

Q: The biggest hurdle for Flaming Gorge pipeline? A: Wyoming

BY JEFF THOMAS ON SEPTEMBER 21, 2011 · 3 COMMENTS · IN DISPATCHES, NEWS, TOP STORIES

Whether or not the controversial Flaming Gorge pipeline is built may be decided in Wyoming, despite all the shouting going on here in Colorado.

State compacts dating from 1922 and 1948 entitle Colorado to water in the Flaming Gorge Reservoir, but “I don’t have the legal ability to go up there and administer those rights,” said Dick Wolfe, Colorado’s state engineer and director of the Colorado Division of Water.



Satellite view of the Flaming Gorge Reservoir in Wyoming. The bottom 1/4 of the reservoir is located in Utah. Google

While that ability may seem like just one of the many intricacies involved in a proposed 500-mile pipeline to bring water from southwestern Wyoming to a thirsty Colorado Front Range, it’s a key point that could be decided by Wyoming Gov. Matt Mead, who has already expressed opposition to the project.

“He is opposed to the pipeline,” confirmed Renny MacKay, communication director for the governor’s office. MacKay said in a recent interview the governor said he opposes trans-basin diversions in general, and in particular, “I don’t think that Aaron Million’s project is well thought out.”

Much of this was news to both the Colorado Water Conservation Board, which last week authorized \$72,000 for a six-month feasibility study of the project, and several environmental groups, which spent thousands of dollars in billboards along I-70 near Grand Junction opposing that move.

For Wolfe, being able to administer such water rights is not a trivial matter. The whole project hinges upon Colorado's ability to take more water out of the Colorado River, which it is entitled to do under an interstate compact with fellow headwater states, Wyoming and New Mexico, and downstream states, such as California and Nevada. As much as 250,000 acre feet of water could be brought to the Front Range by the project, about enough for 1 million new residents with current usage.

However, the state engineer's office also has to protect the rights of other users that draw water from the Colorado, such as the senior rights for the Colorado-Big Thompson project, which already supplies water to much of northeastern Colorado.

"The point of diversion doesn't have to be in the state of use," Wolfe noted. "But then we have to deal with how to administer that right, and how that diversion gets counted under the compact."

Million, a Fort Collins-based entrepreneur, has already secured water rights on the Green River, a major tributary of the Colorado, to enable the exportation of that water. Wolfe said that Million has expressed an extreme interest in conforming to Colorado water law and the protection of other water interests, but added that new rules need to be promulgated so that Wolfe can ensure that all his state's calls on the Colorado are protected.

"They want to be in total compliance," Wolfe said. "But what if they lost dominion or control?"

At a minimum, Wolfe said, the state engineers from both Wyoming and Colorado need to put new rules in place that would allow him to shut down the headgate for the pipeline when it is not in priority — when there's not enough water in the Colorado to comply with the compact. While both offices noted there is a high degree of cooperation between the headwater states regarding the compact, this is fairly new ground and legislative action may be required.

Wyoming Deputy State Engineer Harry LaBonde said it was not clear whether the rules could be worked out between the two offices or would require state legislation.

“Certainly it does raise a number of questions on how it would be administered from a water rights perspective,” LaBonde said. “He (Million) has indicated to us that his intention is to fully comply with the laws of Wyoming and Colorado, and I don’t see there’s an issue there as long as the project is in priority.”

There’s more to it than that, however.

“Certainly any rules that would be promulgated would require the (Wyoming) governor’s signature, so the governor would be in that loop,” LaBonde said.

MacKay said that even if legislation is not needed, the new rules would have to go through public notification and comment, and then passed through two legislative committees, one of which would include leadership of the Wyoming house and senate. If those committees approve the rules changes, the governor’s hands would be somewhat tied.

“There is a chance that we could be forced to act under the terms of the compact,” MacKay noted.

A recent poll from Trout Unlimited found that about 80 percent of Wyoming residents oppose the project, which could make forging ahead on that front a long and expensive prospect. Of course, that expense would pale next to the amount actually required to build the project, which has estimated at between \$3 billion and \$9 billion.

Million could not be reached for comment, but Todd Hartman, spokesman for the Colorado Department of Natural Resources, indicated the conservation board probably wasn’t aware of Wolfe’s position before allocating the \$72,000 for the six-month study. But he reiterated that the board was just studying the proposal, not endorsing the project.

“Questions like the ones you are raising are exactly the kind of things we need to address,” Hartman said. However, much of the initial funding will be spent on roundtable discussions in different water basins of Colorado, after which another \$100,000 could be made available for further engineering and legal analysis.

That non-endorsement was also reflected in comments made by Jennifer Gimbel, director of the conservation board, last week.

“Over six months, a task force will look at legal, environmental, economic and technical issues to determine potential impediments and whether fatal flaws exist in this proposal,” Gimbel said. “I emphasize this vote was not an affirmation of the project itself, or any aspect of it, but the approval of a process to encourage roundtable discussion of issues surrounding any project, using Flaming Gorge as a pilot.”

An environmental coalition including Save the Colorado, the Colorado Environmental Coalition and Western Resource Advocates spent about \$7,000 for a billboard campaign aimed at the conservation board, which was meeting in Grand Junction.

“It’s a new wrinkle,” said Gary Wockner, the executive director of both Save the Colorado and Save the Poudre. Neither of his organizations has endorsed any new water impoundments on either side of the divide.

“That is just one of the many serious questions surrounding the Flaming Gorge project.”