
MINUTES

THIRD QUARTERLY MEETING COLORADO GROUND WATER COMMISSION

AUGUST 13, 1999

The Third Quarterly Meeting of the Colorado Ground Water Commission took place on August 13, 1999, at the Pagosa Lodge at Pagosa Springs, Colorado. Mr. Hal Simpson called the meeting to order at 8:35 a.m. since Chairman Hefley was absent. Marta Ahrens called the roll and determined that a quorum was present. Commission members present were Eugene Bauerle, Anne Castle, Dennis Coryell, Richard Huwa, Earnest Mikita, Jerry Smith, Max Smith and Ex-Officio Hal Simpson. Commissioners Fred Hefley, Jon Brownell and Mike Gross, and Ex-Officio Members Peter Evans and Greg Walcher were absent.

Biennial Election of Officers - The biennial election of officers was moved to the first order of business. Mr. Simpson opened the floor for nominating a Chairman of the Commission. Commissioner Coryell made a motion to nominate Commissioner Mikita as Chairman. The motion was seconded by Commissioner Huwa and carried unanimously.

Chairman Mikita opened the floor for nominations for Vice Chairman. Commissioner Coryell made a motion to nominate Commissioner Anne Castle. The motion was seconded by Commissioner Huwa, and carried unanimously.

Approval of Minutes - Chairman Mikita asked if there were any corrections or additions to the Minutes of the May 21, 1999, meeting. Commissioner Bauerle moved to accept the Minutes, which was seconded by Commissioner Coryell and carried unanimously.

Executive Director's Report - Mr. Hal Simpson presented the Executive Director's report. He welcomed Max Smith and Jerry Smith as new members to the Commission. Mr. Simpson thanked Val Valentine for the tour of geothermal wells and for explaining how ground water is used as a heat source, and he thanked Marta Ahrens for making the arrangements for the meeting.

Mr. Simpson proposed that at the next Commission meeting in November, that a one-hour workshop be held to discuss the responsibilities of the Commission. This would be for the benefit of the new members and would include topics regarding permitting use of designated ground water, enforcement activities, how hearings are conducted, conflict of interest, liabilities as members of the Commission, and the Open Meetings Act.

Mr. Simpson summarized the meeting held in Burlington on July 22 with staff and the East Cheyenne and Plains Ground Water Management Districts. The meeting focused on how the districts and Commission staff can deal with illegal uses and expanded uses related to sprinklers and a process was agreed upon that they will work on in the next few months. The two boards will pass a resolution asking for support from Commission staff to deal with identifying expanded uses that are illegal and how to correct it. The staff will prepare a press release to make citizens in the area aware of this effort.

Mr. Simpson reported on some Republican River Compact issues which took place since the last Commission meeting. The Compact Administration met in Concordia, Kansas, on June 3, 1999. Nebraska has a new Department of Water Resources Director, Roger Patterson, who retired from the Bureau of Reclamation. The Federal reports were presented by the U.S. Geological Survey, the Bureau of Reclamation, and the Corps of Engineers. Mr. Simpson reported that in the litigation that Kansas brought against Nebraska last year alleging overuse of water, Nebraska filed a motion to dismiss the lawsuit stating that ground water is not apportioned by the Compact. Colorado and Kansas have 30 days to submit reply briefs. Colorado will file a brief that states that alluvial ground water was apportioned by the Compact and that Ogallala aquifer water was not.

With regard to the Arkansas River Compact, Mr. Simpson stated that there is nothing to report since the last meeting. Colorado continues to work with the economists to provide them with data to determine the economic damages to Kansas.

Presentation and Adoption of the Policy Memorandum on Public Notice Requirements for Hearings on Variance Requests before the Commission by Pat Kowaleski and Bill Fronczak

– For the benefit of the new Commission members, Mr. Fronczak provided the background on developing a policy on notice requirements for hearings on variance requests. He requested that the Commission adopt the final version of the policy as presented or to provide comments and recommendations to the staff. Commissioner Castle questioned why this is being done as a policy instead of as an amendment to the Rules. Mr. Kowaleski responded that this is appropriate because it is more of an internal document for the Commission, however, they will consider putting it into the Rules at the next rulemaking. Mr. Simpson added that the policy allows the staff to operate until they promulgate a rule.

Mr. Mike Shimmin, from the audience, supported the adoption of this policy and suggested that the Commission move forward with this as a policy and will provide an opportunity for revisions before it becomes a Rule.

Commissioner Castle moved that the Commission adopt the proposed policy as the policy of the Commission and that a process be started for rulemaking using the same policy as a proposed rule, and schedule it for the next meeting along with the next

agenda item. Mr. Kowaleski suggested that it be scheduled for a meeting once the publication and the notice requirements have been complied with. Commissioner Castle revised the motion to reflect the timeline expressed by Mr. Kowaleski. Commissioner Bauerle seconded the motion and it carried unanimously.

Staff Recommendation to Extend Commission Rule 7.10.4(b) by Bill Fronczak -

Mr. Fronczak reported that the staff considered changing this rule to eliminate the expiration date of the conservation policy, which will expire at the end of 2000. As the rule currently reads, irrigators have one more year to file a conservation request before the Commission so the water identified will not be counted against them in historical use computations. Mr. Fronczak stated that the staff proposes to eliminate any expiration dates that would close the conservation program, and recommends starting the rulemaking process to change the language in Commission Rule 7.10.4(b). Dr. Madhi Al-Kaisi, from the audience, offered to assist in this process with publication through CSU. Discussion took place regarding concerns using 10 years to calculate the historic use consumption.

Commissioner Castle moved that the Commission amend Rule 7.10.4(b) by deleting the language as suggested in the staff's August 10, 1999 memorandum. Commissioner Coryell seconded the motion. Mr. Kowaleski stated that a notice of rulemaking will be published deleting reference to year 2000, that there will be public hearing opportunity, and that it will be brought back for final action by the Commission at a public hearing. The motion carried unanimously.

Staff Report - Mr. Bill Fronczak presented the Staff Activity Report for the last quarter. He reported that there is an increase in hearings in the basins. Some hearings have been cancelled since the last quarter due to individual withdrawals, but the staff are still receiving quite a few objections to the determination of water right applications. Mr. Fronczak stated that the legislature funded additional staffing for final permitting and the process has been started for hiring technicians and an engineer to assist with the permitting process and the backlog. He reported that included in the packets is the adopted and signed rule for the Frenchman Ground Water Management District regarding administration of wells that were less than 2.5 acre-feet per acre irrigation. He also reported that the staff would work with Stan Murphy on the enforcement issues that were discussed at the meeting with the East Cheyenne and Plains Ground Water Management Districts.

Report of the Attorney General – Mr. Kowaleski stated that his report is in the packets. He added that with regard to the State Engineer's small capacity rules, they received word from the Legislative Legal Services that they have no objections to the rule and it will go into effect on July 1.

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

Frenchman, Sandhills, Marks Butte and Central Yuma Districts. Mr. Mike Shimmin reported on the behalf of Ben Saunders who was not at the meeting due to illness. Mr. Shimmin reported that the districts have completed their chemigation inspections for this year under a contract with the Department of Agriculture. He stated that Ben has compiled a list of the wells that will be covered by the Frenchman Rule, and there are just under 100 wells in the Frenchman District that are permitted for less than 2.5 feet per acre. Mr. Saunders will mail a notice to the owners of those wells to give them a year notice to become compliant with this rule.

Mr. Shimmin stated that Mr. Simpson's proposal for a work session at the next Commission meeting is a good idea. He requested that the role of ground water management districts and how they interrelate with the Commission be included in this work session and he volunteered to assist with that topic.

Upon request by Commissioner Castle, Mr. Shimmin provided an explanation and history on the provision in the Frenchman Rule that the well owners are required to pay the expenses of administration. He stated that the expenses will vary case by case and he believes the charge is approximately \$300 per year for administering wells where meters are required to be read as much as 8 times per year. For well owners who use power record administration, the charge for the administration of that well will be approximately \$100 per year because there is less time involved.

Mr. Jack Adams, from the **W-Y Ground Water Management District**, stated that he enjoys coming to the meetings away from Denver.

There was no report from the **Arikaree Ground Water Management District**.

Mr. Stan Murphy, from the **Plains and East Cheyenne Management Districts** congratulated the new Chairman and Vice Chair. He thanked Hal Simpson, Bill Fronczak, and Purushottam Dass for coming to their districts.

Commissioner Max Smith reported for the **Southern High Plains Ground Water Management District**. He reported that the feasibility study is on-going and should be completed within the next thirty days. Following this, the district will hold public meetings and go over the findings and ask the public if they want to continue with a large-scale study. The purpose of the feasibility study was to look at what they could do to manage their resources more efficiently. The feasibility study was funded by the CWCB.

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

Dave Taussig reported for the **Upper Big Sandy Ground Water Management District**. He stated that Bernie Kollath resigned and Dave Stone was appointed.

Ms. Sheryl Wailes, from the **Lost Creek Ground Water Management District**, stated that oral arguments will be held on Eagle Peak Farms on September 8 at the Denver Court of Appeals. She reported that Polly Zimbelman is a new board member and George Bush has resigned. They are working with the Town of Bennett on an internal government agreement. She said that the crops are looking good because of the rain. Mr. Kowaleski clarified that the oral arguments are regarding the export decision by the District and the Commission is not involved in that aspect.

Old Business – Mr. Simpson reported on the quarterly meeting dates for the year 2000. He stated that the normal meeting dates are the third Friday of February, May, August, and November. Marta Ahrens stated that the February meeting will be held on Thursday, February 17, and will be held in Sterling in conjunction with the Ogallala Symposium which will be held on Friday, February 18.

New Business –

Mr. Simpson read the two resolutions, one for Fred Hefley and one for Bill Kerksiek, for approval by the Commission. Commissioner Castle moved to adopt the resolution for Fred Hefley and expressed thanks to Fred. The motion was seconded by Commissioner Max Smith and approved unanimously. Commissioner Bauerle moved to approve the resolution for Bill Kerksiek. Commissioner Coryell seconded the motion and it was approved unanimously.

Mr. Mike Shimmin reported on a new initiative by the Water Quality Control Commission to re-examine the ground water quality protection policy in eastern Colorado. He expressed concern with the WQCC not asking the Commission for input on what the water quality protection strategy should be. He requested the Commission to consider adopting a resolution or send a letter prompting the Health Department to publish the data on the Ogallala aquifer and the Northern High Plains so that the Commission can consider and comment on what new policy should be. Mr. Simpson reported that the State Engineer's Office paid for the collection and analysis of an additional 100 sites and he asked David Holm to make sure that this report was included. Mr. Simpson will send a letter to the WQCC requesting that this data be reviewed and to request that either Brad Austin or David Holm come before the Commission to provide an update on what they are doing in the area of ground water quality protection and how it relates to the Commission's duties and responsibilities.

Dr. Madhi Al-Kaisi, from CSU, reported on the Ogallala Symposium, which is held every two years. The next symposium is scheduled on February 18, 2000, at the North Junior College in Sterling. The symposium covers a basic educational program concerning the Ogallala aquifer for water management, and policy issues. They are also working on a study that looks at water conservation using GIS and GPS systems, the economic impacts of different water management scenarios, and the study of the impact of the depletion of the aquifer. They will submit this study to the EPA and are hopeful to obtain funding for the next three years.

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

The meeting adjourned at 10:20 a.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission