
MINUTES

SECOND QUARTERLY MEETING COLORADO GROUND WATER COMMISSION

MAY 19, 2000

The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 19, 2000, at 1313 Sherman Street, Room 318, Denver, Colorado. Chairman Earnest Mikita 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, Robert Loose, Max Smith, Hal Simpson, Kent Holsinger, and Ted Kowalski.

Review and Approval of Agenda Items - An agenda item was added under New Business. Glenn Graham will discuss water quality issues and the Ground Water Protection Council.

Approval of Minutes - Chairman Mikita asked if there were any corrections or additions to the Minutes of the February 17, 2000, meeting. Commissioner Castle moved to accept the Minutes. The motion was seconded by Commissioner Coryell and carried unanimously.

Executive Director's Report - Mr. Hal Simpson welcomed back Ted Kowalski who will be representing the Colorado Water Conservation Board at the Commission meetings. Mr. Simpson provided an update on the status of some budget issues since the last meeting. He reported that thanks to the efforts of water users, the Joint Budget Committee reconsidered the proposed 15% reduction in the travel budget. Also, the Legislature restored the proposal by the JBC to reduce the Personal Services funding by 1%, which will allow the Division to fill the vacant engineer positions in the Designated Basins.

Mr. Simpson reported that the CWCB has agreed to fund a study to obtain well information in the Republican River basin to help prepare for any potential on-going litigation in Kansas v. Nebraska and Colorado. The amount is \$75,000 and will be used to put part-time staff in the field to locate wells in Republican River basin to verify permit information and obtain accurate information using GPS units.

Mr. Simpson reported that at the last meeting a resolution was approved by the Commission dealing with ground water quality. On May 10, the Water Quality Control Commission responded to public comments on the ground water quality policy. The WQCC agreed with the Commission's recommendation to not change the current policy, but to emphasize data collection and to create a Ground Water Protection Council. The Ground Water Commission and Water Resources are members of the Council and Glenn Graham was appointed to be the representative and will give updates at the future Commission meetings.

Mr. Simpson announced that the State Engineer's Office will finally be filling the positions approved by the Legislature last year to work on the backlog of final permits. Megan Sullivan was selected to fill this position as the lead engineer, and support will be provided by Rick

Nielsen. Mr. Simpson reported on the recent reorganization of staffing. Mr. Bill Fronczak will take over the management and supervision of the Designated Ground Water Basins Branch, and Dr. Dass will focus more on tributary ground water issues in the South Platte River basin. Dr. Dass was presented with a plaque for his 13 years of support to the Ground Water Commission and the Designated Basins Branch.

Hearing on a request for variance to authorize an emergency change in description of acres and expanded acres for the irrigation well with Permit No. 11851-F within the Southern High Plains Ground Water Management District, by John S. Lefferdink, attorney for Kelling Partners - Chairman Mikita called the hearing to order, which is recorded on separate record. Mr. Dave Hayes, Assistant Attorney General, was Conflicts Counsel representing the Commission. Commissioner Max Smith removed himself from the hearing due to conflict of interest.

The following persons addressed the Commission: Mike Shimmin, attorney, represented Ms. Lucile Ebeling, the objector. Mr. John Lefferdink, attorney from Lamar, represented Mr. Kelling, landowner, and Dwayne Turner, tenant. Mr. Pat Kowaleski, Assistant Attorney General, represented the staff of the Ground Water Commission.

Mr. Shimmin requested that the hearing not be held until August because it violates the policy of the Commission regarding publication of variance requests and that many of the issues raised in this variance are currently the subject of administrative hearings. Mr. Kowaleski requested that the Commission hear this matter. Commissioner Castle moved to proceed with the variance request of Mr. Kelling. It was seconded by Commissioner Loose and passed unanimously.

Mr. Bill Fronczak, Branch Manager of the Designated Basins Branch, presented the staff's position to deny the variance request and responded to questions from the Commission members. After deliberation by Commission members, Commissioner Bauerle moved to deny the variance request. The motion was seconded by Commissioner Castle, and passed unanimously.

Rulemaking Hearing for the Change of Commission Rule 7.10.4(b) and Rule 11 - Chairman Mikita called the hearing to order, which is recorded on separate record. Mr. Dave Hayes, Assistant Attorney General, was conflicts counsel representing the Commission. Mr. Pat Kowaleski, Assistant Attorney General, representing staff, suggested that the matter regarding the second part of the hearing, Rule 11, be heard at the November Commission meeting. Mr. Dave Taussig, attorney representing Eagle Peak Farms, Ltd., Prospect Valley Farms, Ltd., and the Town of Limon, asked for the opportunity to proceed in the rulemaking hearing today. Mr. Mike Shimmin, attorney, has no objection to Rule 7.10.4(b), requested to postpone discussions on Rule 11, and asked to address the issue of party status.

Commissioner Castle moved that the Ground Water Commission consider at the August meeting the petition of Eagle Peak and Limon to determine which of the proposals are related to the pending rulemaking on Rule 11 and which are not, and then schedule for the November meeting the substantive discussion of the proposed amendments to Rule 11.

The motion was seconded by Commissioner Gross and approved unanimously.

With regard to Rule 7.10.4, Commissioner Castle moved that the Commission approve party status for Eagle Peak Farms, Prospect Valley Farms, and Town of Limon for the Rule 7.10.4 Rulemaking. The motion was seconded by Commissioner Gross and approved unanimously.

Mr. Fronczak remarked that the main reason for changing Rule 7.10.4(b) is to remove the language in the rule referencing the year 2000 as being the sunset date. Discussion ensued and agreement was made to eliminate the sunset provision and adopt the rule change as proposed.

Discussion followed on the distinction between party status and interested parties with regard to the Rule 11 rulemaking.

Report of the Attorney General - Mr. Pat Kowaleski presented the report of the Attorney General. Mr. Kowaleski introduced Matt Poznanovic, from the Attorney General's Office and will be working with the Commission in the future. Mr. Kowaleski gave an update on the Goss litigation. The Supreme Court stated that it is the Commission's responsibility to determine whether there is water available for appropriation in the designated ground water basins, but the primary responsibility for enforcement of the priority system goes to the management districts. He stated that Ted Kowalski argued the case and did an excellent job.

Staff Report - Mr. Bill Fronczak presented the Staff Activity Report for the last quarter. He reported that the last quarter was involved heavily in litigation. They are still receiving objections in the Black Squirrel and North Kiowa-Bijou areas on determination of water rights. With regard to the confined animal feeding operation wells under the grandfathering provision, those wells are complete. Interviews were held to fill the two vacant engineer positions, one was filled by Megan Sullivan, and the other was tentatively offered to an engineer involved in environmental consulting.

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

Mr. Ben Saunders reported for the **Frenchman, Sandhills, Marks Butte and Central Yuma Districts**. Mr. Saunders commended Eric Thoman and Sandy Johnson for their assistance in issuing an exempt well on the same day of the application. The Frenchman District adopted a rule three months ago pertaining to the administration of any well that is less than 2.5 acre-feet per acre. The Board sent letters to those whose wells will be enforced through power coefficient records or water meters in 2001. Mr. Saunders stated that this has been a very favorable action on behalf of the water board because the farmers want to know how much they are pumping. Mr. Saunders complimented the Commission, Hal Simpson, and the water districts regarding water quality. They will continue to do sampling and have funding for it and he feels it is one of the most important things that was accomplished in a long time.

Mr. Jack Adams, from the **W-Y Ground Water Management District** reported that it's been dry

in their country and to send any extra water their way.

No report from the **Arikaree Ground Water Management District**.

Mr. Stan Murphy, from the **Plains and East Cheyenne Management**. Commissioner Coryell reported on behalf of Stan. He stated that during the last month Stan has been working with a GPS instrument that he acquired through the staff to do well locations. Stan has been writing articles for their local newspapers dealing with water level measurements, depletions, water quality, rules and regulations, legislative issues, and enforcement of permits. Commissioner Coryell asked the staff if they have articles or news releases that can help them in their educational process, to please pass them on.

Commissioner Max Smith reported for the **Southern High Plains Ground Water Management District**. He provided an update on the feasibility study in his district with funding from the Colorado Water Conservation Board. They are identifying abandoned wells within the boundaries of their district. The local soil conservation board obtained a grant for \$14,000 to cost-share plugging abandoned wells. Commissioner Smith reinforced Ben Saunders' comments regarding the importance of water quality sampling.

Commissioner Robert Loose reported for the **North Kiowa-Bijou Ground Water Management District**. He stated that they are inundated with people who want to quantify the amount of water they have available under their land. The position of their district is that they don't have a problem with putting the water to beneficial use, but they are concerned about it becoming an export issue. Commissioner Loose asked the staff for their help to negotiate those waters.

There was no report from the **Upper Black Squirrel Creek Ground Water Management District**.

Mr. Dave Taussig reported for the **Upper Big Sandy Ground Water Management District**, Mr. Taussig stated that for the November election, they will de-Bruce and get rid of constitutional amendment that limits the term of directors. They will cooperate with the Commission with regard to the water quality program.

Sheryl Wailes from the **Lost Creek Ground Water Management District** thanked Hal Simpson for his proposal on the water quality monitoring in their district. The directors are looking forward to working with the staff on this project. They received the water levels report for the district and enjoy the new format.

Old Business – None.

New Business

Mr. Glenn Graham reported on the **Water Quality Protection Council**. He stated that he has been a geologist with the Division of Water Resources for 14 years. They have had two meetings and are in the process of developing a draft of a vision statement (which he read to the Commission), a charter for the organization, and identify any other organizations that may have responsibilities toward water quality issues. Mr. Graham stated that the meetings have determined that water quality data is available, but no one knows where it is located. The purpose of the Council is to anticipate any potential problems or conflicts with rulemakings by various agencies pertaining to overlapping or gaps in jurisdictions. The Water Quality Control Division and the Water Quality Control Commission were delighted to learn about the water quality program in the designated ground water basins. This is a continuation of a study started by Brad Austin several years ago and will identify any potential trends in water quality problems. The owners of the wells will receive copies of the analysis for their specific well and the other water quality data will be published in a report not linking specific data analyses to any specific well. The importance of accurate location information is vital to the development of this report.

Mr. Bill Fronczak reported for the record that the Division Engineer for Water Division I started a program to **locate all large capacity wells** in the Republican River Basin. They will start in the W-Y District, through the Sandhills and then down to the Central Yuma Districts this year. They will be contacting Ben Saunders and Jack Adams to coordinate when they will be in their districts. There will be three interns with GPS units who will be checking large capacity wells, wells for livestock operations, and hog farm operations that are pumping 80 acre-feet.

Next meeting - Scheduled for Friday, August 18, 2000, in Breckenridge with potential of a tour of the South Park Stockman's Ranch Recharge Project, which will be in trial in July and August. By holding the meeting in Breckenridge, those who are involved in the trial will be able to participate in the Ground Water Commission meeting.

The meeting adjourned at 2:15 p.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission