
MINUTES

SECOND QUARTERLY MEETING COLORADO GROUND WATER COMMISSION

MAY 18, 2001

The Second Quarterly Meeting of the Colorado Ground Water Commission took place on May 18, 2001, at 1313 Sherman Street, Room 318, Denver, Colorado. Chairman Earnest Mikita called the meeting to order at 10:00 a.m. Marta Ahrens called the roll and determined that a quorum was present. Commission members present were Eugene Bauerle, Anne Castle, Larry Clever, Dennis Coryell, Richard Huwa, Robert Loose, Max Smith, Hal Simpson, and Ted Kowalski. Commission Member Jon Brownell and Ex-Officio Member Kent Holsinger were absent.

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

Approval of Minutes - Chairman Mikita asked if there were any corrections or additions to the Minutes of the February 16, 2001, meeting. Commissioner Castle moved to accept the Minutes. The motion was seconded by Commissioner Loose and carried unanimously.

Executive Director's Report - Mr. Hal Simpson extended apologies on behalf of Kent Holsinger for his absence in order to prepare for his upcoming testimony in Washington, D.C. on the reservoir bypass flow issue. Mr. Simpson stated that the start time for the Commission meetings held in Denver are scheduled to start at 10:00 a.m. to comply with an Executive Order of former Governor Romer. If this creates a problem and the Commission Members prefer the 9:00 a.m. start time, Mr. Simpson could try to get an exception.

Mr. Simpson reported on the statewide water supply situation and distributed a printout of Snotel sites regarding the snowpack. The northwest part of the state is 47% of average, the remainder is at 60 to 80%, and the South Platte River Basin is at 77%. The low level snow has disappeared quickly and the State Engineer's Office is dealing with potential low snowmelt runoff again similar to last year. Currently, soil moisture on the plains is near average, and above average in the southeastern part of the state.

With regard to the Ground Water Commission appointments, Mr. Simpson reported that the terms for Commissioners Huwa, Mikita, and Bauerle have expired, and Commissioner Jon Brownell resigned. Several applications have been received by the Governor's office and are currently being evaluated and, hopefully, will be filled by the August meeting.

Mr. Simpson reported on current legislation. Senate Bill 161, regarding studies dealing with future water supply needs, was postponed indefinitely due to its fiscal impact. House

Bill 1354, which will create a pilot water banking system for the Arkansas River Basin system, was passed and will require that the State Engineer promulgate rules on how the water bank will operate. The Legislature reduced all state agencies' budgets an additional 1½% in Personal Services, which results in DWR being underfunded about 4 to 5% of salaries for the next fiscal year. This could mean that all positions vacated by retirement or resignations may be held vacant for at least three months or longer.

Mr. Simpson provided an update of his meeting with the farmers on the South Platte River in Sedgwick regarding their inadequate well augmentation supplies and the need to curtail their well pumping. As a result of that meeting, Mr. Simpson was pleased to report that the farmers are now operating 21 new recharge projects in that area and efforts are being made to comply with the Platte River Compact. Due to the timely efforts of the well users, Colorado can assure Nebraska that its interests are being protected.

Mr. Simpson concluded his report with an update of the Kansas v. Colorado litigation. A ruling has not yet been received from the U.S. Supreme Court on the issue of monetary damages that Kansas is entitled to. The arguments went well and should save Colorado about \$20 million in awards to Kansas. Kansas' expert reports were received in April and new issues were introduced that Colorado has not had to deal with in the past; i.e., how crop evapotranspiration is computed, and a modification in the model calibration. The trial on compact compliance may not take place until early next year.

Status of the Kansas v. Nebraska and Colorado litigation - Republican River Compact by Ken Knox - Mr. Knox reported on the status of the litigation and where Colorado is heading. Four contractors were hired in the areas of surface water, ground water, land use and conservation practices, and geographic information systems. Mr. Knox reported that he, Bill Fronczak, and Megan Sullivan have perused over 3,700 lineal feet of documents from Montana, Nebraska, Missouri, and Kansas. These documents will be electronically imaged and used to set up a library for the court information management system. Review of the Federal documents will be completed by mid-June. Staff will then determine which documents will be used to start building Colorado's case for the trial that starts in March 2003. Mr. Knox reported that they will be focusing on in-state information sources; specifically, they will travel to the Ground Water Management Districts and request information from power companies to ascertain how much water was pumped from the Ogallala. They will be talking to well drillers and conducting field surveys to determine irrigation practices (i.e., type, crop, accuracy of area), land use, and conducting farmer interviews to discuss historical practices. A pretrial conference before the Special Master will be held on May 30, 2001, at the U.S. District Courthouse in Denver.

Hearing on the appeal of the Hearing Officer's Initial Decision (Case No. 99-GW-15 (A through N Consolidated) in the matter of Objections to the Thomas H. Bradbury, et. al. Applications for Determination of Water Rights to Allow the Appropriation of Designated Ground Water from the Laramie-Fox Hills, Arapahoe, and Denver Aquifers, by Don McClary, attorney for the North Kiowa-Bijou Ground Water

Management District. Chairman Mikita called the hearing to order, which is recorded on separate record. Mr. Dave Hayes, Assistant Attorney General, was the Conflicts Counsel representing the Commission. Commissioner Loose recused himself from the hearing due to a potential conflict of interest resulting from his position as a member of the District board. Commissioner Castle disclosed that she and her law firm represented clients whose interests could be affected by the outcome of some of the issues raised in the appeal, but who were not involved in the pending case. Any potential conflict of interest of Commissioner Castle was waived by the counsel representing the applicant, the District, and the staff.

The following persons addressed the Commission: Mr. Don McClary, attorney for the North Kiowa-Bijou Ground Water Management District. He stated for the record that the District takes exception that the notice of the hearing did not provide an opportunity for the opposing parties to file a response brief, which they believe is a serious departure from the normal adjudicatory proceedings. Mr. McClary also stated that the District takes exception to the 15-minute limitation per party. Commissioner Castle moved to continue with the hearing despite not having a reply from the District, but allow the District an additional 15 minutes at the end to continue its case. Commissioner Smith seconded the motion and it passed unanimously.

Mr. Mark Wagner, attorney with the firm of Hill and Robbins, represented Thomas Bradbury, the applicant. Mr. Matt Poznanovic, Assistant Attorney General, represented the staff of the Ground Water Commission.

After deliberation by Commission members, Commissioner Castle moved that the Commission affirm the Hearing Officer's decision with respect to the constitutionality of the statute, §37-90-107(7), C.R.S.; seconded by Commissioner Clever, and passed unanimously. With regard to paragraph no. 19 of the Hearing Officer's findings, Commissioner Clever moved that the Commission affirm the Hearing Officer's finding that the Ground Water Commission has jurisdiction over the applications and the parties; seconded by Commissioner Bauerle, and passed unanimously. Commissioner Clever moved to affirm the Hearing Officer's determinations, specifically no. 24, that the anti-speculation provisions of Colorado water law apply to the determination of rights to ground water in the Denver, Arapahoe, and Laramie-Fox Hills aquifers within the designated ground water basins; the motion was seconded by Commissioner Smith. Of the seven voting members present at the meeting, only Commissioner Clever voted in favor of the motion; the remaining Commission Members voted against. The motion failed. Commissioner Castle moved to affirm the findings of the Hearing Officer's decision in paragraph nos. 16 and 17 and find that the evidence presented was sufficient to show that the applicant was not speculating in his request for the water determinations; seconded by Commissioner Bauerle, and it passed unanimously. Commissioner Coryell moved that the Commission affirm that the staff was a proper party in the hearing; seconded by Commissioner Clever, and passed unanimously.

Mr. Kowalski suggested that the Commission discuss at a future meeting whether more input should be obtained in similar type appeals.

Discussion of Administering the Southern High Plains Designated Basin as one aquifer, by William Fronczak. Mr. Fronczak reviewed the discussions from the last meeting regarding administering the Southern High Plains Designated Basin as one aquifer and asked the Commission to direct the staff on how they should proceed. The issues with multiple-completed wells are contamination and injury to other water rights. The District wants to work with the staff to put water to maximum beneficial use without injuring existing water rights; i.e., use the half-mile rule spacing. Mr. Fronczak reported that the staff, with support of the District, is proposing to initiate a rulemaking to allow wells to be multiple-completed in the Southern High Plains using the half-mile rule. They would work closely with the District to set up public meeting in the next quarter to solicit public input, and to work with the District to develop draft language on the rule on how to administer water in the Southern High Plains. Then, at the August meeting, bring the language to the Commission for review to determine if it is adequate and to proceed with formal rulemaking. In response to Commissioner Castle's question on what will be learned from the Phase II study beginning soon, Mr. Fronczak replied that they hope to learn the quantification of each of the aquifers in the District as well as the aerial extent of the aquifers and where they may be in connection with each other.

Commissioner Max Smith expounded on Bill's report. He stated that Phase II would geographically define what areas are possibly over-appropriated and what areas would still allow for further development. He concurred with the staff's timeline for starting the rulemaking process in conjunction with Phase II because it would take a year to complete the study.

Mr. Mike Shimmin, from the audience, proposed to the Commission that instead of using resources on a rulemaking for which there is no basis, that efforts be concentrated in getting the final permits issued in the Southern High Plains basin. Then, after the Phase II study is completed, the Commission will have more factual basis for what direction to proceed. Mr. Fronczak responded that the staff are proceeding with final permitting, but there are numerous additional problems in the basin, and the staff needs direction on how to administer those problems without issuing cease and desist orders.

Commissioner Castle proposed directing the staff to develop a proposed rule for the August meeting, that is relatively narrow in scope, but recommends what the staff feels is needed in order to go forward with the final permitting process. The Commission would await the results of the Phase II study to determine what rules should apply to new appropriations. Mr. Fronczak reported that he will work closely with the District to set up a public meeting in Springfield or Lamar to let the public know what the Commission is doing and to solicit comments from local well users prior to drafting the language.

Staff Report by Suzanne Sellers and Megan Sullivan - Ms. Suzanne Sellers presented the Staff Activity Report for the last quarter. She reported on new and replacement applications. The staff received 273 small capacity well applications, and issued 328 permits. They received 51 determination of water rights applications, and issued 57 permits. With regard to change applications, 17 new applications were received and 13 were approved, and 62 applications are currently in different stages of processing, 43 of those are in the hearings process. Ms. Sellers reported that Mr. Simpson and the Division I Engineer visited a site in Lost Creek to inspect an area that was allegedly exposing ground water. It was determined that ground water was not exposed. Ms. Sellers reported that four of seven emergency verbal permits were issued. She announced that Mr. Rick Nielsen passed the EIT exam and was promoted to the EIT I position. Staff have attended several water quality meetings with the Water Quality Control Commission. Ms. Sellers reported that the Ground Water Commission web site has been launched and she would appreciate receiving comments from the Commission and the Districts on the web site. Staff are currently working on improving the designated basins web site.

Ms. Megan Sullivan reported on final permitting. The beneficial use of 27 conditional permits were clarified in Kiowa, Logan, Phillips, Cheyenne, Sedgwick and Washington counties, and those permits are ready to be published. Sixty final permits have been published. Logan, Cheyenne and Sedgwick counties are complete. Ms. Sullivan reported that well owners continue to be slow in responding to requests for additional information.

Report of the Attorney General - Mr. Matt Poznanovic presented the report of the Attorney General. In addition to the written report, Mr. Poznanovic stated that with regard to the Ray Gerk Consolidated Cases, a final order was issued on May 14 to grant the applications. Mr. David Hayes reported that this will be his last meeting as Conflicts Counsel for the Commission. Mr. Pat Kowaleski, who normally represents the staff, will take over as Conflicts Counsel and Matt Poznanovic will assume the staff representation.

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

Mr. Aron Nein reported from the **Frenchman, Sandhills, Marks Butte and Central Yuma Districts**. Mr. Nein reported that Ben Saunders went back to the hospital in Greeley for surgery to clear up an infection. The water levels in the districts as a whole are down about 1¾ feet. Mr. Nein reported on the over-pumping they have had on expanded acres during the extremely dry season in the year 2000. In the Frenchman District, they adopted a 2 to 1 payback policy for any over-pumping; they are also dealing with under-appropriated wells (about 80 to 90 wells), the issue of alternating acres (expanding acres without going through the permit process), and pre-irrigation. The Marks Butte District also adopted a 2 to 1 payback policy; and the 2 ½ acre-feet per acre was lowered to 2 acre-feet per acre, which took the number of wells to administer to five. Mr. Nein reported on the two legal and liability issues in the Central Yuma District. Mr. Mike Shimmin added that

they will look at potential policies of allowing unannounced inspections by board members and liability issues.

There were no reports from the **W-Y Ground Water Management District** or from the **Arikaree Ground Water Management District**.

Mr. Stan Murphy, from the **Plains and East Cheyenne Management Districts**, distributed a well permit to the Commissioners as a test.

Mr. Doug Melcher reported for the **Southern High Plains Ground Water Management District**. He stated that the district completed water level measurements and GIS on all new wells. CWCB funds will be available on July 1 for Phase 2 of the study, and they will work with staff on what they need with regard to the aquifers.

Commissioner Robert Loose reported for the **North Kiowa-Bijou Ground Water Management District**. He stated that the district has been busy with development of wells and irrigated acres that are being converted to development.

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 - **Determine location of August 2001 meeting** – The meeting will be held in Durango. Details regarding a tour and the meeting will follow.

Mr. Simpson reported that Mr. Steve Lautenschlager will retire from state service and as Hearing Officer on July 1 of this year.

Next meeting - Scheduled for Thursday and Friday, August 16-17, 2001 in Durango, Colorado.

The meeting adjourned at 3:55 p.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission