Judge questions length of water trial

BY

State still on the stand

By RUTH HEIDE

ALAMOSA — As the state water trial entered its fourth week on Tuesday, presiding District Judge O. John Kuenhold questioned whether attorneys would be able to finish in the six weeks scheduled for the case.

The trial is scheduled to conclude the first full week of March.

The state may not complete its witness list until Thursday when opponents to the proposed rules will begin calling witnesses.

Allan Hale, one of the objectors' attorneys, said the objectors would be prepared to start this week with their witnesses and were still projecting to finish either late next week or early the following week. "I think we are on schedule."

Glenn Porzak, attorney for opponent Cotton Creek Circles, suggested closing arguments could be submitted in writing followed by oral arguments. Kuenhold said that was an option to consider.

Knox begins third day

Colorado Division of Water Resources Chief Deputy State Engineer Dr. Ken Knox begins his third day on the witness stand on Wednesday. His boss State Engineer Hal Simpson will have the distinction of testifying as the 13th and final witness called by the state to substantiate the proposed rules which govern new withdrawals from the confined aquifer in the San Luis Valley.

During his day-long session on the stand on Tuesday, Knox reiterated what other state witnesses had said about a decline in aquifer levels in the Valley as illustrated in engineer Allen Davey's changes in aquifer storage data.

He said if the Valley had not experienced the wet period of 1985-1987 the decline would have been more pronounced, and even with predicted recurrence of that wet period in the future, the prediction still shows a general decline.

Knox shared a chronology of groundwater regulations in the San Luis Valley beginning with a moratorium on new wells in the confined aquifer and unconfined aquifer outside the closed basin in 1972 which was expanded to include wells in the unconfined aquifer in the closed basin in 1982. He described water court cases and legislative mandates which resulted in the proposed rules before the court in this case.

Knox also went through the process which will be used in future applications for withdrawals within the confined aquifer if the proposed rules are upheld by the court. An applicant wishing to make a new withdrawal would have to change the point of diversion or permanently retire an existing water right or rights equal to the new withdrawal, Knox explained. He said that one-for-one replacement was necessary to prevent additional injury and maintain the state's ability to meet its compact obligations.

The water right which would be retired would have to come from the same hydrological zone and same layer within the confined aquifer as the proposed new withdrawal, Knox said.

Runs would be made of the Rio Grande Decision Support System groundwater model to provide a reference point and calculated impacts of the new withdrawal.

The model runs might result in additional requirements to retire more water to make up for the impact of the new withdrawal or decrease the amount of water appropriated in the new application, Knox said. He added the potential exists for the replacement to exceed 100 percent.

Knox addresses groundwater issues

When questioned about alleged out-of-priority groundwater pumping particularly during a time when senior surface water users had no water in the drought year of 2002, Knox said “these wells were pumping in conformance with their permitted and decreed amounts.” He added there were (and are) no rules in place regulating groundwater or requiring augmentation of surface depletions by existing wells.

Knox said even if rules had been in place requiring replacement of stream depletions, the confined aquifer would still be in an un-sustainable condition. “My overall assessment the confined aquifer is not sustainable,” he said.

He said the legislature provided a benchmark goal to bring the aquifer back into a state of sustainability and that benchmark is the time period between 1978 and 2000 when the Valley’s aquifer systems were relatively stable.

Knox said the proposed rules would satisfy legislative requirements to protect senior water rights from material injuries from new uses in the confined aquifer and would protect the state’s delivery obligations under the Rio Grande Compact.

Knox was questioned by opponents about subjects which had arisen with previous witnesses including subsidence. Knox said although the rules do not address subsidence specifically, they do address artesian pressure which has the effect of protecting against land subsidence which in turn is important to the sustainability of the confined aquifer system.

Another question which had been raised with previous witnesses was the predicted useful life of the confined aquifer and how much a new 100,000-acre-foot withdrawal would impact that. Knox said he had not performed an analysis of that but suspected a withdrawal like that would only make the aquifer decline at a faster and increased rate.

Knox addressed future regulations. He said the state engineer has promulgated rules requiring well metering. They came out a year after the rules in this case. He said that step was taken separately from the rules at issue in this case because “It is a process that requires thought and consultation with the water user community, and often times it does require an assignment of priorities of which is more important first.”

He said regulation of the unconfined aquifer may come later, but the state is trying to work with water users in the creation of groundwater management sub-districts to exercise local regulation.