

UPPER BLACK SQUIRREL CREEK GROUND
WATER MANAGEMENT DISTRICT
REGULAR MEETING MINUTES

January 9th, 2019

The **January** meeting of the Board of Directors of the Upper Black Squirrel Creek Ground Water Management District was called to order **Wednesday, January 9th, 2019 at 6:00 P.M.**, at the District Office, 520 Colorado Avenue, C, Calhan, CO by President David Doran, and determined a quorum was present.

Board Members in Attendance: President David Doran, Vice-President Dan Farmer, Treasurer Mark Greeley, JR Bond/Secretary

Board Members Absent: NA

Others in Attendance: Leon Gomes, Jerry Jacobson, Don Booker, David Pelsler, Jonathon Smith, Amy Lathen, Braden McCrary, Lisa Thompson, Tracy Doran, Mark Belles, John Hill

PUBLIC NOTICE OF THE MEETING WAS POSTED

President Doran opened the meeting and called for approval or amendments to the agenda.

1. Agenda for January 9th, 2019:

Director Bond motioned to accept the agenda with the addition of Old Business 2a-status report and #4 Meridian Service Metropolitan District application for a well permit and amendment to a replacement plan/Case no. 18GW01, under New Business Well Permits #8 CMH Homes, #9 Whedon, also Under Determination of Water Rights #2 Colvin, and El Paso County Reviews #4 Four Corners Kennel LLC, #5 Timber Ridge West, & #6 The Ranch and an executive session to discuss Cherokee/Meridian Replacement Plan and to confer with legal counsel regarding proposed rules. Director Farmer seconded the motion. Motion carried (4-0)

2. Minutes for November 6th, 2018:

Director Bond motioned to approve the minutes of November 6th, 2019 as written. Director Greeley seconded the motion. Motion carried (4-0)

3. Treasurer Report & Any Bills Needing Board Approval:

Treasurer Greeley reported on the income and expenditures for the month November and December. Director Farmer motioned to approve the treasurer reports and pay the

attorney bill for November and December of \$18,773.45 and engineering bill for \$2920.00 and accounting bill of \$1000.00. Director Bond seconded the motion. Motion carried (4-0)

4. Sunshine Law:

- A. Meetings to be held the first Tuesday of every month at 6:00 P.M. or at a time designated by the Board of Director's at 520 Colorado Avenue, C, Calhan, CO or at a location designated by the Board of Director's.
- B. Agendas to be posted on the front door of the District Office located at 520 Colorado Avenue, C, Calhan, CO and on the District's web site www.upperblacksquirrelcreekwater.com
- C. The minutes and records of the meetings to be retained at the District Office located at 520 Colorado Avenue, C, Calhan, CO and will be made available on the District's web site after approval at www.upperblacksquirrelcreekwater.com
- D.

5. Hearing:

HEARING ON AMENDMENT TO RULE 1 (DEFINITIONS), AMENDMENT TO RULE 6 (REPLACEMENT/AQUIFER STORAGE AND RECOVERY PLANS), AMENDMENT TO RULE 8 (WATER QUALITY):

Director Farmer motioned to close the regular meeting and to go into the hearing at 6:04 PM. Director Greeley seconded the motion. Motion carried (4-0)

Attorney Thompson stated that the Hearing by Statute CRS 37-90-131 is supposed to be as informal as possible but still with due regards to the party's rights. It also allows for Oral or written comments from interested parties in respect to the proposed rules and that we are recording this by electronic means. Ms. Thompson stated that the transcript of the hearing can be made available if requested at the party's expense. Lastly, Ms. Thompson noted that under the Statute once the Hearing is over the Board has 63 days to make a final determination of the Order and then publish that final rule.

President Doran went over a timeline on how we got here.

September 14, 2018. Upper Black Squirrel sent initial conferral letter to Commission.

September 27, 2018 and October 4, 2018. Upper Black submitted notice of the proposed rules for publication to the Ranchland News. Notice stated that the Board of Directors would be considering adoption of the amended rules at its January 9, 2019, 6 PM meeting. Notice was published in the Ranchland News. The

notice also included an objections deadline of November 5, 2018 for any objections to the notice or to any matters therein. No objections were filed.

November 1, 2018. Meeting with Commission, Lost Creek, North Kiowa-Bijou to discuss the three Districts' proposed rules.

December 10, 2018. Upper Black sent a follow up letter to Commission asking for written comments.

Friday, December 21, 2018, the Friday immediately before the Christmas week the District received a letter from Mr. Bill Paddock generally stating: letter sent on behalf of Meridian Service Metropolitan District, the Woodmen Hills Metropolitan District, the Paint Brush Hills Metropolitan District and the Cherokee Metropolitan District, concerning the Upper Black Squirrel Creek Ground Water Management District's proposed amendments to its rules 1, 6, and 8. Claimed that the notice and publication of the rules was not sufficient conferral. They requested that the Board vacate the January 9, 2019 hearing on the proposed rule changes and confer directly with the metro districts in an effort to reach a consensus on the proposed rule changes.

January 3, 2019. Upper Black responded to Metro District letter stating that the hearing would proceed but encouraging the Metro Districts to provide oral and/or written comments.

January 3, 2019. Upper Black Squirrel's counsel submitted to the Board suggested minor clarifications and edits to the rules after further considering the proposed rules submitted to the Commission and the prior discussion with Commission Staff.

January 4, 2019. Received a letter from Mr. Kevin Rein, Commission Executive Director, providing comments on the rules. The Board will consider tonight whether additional time is needed to review and respond to the Commission comments. One option is a continuance of this hearing to allow for further consideration, if the Board determines additional time is needed.

January 4, 2019. Received a report from Mr. Mike Wireman, the Upper Black Squirrel's hydrogeological consultant, supporting the proposed amendments.

Ms. Thompson reported that we just received a letter tonight, within the last couple of hours from Cherokee Metropolitan District, Woodmen Hills, Paint Brush Hills, and Meridian Ranch. The Board had not seen the letter.

President Doran asked the Board for their direction and thoughts on going forward. Mr. Doran reported that we have followed the rules and regulations regarding rulemaking and have spent a lot of time and money on these. Director Farmer responded that he did not think they were prepared because of the late correspondence and would like to motion to continue.

Director Farmer made a motion for continuance. Director Bond seconded the motion. Ms. Thompson stated that whatever the Board decides the February agenda item will include these rule discussions and if the Board decides on a date specific, we will need to in a public meeting state the date and publish in the paper. Director Farmer withdrew his motion. Jr seconded the motion. Motion died. (4-0)

Discussion continued on procedural issues.

Director Farmer motioned to continue the hearing and discuss all the information brought forward and recently received and to discuss at the February meeting and decide when to hold the hearing. Director Greeley seconded the motion. Motion carried (4-0) for continuance of the hearing.

Director Farmer motioned to come out of the Hearing and back into regular business at 6:14 PM. Director Bond seconded the motion. Motion carried (4-0)

OLD BUSINESS

1. Rules & Legislation Updates:

a. GWC General Amendments to Designated Basin Rules 4, 5 & 7:

Those were discussed by Mr. Vander Horst at the November Commission meeting and it is Ms. Thompson's understanding those were approved by the Board and they will publish and proceed with formal rulemaking.

b. Case No. 17GW05 (Rulemaking): Rule 5.6 & 5.8 Amendments ASR (Aquifer Storage & Recovery) Draft Rules:

Ms. Thompson stated that the Hearing was held before the Hearing Officer on November 26-28, 2018. The Hearing Officer then requested proposed Orders and closing statements that were submitted by the parties and the Hearing Officer will attempt to finalize these Orders on these proposed rules in January and then they would go to the Commission as recommendation at their February 15th, 2019 meeting.

2. Cherokee Metro & Meridian Service Metro/Replacement Plan/Case No.98CW80/Cherokee Motion for Determination of Question of Law/Case No. 08GW71:

Ms. Thompson noted that we have a Status conference tomorrow. Ms. Thompson reported that Cherokee and Meridian submitted a status report to the Hearing Officer and stated that they will request that the Hearing Officer allow additional time before setting case management deadlines in this case, to allow for Commission Rulemaking in 17GW05 as well as UBS District's Rulemaking to be completed, as well as to allow for the parties to engage in settlement discussions. Cherokee and Meridian propose that a status conference be scheduled in September 2019, with reports filed every three months until that time. Discussion followed and this will be discussed in executive session.

3. District Violations:

Ms. Thompson advised that we have been working with Chris Grimes with Commission Staff and he has been very active the last two months, he has been working on pond issues in Blue Springs ponds and diversion and pond issues in Shaw Ranch. Ms. Thompson updated the Board on the November 5th site visit with Chris Grime, Doug Hollister, Dave Doran and the owner of Shaw Ranch and what issues needed to be addressed and the ways to bring them into compliance. Mr. Grimes has also been dealing with pond issues with Robinson Brick Company and has given them till April 1, 2019 for all corrective actions to be completed and a pond issue with Trust Real Estate neither of which the District was aware of until we saw the correspondence that was going on. Because the Board did not require enforcement against the pond in question for Trust Real Estate, we sent a letter to Mr. Grimes and to counsel for Trust Real Estate, LLC clarifying that the Board had not discussed enforcement proceedings in this instance. It was relayed that the initial complaint was submitted by a neighbor of Trust Real Estate. Mr. Grimes sent an enforcement summary table from Commission Staff which will be very helpful to the Board. Discussion on the meeting we had with Commission Staff on enforcement issues and how the District was not seeing any action taken and since that meeting there have been improvements. President Doran discussed the enforcement actions that Commission Staff was pursuing going on in the basin that we knew nothing about through complaints from other constituents in the basin, he noted that he is glad they are taking a look at things but we don't want the District to be thrown under bus. Discussion continued on the diversions in Shaw Ranch and measurement devices.

4. Meridian Service Metropolitan District/Application for a well permit and an Amendment to a replacement plan/Case no. 18GW01:

Ms. Thompson updated the Board and suggested to the Board that they go ahead and get party status to confirm it matches decree. Discussion followed. Director Farmer motioned to have Lisa contact Meridian's counsel and see if they can get a copy of the Order. Director Bond seconded the motion. Discussion followed. Director Bond motioned to strike that motion. Director Greeley seconded the motion. Motion died (4-0)

Director Farmer motioned to allow Lisa to contact Meridian's counsel and see if they would be willing to share the proposed Order to review and see if it is line with what we have already settled with and if it becomes a time constraint, we will send in the objection fee of \$10.00. Director Bond seconded the motion. Motion carried (4-0)

NEW BUSINESS

Water Well Permit Applications:

1. Espinoza/Division 5:

Applicant is applying for a well in Yucca Estates Subdivision for a 5.12 acre parcel. This subdivision allows .5 acre-feet in the Arapahoe aquifer and 3,000 sq. feet of irrigation, and requires a meter. Director Bond motioned to approve the Espinoza application for .5 acre-feet in the Arapahoe, and 3,000 sq. feet of irrigation and a meter and they need to correct their application to include the correct GPS coordinates, the number of dwellings, and to reflect the correct amounts of .5 acre-feet and 3,000 sq. feet of irrigation in the application. Director Greeley seconded the motion. Motion carried (4-0)

2. Mudigonda:

Had already been approved last month, and no action was required.

3. Bonati/Division 3:

This is a pre-72 subdivision with no water supply letter in Pine Park Estates and the parcel is 4.84 acres. Applicant is applying for the Dawson aquifer, max acre-feet. Director Farmer motioned to approve the application for the Denver, not the Dawson, for .5 acre-feet. Director Greeley seconded the motion. Motion carried (4-0)

4. Petersen:

Applicant is applying for a well on 49.3 acres in the Denver aquifer, asking for 1 home, 1 acre-foot of irrigation and domestic animal watering. Ms. Porter at the State thinks there may have been a well permit taken out on this property but the applicants have not found a well and think it might not have been drilled. Director Bond motioned to approve the application contingent on a site visit to verify there is no other well. Director Greeley seconded the motion. Motion carried (4-0)

5. CMH Homes/Division 5:

Applicant is applying for a well on 40 acres in the Laramie-Fox Hills aquifer for 2 homes, a cre-foot, 1 acre-foot of irrigation, and domestic animal watering. Ms. Porter from the State said there was a permit issued in 1997 but was not constructed. Director Farmer motioned to approve the application contingent on a site visit to verify there is no other well. Director Bond seconded the motion. Motion carried (4-0)

6. Frederickson/Division 1:

The applicants are applying for two wells parcel 2-B is 35.02 acres and they are asking for 2 homes, 1 acre-foot in the Denver, 1 acre-foot irrigation, and domestic animal watering. Parcel 2-A is 67.15 acres and they are asking for 2 homes, 1 acre-foot in the Denver

aquifer, 1 acre-feet irrigation, and domestic animal watering. Director Farmer motioned to approve the Frederickson applications. Director Greeley seconded the motion. Motion carried (4-0)

7. Miller/Division 4:

Applicant is applying to re-permit no. 198398 pursuant to Determination of Water Right 3621-BD. They have 160 acres and are asking for industrial, municipal, irrigation, commercial, and determined uses in the Arapahoe aquifer, with 47.6 acre-feet. The uses that are allowed for in their determination of water rights are: domestic, agricultural, irrigation, greenhouse uses, livestock and animal watering, commercial, industrial, structure and equipment washing. They also have a stock well on their property. Discussion followed on municipal use. Director Bond motioned to direct attorney Thompson respond to the State and to contact Lost Creek Counsel to discuss anti-speculation. Director Farmer seconded the motion. Motion carried (4-0)

8. CMH Homes/Division 5:

Applicant is applying for a well on 39 acres in Bar 10 Prairie Acres, and is asking for .5 acre-feet, 1 home, and .5 acre-feet of irrigation and domestic animal watering. Determination of Water Right 1001-BD excluded water to allow for exempt wells in the Laramie-Fox Hills aquifer. Director Bond motioned to approve the CMH homes well permit application. Director Farmer seconded the motion. Motion carried (4-0)

9. Whedon/Division 5:

Applicant is applying to replace existing alluvium stock well on his 40 acre parcel. Original well was drilled in 1970. Director Bond motioned to approve the Whedon application with the same use within 50 feet of the original well. Director Farmer seconded the motion. Motion carried (4-0)

Determination of Water Rights:

1. Contreras:

Applicant is seeking a Determination of Water Right underlying their 5.105 acre parcel, it is lot 18 of Hadden Heights Subdivision. They have claimed ownership of the property and control of the ground water. The intended beneficial uses are: domestic, irrigation of lawn and garden, greenhouse irrigation, vehicle and structure washing, stock watering and replacement. They are seeking determinations in Laramie-Fox Hills, Arapahoe, and Denver aquifers. Director Bond motioned to approve the application. Director Greeley seconded the motion. Motion carried (4-0)

2. Colvin/Division 3:

Applicant is seeking a Determination of Water Right underlying 19.8 acre parcel. They claim ownership of this land and control of the ground water. The intended beneficial uses are: domestic, including in house use, landscape/irrigation of lawn and gardens, pasture irrigation and water of domestic animals and stock. They are seeking determinations from the Laramie-Fox Hills, Arapahoe, Denver and Dawson aquifers. Discussion followed on that they would need 4% replacement for the Denver and

actual replacement for the Dawson. Director Bond motioned to approve the application. Director Farmer seconded the motion. Motion carried (4-0)

El Paso County Reviews:

1. Hale Sand Pit Expansion/Division 2:

Located on 150 acre parcel and currently has a 9.9 acre sand mining area. They want to expand an additional 52.5 acres. Discussion followed. Director Bond motioned to have Ms. Thompson review and comment. Director Farmer seconded the motion. Motion carried (4-0)

2. Mountain to View Estates Subdivision/Minor Subdivision Plat/Division 2:

The proposed 40 acre site has never been platted and has 1 existing home and shop on it, they want to be rezoned to R-5 and platted into 3 single family lots, each containing 13 acres. The Board discussed and did not have any objections.

3. Falcon Landing/Final Plat for Commercial Site Construction:

The review has the wrong information regarding township, range and section, they have Section 7, township 15 S, Range 65, which is not in Woodmen Hills, which is where this is supposed to be. The proposed site is Lot 3 Beckett at Woodmen Hills Filing 3. They want final plat approval for a commercial site. The Board did not have any objections.

4. Four Corners Kennel LLC/Strevett/Site Development Plan/Division 2:

They want to convert two of their existing buildings into dog breeding/training facilities, which will include 20 indoor/outdoor kennels and another 4 indoor/outdoor whelping kennels. They will need a commercial well permit. The State had said they did not need a commercial well permit based on what they were told, and have since sent the applicant an email requesting that they do need to change their well permit to allow for commercial. Comments to the County will note that they do need a commercial well permit.

5. Timber Ridge West/Final Plat:

This is not in the District but it borders it. It includes 212 lots and they have an IGA with Sterling Metro District for water and waste water. Discussion followed. Director Farmer motioned to have Ms. Thompson review and comment. Director Greeley seconded the motion. Motion carried (4-0)

6. The Ranch/Sketch Plan/Division 3:

Classic Homes is requesting approval of a new sketch plan for the Ranch, located west of Falcon, generally 1 mile west of Meridian Road and 1 mile North of Woodmen Road. They propose approximately 2100 residential units at varying densities. Water and Waste water will be provided by Sterling Ranch Metro District, with Meridian Ranch is contracted with Sterling Ranch to provide wastewater through its participation in the Cherokee wastewater facility. Discussion followed. Director Farmer motioned to have Ms. Thompson review and comment. Director Greeley seconded the motion. Motion carried (4-0)

ANY OTHER BUSINESS THE BOARD MAY HAVE:

Board Reports:

1. Ground Water Contamination Study:

President Doran updated the Board and noted that the District had committed \$5000.00 to the study. Discussion followed. President Doran noted that Mike Wireman needs to be kept abreast on this.

2. County Water Master Plan Steering Committee:

President Doran reported that the plan was approved by the Planning Commission and the steering commission is over. President Doran noted this was a very rapid plan.

Director Dan Farmer noted that we have never heard anything back from the State on the Weir by Stapleton and that the State said they were going to put a full time reading/monitoring device on this. David Pelser introduced himself as the new General Manager of Meridian and said that there was some action by the State and they are trying doing some improvements the weir to get more accurate readings. There was discussion on reports and readings.

Director Farmer discussed the idea of seeking attorney fees from people in violation of ponds, that if they don't know they should know they are in violation and it is a burden on the district. Discussion followed on Statue on fees, and other options like putting out an opt ed or some sort of PR on the legal issues regarding ponds. President Doran said he could bring this issue up to the Ground Water Commission. Discussion followed on how many ponds the State has identified which is around 720 ponds.

VISITOR INPUT

Amy Lathen introduced herself as the General Manager of Cherokee and thanked the Board for the continuance on the Hearing and giving them some more time. Ms. Lathen advised that she has a letter to submit for the record and the Statute that was cited actually speaks about conferring with the basin users which they don't think the District has done that and disagrees that publication does that.

David Pelser spoke and said he brought Braedon with him. Mr. Pelser stated they would like to confer with the District on the Rules and Regs and are puzzled by what the District is trying to accomplish and we think having the opportunity to discuss that with you and understand what you are trying to accomplish with that we might be able to help you work through that and meet that accomplishment if that's possible without unintended consequences. He stated he thinks there an opportunity there for us to work together. Mr. Pelser added as a personal note that he

is new enough to the area and does not have a stake in that history and hopes to work in a cooperative way. Ms. Lathen agreed with that last statement.

President Doran stated that for about the last 4 or so years that there has been a genuine effort by the Management District to extend fig leaves and try to work out these issues, we have settled a number of issues, even with Meridian. President Doran stated that we done a lot with Cherokee with settlement agreements and stipulations and we are trying, we just don't like to extend it and get beat on the head with it. President Doran said we look forward to working cooperatively and reaching agreements that way.

Director Bond stated that the end of the day what we are trying to do is protect your water as well as ours. Director Bond stated that these are volunteer positions, that none of us get paid. We are not going to let what happened with Lost Creek happen here, and at one point felt we were all on the same page. Director Bond stated that we want you to have an opportunity to talk.

David Pelser said there is a reason that only the managers came tonight, and not the attorneys. We might just surprise ourselves and not have disagreements on these things he noted. Director Bond noted that there is a lot better way to spend our money.

Mark Bellis a resident of 4-Way Ranch asked if it was possible to get a copy of the proposed Rule changes and really here to just learn about the board and would like a moment of time to speak with President Doran to learn what the Board does.

Donald Booker asked if the District had another member and knows how hard it is to get directors and asked if they had ever thought about getting a member at large. Attorney Thompson stated that when the District was formed it was divided into the districts and is established by Statute. Mr. Booker said you might have someone more interested on being on the Board and not just because they live in the district.

Leon Gomes General Manager of Paint Brush Hills stated he did not bring anyone but himself and wanted to say he concurs with the statements of the other district managers. Mr. Gomes stated that it sounds like the Board is open to conferring with the metro districts and that we can hopefully formalize this and any future issues and work things out on the table and not let others make those decisions. Once it goes beyond this board and goes before Hearing Officer, Commission or a Judge making the decision and is out of our hand.

President Doran stated that we tried to be above the Board and do everything right and our meetings are open to the public and stated that Cherokee has been at every one of our meetings and every attorney that represents water was present at the Hearing knew the three districts had rules, because one of the districts was working on stipulating, which was Woodmen Hills attorney, so it was not like it was an unknown that we were going with an ASR rule. President

Doran further advised that at the November Ground Water Commission meeting which was well attended by several of your attorneys heard all three districts thank the Commission for the conferral process with them and that all three districts on the record stated that they were going forward with ASR Rules; so from November until we got the letter we were a little lambasted. He stated that we were trying to be very transparent and went through the whole formal rulemaking process. We apologize if you didn't know he stated and noted that maybe we're not as far apart as you think we are on these rules. President Doran said like Director Bond said we're trying to protect everyone's water. When you talk about ASR one of this District's biggest concerns is regarding water quality is also what we saw happen to the Security-Widefield aquifer, and this is the second disaster to hit that aquifer. President Doran stated is behooven of the District as a Management District to look at what are the long-term effects on taking care of an aquifer and we can't just walk into dump something in to get credit for something. ASR is such a new thing, and there are so many parameters that people are still learning President Doran stated and he thinks a lot of them are beneficial and a lot of them are still unknown. From the District's stand point we looked at the knowns and tried to formulate our best practices to protect the aquifer because once you ruin it you can't fix it. We are trying our best to protect all of our constituents.

The Board took a small break at 7:42 PM

Director Farmer motioned to go into executive session at 7:59 PM. Director Bond seconded the motion. Motion carried (4-0)

EXECUTIVE SESSION

Please take notice that Attorney Thompson Pursuant to C.R.S. §24-6-402(4)(b)(e) is requesting an Executive Session with the Board of Directors of the Upper Black Squirrel Creek Ground Water Management District during its regular meeting scheduled on Wednesday, January 9th, 2019, regarding the following matters:

1. Cherokee/Meridian Replacement Plan
2. Proposed Rules

Director Farmer motioned to come out of executive session and back into regular meeting at 8:19 PM. Director Bond seconded the motion. Motion carried (4-0)

EXECUTIVE SESSION REPORT

Director Bond motioned to have Ms. Thompson review and provide comments back to the Board on the Ground Water Commission letter on our proposed rules. Director Farmer seconded the motion. Motion carried (4-0)

ADJOURNMENT

President Doran called for the meeting to be adjourned.

Director Bond made a motion to adjourn the meeting. Director Greeley seconded the motion.
Motion carried (4-0)

The meeting adjourned at 8:25 P.M.

Respectfully submitted,

Tracy Doran/Office Manager