Colorado to force the issue on January 26

By Tony Rayl
The Yuma Pioneer

The veil of secrecy shrouding Colorado’s negotiations with Kansas and Nebraska on the proposed compact compliance pipeline has been lifted.

Revealed is the fact the three states remain at odds on three issues.

Also made clear is that Monday, Jan. 26, is an important day.

Leaders from all three states will meet that day, via telephone, with Colorado asking for a decision on the proposed pipeline by the Republican River Compact Administration. If the answer is “yes,” then it will be time to get busy on the pipeline.

However, Colorado’s leaders fully expect a “No” answer. In that case, Colorado then will invoke a call for “fast track arbitration” that must be completed in six months.

If the arbitration works out in Colorado’s favor, but Kansas and Nebraska still balk at approving the pipeline project (the arbitration is non-binding), then the state will take the issue to the United States Supreme Court.

There is no guarantee the Supreme Court would hear the case, and even if it did, it could be quite a while before it appears on the court’s docket.

That is the situation as it was laid out by Alex Davis of the Colorado Department of Natural Resources, State Engineer Dick Wolf, and Peter Ampe with the Colorado Attorney General’s Office, during a public meeting held last week in Yuma. Approximately 60 people attended the meeting, which was announced less than one week earlier.

Colorado, Kansas and Nebraska have been discussing the pipeline project since early last year. Davis said Kansas insisted the conversations remain confidential so the states could talk openly and frankly, exploring all ideas and options without worry of public backlash.

However, Davis said it became apparent to the Colorado delegation in recent weeks that it was time to go public so it could get some feedback. Kansas and Nebraska agreed one week ago to lift the confidentiality agreement.

4 issues, 3 insurmountable

Davis said four major issues have come to the forefront during the discussions.

One is rather easy to resolve. Kansas stated it did not want Colorado to use the pipeline—which would be located at the east end of Yuma County and discharge directly into the North Fork of the Republican River at the Colorado-Nebraska state line—to, for example, pump 40,000 acre feet into the river over the course of four months and then state they are in compact compliance for five years.

That was never the intention of the Republican River Water Conservation District, the entity doing the pipeline, which plans on pumping the amount needed each year to meet Colorado’s obligations to the Republican River Compact.

Therefore, Colorado is going to come up with some kind of agreement on pipeline usage that satisfies Kansas, and also gives Colorado some leeway for overage credit if it pumps a bit too much during a wet year.

No big deal.

However, there are three other issues that Davis said are “insurmountable.”

One has to do with a credit involving water above Swanson Reservoir in Nebraska. The states could not come to an agreement on how to handle that credit.

Another issue is Nebraska wanting assurances the Haigler Canal would not be shorted. Davis said research showed it actually is a Colorado water right that is administered in Nebraska. She said Colorado offered to make sure water is in the canal, only if it runs dry because of reasons beyond the Nebraska users' control.

Davis said Colorado was not going to supply water if the canal went low because the Nebraska users were not utilizing it correctly. The offer was rebuffed.

The third insurmountable issue is the one most are aware of— Kansas' argument that Colorado needs to meet compliance in each sub-basin, the North Fork, South Fork and Arikaree River, rather than basinwide compliance.

In other words, Kansas has taken the stance Colorado cannot use the pipeline to the North Fork to make up for shortages on the South Fork and Arikaree.

Colorado's interpretation of the final settlement reached between the three states early this decade, is that it allows Colorado to meet compliance basin-wide, not in each sub-basin.

Davis said Colorado wants to let the courts decide that issue, but Kansas has insisted on tying its approval of the pipeline to Colorado agreeing to the sub-basin test.

Davis said Colorado has to litigate that issue, so it became apparent recently that the state was not going to be able to cut a deal for the pipeline.

An advisory committee, representing local entities involved in the compact issue, told the Colorado delegation that the three "insurmountable" issues really have nothing to do with the pipeline and augmentation plans, but rather with problems the states have with the computer model used for compact compliance and the accounting methods used.

However, Colorado cannot push the pipeline issue to arbitration until the Republican River Compact Administration—the RRCA, whose purpose is to administer the compact, is comprised of one member each from the states of Colorado, Kansas and Nebraska—formally rejects the proposal.

Thus, Colorado's plan to ask for formal acceptance on Jan. 26, after which, if it is denied, the state will immediately begin the fast track arbitration process.

Wells safe during process

State Engineer Dick Wolfe stressed during last week's presentation that the state will not take any curtailment action on irrigation wells while working out the pipeline presentation.

In fact, he and Davis both said Colorado will look at all possible options to get into compact compliance without mandating the forced shutdown of wells.

Wolfe said the state is looking into more conservation measures, such as CREP and EQIP, to continue to pay for wells taken out of production. Measurement rules are going into effect this year, and the fate of Bonny Reservoir is still on the table.

Harris Sherman, the executive director of the Department of Natural Resources, is formulating a letter that will go out to irrigators assuring them the state will do all it can before ever resorting to well curtailment.

The mention of Bonny opened the door for more discussion on that issue.

Funding for pipeline

Delays on the RRCA approving the pipeline has left the RRWCD hanging for the time being on the estimated $71 million pipeline project—$50 million for well purchases and $21 million to construct the approximately 12-mile pipeline.

RRWCD representatives said they are maintaining close communications with the sellers, whose wells will be used for the pipeline, to ensure the purchase will go through as planned when everything finally is in place.

The RRWCD also has a $60 million loan from the Colorado Water Conservation Board for the project. The loan was approved by the Colorado Legislature last spring. RRWCD leaders were going to confirm it, but it is believed the loan is on the table for one year and that the RRWCD could ask for an extension of up to two years.

However, assessment fees increasing from $5.50 per irrigated acre to $14.50—to pay for the pipeline debt over 20 years—will be paid by irrigators on this year’s tax bill, even though the pipeline is in a holding pattern for the moment.