. Kowalski stated that aquifer storage was made a major part of the plan. In response to a concern of Commissioner Arnusch about phreatophyte removal, Mr. Kowalski stated that eradication would continue. Commissioner Farmer expressed a concern about the continued use of the modified priority system.

Mr. Bob Longenbaugh, providing public input, addressed the Commission. He said that the South Platte Roundtable had moved five (5) phreatophyte removal proposals forward. He also said that the report indicated that the North Kiowa-Bijou and the northern part of Upper Black Squirrel and Lost Creek Basins are the top areas for artificial recharge. He advised the Commission that they look into the legality and other matters dealing with the recharge of those aquifers. He noted that Nebraska is recharging excess flows in the South Platte River.

**Chairwoman Burr called for agenda item no. 7,** the staff activity report. Mr. Keith Vander Horst went over his written report. He noted that the last publication for final permits in North Kiowa-Bijou was sent out for publication with the objection period ending in the middle of January. Mr. Vander Horst informed the Commission of objections received on two recent applications, Galyn Einspahr and Prospect Dairy, that will go before the Hearing Officer. He then explained how busy Chris Grimes has been, especially when one considers the number of perceived violations reported versus actual unpermitted uses. In the Northern High Plains there is a report of unauthorized commingling, in North Kiowa-Bijou permits that have a change order requiring third party administration do not have administration contracts signed as required, there are ponds out of compliance in Kiowa-Bijou and in the Blue Springs subdivision in Upper Black Squirrel which also has complaints on using abandoned greenhouses to grow marijuana.

In answer to a question from Commissioner Burr, Mr. Vander Horst stated that applications to permit ponds, an application for a determination of water right and an application for a replacement plan have been received from Rocky Mountain Roosters. There were objections to the applications as published and they are now before the Hearing Officer.

Answering a question of Commissioner Farmer about the use of greenhouses for marijuana growing, Mr. Vander Horst stated that staff is concerned about the illegal use of water but not about violation of El Paso County laws.

**Chairwoman Burr called for agenda item no. 8,** the Attorney General's report. Ms. Jen Mele reported that she has been very busy. There have been no new developments in either the Cherokee or Gallegos matters. The decision of the Supreme Court in Meridian upheld the Hearing Officer's and the District Court's decisions and remanded the matter to District Court for decisions on what portions of the water are and are not designated ground water. She thinks that there should now be an internal discussion to see how the decision will apply to the rest of the Basins. Ms. Mele noted that the Front Range Resource replacement plan has been set for trial. She said that there have been motions filed to exclude certain proposed sources of replacement water. Ms. Mele said that in 15-GW-14, the Meridian replacement plan, the applicant has been moved to disqualify the Hearing Officer. Ms. Mele informed the Commission that Cherokee Metropolitan District filed a complaint about the administration of some of their rights.

There were no questions of Ms. Mele.

**Chairwoman Burr called for agenda item no. 9,** Management District Reports

Mr. Nate Midcap, reporting for the **Marks Butte, Frenchman, Sandhills and Central Yuma GWMD's**, reported that his boards have been trying for thirty (30) years to recharge water from the South Platte. The court has rejected their plans because storage is not a beneficial use. He advised the Commission that his boards and irrigators are concerned about and involved in the Hutton case. Mr. Midcap mentioned concern of his boards and the local irrigators on the matter of the amended metering rules and the administration of the Republican River Basin as it pertains to the East Cheyenne District. Mr. Midcap read a resolution, Resolution 2015-1, of his District Boards, regarding the administration of the basin into the record. He reported that there had been a little snow and that the cooler temperatures have caused the harvest to stretch out.

Mr. Jack Dowell, reporting the **W-Y GWMD**, reported that of 300 chemigation inspections there had been eight (8) failures. He also said that the harvest of corn and beets continues with both crops looking good. He asked that the Commission keep the farmers advised of the Hutton matter as it relates to SB-2013-052. In response to a question of Commissioner Farmer, Mr. Dowell stated that the district was working on a formal position on the Hutton matter.

Rod Mason, reporting for the **Arikaree GWMD**, reported that there were areas in his district that had received twenty (20) inches of rain through July leading to a good wheat harvest. Mr. Mason said that his district is concerned about the Hutton case and that the District has intervened and requested that the Commission intervene as well.

Mr. Dennis Coryell, reporting for the **Plains GWMD**, informed the Commission that Mr. Carey Barnes was no longer manager of the Plains or East Cheyenne Districts and that the Plains and East Cheyenne Districts were no longer going to share a manager and that in the future, each district would present its own reports. Mr. Coryell noted that the Plains District had received between twenty (20) and twenty-five (25) inches of rain between April and November. He mentioned that without a manager it was difficult to obtain the meter readings but that the Board was trying. Mr. Coryell said that his board was concerned about the Hutton case and went on to say that whichever side wins the water users will still be affected. His board held a special meeting to plan a course of action regarding this matter as they believe that it challenges the Ground Water Management Act of 1965. The District would like the Commission to be a party to the case.

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

Mr. Blake Gourley, reporting for the **Southern High Plains GWMD** reported that conservation plans were a topic of discussion in Baca County.

Mr. Robert Loose reporting for the **North Kiowa Bijou GWMD**, reported that the board was pleased with the recent Meridian decision.

Ms. Tracy Doran, reporting for the **Upper Black Squirrel GWMD**, reported that she and staff had met and performed a field inspection of what the district believes to be illegal ponds in the Blue Springs subdivision. She also said that now that there was a ruling in the Meridian matter that staff would begin enforcement actions against Meridian. Ms. Doran noted that it was that time again when she planned for election of officers to her boards.

Ms. Lisa Thompson, attorney for the Upper Black Squirrel District, addressed the Commission. She mentioned that the Cherokee Metropolitan District had requested that the Water Quality Control Commission amend its standards for Total Dissolved Solids (TDS) allowable in ground water. She said that there will be a hearing in August of 2016 but that there are stake-holders meetings in January, February and March, she asked the Commission for support. Ms. Thompson also said that the board was pleased with the Supreme Court decision in Meridian saying that surface water is Designated Water. Further, she advised the Commission that the board will take up the matter of De Novo hearings and asked for the Commission's support. Ms. Thompson closed her remarks questioning the status of two (2) existing replacement plan applications for surface ponds and the potential for the need of many more in relation to the recent field inspection.

Mr. Tracy Doran reporting for the **Upper Big Sandy GWMD**, reported that they were having a study of the interface between the alluvium and bedrock waters conducted. She also said that the board was considering amending Rules 3.1 and 3.2 regarding export of water. Ms. Doran is planning the election of four (4) seats on the board.

Mr. Tom Sauter, reporting for the **Lost Creek GWMD**, reported that they are interested in the progress of the proposed de novo review legislation. He informed the Commission that his district was going to require all high capacity wells to be metered and that there are only approximately 65 of the 265 high capacity wells in the district that are metered at this time.

Mr. Dan Lloyd, reporting for **Upper Crow Creek Basin**, reported that there has been no snow with 64 mph winds and still the wheat looks good. He said that for 2015 the total water use was down. Mr. Lloyd noted that motions to close Upper Crow Creek and to form a district will be filed soon. He concluded his remarks noting that there is no news from Wyoming and that oil development is down.

Ms. Deb Daniel, reporting for the **Republican River Water Conservation District**, reported that the Northern High Plains had received abundant spring rain, experienced moderate temperatures in the sum and were now enjoying a long fall all which adds to a good crop. Ms. Daniel said that the Compact Compliance Pipeline (CCP) had pumped 10,250 acre-feet in 2015. She is glad that the pipeline operation has received a green light for 2016. She also reported that the Ogallala Initiative is responsible for retiring 500 acres in the past year. Ms. Daniel says that the district is very concerned about the Hutton matter and intends to enter the case.

**Chairwoman Burr called for agenda item no. 10, old business.**

- a. Update on Water Quality Control Commission rulemaking with respect to changing discharge standards for Total Dissolved Solids, by Pat Kowaleski.

Mr. Kowaleski advised the Commission that the Water Quality Control Commission (WQCC) is in their triennial review. He noted that rulemaking with regards to site specific standards in Upper Black Squirrel Creek has an August 16, 2015 hearing but no procedural dates are set. Mr. Kowaleski said that all filing dates are to be set in March or April.

Mr. Bob Longenbaugh addressed the Commission. He said that the entire rulemaking of the WQCC was because of Cherokee Water and Sanitation District. He explained that the district wants to recharge the aquifer with their ponds but can't because the salt-load, at 2100 tons per year, exceeds the WQCC guidelines.

Commissioner Farmer said that the Commission needs to be concerned about this and be aggressively involved now.

Mr. Kowaleski said that there was no need to act now because there was not enough information to make a good decision. He said that if it was necessary the Commission could act at a special meeting.

Commissioner Tietmeyer approved of Mr. Kowaleski's plan to invite the staff of the WQCC to the February meeting for a presentation on its rulemaking process.

Mr. Kowaleski said that he will continue to look into the matter.

- b. Legislation on de novo review of appeals of Commission's decisions, by Alan Curtis.

Mr. Curtis asked the Commission to support the renewed effort to amend statute to identify de novo review as being a review of the record and not a whole new trial before a judge. He explained that the Commission is the only agency where appeals to the decision of the Board are retried rather than having the record reviewed, effectively squashing any administrative hearings appealed.

Commissioner Farmer advised that he supports the proposed legislation and would like the Commission to support it. Commissioner Burr asked if he was asking for a position today. Commissioner Randall said that there was no decision yet at the Department level but that they would look into offering departmental support.

Commissioner Tietmeyer moved to support the proposed legislation.  
Commissioner Kramer seconded the motion.

Commissioner Arnusch asked if there were any limits to the district if they appeal.  
Mr. Curtis said that the districts could not add new evidence either.

In response to a question of Commissioner Farmer, Mr. Curtis said that the proposed legislation mirrored the original intent of the proposed 2015 legislation.

Commissioner Tietmeyer said that the Commission needed to act for the Hearing Officer.

Commissioner Farmer said that the Commission reviews the Hearing Officer's decisions.

Chairwoman Burr called the vote which passed unanimously.

**Chairwoman Burr called for agenda item no. 11, new business.**

a. Applicability of SB15-183 to Designated Basins, by Keith Vander Horst.

Mr. Vander Horst informed the Commission that SB15-183, passed during the 2015 legislative session, dealt with secondary quantification of historic consumptive use after the water right had already gone through a previous determination of the historic consumptive use. He said that now, outside of a Designated Basin, that once the historic consumptive use of a water right had been determined that value was set and would not be re-determined in the future. Mr. Vander Horst asked the Commission if they wanted this statute to apply within the Designated Basins. Mr. Vander Horst informed the Commission that he had asked for comments from stake-holders and received ten (10) responses. The responses are both in favor of and against having SB15-183 apply within Designated Basins. He said that staff is of the opinion that concepts outside of Basins should apply within the Basins. Mr. Vander Horst said that no rule making would occur at this time but that the Smart Act, signed by Governor Hickenlooper requires that all rules be reviewed and it is the Designated Basins turn next year and that is when it would be best to amend the rules.

Commissioner Arnusch moved to have staff process change applications as "-once and done-" for consumptive use analysis.  
Commissioner Tietmeyer seconded the motion.

After discussion the vote was called. The motion passed with Commissioners Farmer and Tietmeyer voting nay.

- b. The complaint filed by Cherokee Metropolitan District was discussed during the AG's report..
- c. Distribution of 2015 Groundwater Level Reports, by Kevin Donegan & Andy Flor occurred with minor discussion.

d. Selection of next year's meeting dates and locations.

Secretary Nielsen referred the Commission to the memorandum they received with their meeting packet that identified the proposed dates and locations for the 2016 meetings. After a brief discussion regarding the location of the August meeting the dates of February 19<sup>th</sup> in Denver and May 20<sup>th</sup>, August 19<sup>th</sup> and November 18<sup>th</sup> in Castle Rock were agreed to.

Commissioner Farmer moved to accept the meeting dates and locations as proposed. Commissioner Tietmeyer seconded the motion which passed unanimously.

**Chairwoman Burr called for agenda item no. 12, public comment.**

Mr. Bob Longenbaugh commented on SB15-183.

**Chairwoman Burr called for agenda item no. 13, executive session.**

Mr. Kowaleski advised the Commission on the need and statutory authority, 24 6402 3A 2CRS, to enter into executive session for the discussion of legal issues in 15CW2018.

Commissioner Valdez moved to enter executive session.  
Commissioner Tietmeyer seconded the motion which passed unanimously.

Commissioner Valdez moved to exit executive session.  
Commissioner Arnusch seconded the motion which passed unanimously.

Mr. Kowaleski reported that the executive session was to discuss Hutton v Wolfe et al and that was all that was discussed and that no action was taken

Commissioner Gourley moved that the Commission intervene in Hutton v Wolfe et al.  
Commissioner Valdez seconded the motion  
Commissioner Kramer disclosed his involvement in the case as a resident irrigator.  
Chairwoman Burr called the question which passed unanimously.

There being no further business the meeting adjourned.

Respectfully submitted,

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