RWR water project faces more opposition – this time from Polis, legislators

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The attention on a $600-million proposal to pipe water from the San Luis Valley to Douglas County is gaining attention — of the negative kind — from Gov. Jared Polis and other policymakers at the state Capitol.

Polis, in a statement to Colorado Politics, took a position last week on the proposal from Renewable Water Resources (RWR) that would ferry as much as 34,000 acre-feet of water from a confined aquifer in the San Luis Valley to Douglas County. Through a spokesman, Polis said he is "against any inter-basin transfer without local support of impacted communities. This is a proposed inter-basin transfer with deep concerns and opposition in the San Luis Valley and the governor is opposed."

Polis joins Attorney General Phil Weiser, who told Colorado Politics last month he is prepared to "take a lead role in how we in Colorado can stop this from happening because the idea of removing water from the valley at a time of a depleted aquifer is something I can't understand."

RWR argues that its proposal is a win-win solution – it would economically benefit San Luis Valley while ensuring water sustainability for Douglas County.

Renewable Water Resources proposes to tap 25 new groundwater wells in a "confined" aquifer in the valley to bring that water to the South Platte River and eventually to a yet-to-be unidentified water provider in Douglas County.

The project also came up, though not by name, in a hearing last Thursday in the Senate Agriculture and Natural Resources Committee, and it doesn't appear to have any fans on the panel, either.

The bill at issue is Senate Bill 28, which would set up a fund to finance groundwater reductions in the Republican River basin, in northeastern Colorado, and the Rio Grande River basin in the San Luis Valley.

The bill intends to help pay for groundwater limitations in the Republican River and to boost the sustainability of the large, confined aquifer in the Rio Grande River basin, the same aquifer that RWR intends to tap for its project.

Simpson, the general manager of the Rio Grande Water Conservation District, explained that the Rio Grande portion of the bill would pay farmers not to pump water in order to maintain the aquifer close to 1976 levels. Simpson told Colorado Politics that state law requires a sustainable aquifer system.

"You don't have to achieve those goals by drying up irrigated ag," although that's part of the solution, he said.

He said some strategies could include water conservation or by changing the crops being grown in the valley, such as from alfalfa to industrial hemp, for example. The latter would use about half of the water, but there's not yet enough of a market for industrial hemp, he said.

"But if Mother Nature continues to deal precipitation the way it has for the last 20 years ... we will have less groundwater-dependent irrigated acres" in the valley, he said.

The Rio Grande Water Conservation District spent $5 million just in the last month to pay farmers to conserve or stop irrigating, although the district received $13 million in applications for conservation funding. The target is around 40,000 acres, based on fallowing (retirement of irrigated acres), changing the crops or other water conservation measures. Whether that will be enough, however, is unknown, Simpson said, because of precipitation, including variability in snowpack.

As of January, 2022, the aquifer is at its lowest point ever for a January. That's after taking 100,000 acre-feet out of pumping in the last few years, he said.

"It's the aridification of the West. We don't have the supply of water in the Rio Grande that we had prior to 2002," he said.

In the Republican River, compacts require a reduction of 25,000 irrigated acres by 2029, based on a 2016 resolution signed by Colorado, Nebraska and Kansas. That also means cutting back on irrigation, and the money would pay farmers to do that. The Republican River district has already spent $150 million on groundwater conservation; the Rio Grande district has spent $70 million for the same purpose.

As proposed, funding for SB 28 would come from economic recovery dollars – about $848 million was allocated for economic recovery efforts during the 2021 session – from the American Rescue Plan Act. Simpson pointed out that ARPA requirements allow for those dollars to be used for water conservation, and he's asked for $80 million for SB 28.

The high prices of certain commodities — corn, for example — make taking acres out of production more difficult, according to David Robbins, the general counsel for both basins, who testified Thursday.

"If they fail in this task, they will receive orders [from the state engineer] shutting down the wells in each basin, which will have a dramatic and very difficult consequence for everyone in both basins," Robbins said.

Sen. Don Coram, R-Montrose, asked witnesses to address trans-basin diversions for an area that is already having trouble with sustainability, a direct reference to the RWR project, although he did not mention it by name.

Robbins replied that the people in the valley are attempting to pull back another 40,000 acres from production to solve the groundwater issue.

"How you can take 20,000 acre feet plus by further exacerbating the problem is difficult to understand," Robbins said. "We have significant questions about exporting water from the San Luis Valley. My client is resolved to resist it."

Sen. Kerry Donovan, D-Vail, the committee's chair, said that if the bill passes, it's a sign the General Assembly is making a statement and acknowledging the limited amount of water in the basins.

"That should be a signal to those hunting for water that this isn't the right place to look," Donovan said.

The bill passed on a 4-0 vote and is now awaiting action from the full Senate.

Several new developments have taken in the past several weeks involving the RWR proposal.

On Jan. 27, the company told the Douglas County board of county commissioners it would drop its asking price for the county’s participation in the $600 million project from $20 million to $10 million.

According to the January 27 letter to the Douglas County commissioners, RWR's attorneys advised them that "rules and regulations governing the use of ARPA funds may not allow the county to spend $20 million on projects that are not completed by 2026." However, the letter continued, the attorneys believe the county could spend $10 million of its ARPA money "as compensation for general revenue loss" outside of the deadline limitations.

In exchange, the letter said, RWR would hike the cost of the water to the end-user in Douglas County from $18,500 to $19,500 per acre-foot, a one-time payment from the water provider.

RWR is proposing to pay land-owners in the San Luis Valley for their water rights $2,000 per acre-foot. While there isn't an exact valuation on water from the confined aquifer, market value for water in the valley ranges from a high of $4,100 per acre-foot for surface water to $3,100 per acre-foot for water in the much smaller unconfined aquifer.

RWR eventually wants to buy 34,000 acre-feet of water for its project, at a cost of $68 million. The company also proposes a separate $50 million "community fund" to assist local communities with schools, broadband or food banks, senior services or job training.

RWR's Sean Tonner told the Douglas County commissioners on Feb. 7 that the project will set a "gold standard" for Colorado.

As for the $50 million community fund, Tonner said it would generate $3 million to $4 million per year in interest in perpetuity.

"It's a significant amount of money" for the valley, he said. Tonner also told the commissioners that what they're paying for water in the valley is "three to four times" the market rate, and they're only buying from voluntary sellers.

Tonner said two years ago, water was selling at $80 per acre-foot in the valley, which he called "criminal."

Tonner argued that the RWR project would economically benefit the valley, which he said is among the most impoverished areas of the state at 43% below the poverty level and where population is declining and getting older.

Tonner also stated the the valley needs to diversify from its ag economy. He pointed to statements Simpson made in 2018, including that the the valley "is based 100% on irrigated agriculture from a water supply that doesn't exist anymore."

Family farms, especially the small and medium-sized farms, will be gone, Tonner predicted. There has to be a win-win solution, he said, explaining the valley has the water while the Front Range has the money.

"We can have both: we can have the Front Range being vibrant; the Front Range needs water; we can have the San Luis Valley being vibrant; it needs capital and needs to transition its economy to something lower than 90% to 95% agricultural-based," he said. "We're not saying shut down all ranching and farming, but have a more diversified economy outside of government jobs and agriculture."

Tonner claimed the RWR proposal would help the Rio Grande basin resolve its water shortage problem, maintaining the project would replace water at "one-to-one plus," defined as putting more water back into the aquifer than what's being taken out.

Those representing the valley at the Feb. 7 meeting offered a different take on the proposal's economic effects.

The $50 million community fund won't cover the economic loss to the valley from the project, according to Chad Cochran, a banker with Farm Credit of Southern Colorado, which makes loans to farmers and ranchers. Based on U.S. Census and Colorado State University data, Cochran said that taking 34,000 acres out of agricultural production represents about 5% of the total agricultural acreage in the valley. The direct sales loss from just those 34,000 acres would be $18 million per year, he said, adding the overall economic loss would total about $53 million per year, Cochran said.

"A community fund of $50 million is a band-aid. It's nominal. It's one year of trade for us," Cochran said.

James Henderson, a fifth-generation farmer in the valley and vice president of Colorado Farm Bureau, told commissioners the RWR project is "buy and dry," referring to the permanent removal of productive agriculture and putting the water somewhere else. It creates winners and losers – one community loses the water, another gets it, Henderson said.

"Why should a Douglas County citizen care what happens to some farm down some road? They didn't know about the farm before. Why would they care when it's gone? But when you lose the production off the land, you lose the farmers," he said.

RWR also appears to be considering new options on its proposal.

The original proposal would build a pipeline that would eventually reach the South Platte, to either Antero or Strontia Springs reservoirs. But Denver Water, which owns both reservoirs, has been adamant it wants nothing to do with the RWR project, and that extends to allowing the storage of the valley water in its reservoirs.

The final route hasn't been determined, Tonner told the commissioners.

Another option would be to build a pipeline from the valley to the lower Arkansas River, east of Pueblo, where infrastructure already exists to move the water north to Douglas County. That would save $200 million, Tonner said.

The lower Arkansas River infrastructure, including storage, however, belongs to Aurora Water, and the latter is not interested, either.

"We understand that in recent conversations regarding a proposal from RWR regarding water from the San Luis Valley, it has been suggested that infrastructure owned and operated by Aurora Water could be utilized for this proposal," Greg Baker of Aurora Water told Colorado Politics. "RWR has not asked Aurora Water to be able to use our infrastructure and Aurora Water does not have the excess system capacity to move this water."

Tonner also refused to identify the project's end-user, likely to be a water district, in response to a question from Commissioner Lora Thomas.

Editor's note: This story has been updated to clarify that the water proposal is estimated to cost $600 million. Douglas County's original proposed share of that project is $20 million.