
MINUTES

FIRST QUARTERLY MEETING COLORADO GROUND WATER COMMISSION

FEBRUARY 22, 2002

Ground Water Commission in Executive Session concerning Eagle Peak Farms v. Ground Water Commission, Case No. 99CV0097 (Adams County District Court). Commissioner Loose moved to go into Executive Session at 8:15 a.m.; the motion was seconded by Commissioner Coryell and passed unanimously. Mr. Kowaleski, from the Attorney General's Office, stated that the Executive session did not need to be recorded on tape. Mr. Kowaleski provided a briefing on the status of the litigation regarding Eagle Peak Farms v. Ground Water Commission.

Following the Executive Session, Commissioner Castle moved to go into General session, seconded by Commissioner Smith, and moved unanimously. For the record Mr. Kowaleski indicated that the Commission discussed the status of the litigation involving Eagle Peak Farms and the position of the Commission.

The First Quarterly Meeting of the Colorado Ground Water Commission took place on February 22, 2002, at the Northeastern Junior College, Sterling, 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, Anne Castle, Dennis Coryell, Richard Huwa, Robert Loose, Max Smith, and Hal Simpson. Commissioner Larry Clever, and Ex-Officio members Kent Holsinger and Ted Kowalski were absent.

Review and Approval of Agenda Items - Mr. Simpson added 'Comments from the Commission on Federal Legislation' to New Business to discuss whether the Commission wants to take a position on Federal legislation.

Approval of Minutes for Meeting of November 16, 2001 - Chairman Mikita asked if there were any corrections or additions to the Minutes of the November 16, 2001 meeting. Mr. Mike Shimmin, attorney, from the audience, stated that the description of Brad Peterson's title, should be 'Farm Manager for Lost Creek Land and Cattle Company'. Mr. Hal Simpson, also added that 'Mexico' should be changed to 'New Mexico', in his report. Commissioner Castle moved to accept the Minutes with the corrections. The motion was seconded by Commissioner Coryell and carried unanimously.

Public Comments and Commission Resolution on Whether the Anti-Speculation Doctrine Applies within the Denver Basin Aquifers of the Designated Basins – Chairman Mikita called the Public Comments session to order and a timeframe was determined for each party to testify. Commissioner Castle disclosed that her law firm represents a client who may be affected by the anti-speculation doctrine to Denver basin determinations.

Testimony was heard by the following parties: Bill Fronczak, representing the staff, stated that staff takes the position that the Commission should not apply the anti-speculation doctrine to the

withdrawal of Denver Basin ground water within the Designated Basins. Mr. Fronczak stated that the staff would issue an order determining the amount of water that could be withdrawn from the Denver Basin aquifer(s), and then a well permit would be issued pursuant to the water right and the statute regarding the 100-year aquifer life.

Mr. Andy Jones, attorney, of Lind, Lawrence and Ottenhoff, representing Lost Creek Ground Water and Upper Black Squirrel Creek Ground Water Management Districts, reported on why the Commission should not encourage speculation. He stated that the districts he represents feel that in-basin uses should be favored and that all the resources in the district, including Denver Basin water, should be used by permanent residents to improve local economies. The districts feel that if they have beneficial use for the water, they should be allowed to use it.

Mr. Don McClary, attorney, representing Kiowa Bijou Ground Water Management District, stated that statute does apply to the anti-speculation doctrine and that the Ground Water Commission is bound by a ruling by the judge. He also stated that the Ground Water Commission should use great care before they attempt to adopt any other position than that which conforms to what the judge has already ruled on (i.e., the Bradbury case).

Mr. Mike Shimmin, on behalf of the Northern High Plains Ground Water Management Districts, stated that the decision that the Commission is considering has to be made in the context of designated ground water law, and that the Commission only has jurisdiction to designated ground water, not non-tributary ground water.

Dave Taussig, attorney, from the audience, stated that this is an important policy decision and the legislature should make the decision.

Commissioner Castle clarified the position that the Commission took in the Bradbury case. She stated that the Commission did not take a position on whether the anti-speculation doctrine applied to the determination of Denver Basin ground water within the Designated Basins. That decision was made by the Hearing Officer and was not appealed by the Bradbury applicant. She also stated that the policy that evolved out of the Vidler Tunnel case was to prevent people from hoarding water. She stated that the Commission and the staff will do whatever the court ordered in the Bradbury case, but it is under the Commission's authority to advise the courts on what the appropriate policy should be under Designated Basin ground water.

Chairman Mikita stated that these comments will be taken under consideration and be continued at the Ground Water Commission meeting in May.

For the record, Mr. Don McClary stated that this may be a possible contempt issue and requested that, under the Open Records Act, the official record and tape of this meeting be kept and available for inspection.

Report of the Executive Director by Hal Simpson – Mr. Simpson reported that the Ogallala Symposium was interesting and thanked Bill Fronczak for his work on the committee that organized the symposium. With regard to the Arkansas River litigation, Mr. Simpson reported that mediation efforts were not successful and a 6 to 8 week trial will be held in June through August. The main part of the trial will be to evaluate Colorado's compact compliance from 1997 to the present, as well as into the future. The trial will be a battle of experts in modeling, and experts in

evapotranspiration requirements, to allow the Special Master to determine if the rules are adequate or will need to be adjusted.

Mr. Simpson reported that the Northern High Plains Ground Water Levels Report, prepared by George Van Slyke and his staff, is available and copies were distributed to the Commissioners. He stated that the Well Tester Certification Program and testing will be held in April to obtain certification as a well tester by the state.

With regard to snowpack, Mr. Simpson reported that statewide we are at 54% of average and it will be the third consecutive year that snowpack has been well below average. Unless we get substantial spring rains, we will go into summer with the potential for a third year of drought.

Mr. Simpson reported that a case from Water Division 2 (Empire Lodge Homeowners Association v. Moyer), on an appeal to the Colorado Supreme Court, regarding the authority of the State Engineer to approve substitute water supply plans involving out of priority depletions, was recently decided. The Supreme Court found that the State Engineer could not approve certain types of substitute supply plans, and this was the basis for approving plans, particularly in the South Platte River basins that operate on a year-to-year basis. The three main water augmentation groups are GASP, Lower South Platte, and Central, with approximately 4,000 irrigation, municipal, or commercial wells. Mr. Simpson stated that they are seeking legislation to clarify that the State Engineer has limited approval to approve substitute supply plans in three areas: the plans pending in water court, those where the operation is no longer than five years, and emergency cases for a period of not more than 90 days. The State Engineer's Office is moving to amend the 1974 South Platte Rules and attempt to minimize the objections to rules and file them by early April.

Status of the Kansas v. Nebraska and Colorado litigation - Republican River Compact by Hal Simpson – Mr. Simpson reported that mediation began in November and will continue through the end of March. The Special Master moved the trial date back to July 2003 so they could focus on mediation. There is potential that a settlement could still be reached. The expert reports are due this fall. All states have been waiting on the USGS model, which is still not completed.

Presentation on the Status of the Southern High Plains Aquifers Investigation by Wayland Anderson and Lara Harshfield of McLaughlin Engineers -- Mr. Anderson recognized Commissioner Max Smith, Chuck Roberts, and the CWCB, for their involvement in the study. He reviewed the 2002 Phase 2 Study Scope of Work. Ms. Harshfield reported on the hydrologic model and the various aquifer units. Mr. Anderson also reported on the monthly precipitation from March through October for the years 1999 to 2001, comparison of irrigated acreage, recoverable ground water by aquifer unit, the life expectancy of ground water resources in the basin, and the conclusions. Among the twelve recommendations presented in the report, Mr. Anderson stated that flow meters or appropriate measuring devices be used on high capacity wells to account for the amount of water being pumped, well spacing criteria be established, and that a funding mechanism be established to support District activities.

Report on Water Quality Study in the High Plains Aquifers by Bill Fronczak -- Mr. Fronczak provided a brief overview of the results of the water quality sampling efforts in the High Plains aquifer for the year 2000. Two hundred eighty-three samples were collected from domestic or livestock wells. Twenty-seven samples exceeded drinking water limits for nitrate levels, 73% had nitrate present at 0.1 to 5.0 mg/L. The study results indicate movement of contamination as the

samples that were low in drinking water standards in the 1997-98 study were higher in 2000, and those that were higher in 1997-98 were lower in 2000.

Mr. Fronczak reported that for future sampling efforts, the 2002 water quality study will be scheduled in the Northern and Southern high plains, however, funding will determine the number of samples that will be taken as well as what will be analyzed. It was agreed with the Department of Agriculture that 350 to 380 nitrate/nitrite samples will be tested. Mr. Fronczak reported that results are usually received in three to four months. Commissioner Castle stated that she would like to see the results of the sampling be released quicker, particularly to the people who are drinking that water.

Discussion took place regarding staggering testing between the front range basins area and the high plains. Mr. Simpson stated that there was a bill introduced last week that will require the Department of Agriculture to perform water quality sampling. Mr. Fronczak also stated that he would like to see pesticide sampling performed about every ten years.

Staff Report by Suzanne Sellers - Ms. Ms. Suzanne Sellers presented the Staff Activity Report and the final permitting report for the last quarter. Both of these reports were included in the Commissioners' packets.

Report of the Attorney General by Matthew Poznanovic - Mr. Matt Poznanovic stated that the report was in the packets, however, he reported on the Dunovan case. The time for appealing the Hearing Officer's initial order expired and there were no objections, so the permit was issued during the week. He also reported on the hearings that will be held in March.

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

Mr. Aron Nein reported from the **Frenchman, Sandhills, Marks Butte and Central Yuma Ground Water Management Districts**. Mr. Nein reported on the under-appropriated well administration policy in the Frenchman and Marks Butte districts in the first year under Rule 5.1 with regard to the 2 for 1 payback policy for irrigators who pumped more than permitted in 2001. In the Central Yuma District, the board is currently discussing an under-appropriated well administration policy. There was no new news to report in the Sandhills District.

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 an election the first part of the month and got rid of term limits for board members and spending limitations of the Tabor Act.

Commissioner Max Smith reported on behalf of the **Southern High Plains Ground Water Management District** and stated that the well owners would like to get the final permitting process moving.

There were no reports from the **North Kiowa-Bijou Ground Water Management District** or from the **Upper Black Squirrel Creek Ground Water Management District**.

Mr. Dave Taussig, of the **Upper Big Sandy Ground Water Management District**, reported that they also got rid of term limits for board members in November. It was the second time they attempted that.

There was no report from the **Lost Creek Ground Water Management District**.

Old Business – None

New Business –

a. **Discussion of Items of Concern from Water Users in Attendance at the Ogallala Symposium** – Mr. Fronczak reported on issues of local concern from the symposium and the five questions put together by the committee. The primary concerns were water law, economic development, and water quality education and research. The other issues that resulted from soliciting comments were: the final permitting process, why new irrigation wells are not allowed in the High Plains, and transferability of water and concern that a municipality can pump water within five miles of their well site. The results indicate a need for additional education, increase knowledge on our website, pamphlets or brochures, and make information more available through radio stations, newspaper articles. Another issue that was raised was rotation of irrigation and how it is handled by the Commission; should it be looked at as consumptive use or a change of description of irrigated acres. Before March 1 of each year, the irrigator describes to staff which parcel they want to irrigate. Rotational irrigation is currently viewed as a change in description of acreage, however, a concern is that it may be viewed as expansion of use of water and a need for further administration. This subject may be considered as a topic at May or August meeting as a policy or potential rule change. The staff will research this issue further and work with the High Plains managers to solicit their comments over the next few months on whether the local users would like to see a rule change. These comments will be brought back at the November meeting following irrigation season.

Concerning the earlier discussion on the Denver Basin aquifer, Commissioner Coryell requested using the resources of staff, with regard to having someone from staff discuss the make-up of the Denver Basin aquifer, the geology, and how it is different from the Northern High Plains or the other districts. Mr. Simpson responded that George Van Slyke can provide a presentation regarding the geology/hydrology of the Denver Basin aquifers at the May meeting.

b. **Selection of Meeting Dates for the remainder of 2002** – Marta Ahrens provided the following dates that have been scheduled for the Commission meetings: May 17, in Denver, Room 318; August 15-16, location to be determined; November 15, in Denver, Room 318.

c. **Comments from Commission on Federal legislation** – Mr. Simpson reported on this issue at the last meeting and distributed legislation that was introduced concerning the Ogallala aquifer regarding whether the Commission was supportive of Federal involvement in the management of the aquifer. There may be a new bill introduced to have state water resources agencies become more involved, and let the Federal government deal with issues regarding providing assistance to farmers. It is an incentive program to save water and provides a one-time maximum of \$50,000 to farmers as matching funds to improve irrigation systems, and those farmers who opt for dry land farming will receive \$50 per acre per year. The Western States Water Council created a working committee, of which Mr. Simpson is a part of, to develop legislation that gives states more authority

in the area of management. The focus is to stop pumping water from the Ogallala aquifer. Commissioner Castle is in favor of this and feels that the Commission should take a lead on this.

d. Mr. Fronczak reported on the packets that the staff puts together for the districts. They are currently sent to managers and copies are made available for pick up during the meeting. To save on copying costs, Mr. Fronczak proposed making copies only for the managers, and the managers will provide copies to their board members. Mr. Fronczak will develop a memo and have the boards respond in writing to staff on whether they want to continue having the packets made available to each board manager.

Next Meeting - The next meeting is scheduled for Friday, May 17, 2002, in Denver, Colorado.

The meeting adjourned at 2:35 p.m.

Respectfully submitted,

Marta Ahrens
Secretary to the Ground Water Commission