
MINUTES

FOURTH QUARTERLY MEETING COLORADO GROUND WATER COMMISSION

NOVEMBER 16, 2001

The Fourth Quarterly Meeting of the Colorado Ground Water Commission took place on November 16, 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, Dennis Coryell, Richard Huwa, Robert Loose, Max Smith, Hal Simpson, Kent Holsinger, and Ted Kowalski. Commission Member Larry Clever was 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 August 17, 2001, meeting. Commissioner Smith moved to approve the Minutes. The motion was seconded by Commissioner Bauerle and carried unanimously.

Executive Director's Report - Mr. Hal Simpson congratulated Commissioner Castle on being appointed as Chairwoman of the management committee at the law firm of Holland and Hart. Mr. Simpson reported that he sent a letter to Mr. John Porter of the Dolores Water Conservancy District thanking him for the tour of Dolores River Project and luncheon in August. Mr. Simpson summarized current federal legislation concerning the High Plains; HR-3121 was introduced by members of Congress from Oklahoma and New Mexico which deals with proposed legislation concerning the High Plains aquifer and provides that the Department of Agriculture recognize certain improvements by owners of farms that reduce the withdrawal of water from the Ogallala aquifer. At the next meeting, Mr. Simpson would like to receive comments from the Commission Members on whether Colorado would support this legislation.

With respect to the Kansas v. Colorado litigation on the Arkansas River Compact, Mr. Simpson reported that the Attorney Generals of Colorado and Kansas have requested that the Special Master stay the litigation through the end of December, allowing the states to enter into a mediation effort for a global settlement which would include compensation to Kansas and how to resolve future disputes.

Biennial Election of Chair and Vice-Chair - Commissioner Coryell nominated Chairman Earnest Mikita to again serve as Chairman, which was moved by Commissioner Smith, seconded by Commissioner Loose, and approved unanimously. Commissioner

Loose nominated Commissioner Max Smith as Vice Chair, which was moved by Commissioner Castle, seconded by Commissioner Coryell, and approved unanimously.

Status of the Kansas v. Nebraska and Colorado litigation - Republican River Compact by Hal Simpson - Mr. Simpson reported that the issues related to litigation strategy will be discussed in Executive Session. Mr. Ken Knox, Assistant State Engineer, reported on the Kansas v. Nebraska and Colorado litigation. With regard to document production, Mr. Knox reported that staff completed and identified documents and the states have selected a single contractor to image the documents. Receipt of the documents is anticipated the first part of December for distribution to contractors. Mr. Knox reported on the surface water, the ground water, the land use conservation practices, and the GIS components. He stated that the staff is conducting a comprehensive review of streamflow and diversion records, technical and engineering work based on historic use and accurate pumping information.

Hearing on a Request for Variance to Eliminate Administration Requirements Associated With a Commingling Authorization as Required by Rule 7.6.7 Within the Lost Creek Designated Ground Water Basin, by Mike Shimmin and Brad Peterson –

Chairman Mikita called the hearing to order, which is recorded on separate record. Mr. Pat Kowaleski, Assistant Attorney General, served as Conflicts Counsel representing the Commission, and noted for the record that he discussed this in advance with Mr. Mike Shimmin. For the record, Mr. Kowaleski noted that all Commission members were present except Commissioner Clever.

The following persons addressed the Commission: Mr. Mike Shimmin, attorney with Vranesh and Raisch, LLP, representing Lost Creek Land and Cattle; Brad Peterson, Farm Manager for the Lost Creek Land and Cattle Company. Mr. Shimmin summarized that the hardship to Lost Creek Land and Cattle is all monetary with no corresponding benefit to the aquifer or other water users because this is not a fully appropriated area and there is no injury to anyone.

Mr. Bill Fronczak, of the staff, reported that the staff recommends that the Commission deny this variance request, and recommended that the Commission make a determination that a hearing is not needed in an underlying challenge to this order.

Ms. Cheryl Wailes, representing the Lost Creek Ground Water Management District, reported that the District agrees with the staff and that the wells should be metered.

After deliberation by Commission members, Commissioner Castle moved that the Commission deny the requested variance from the order of April 7, 2000. This motion was seconded by Commissioner Loose, and approved unanimously.

Staff Report by Suzanne Sellers and Megan Sullivan - Ms. Suzanne Sellers presented the Staff Activity Report for the last quarter. Ms. Megan Sullivan reported on final permitting. Both of these reports were included in the Commissioner's packets.

Report of the Attorney General by Matthew Poznanovic - Mr. Matt Poznanovic presented the report of the Attorney General. He stated that there will be a hearing on the Dunavan matter on Monday, November 19, 2001.

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 was able to attend the last district board meeting and then returned to the Holyoke hospital for minor surgery. With regard to the Board meeting, the major topic was discussion on rotational acres. Mr. Nein reported on the number of under-appropriated wells in each of the districts and stated that the Board may adopt an under-appropriated policy.

There were no reports from either the **W-Y Ground Water Management District**, the **Arikaree Ground Water Management District**, the **Plains and East Cheyenne Management Districts**, the **Southern High Plains Ground Water Management District**, 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 – Commissioner Castle reported that the Executive Session discussion concerned an issue arising in the pending Bradbury application; namely, whether the anti-speculation doctrine applies to appropriations from Denver Basin aquifers. She stated that it would be helpful to have the Commission put the issue of appropriation from the Denver Basin aquifers of the Designated Basins on the agenda for a future meeting. She added that input from the districts and members of the public should be obtained, since this issue will be decided in the Bradbury litigation. Commissioner Castle recommended that written input on the briefs be submitted for the February Commission meeting. Then, at the May meeting, the Commission will follow-up on the applicability of the anti-speculation doctrine within the Denver Basin aquifers of the Designated Basins, and decide whether the Commission wants our attorney to take a position in the Bradbury litigation.

Next meeting - Scheduled for February 21-22, 2002, in conjunction with the Ogallala Symposium, at Northeastern Junior College in Sterling, Colorado.

Ground Water Commission in Executive Session (12:00 noon) concerning the following two court cases:

- a. North Kiowa-Bijou Groundwater Management District v. Groundwater Commission of the State of Colorado: Hal D. Simpson, State Engineer/Executive Director of the Ground Water Commission and Thomas H. Bradbury et. al., Case No. 2001CV1652 (Arapahoe District Court, June 27, 2001).
- b. State of Kansas v. State of Nebraska v. State of Colorado, No. 126 (October Term, 2000).

Prior to going into Executive Session, Ms. Carol Angel, of the Federal and Interstate Litigation Section and the Water Unit of the Attorney General's Office, provided a brief background of the case and the trial schedule of the upcoming litigation. Mr. Kowaleski provided a briefing on the North Kiowa-Bijou Case. Commissioner Castle moved to go into Executive Session; the motion was seconded by Commissioner Huwa and passed unanimously. (For the record, Mr. Kowaleski stated that the Executive session did not need to be recorded on tape.)

The meeting adjourned at 2:05 p.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission