

NOTICE OF PUBLIC RULEMAKING HEARING

BEFORE THE COLORADO GROUND WATER COMMISSION

CASE NO. 09-GW-29

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IN THE MATTER OF THE PETITION TO THE COLORADO GROUND WATER COMMISSION FOR RULEMAKING TO AMEND RULES 5.2.7.1 AND 5.2.7.2 OF THE RULES AND REGULATIONS FOR THE MANAGEMENT AND CONTROL OF DESIGNATED GROUND WATER TO DEFINE THE EXTENT OF THE ALLUVIAL AQUIFER OF THE UPPER BIG SANDY DESIGNATED GROUND WATER BASIN, TO IDENTIFY SUCH BASIN AS OVERAPPROPRIATED, AND TO REQUIRE REPLACEMENT PLANS FOR NEW LARGE CAPACITY WELLS IN SUCH BASIN

FILED BY UPPER BIG SANDY GROUND WATER MANAGEMENT DISTRICT

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I. STATEMENT OF BASIS AND PURPOSE

This is a notice of a public rulemaking hearing before the Colorado Ground Water Commission for consideration of amendments to the Commission's Rules and Regulations for the Management and Control of Designated Ground Water, 2 CCR 410-1 ("Commission's Rules").

The Commission's Rules and any amendments thereto are promulgated pursuant to section 37-90-111 (1)(h), C.R.S to carry out the authority and responsibilities of the Commission to supervise and control the exercise and administration of rights acquired to the use of designated ground water. The proceedings will be conducted pursuant to the Commission's Rules for Procedure for All Hearings before the Colorado Ground Water Commission, 2 CCR 402-3, as modified herein.

The purpose of the proposed amendment is to amend Rules 5.2.7.1 and 5.2.7.2. Amendment of Rule 5.2.7.1 would define the extent of the alluvial aquifer based on the recent Water Balance Report by Martin and Wood Water Consultants, Inc. prepared for the Upper Big Sandy Ground Water Management District. Amendment of Rule 5.2.7.2 would determine that the alluvial aquifer within the Basin is overappropriated and require replacement plans for new large capacity wells in the alluvial aquifer.

II. DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED

The Upper Big Sandy Ground Water Management District, the "Applicants," have filed this request for an amendment to the Commission's Rules, and the Commission, at its November 20, 2009 meeting, authorized the initiation of the Rulemaking hearing. The Commission's Hearing Officer will conduct a fact finding hearing, and the Hearing Officer's findings will then be sent to the Commission for its use during the Rulemaking Hearing before the Commission.

A hard copy of the Applicant's Petition is available upon request to the Commission staff (1313 Sherman Street, Room 818, Denver, CO 80203; telephone (303) 866-3581) and is also posted on the Commission's website at <http://water.state.co.us/cgwc/>. The Commission will consider any alternative proposals related to the proposed amendments.

### III. SPECIFIC STATUTORY AUTHORITY

The statutory authority for promulgating the Commission's Rules and any amendments thereto is found at section 37-90-111 (1)(h), C.R.S.

### IV. PUBLIC PARTICIPATION

#### Party Status

The Notice of Rulemaking Hearing will be published on January 10, 2010. Applications for Party Status will be accepted through February 1, 2010. The applications will be reviewed in accordance with Rule 4(E) of the Commission's Rules for Procedure for All Hearings before the Colorado Ground Water Commission, 2 CCR 402-3. Applications for party status shall set forth the name of the person, persons or agency seeking party status. The application shall also indicate the interest of the person(s) in the proposed rules and a description of the general nature of the evidence or information to be presented in the course of the proceedings. Party status will be determined by the Commission's Hearing Officer.

#### Fact Finding Hearing

After February 1, 2010, when party status requests have been received, the Hearing Officer will establish the requirements and timelines for the fact finding hearing. After the conclusion of that hearing, the Hearing Officer will transmit his findings to the Commission.

#### Written Comments

After the conclusion of the fact finding hearing, the Commission encourages written comments, based on the proposal for rulemaking submitted by the District, and the Hearing Officer's findings. The Commission will consider the Hearing Officer's findings at the public hearing and may accept or reject, in full or in part, those findings in determining rule amendments.

In order to allow the Commission adequate time to consider public comments on the proposed amendments, all such comments should be made in writing. The Commission will consider all written comments, regardless of whether the commenter makes an oral presentation.

Written comments may include any written data, views or arguments concerning the proposed amendments to the Commission's Rules, legal arguments or briefs, and materials prepared by persons other than the submitter. If alternative amendments are proposed, the Commission encourages those amendments to be included in the written materials, along with a proposed statement of basis and purpose of the alternative amendments. Twenty copies of all written comments must be delivered to the Commission's office at 1313 Sherman Street, Room 818, Denver, CO 80203 by the close of business (5:00 p.m.) on July 30, 2010. The Commission may

accept and consider late written comments and day-of-hearing written comments, but any person who fails to deliver written comments by the deadline will not be entitled to make a Scheduled Oral Presentation, as described below.

The Administrative Record, including public written comments, all staff written comments and all other written materials to be considered by the Commission in this rulemaking, will be available for inspection at the Commission office during normal business hours (8:00 a.m. -5:00 p.m.) after July 30, 2010. Copies are available at the designated rate.

### Oral Presentations

The opportunity for two types of oral presentations will be available to the public. The first, referred to as Scheduled Oral Presentation, will be assigned a 15 minute time period on the agenda. (NOTE: Time may be reduced depending upon the number of people seeking a Scheduled Oral Presentation.) The second, referred to as General Public Comment, will allow the commenter five minutes or less (determined by the available time and number of speakers) and are scheduled on a “first come, first served” basis the day of the hearing.

Scheduled Oral Presentations are only available for persons who applied for and received party status, and who delivered their written comments to the Commission on or before July 30, 2010. Assignment of time slots for Scheduled Oral Presentations will be made at the prehearing conference described below. Anyone that submits written comments by July 30, 2010, but cannot attend the pre-hearing conference may make a written request for a Scheduled Oral Presentation on or before November 5, 2010, but will have to accept an available time slot after those attending the pre-hearing conference have been assigned a time to make their presentation to the Commission.

## V. PREHEARING CONFERENCE

Prior to the public hearing conducted by the Commission, the Commission’s Hearing Officer will conduct a prehearing conference with entities that have Party Status. The purpose of this prehearing conference is to schedule Oral Presentations. The Hearing Officer will determine the date and location of the Prehearing Conference.

## VI. RULEMAKING HEARING

DATE: Friday, August 20, 2010

TIME: 10:00 a.m. (or as soon thereafter as provided for on the agenda of the general meeting of the Colorado Ground Water Commission)

PLACE: Town of Castle Rock Council Chambers, 100 N. Wilcox St., 2<sup>nd</sup> Floor, Castle Rock, Colorado 80104

VII. PROCEDURE AND PROPOSED AGENDA FOR RULEMAKING HEARING

The Commission will not apply the formal rules of evidence or civil procedure. No member of the public or Commission Staff shall have the right to cross examine any person speaking at the hearing. Commission members may ask questions of any person appearing before them.

The Chair of the Commission may stop any Scheduled Oral Presentation or General Public Comment if the person speaking has exceeded his/her allotted time. Subject to the discretion of the Chair, no exhibits, maps, demonstrative exhibits or physical evidence may be presented in the oral summary unless such material was attached to the participant's written comment. Once the written comment is submitted for the consideration of the Commission, the material becomes part of the Administrative Record and the property of the Commission and will not be returned to the person offering the material.

Agenda

- 10:00 Rulemaking procedures explained
- 10:05 Scheduled oral presentations
- 11:20 Staff presentation
- 11:30 General public comment
- 12:00 Close public record, and Board deliberations

NOTE: THIS AGENDA MAY BE MODIFIED BY THE HEARING OFFICER AT THE PREHEARING CONFERENCE, DEPENDING UPON THE NUMBER OF SPEAKERS.

Subject to section 24-4-103, C.R.S., the Board may modify the proposed revised Rules prior to promulgating final revised Rules.

VIII. EFFECTIVE DATE

The amendments to the rules shall become effective 20 days after publication of the final rules in the Colorado Register.

DATED this 23rd day of December, 2009.



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Dick Wolfe, P.E.  
Executive Director  
Colorado Ground Water Commission  
1313 Sherman Street, Rm. 818  
Denver, CO 80203