

DRAFT
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 109TH CONGRESS
 2ND SESSION

[H. R. /S. _____]

To authorize the Secretary of the Interior to engage in a study relating to long term water needs for the area served by the Fryingpan-Arkansas Project, Colorado, and for other purposes.

Comment [MSOffice1]: Change of "feasibility study" to "study" throughout is subject to further discussion with Reclamaation, currently scheduled for 5/12/2006.

IN THE HOUSE OF REPRESENTATIVES/SENATE

Mr. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To authorize the Secretary of the Interior to engage in a study relating to long term water needs for the area served by the Fryingpan-Arkansas Project, Colorado and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STUDY.

(a)(1) Pursuant to Federal reclamation law (the Act of June 7, 1902, and all Acts amendatory thereof or supplementary thereto), the Secretary, through the Bureau of Reclamation, is authorized to conduct a study to determine the most feasible method of meeting the present and future water supply and related storage requirements within the area served by the Fryingpan-Arkansas Project, including the potential enlargement of Fryingpan-Arkansas facilities.

(2) The study shall be conducted in two phases.

(A) The first phase shall be conducted consistent with the “Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies” (U.S. Water Resources Council, 1983, U.S. Government Printing Office), including any subsequent modifications, and all applicable Federal statutes.

(B) The second phase, to the extent that it does not duplicate work done in the first phase, shall —

(i) identify major water-related impacts, including depletions, and evaluate the cumulative effects of the historic, current and proposed water supply, exchange, trades and storage methods, including environmental impacts such as impacts on water quality and wildlife habitat, and water supply, social, cultural, recreation, flood control and economic impacts on the area served by the Fryingpan-Arkansas Project (“area served”) taking into account the hydrologic conditions during the period from 1975 to present;

(ii) conduct an environmental justice assessment, using the methodology described in “Toolkit for Assessing Potential Environmental Injustice” (U.S. Environmental Protection Agency, November 2004), including any subsequent modifications, to determine whether historic, current and proposed water supply, exchange, trades and storage methods disproportionately impact minority and/or low-income communities in the area served; and

(iii) evaluate feasible options to resolve or mitigate the impacts and effects referred to in paragraphs (i). and (ii).

(3) In conducting such study, the Secretary shall take into consideration the intergovernmental agreement dated May 27, 2004, as it may be amended, among the City of Pueblo, the City of Aurora, the Southeastern Colorado Water Conservancy District, the City of Fountain, the City of Colorado Springs, the Board of Water Works of Pueblo, Colorado, and the need to ensure compliance with the Arkansas River Compact as executed by the states of Colorado and Kansas on December 14, 1948.

(b) Before funds are expended for either phase of the study authorized by this section, the Southeastern Colorado Water Activity Enterprise shall first agree to participate in that phase of the study and to fund, at a minimum, 50 percent of the costs of such study. The Southeastern Colorado Water Activity Enterprise's share of the costs may be provided partly or wholly in the form of services directly related to the conduct of the study, as determined by the Secretary. Costs incurred prior to the enactment of this Act to develop the Preferred Storage Options Plan Report published September 21, 2000, by the Southeastern Colorado Water and Storage Needs Assessment Enterprise and Final PSOP Implementation Committee Report dated April 19, 2001, may be credited toward such Enterprise's share of the costs of the study, as determined by the Secretary.

(c) The Secretary shall submit the study authorized by this section, which includes both phases, to the President and the

President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(d) No funds shall be expended for the construction of enlargements, or any other alternative identified in the study authorized by this section for which authority does not currently exist, without further authorization by Congress.

(e) Nothing in this section is intended to waive, supercede or replace any action required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)); *Provided:* in conducting any such analysis required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)), the Secretary shall take into consideration the information gathered in the study authorized by this section.

(f)(i) There is authorized to be appropriated \$4,000,000 to conduct first phase of the study authorized by this section.

(ii) There is authorized to be appropriated \$??,000,000 to conduct second phase of the study authorized by this section.

SEC. 2. SECRETARY AUTHORIZED TO ENTER INTO CONTRACTS FOR THE USE OF EXCESS STORAGE AND CONVEYANCE CAPACITY OF THE FRYINGPAN-ARKANSAS PROJECT, COLORADO.

The Act of August 16, 1962, as amended, (76 Stat. 389 et seq., as amended), is amended further by adding at the end the following new sections:

SEC. 8. (a)(1) Except as provided in Section 9, and subject to the provisions of this Act, including, but not limited to section 5, and all other applicable Federal statutes, the Secretary is authorized to enter into contracts with an entity, private or public, (“hereinafter referred to as ‘entity’”), for the use of excess capacity in the Fryingpan-Arkansas Project for the purpose of diverting, storing, impounding, pumping, exchanging, or conveying nonproject water for irrigation, domestic, municipal and industrial, or any other beneficial purpose within the natural basin of the Arkansas River within Colorado.

(2) In entering into such contracts, the Secretary shall take into consideration the Preferred Storage Options Plan Report published September 21, 2000, by the Southeastern Colorado Water and Storage Needs Assessment Enterprise, the intergovernmental agreement dated May 27, 2004 among the City of Pueblo, the City of Aurora, the Southeastern Colorado Water Conservancy District, the City of Fountain, the City of Colorado Springs, the Board of Water Works of Pueblo, Colorado, and the need to ensure compliance with the Arkansas River Compact as executed by the States of Colorado and Kansas on December 14, 1948.

“(b) The Secretary is authorized to enter into contracts pursuant to this section provided that-

“(1) such contracts shall not impair or otherwise interfere with:

“(A) the Fryingpan-Arkansas Project’s authorized purposes;

“(B) the ability of those with prior Fryingpan-Arkansas Project contracts to meet such contractual obligations to the Secretary as existed at the time of the execution of a contract pursuant to the authority of this section;

“(C) such contractual obligations as the Secretary has to Fryingpan-Arkansas Project contractors at the time of the execution of a contract under the authority of this title;

“(D) the storage allocations and limitations pursuant to Contract No. 5-07-70-W0086, as amended, renewed or superceded, between the Southeastern Colorado Water Conservancy District and the United States, and the allocation principles adopted by the Southeastern Colorado Water Conservancy District on November 29, 1979, and confirmed by the district court of Pueblo County in Civil Action No. 40487 by decree dated December 18, 1979, including any subsequent modifications made by the district that are confirmed by the District Court;

“(E) the yield of the Fryingpan-Arkansas Project from its West Slope and East Slope water rights; or

“(F) the ability of individuals or entities located within the natural basin of the Arkansas River within Colorado to enter into contracts for the use of excess water storage and conveyance capacity pursuant to section 8 of this Act or any other authority under Reclamation law.

“(2) To the extent such contracts are with an entity that does not have an allocation of Project carry over storage space pursuant to the allocation principles adopted by the Southeastern Colorado Water Conservancy District on November 29, 1979, and confirmed by the District Court of Pueblo County in Civil Action No. 40487 by decree dated December 18, 1979, including any subsequent modifications made by the District that are confirmed by the District Court (‘non-qualified’ entities), the contracts shall not impair or otherwise interfere with the ability of qualified entities with an allocation of Project carry over storage space to enter into contracts for the use of excess water storage and conveyance capacity pursuant to this section 8.

“(3) Nothing in sections 8 through 12 of this Act shall--

“(A) increase diversions of Project water from the natural basin of the Colorado River;

“(B) increase diversions of nonproject water from the natural basin of the Colorado River within

Colorado into another river basin for delivery or storage, except as provided in section 12 of this Act;

“(C) affect in any way contracts, or the renewal of contracts, entered into pursuant to authority other than section 8 of this Act, including, but not limited to, Contract Nos. 00XX6C0049 and 009D6C0048 between the Board of Water Works of Pueblo, Colorado and the United States, or the renewal of Contract Nos. 00XX6C0049 and 009D60048; Contract No. 6-07-70-W0090 (formerly Agreement No. 14-06-700-6019) between the Cities of Aurora and Colorado Springs and the United States; Contract No. 7-07-7010056 between Twin Lakes Reservoir and Canal Company and the United States; Contract No. 9-07-70-W0099 between the United States and High Line Canal Company; and Contract No. 039E6C0117 between Board of Water Works of Pueblo and the United States; or

“(D) affect the interpretation or implementation of existing law or legislation for any other Congressionally authorized water project.

“(c) Subject to the provisions of subsection (b), the Secretary may enter into contracts authorized by this section upon such terms and conditions as the Secretary may determine to be just and equitable. The term of any such contract shall be for such period, not to exceed the contract term authorized in 43 U.S.C. § 485h(c),

485h(c), as the Secretary deems appropriate. Upon expiration, such contracts may be renewed upon such terms and conditions as may be mutually agreeable to the Secretary and the contractor for the use of excess capacity.

“(d) The Secretary shall establish such charges, subject to subsection (e), for the use of excess capacity as the Secretary deems appropriate. Such charges shall consist of the following components.

“(1) One component shall reflect either

(A) construction costs based on either the original cost, the estimated current costs, or other appropriate measure of costs, including interest as provided in paragraph (3) of this subsection, of constructing the Fryingpan-Arkansas Project facilities involved; or

(B) another appropriate rate, such as a market rate.

“(2) A second, separate component shall reflect an appropriate charge for operating, maintaining, and replacing these same facilities.

“(3) Except in the case of a market based rate, when excess capacity in Fryingpan-Arkansas Project facilities will be used to divert, store, impound, pump, or convey nonproject water for municipal and industrial purposes, an interest component using the rate determined by the Secretary in accordance with the Water Supply Act of 1958 (43 U.S.C. §390b).

“(e) All charges established pursuant to this section shall be just and equitable as to the rates paid by the those entities that receive project water from the Fryingpan-Arkansas Project facilities. The project contractor rate shall be the baseline from which adjustments can be made based on the particular circumstances involved in the contract.

“(f) Prior to the execution of any contracts under this section, the Secretary shall execute an agreement with the Southeastern Colorado Water Activity Enterprise to provide guidelines for the terms to be contained in the contracts executed pursuant to this section. Such guidelines shall appropriately address impacts associated with water operations under the contracts, surcharges established by the Enterprise, reimbursement of costs incurred, and water quality monitoring, as identified by the Southeastern Colorado Water Activity Enterprise and the Secretary.

“SEC. 9. (a) The Secretary of the Interior may enter into new and renewal contracts with the City of Aurora, Colorado, or an enterprise of the City, for use of storage or carrying capacity excess of the requirements of the Fryingpan-Arkansas Project, Colorado, for the purpose of impounding, storage, and carriage of non-project water for domestic, municipal, industrial and other beneficial purposes. The term of any such contract shall be for such period, not to exceed the contract term authorized in 43 U.S.C. § 485h(c), as the Secretary deems appropriate.

“(b) Prior to the execution of any renewal contract with the City of Aurora, the Secretary of the Interior shall execute an Agreement with the Southeastern Colorado Water Activity

Enterprise, which agreement shall provide guidelines for the terms to be contained in a renewal contract executed pursuant to this section. Such guidelines shall appropriately address those impacts associated with water operations under the contracts, such as storage and conveyance charges, surcharges established by the Enterprise, reimbursement of costs incurred, and water quality monitoring, as identified by the Southeastern Colorado Water Activity Enterprise and the Secretary.

“(c) The Secretary shall establish such charges under this section 9 in a manner consistent with the provisions of section 8(d) and (e).

“SEC 10. (a) Except as provided under subsection (b), all revenue generated pursuant to contracts executed under sections 8 and 9 shall be credited as follows:

“(1) That portion of the charges established pursuant to section 8(d) and 9(d) which is attributable to the component which reflects interest shall be credited as a general credit to the Reclamation Fund.

“(2) That portion of the charges established pursuant to section 8(d)(2) and the comparable provision of 9(d) shall be credited against the appropriate project operation, maintenance, and replacement costs.

“(3) All remaining revenues in excess of those in paragraphs (1) and (2) of this subsection shall be credited as follows:

(A) If reimbursable federal construction costs are outstanding for the Fryingpan-Arkansas project at the time

revenues are received, then all remaining revenues shall be covered into the Reclamation Fund and credited to the Fryingpan-Arkansas Project. All remaining revenues shall be credited against such reimbursable costs in a manner the Secretary deems to be just and equitable as to the reimbursable purposes which are involved. The revenues so credited shall not be applied so as to reduce the amount of the current annual payments due the Secretary from the project contractors or any other parties responsible for paying outstanding reimbursable project construction costs unless and until the party's current annual payment due exceeds the remaining reimbursable construction costs payable by the party.

“(B) If no reimbursable Federal Fryingpan-Arkansas Project construction costs are outstanding at the time revenues are received, then all remaining revenues shall be credited to a separate fund, established in the Treasury of the United States, to be known as the Fryingpan-Arkansas Project Fund, which shall remain available, without appropriation, for new federally funded construction on the project, including, but not limited to, additions, rehabilitations and betterments, safety of dams modifications, and major capital replacements, applied against the Federal reimbursable costs, if any, of such new construction in such manner as the Secretary deems just and equitable as to the Federal reimbursable project purposes involved. No expenditures may be made from the Fryingpan-Arkansas Project Fund without the express written consent of the Secretary and the Enterprise.

“(b) DIRECT PAYMENTS. - Payments generated pursuant to contract terms established under section 8(f) and the comparable provisions of 9(b)

shall be made directly by the contractors to the Southeastern Colorado Water Activity Enterprise.

“SEC. 11. (a) Nonproject water diverted, stored, impounded, pumped, exchanged, or conveyed under a contract entered into pursuant to section 8 or 9 shall be exempt from any acreage limitation provisions of the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto including, but not limited to, the Warren Act of 1911, the Reclamation Reform Act of 1982 (96 Stat. 1263; 43 U.S.C. 390aa-390zz-1) and from any farm unit size limitations established pursuant to section 4(c)(5) of the Act of August 11, 1939 (Chapter 717; 16 U.S.C. 590z-2(c)(5)).

(b) Notwithstanding subsection (a), if such nonproject water is commingled with project water in Reclamation project facilities, and the resulting commingled supply is used to irrigate lands in a project contractor's service area, then such commingled water shall bear the same acreage limitations or farm unit size limitations as the project water unless --

“(1) contract provisions are in effect which provide that project or nonproject water, or both, will be accounted for on a quantitative basis, that project water will not be delivered to ineligible land, and that appropriate charges, as determined by the Secretary, will be paid for the project water, and

“(2) the charges for the use of the excess capacity include an appropriate interest component, as determined by the Secretary.

“SEC. 12. (a) Excess water storage capacity of the Fryingpan-Arkansas Project to divert, store, impound, pump, exchange, or convey nonproject water made available under contracts executed pursuant to the provisions of sections 8 and 9 shall not be utilized so as to increase diversion of nonproject water from the natural basin of the Colorado River within Colorado into another river basin for delivery or storage unless --

“(1) the diversion is the subject of a decree entered prior to the effective date of this section for which no new infrastructure or legal approvals are necessary to divert the water out of the natural basin; or

“(2) the diversion is the subject of an agreement in existence on the date of the enactment of this section, contemplating additional diversions diverted through or stored in the facilities authorized by this Act, between the beneficiary of such transbasin diversion and the water conservation district, as defined under Colorado law, from within whose boundaries the waters are proposed for diversion; or

“(3) the diversion is the subject of an intergovernmental agreement or other contractual arrangement executed after the date of the enactment of this section, between the beneficiary of such transbasin diversion and the water conservation district, as defined under Colorado law, from within whose boundaries the waters are proposed for diversion; or

“(4) the beneficiary of such transbasin diversion provides compensatory storage or alternate water supply in an amount equal to the quantity diverted out of the basin for the

benefit of the water conservation district, as defined under Colorado law, from within whose boundaries the waters are proposed for diversion.

“(b) Prior to executing any agreement, or arrangement or agreement for provision of compensatory storage or alternative water supply, that allows for increased diversions of nonproject water as described in subsection (a), the parties to such agreements or arrangements shall submit the agreement or arrangement to the Secretary, who, within 30 days, shall submit such agreement or arrangement to the President Pro Tempore of the Senate and the Speaker of the House of Representatives for a period of not less than 60 days.

“(c) This section shall not be considered as precedent for any other congressionally authorized project.