
MINUTES

FIRST QUARTERLY MEETING COLORADO GROUND WATER COMMISSION

FEBRUARY 17, 2000

The First Quarterly Meeting of the Colorado Ground Water Commission took place on February 17, 2000, at the Northeastern Junior College, Sterling, Colorado. Chairman Earnest Mikita called the meeting to order at 1:00 p.m.

Mr. Hal Simpson introduced Robert Loose, the new Ground Water Commission member appointed by the Governor, who represents the Kiowa Bijou Designated Basin, and Dan McAuliffe, Deputy Director of the Colorado Water Conservation Board. Mr. Kent Holsinger, Assistant Director of the Department of Natural Resources, will be representing the Department at the Commission meetings.

Determine Quorum - 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, Robert Loose, Max Smith, Hal Simpson, Kent Holsinger, and Dan McAuliffe (for Peter Evans). Commissioner Jon Brownell and Ex-Officio Member Peter Evans were absent.

Changes to the Agenda - Chairman Mikita stated that the agenda topic, Information and Training Session on Designated Ground Water Statutes and Commission Rules and Procedures, will take place at the end of the meeting. Agenda item 7, Upper Black Squirrel Creek Ground Water Management District presentation, was dropped from the agenda and replaced with the Ground Water Quality Policy.

Approval of Minutes - Chairman Mikita asked if there were any corrections or additions to the Minutes of the November 19, 1999, meeting. Commissioner Castle suggested two changes to page 3, paragraph 2. Commissioner Gross moved to accept the Minutes with the changes outlined by Commissioner Castle. The motion was seconded by Commissioner Bauerle and carried unanimously.

Report of the Executive Director - Mr. Hal Simpson reported that Peter Evans will resign as Director of the Colorado Water Conservation Board early this summer to be with his family in New York.

Mr. Simpson reported on a proposed cut in the travel budget of 15%, its impact in the area of water administration, and the Division's ability to protect ground water rights in the designated basins because it would limit enforcement. Mr. Simpson stated that efforts are being made to get the Joint Budget Committee to reconsider this cut.

Mr. Simpson provided an update on Kansas v. Nebraska and Colorado concerning the Republican River Compact. The lawsuit is moving forward. The Special Master held a hearing in Kansas City on the motion filed by Nebraska to dismiss the case with respect to ground water saying that the Republican River Compact's allocations of virgin water supply did not include ground water. The Special Master's Report to the U.S. Supreme Court recommended the motion to dismiss by Nebraska be denied based on the evidence that all the ground water hydrologically connected to the Republican River stream system was included in the apportionment. Colorado and Nebraska intend to file an exception to his decision. Mr. Simpson reported that preparation is being stepped up for the trial on the issue of the impact of pumping water from the Ogallala aquifer on the Republican River streamflows, or how the compact could be renegotiated to include the Ogallala aquifer.

Regarding the litigation on the Arkansas River in Kansas v. Colorado, the trial was completed on January 28, 2000 on the remedy phase, which is the amount that Kansas should be compensated for depletions by post-compact wells in Colorado on the Arkansas River. Kansas wants payment in money only and they challenged Colorado's ability to pay in water. The trial on future compliance issues regarding which model and what data will be used, and on the current rules that were promulgated in 1996, will take place in July or August and will take an additional 3 to 4 weeks.

Mr. Simpson reported that he submitted a brief report to the Water Quality Control Commission at their February 14 meeting asking for an extension of time so that the Ground Water Commission Members have an opportunity to consider the ground water quality policy. The draft resolution will be discussed during agenda item 7 and the Commission will have an opportunity to provide their position regarding the policy prior to the WQCC meeting on March 13.

Mr. Simpson stated that the meeting with the Upper Black Squirrel Creek Ground Water Management District was very productive. Agreement was reached on several issues, some alternatives were suggested, and the Commission may not have to deal with the differences over the rules and regulations of the district and the Commission.

Presentation of a Memorandum of Understanding between the Commission and the Plains and East Cheyenne Ground Water Management Districts by Ken Knox and Stan Murphy – Mr. Knox stated that this MOU is an example of an attempt to work with the districts to identify those ground water wells that are not in compliance. He stated that it is not an expansion upon the State Engineer's authorization or duties, but it establishes a working agreement with the districts to set up a process in the event if there is a potential violation. Commissioner Castle moved that the Ground Water Commission approve the MOU between the DWR and Plains and East Cheyenne Ground Water Management Districts. The motion was passed unanimously.

Ground Water Quality Policy - Mr. Simpson reported that he met with Julie Vlier, Chairman of the Water Quality Control Commission, regarding the ground water quality policy in sole source aquifers. He reported that he asked the WQCC to withhold any action until the Ground Water Commission has a chance to comment on the discussion paper.

Commissioner Castle summarized concerns from previous discussions on the ground water quality policy, concern about the deterioration of ground water quality, and sole source aquifer protection. She stated that the Commission should be looking at the problem and developing the best management practices to deal with it. If necessary, utilize the current management structure that the ground water management districts have in place to implement and provide information about the best management practices.

Discussion took place regarding the confusion of the term "sole source", whether this is an adequate definition to analyze what the impacts are, and that it needs to be better defined prior to further discussion on anti-degradation standards. Mr. Mike Shimmin, from the audience, stated that he believes for the purposes of this proposal, sole source was intended to refer to the Ogallala aquifer. Mr. Shimmin stated that he and Ben Saunders appeared at the WQCC meeting and submitted oral and written comments. Copies of the written comments were distributed to the Ground Water Commission Members.

Mr. Simpson read the resolution that will be forwarded to the WQCC. Commissioners Castle, Gross, and Mr. Shimmin made some additions and corrections to the resolution. Mr. Simpson stated that the resolution will be rewritten and sent to the Commission Members within the next week. If everyone is in agreement, Chairman Mikita will sign it. Commissioner Castle moved to adopt the Resolution as modified today subject to review when the Commissioners see the language next week. Commissioner Loose seconded, and it passed unanimously.

Staff Report - Mr. Bill Fronczak presented the Staff Activity Report for the last quarter, which is included in the packets. He reported that Bob Barnes is retiring from the Division the end of February and he acknowledged Bob's hard work over the past five years. Mr. Fronczak stated that the staff are processing the 300+ CAFO applications that came in the end of the year. There are still applications coming in for the determination of water rights for the Denver Basin and quite a few objections. The staff worked closely with the Upper Black Squirrel Creek Ground Water Management District regarding their rules and have developed a working relationship. The water conservation rule and the variance policy requiring publication are at the Secretary of State's Office and the hearings for those are scheduled for the May Commission meeting. The final permitting process is in progress and the staff are sending information packets to get clarification of water rights.

Report of the Attorney General - Mr. Pat Kowaleski presented the report of the Attorney General, which is included in the packets. With regard to Eagle Peak Farms, two separate district courts dismissed challenges against the Commission's half-mile rule for failure on the part of the applicant to process those appeals. Mr. Kowaleski reported that staff member Ted Kowalski, who represented the Commission, accepted a position with the Colorado Water Conservation Board. Regarding the determination of water rights and the Upper Black Squirrel Creek Ground Water Management District, the Attorney General's Office had a number of matters set for hearings but they will be able to resolve a number of the issues before it goes to hearing.

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

Mr. Ben Saunders, from the **Frenchman, Sandhills, Marks Butte and Central Yuma Districts**, reported that the water levels are measured and all CAFO's started, but it will take them the rest of the year to finish the CAFO applications. Water levels went up in Sedgwick County and down in the Sandhills.

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**, reported that they had over 100 CAFO applications in the Plains District and approximately 10 in the East Cheyenne District.

Commissioner Max Smith reported for the **Southern High Plains Ground Water Management District**. He stated they completed the feasibility study on ground water aquifer in their area. A public meeting was held in Walsh in January, which was attended by Chuck Roberts and George VanSlyke from the State Engineer's Office. The Board decided to start Phase I of the large-scale feasibility study. Commissioner Smith stated that the approximate cost of the full scope comprehensive feasibility study will be over \$230,000.

Lloyd Musgrave from the **North Kiowa-Bijou Ground Water Management District**, introduced Leroy Kerksiek and added that the new Commission Member Robert Loose is from their district.

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

Old Business - None

New Business – Mr. Dan McAuliffe reported that the CWCB requested \$585,000 on an annual basis to use for local water planning study activities. The Governor has appointed Mr. Tom Cech, from the Central Water Conservancy District, as the new member of the Mineral, Energy and Geology Policy Advisor Board to represent water interests and to help the CWCB develop proposals for some of the future expenditures of that fund. Mr. Cech will work with the CWCB and the SEO to develop a statewide ground water atlas for Colorado in a GIS platform. Mr. McAuliffe asked the Ground Water Commission Members to let him know if they have any thoughts regarding the atlas.

Next Meeting - The next meeting is scheduled for Friday, May 19, 2000, in Denver, Colorado.

The **Information and Training Session on Designated Ground Water Statutes and Commission Rules and Procedures** was presented by Bill Fronczak and Pat Kowaleski.

The meeting adjourned at 4:25 p.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission