
MINUTES

FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION

NOVEMBER 17, 2000

The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 17, 2000, at 1313 Sherman Street, Room 318, Denver, Colorado. Chairman Earnest Mikita called the meeting to order at 9:10 a.m. Marta Ahrens called the roll and determined that a quorum was present. Commission members present were Eugene Bauerle, Jon Brownell, Anne Castle, Larry Clever, Dennis Coryell, Richard Huwa, Robert Loose, Max Smith, Hal Simpson, Kent Holsinger, and Ted Kowalski.

Review and Approval of Agenda Items - There were no additions or corrections to the agenda.

Approval of Minutes for Meeting of August 18, 2000 - Chairman Mikita asked if there were any corrections or additions to the Minutes of the August 18, 2000 meeting. Commissioner Castle suggested changing a sentence for clarification under the item Status of the Kansas v. Nebraska and Colorado litigation on page 2 as follows: "Colorado is considering filing cross claims against Nebraska and Kansas because their pumping on the east side of the border where Colorado's points of delivery are measured could *impact the flows*". Commissioner Brownell moved to accept the Minutes with the change. The motion was seconded by Commissioner Coryell and carried unanimously.

Report of the Executive Director by Hal Simpson – Mr. Simpson welcomed Larry Clever to the Commission, who was appointed in October 2000 by Governor Owens to represent the municipal and industrial users on the western slope. Commissioner Dennis Coryell was reappointed to the Commission. Mr. Simpson read a Resolution to former Commission Member Michael Gross and presented him with a plaque for his seven years of service to the Commission. Commissioner Castle made a motion to approve the Resolution, and was seconded by Commissioner Brownell. Mr. Simpson thanked the staff for their efforts in getting caught up on the backlog.

Mr. Simpson provided an update on the Kansas v. Colorado litigation. He stated that there is a final report from Special Master Littleworth which sets forth a procedure to determine how Kansas should be compensated in dollars, but it was not quantified. It is estimated to be about 40 million dollars. A very intense 6-week trial is anticipated on the rules that were promulgated by the State Engineer's Office and on the ground water model. Colorado will file exceptions to the Special Master's report based on the recommendation that the damage award be based on the damages to Kansas' farmers, and on the calculation of prejudgment interest. Oral arguments will be held in early 2001 and a decision will be made by June 2001.

Mr. Simpson reported on the Joint Agency Water Quality/Quantity Workshop that was mentioned at the last Commission meeting. The date and location have not yet been determined because they are trying to work it into the Governor's schedule. The focus is on surface water but the Commission members are encouraged to attend since it is an opportunity for the Ground Water Commission to understand the responsibilities of other boards and commissions.

Status of the Kansas v. Nebraska and Colorado litigation - Republican River Compact by Hal Simpson – Mr. Simpson provided a history of the Republican River Basin and how it overlies the Ogallala aquifer in the three states. The Republican River Basin is subject to a compact that was signed in 1942 and allocates to each state the right to consume a certain amount of water. Since Colorado has not been consuming its full compact entitlement, there is a cushion between the consumption and allocation. Colorado is now fully involved in the litigation. Because the Special Master has concluded that the ground water withdrawals that deplete streamflows are governed by the compact, Ogallala pumping, as well as alluvial well pumping and other activities, have to be evaluated in light of how the streamflows have been depleted in the Republican River. Mr. Simpson reviewed the Case Management Order and the issues that will be briefed in January of 2001. The Special Master's plan is to start trial by March 2003. Colorado has started gathering data and submitted a supplemental request through the Department of Natural Resources for \$250,000 for work to begin this year, followed by another \$750,000 for the following year to prepare for litigation. A report by the USGS on the effects of wells and other land use practices and activities in the Republican River Basin should be completed in draft form by May 2001.

Commission Rulemaking Hearing for Rule 11, including the petitions of Eagle Peak Farms and the Town of Limon which the Commission determined related to the pending Rule 11 Rulemaking - Chairman Mikita called the hearing to order, which is recorded on separate record. Mr. David Hayes, Assistant Attorney General, served as conflicts counsel for the Commission. The following persons addressed the Commission:

Mr. Bill Fronczak, of the staff, provided a brief history of the rulemaking for Rule 11 and presented the staff's position and recommendations. Mr. Andy Jones, attorney at Lind, Lawrence and Ottenhoff, on behalf of Kim Lawrence who was out of the country, represented Lost Creek, Upper Black Squirrel Creek, and the Southern High Plains Ground Water Management Districts. Mr. Mike Shimmin, attorney representing Marks Butte, Frenchman, Sand Hills and Central Yuma Ground Water Management Districts. Comments from other interested parties included Jack Adams of the W-Y Ground Water Management District, and Mr. Stan Murphy of Plains and East Cheyenne Ground Water Management District, who both stated that they support the staff's recommendations. Changes to the proposed rules initially published were proposed by the Town of Limon and Eagle Peak Farms. Of the ten changes proposed, five were deemed "related" to the proposed rules and were considered by the Commission. Eagle Peak Farms and the Town of Limon declined to participate in this hearing.

After deliberation by Commission members, Commissioner Castle moved that the change designated as item #1 not be included in the proposed rule; seconded by Commissioner Huwa and passed unanimously. Commissioner Smith moved that item #2 not be included; Commissioner Loose seconded and passed unanimously. Commissioner Loose moved to support item #3 with a change from 7 days to 14 days; seconded by Commissioner Coryell and passed unanimously. Commissioner Coryell moved to not include item #4 in the changes; seconded by Commissioner Brownell and passed unanimously. Commissioner Castle moved to not include the definition of unusual hardship; seconded by Commissioner Bauerle and passed unanimously.

Mr. David Hayes confirmed that the Commission adopted the rule changes as proposed originally by the staff with one modification proposed by the Town of Limon and Eagle Peak Farms; namely, changing Rule 11.2.4 to require 14 days between publication of a variance and the hearing on the variance. Commissioner Castle moved to add a sentence at the end of proposed Rule 11.2.2 stating that "a copy of the variance request will be sent to the appropriate Ground Water Management District"; seconded by Commissioner Huwa and passed unanimously. Commissioner Castle moved the adoption of the proposed Rule on variances; seconded by Commissioner Brownell and passed unanimously.

Mr. David Hayes added that the date the rule changes will become effective is February 1, 2001.

Staff Report by Bill Fronczak - Mr. Bill Fronczak presented the Staff Activity Report for the last quarter. He commended the staff in the good job on getting the changes of water rights and the new small capacity appropriations current. There are a total of 53 change applications pending, 40 of which are Eagle Peak Farms. The new large capacity appropriations are coming along well and will be current by 2001. Mr. Fronczak reported that Eric Thoman was promoted to the Information Technology Branch, Sandy Johnson is taking over the duties of the small capacity well evaluations, and Chris Grimes is the new water commissioner representing the staff and assisting with water administration. Mr. Fronczak reported that they have not received any new objections to determination of water rights. He reported that the constitutionality of C.R.S. Section 37-90-107(7), is being challenged and he will keep the Commission updated on this. With regard to final permit activities, two counties in the Northern High Plains have been completed, and they are in the process of organizing the Southern High Plains' procedures on the final permit process. The staff will go to the Southern High Plains for a couple of weeks next year to meet with the water users and assist in making the process smoother. Megan Sullivan will make the presentation on final permit activities at the future Commission meetings. Mr. Fronczak provided an explanation on clarifying the final permit activities and how the county assessors get involved. He also clarified the discrepancy in the report regarding the matter of the exposure of ground water in the Lost Creek basin.

Report of the Attorney General by Pat Kowaleski - Mr. Pat Kowaleski presented the report of the Attorney General, which was included in the packets. He reported on the constitutional challenge to the provision of the statute Section 37-90-107(7) that the Commission should allocate upon the basis of ownership of the overlying land any designated ground water contained in the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers. The North Kiowa-Bijou Ground Water Management District alleges that this statute violates the constitutional provisions that waters of the state shall be subject to appropriation at any time. The Hearing Officer is in the process of the hearing the matter, which is likely to be appealed to the Commission after he issues his decision with regard to the matter.

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

Mr. Mike Shimmin reported for Ben Saunders, from the **Frenchman, Sandhills, Marks Butte and Central Yuma Districts**, and stated that Ben has been having serious health problems over the last few months. He will have to retire from the districts' boards that he has been managing since 1974 and is looking for someone to replace him. He may continue on a part-time basis in order to train a new manager. Mr. Shimmin reported on an irrigation well located south of Holyoke that has been acquired by the city and the city will raise alfalfa for the sole purpose to build up the historical consumptive use so they can change the use of the well to municipal use. Mr. Shimmin reported that Ben hopes to begin water level measurement for the year and has hired help with this.

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 the Plains District is concerned with the Republican River Compact issue and the districts may be interested in doing global positioning. They have already determined GPS locations of 170 wells in the Plains District and 30 wells in the East Cheyenne and suggested that the districts would be able to assist with those types of projects.

Mr. Doug Melcher reported for the **Southern High Plains Ground Water Management District**. He stated that they received the draft copy of the McLaughlin Engineers water study and will look at refining the definition of the major aquifers, reevaluation of their water level monitoring destinations, they are performing some enhanced GIS work. They have been involved in the Eagle Peak Farms issue and are struggling with how to keep funding their district.

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 from the Lost Creek Ground Water Management District.

Old Business - None

New Business – Commission meeting dates for 2001 -- The staff has tentatively chosen February 16, May 18, August 16-17, and November 16, 2001 as the Commission meeting dates. Commissioner Brownell moved to accept dates, seconded by Commissioner Castle and passed unanimously.

Next Meeting - The next meeting is scheduled for Friday, February 16, 2001, in Denver, Colorado.

The meeting adjourned at 11:45 a.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission