
MINUTES

FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION

NOVEMBER 20, 1998

The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 20, 1998, at 1313 Sherman Street, Room 318, Denver, Colorado. Chairman Fred Hefley called the meeting to order at 9:00 a.m. Marta Ahrens called the roll and determined that a quorum was present. Commission members present were Eugene Bauerle, Jon Brownell, Anne Castle, Dennis Coryell, Michael Gross, Richard Huwa, and Earnest Mikita. Commissioner Bill Kerksiek and Ex-Officio Members Peter Evans, Hal Simpson, and Doug Robotham were absent.

Approval of Minutes - Chairman Hefley asked if there were any corrections or additions to the Minutes of the August 14, 1998, meeting. Commissioner Gross moved to accept the Minutes. The motion was seconded by Commissioner Mikita and carried unanimously.

Hearing for the Appeal of the Hearing Officer's Initial Decision (Case No. 96-GW-13) in the matter of Objections to Thirty-Nine (39) Applications to Change the Water Rights Associated with the Wells, as per the request filed by David C. Taussig, the attorney for the applicant Eagle Peak Farms and Prospect Valley Farms, LTD. - Chairman Hefley called the hearing to order, which was recorded on a separate tape. Conflict Council Lee Miller briefed the Commissioners with respect to the proposed order for the proceeding. Eagle Peak Farms' motion to poll the Commissioners for any conflict of interest with the application was denied by conflict counsel. Commissioner Castle moved that both parties be given 20 minutes for testimony and 5 minutes for rebuttal. The motion was seconded by Commissioner Bauerle, and carried unanimously.

Testimony was heard from David Taussig, of White and Jankowski, representing Eagle Peak Farms and Prospect Valley Farms; Kim Lawrence, of Lind, Lawrence and Ottenhoff, attorney for the Lost Creek Ground Water Management; Pat Kowaleski, from the Attorney General's Office, representing the Commission staff; Michael Shimmin, on behalf of the Lost Creek Land and Cattle Company and the four Northern High Plains ground water management districts; and Linda Shoeneman, objector.

Commissioner Castle stated that the Commission is bound by the statute and the rule, and the issue is whether the water in question can be exported out of the district; she does not feel that the Commission has any discretion and that the Hearing Officer's decision is correct. Commissioner Gross stated that local control was mandated by legislature and the Commission is bound by it, and recommended affirming the decision of the Hearing Officer. Commissioner Coryell moved that the Commission affirm the

Hearing Office's decision and to deny default judgment. Commissioner Mikita seconded the motion, and the motion carried unanimously.

Mr. Kim Lawrence requested that the Commission make a determination for attorney fees and costs on the grounds that this hearing was frivolous and groundless. Following deliberation, Commissioner Gross made a motion to deny Lost Creek's request for attorney fees and costs. Commissioner Castle seconded the motion; the motion carried with five in favor and three against.

Hearing for the Appeal of the Hearing Officer's Initial Decision (Case No. 97-GW-07) in the matter of An Objection Reversing the Denials Set Forth in Case No. 96-SE-05, for Well Permit Nos. 202250 through 202267, applicant Cure Feeders, LLC.

- Chairman Hefley called the hearing to order, which was recorded on a separate tape. Conflict Council Lee Miller briefed the Commissioners with respect to the proposed order for the proceeding. Testimony was heard from Larry Gallegos, of Berliner Zisser Walter and Gallegos, representing Cure Feeders; Richard Thomas, attorney representing the Plains Ground Water Management District; Mike Shimmin, attorney representing four Northern High Plains ground water management districts; and Pat Kowaleski, of the Attorney General's Office, representing the staff.

Following deliberation by the Commission, Commissioner Castle moved to affirm the initial decision of the Hearing Officer, but with modifications to paragraph no. 23 to read as follows: "The issues in this matter are concerned with the administration of and the potential injury to vested water rights. As such, this is a matter to be heard by the Commission pursuant to the provisions of Section 37-90-114, C.R.S." The motion was seconded by Commissioner Gross and carried unanimously.

Request for variance to make a one-time replacement of a municipal well with Permit No. R-4570-FP greater than 300 feet from the permitted location within the Frenchman Ground Water Management District, by John C. McClure, attorney for the applicant, City of Holyoke

– Chairman Hefley called the variance hearing to order, which was recorded on a separate tape. Mr. Bill Fronczak, of the staff, provided the history of the application and reason for the variance request and stated that the staff has no opposition to the application. Mr. John McClure, attorney representing the City of Holyoke, distributed an exhibit book. Mr. Ben Saunders, from the Frenchman Ground Water Management District, urged the Commission to adopt this request for a replacement well as presented. Mr. Scott Mefford, ground water engineer with Hydrokenetics, provided a description of the information presented in the exhibit book that was distributed to the Commissioners and requested that the replacement well be issued. Commissioner Mikita made a motion to grant the variance; Commissioner Bauerle requested that the words "power coefficient" be inserted in section E after "metered". The motion was seconded by Commissioner Brownell, and carried

unanimously.

Executive Director's Report - Mr. Hal Simpson was not present for the Commission meeting as he was attending the Western States Water Council Meeting in Reno, Nevada. The Commission members were referred to the Executive Director's written report which was included in the packets that were mailed to all Commission members.

Presentation of the designated basin work group discussions and proposed legislation by Bill Fronczak - Mr. Fronczak reported that at the last meeting the Commission adopted a resolution to have the staff set up a work group to discuss potential legislative issues brought up by Senator Ament. The legislative work group met twice; first in September to get the issues on table, and the second meeting was held in October in an effort to reach a consensus on some issues. Mr. Fronczak stated that the staff and the work group are asking the Commission to adopt resolutions on those issues where consensus was reached to direct the staff to draft potential legislation and seek sponsors.

The Commission heard discussions on the work group issues from several members of the audience, both from those who were and were not involved in the work group meetings. Following this, Commissioner Gross stated that the Commission is not ready to adopt any resolution on proposed legislation for this session whether or not there is consensus, and directed the staff to continue with the work group meeting. Commissioner Castle asked for recommendations from the staff on changes that could be made to the statute at the next meeting.

Staff Report— Mr. Bill Fronczak presented the Staff Activity Report for the last quarter. He welcomed Joanna Williams as a full-time employee to the Commission staff. Mr. Fronczak reported that staff is still working diligently, and making progress, on the backlog. With regard to enforcement cases this past quarter, a cease and desist order that was issued against a well in the southern portion of the Northern High Plains, was solved through a consent decree. He also reported that the staff participated in a Denver Basin bedrock geology tour.

Report of the Attorney General - Mr. Pat Kowaleski presented the report of the Attorney General, which is included in the packets. Mr. Kowaleski reported that at the last Commission meeting, the AG's Office was asked to review procedures on giving notices to parties with regard to variances. They will continue to look into specific variances that the Commission has acted upon, and the context of those, and will come back with a recommendation. Mr. Kowaleski also reported on the process that the State Engineer has initiated on amending the rules on small capacity wells, and that work is

continuing on this with the State Engineer's staff.

Management District Reports - Chairman Hefley called for the Management District reports.

Mr. Ben Saunders, from the **Frenchman, Sandhills, Marks Butte and Central Yuma Districts**, reported that last year they had a water quality network and were provided with samples which resulted in a good database on water quality in eastern Colorado. Mr. Saunders inquired as to the possibility of a joint effort to obtain funding from the legislature to continue an on-going water quality network with the database that they have started. He stated that a hearing will take place on December 2 in the Frenchman District to amend the 5 acre-feet and encouraged the Commissioners to attend. Mr. Saunders reported that his chemigation inspector resigned to go to work for the prison, and left him with about 250 chemigation inspections to perform. They will start water level measurements and he thanked George VanSlyke for his assistance. Finally, he commended Joanna Williams on her good work.

There were no reports from the **W-Y Ground Water Management District** or the **Arikaree Ground Water Management District**.

Mr. Stan Murphy, from the **Plains and East Cheyenne Management Districts** expressed his concern on HB-1151 regarding adopting of the grandfathering of existing feedlot wells. He recommended that the applicant be required to prove beneficial use of their water.

Mr. Max Smith reported for the **Southern High Plains Ground Water Management District**. He stated that one year ago money for a feasibility study of the aquifer was granted through the CWCB. After the feasibility study is completed, they would like to obtain additional funding for a large scope study of the Southern High Plains.

There were no reports from the **North Kiowa-Bijou Ground Water Management District**, the **Upper Black Squirrel Creek Ground Water Management District**, the **Upper Big Sandy Ground Water Management District**, or the **Lost Creek Ground Water Management District**.

Old Business - None.

New Business – Dr. Dass followed up on Mr. Stan Murphy's comment regarding how the staff should handle the processing of small capacity well permits for feedlot uses under the grandfathering provision. He stated that the staff plans to field-inspect each operation and will ask the applicant to provide documentation on the size of their operation and estimate their water requirement. Dr. Dass also discussed the Executive Director's report regarding the backlog issue and the request for three additional staff. The Commission Members authorized the staff to draft a resolution on behalf of the

Commission for Chairman Hefley's signature supporting the decision item request for additional staff for the Designated Basins Branch.

Mr. Mike Shimmin, from the audience, discussed Amendment 14 regarding hog farms, and stated that the amendment must be in place by March 31, 1999. He requested the Commissioners make a determination if the Commission should be involved as appropriate in the rulemaking process. The Commission authorized Mr. Hal Simpson, Executive Director, to coordinate with the Water Quality Control Commission to be party to the rulemaking hearing for those matters which the Commission has jurisdiction over.

Mr. Pat Kowaleski reported that he is representing the WQCC in this matter and that they would be interested in the Commission's and the State Engineer's comments. The hearing of the WQCC is scheduled in February, prior to the Ground Water Commission meeting. The regulations will focus on monitoring, reporting, permitting, bonding, and because of the nature of the subject matter, it may be appropriate for the Commission staff to be involved. Mr. Kowaleski stated that the plan is to have the system in affect in the statutes by July 1, 1999. The Commission authorized the State Engineer to participate, as necessary, on behalf of the Commission in the rulemaking process by the WQCC regarding confined animal feeding operation facilities.

Next Meeting - The next meeting is scheduled for February 19, 1999 in Denver.

The meeting adjourned at 4:10 p.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission