
MINUTES
SECOND QUARTERLY MEETING
COLORADO GROUND WATER COMMISSION

MAY 21, 1999

The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 21, 1999, 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, Anne Castle, Dennis Coryell, Michael Gross, Richard Huwa, Bill Kerksiek, Earnest Mikita, Hal Simpson. Ex-Officio Members Greg Walcher and Peter Evans, and Commissioner Jon Brownell were absent.

Approval of Minutes - Chairman Hefley asked if there were any corrections or additions to the Minutes of the February 19, 1999, meeting. Chairman Hefley requested that corrections be made to change "Chairman Hefley" to "Vice-Chairman Brownell". Commissioner Mikita moved to accept the Minutes, and was seconded by Commissioner Huwa. The motion carried unanimously.

Executive Director's Report - Mr. Hal Simpson presented the Executive Director's report. Mr. Simpson reported that Stan Robson is retiring from the USGS. Mr. Robson has assisted and provided leadership to the State of Colorado on the SB-74 Technical Peer Review Group.

With regard to the Arkansas River Basin, Mr. Simpson reported that the basin has experienced significant runoff due to the recent rainstorm and will remain that way for 20 to 30 days. With the recent rainfall, it should be a good year for replacement of depletions caused by wells. Mr. Simpson stated that litigation on Kansas v. Colorado is continuing. Colorado has hired an economist who is working on a response to Kansas' report on economic damages to submit to the Special Master in August, and Kansas' rebuttal to the Repayment With Water Feasibility Study is also due in August. The courtroom has been reserved for the trial in Pasadena, California, in November, December, and January, and things are moving forward on the litigation over economic issues.

Mr. Simpson reported on the recent lawsuit filed by Kansas alleging that Nebraska violated the Republican River Compact by allowing excessive ground water development in the Ogallala aquifer and has not regulated well construction. Nebraska counter-sued Kansas and alleged that Kansas has also violated the Compact by not providing data to the Compact Administration. Nebraska's Commissioner, Mike Jess, was not reappointed by the new Governor; Nebraska's new Director of the Department of Water Resources is Roger Patterson. The Annual Republican River Compact Meeting will be held on June 3

in Concordia, Kansas. Following the Compact meeting, Mr. Simpson stated that he plans to meet with the ground water management districts in the Northern High Plains in June or July to provide them with an update on the litigation report and get their thoughts on moving forward on strategy.

With regard to legislation, Mr. Simpson reported that the Division of Water Resources will hire 3 FTE's for 8 years to deal with the backlog in Designated Basins. HB-1222, dealing with the Denver Basin aquifer and extending the Special Water Committee, was approved. SB-73 was approved and contains funding for year three of the RGDSS and authorized a feasibility study to develop a decision support system for the South Platte. HB-1050, dealing with a river basin planning bill, was postponed indefinitely. Mr. Simpson stated that the rulemaking for small capacity wells has been concluded with input from water users and has received significant support.

Mr. Simpson concluded his report by stating that some topics for the August Ground Water Commission meeting will include setting meeting dates for the year 2000; discuss holding the February meeting in conjunction with the Ogallala Symposium in Sterling; extending the date of the water conservation rule which expires in the year 2000; and election of officers.

Request for variance on a Cease and Desist Order issued for the irrigation of unauthorized and expanded acres by the irrigation well with Permit No. 11851-F and for an emergency change of description of irrigated acres within the Southern High Plains Ground Water Management District, by John S. Lefferdink – Chairman Hefley excused himself from this hearing due to conflict of interest. Commissioner Gross moved to elect Commissioner Castle as Chairman for the hearing, which was seconded by Commissioner Bauerle and approved unanimously. Acting Chairman Castle called the hearing to order, which is recorded on separate record. Mr. Ted Kowalski served as counsel for the Commission and will assume the role as conflicts counsel in the future.

The following persons addressed the Commission: Mr. John Lefferdink, attorney, represented the applicant Mr. M.L. Kelling; Mr. Dwayne Turner; Mr. Bill Fronczak, representing the staff; Mr. Pat Kowaleski, from the Attorney General's Office, representing the staff; Mr. Max Smith, from the Southern High Plains Ground Water Management District; Mr. Bill Williams, from Walsh, Colorado, representing Mrs. Lucille Ebeling, the complainant.

Following questions and discussion by Commission members, Commissioner Mikita made a motion to grant the variance under the condition that Mr. Turner irrigate 372 acres of corn and soybeans and limited irrigation on sunflowers. Commissioner Gross provided clarification regarding the amount and seconded the motion. Mike Shimmin, from audience, requested that this variance not set a precedence for future variance

requests. The motion was approved unanimously.

Presentation of a Draft Policy Memorandum on Public Notice Requirements for Hearings on Variance Requests before the Commission by Pat Kowaleski and Bill Fronczak – Mr. Kowaleski reported that a draft policy regarding publishing variance requests has been developed and made available to the Commissioners. He asked that this policy be brought to the next meeting in final form after all the parties have had a chance to comment. Mr. Mike Shimmin volunteered to work with the staff prior to the next meeting on some proposed language.

Staff Report - Mr. Bill Fronczak introduced Eric Thoman, former deputy water commissioner, as a new team member to the Commission staff. Mr. Fronczak reported on the following staff activities: numerous objections were received to large capacity well permit publications for determination of water rights; staff is still working on the permitting backlog; staff worked on a draft policy memorandum and the small capacity rules. He also reported on extending the rule regarding conservation of water, and the grandfathering of small capacity wells with regard to animal feeding operations. Mr. Fronczak stated that Brad Austin's report on the water quality in the Northern High Plains has been completed and that he may report on it at the August meeting.

Report of the Attorney General - Mr. Pat Kowaleski presented the report of the Attorney General. Mr. Kowaleski reported that Mr. Lee Miller, former Assistant Attorney General, is now in private practice, and Mr. Ted Kowalski will represent the Commission as conflicts counsel. He stated that the anticipated effective date of the rules on small capacity wells is July 1, 1999.

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

Mr. Ben Saunders reported for the **Frenchman, Sandhills, Marks Butte and Central Yuma Districts**. Mr. Saunders reported that the U.S. Fish and Wildlife Service is considering putting the Black-tailed Prairie Dog on the endangered species list. With regard to confined animal feeding operations, he asked the directors in each of the districts to provide him names of feedlots and letters have been sent. Mr. Saunders stated that they started chemigation activities and they have a full-time chemigation inspector. He reported on the proposed amendment to the Frenchman District's rules and regulations with regard to administering expanded acres and granting permits for commingling wells. The District will hold a public hearing on May 26 and he invited the Commissioners to attend.

Mr. Jack Adams reported for the **W-Y Ground Water Management District** . He stated that he's glad his district doesn't have the problems that some other districts have and said that Mr. Turner received a good deal. His district is considering raising the small capacity well permit from 5 acre-feet to 80 acre-feet, which will be discussed at the board meeting next Wednesday night. Mr. Adams complimented the staff on the good job they are doing and he stated that the Commission should stand behind them.

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

Mr. Stan Murphy, from the **Plains and East Cheyenne Management Districts**. He gave his perspective on the hearing this morning. He encouraged the Commissioners to look out for existing water rights and protecting the people instead of trying to solve everyone's problems.

Mr. Max Smith reported for the **Southern High Plains Ground Water Management District**. He stated that this morning was a good example of why the final permitting process should be started in 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**,

Lost Creek Ground Water Management District - Sheryl Wailes reported that Rich Cooper and Bill Fronczak came to their December meeting to discuss proposed rule changes and answer questions from the directors. Ms. Wailes stated that they are reviewing and updating their rules and are in the process of replacing one of their directors. She stated that the farmers are behind in planting due to the recent rain.

New Business –

Mr. Simpson referred to the two letters in the Commissioners' packets regarding the proposed rules for W-Y and Frenchmen, and stated that if the Commissioner Members have any comments that they be sent to the staff.

Dr. Purushottam Dass reported that the Ogallala Symposium will be held in Sterling on Friday, February 18, 2000. Dr. Dass proposed that the Commission meeting be held on Thursday, February 17, in Sterling. Commissioner Gross made a suggestion for a later starting time for the Commission meeting, based on the agenda, to allow for travel time and more efficient use of the Commissioners' time.

Biennial Election of Officers - Mr. Simpson stated that since the Governor has not made a decision on the new appointments, that the current Commissioners continue in their capacity until the first week of June. He also suggested having as the first item of business at the next meeting the election of the Chair. Commissioner Mikita moved and Commissioner Castle seconded to continue this at the next meeting; the motion carried.

Next Meeting - The next meeting is scheduled for **August 13, 1999**, at the Pagosa Lodge in Pagosa Springs. On August 12, a tour of the geothermal resources used for recreation and heating will be provided by a local water commissioner, and a guest speaker for dinner will be arranged to discuss the geothermal resources.

The meeting adjourned at 12:10 p.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission