

107TH CONGRESS  
2D SESSION

# H. R. 3881

To authorize the Secretary of the Interior to engage in studies relating to enlarging Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake, Fryingpan-Arkansas Project, Colorado, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2002

Mr. HEFLEY (for himself, Mr. MCINNIS, Mr. SCHAFFER, and Mr. TANCREDO) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To authorize the Secretary of the Interior to engage in studies relating to enlarging Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake, Fryingpan-Arkansas Project, Colorado, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2       tives of the United States of America in Congress assembled,*

3       **SECTION 1. PURPOSES.**

4       (a) The purposes of this Act are the following:

5               (1) To authorize the Secretary of the Interior  
6       to engage in studies relating to enlarging Pueblo  
7       Dam and Reservoir and Sugar Loaf Dam and Tur-

1 quoise Lake, Fryingpan-Arkansas Project, Colorado,  
2 as described in the Preferred Storage Options Plan  
3 Report published September 21, 2000, by the South-  
4 eastern Colorado Water and Storage Needs Assess-  
5 ment Enterprise and the Final PSOP Implemen-  
6 tation Committee Report dated April 19, 2001.

7 (2) To authorize the Secretary to enter into  
8 contracts for the use of excess storage and convey-  
9 ance capacity of certain east slope facilities of the  
10 Fryingpan-Arkansas Project, Colorado, for munic-  
11 ipal, water banking, and other purposes, as de-  
12 scribed in the Preferred Storage Options Plan Re-  
13 port published September 21, 2000, by the South-  
14 eastern Colorado Water and Storage Needs Assess-  
15 ment Enterprise and Final PSOP Implementation  
16 Committee Report dated April 19, 2001, by amend-  
17 ing the Act of August 16, 1962 (76 Stat. 389 et  
18 seq.).

19 (3) To authorize the Secretary to enter into  
20 temporary contracts with any agency or entity, pri-  
21 vate or public, operating a water bank established  
22 pursuant to Colorado law, for use of facilities for the  
23 impounding, storage, and carriage of nonproject  
24 water for irrigation, domestic, municipal, industrial,  
25 and other beneficial purposes.

17 (b) Nothing in this Act is intended to—

22 (2) increase diversions of project water from  
23 the natural basin of the Colorado River;

1 rado into another river basin for delivery or storage,  
2 except as provided in this Act;

3 (4) impair or otherwise interfere with Contract  
4 Nos. 00XX6C0049 and 0009D6C0048 between the  
5 Board of Water Works of Pueblo, Colorado, and the  
6 United States, or the renewal of Contract Nos.  
7 00XX6C0049 and 0009D6C0048 pursuant to the  
8 authority that provides the legal basis therefor; or

9 (5) affect the interpretation or implementation  
10 of existing law or legislation for any other congres-  
11 sionally authorized water project.

12 **SEC. 2. SECRETARY AUTHORIZED TO CONDUCT STUDIES**  
13 **FOR THE ENLARGEMENT OF PUEBLO DAM**  
14 **AND SUGAR LOAF DAM.**

15 (a) The Secretary of the Interior is hereby authorized  
16 to engage in storage space studies, up to and including  
17 a feasibility study pursuant to section 8 of the Federal  
18 Water Project Recreation Act (16 U.S.C. 4601–19) and  
19 section 9(a) of the Act of August 4, 1939 (Chapter 418;  
20 43 U.S.C. 485h(a)), as may be appropriate, relating to  
21 enlarging Pueblo Dam and Reservoir and Sugar Loaf  
22 Dam and Turquoise Lake, Fryingpan-Arkansas Project,  
23 Colorado, including studies for the purpose of determining  
24 the potential costs, benefits, and environmental and rec-  
25 reational impacts of such enlargements and the use and

1 operation thereof, as described in the Preferred Storage  
2 Options Plan Report published September 21, 2000, by  
3 the Southeastern Colorado Water and Storage Needs As-  
4 sessment Enterprise and Final PSOP Implementation  
5 Committee Report dated April 19, 2001. Any report or  
6 reports submitted to the President and Congress prepared  
7 pursuant to this provision shall be considered to fulfill the  
8 requirements of section 9(a) of the Act of August 4, 1939  
9 (Chapter 418; 43 U.S.C. 485h(a)), to the extent that sec-  
10 tion may be applicable.

11 (b) Before funds are expended for the studies author-  
12 ized by this section, the Southeastern Colorado Water Ac-  
13 tivity Enterprise shall agree to participate in the studies  
14 and to fund the costs of the studies. The Southeastern  
15 Colorado Water Activity Enterprise's funding of the costs  
16 may be provided partly or wholly in the form of services  
17 directly related to the conduct of the studies.

18 **SEC. 3. SECRETARY AUTHORIZED TO ENTER INTO CON-**  
19 **TRACTS FOR THE USE OF EXCESS STORAGE**  
20 **AND CONVEYANCE CAPACITY OF CERTAIN**  
21 **EAST SLOPE FACILITIES OF THE FRYINGPAN-**  
22 **ARKANSAS PROJECT, COLORADO.**

23 The Act of August 16, 1962 (76 Stat. 389), is  
24 amended by adding at the end the following:

1       “SEC. 8. (a) The Secretary is authorized to enter into  
2 contracts with any agency or entity, private or public, sup-  
3 plying water for municipal and other purposes within the  
4 project boundaries, for the use of excess water storage and  
5 conveyance capacity for nonproject water in certain east  
6 slope facilities, as described in the Preferred Storage Op-  
7 tions Plan Report published September 21, 2000, by the  
8 Southeastern Colorado Water and Storage Needs Assess-  
9 ment Enterprise and Final PSOP Implementation Com-  
10 mittee Report dated April 19, 2001, after consultation  
11 with the Board of Directors of the Southeastern Colorado  
12 Water Activity Enterprise: *Provided, however,* That such  
13 contracts shall not impair or otherwise interfere with—

14           “(1) the project’s authorized purposes,  
15           “(2) the ability of the project contractors to  
16 meet existing Federal repayment obligations,  
17           “(3) the storage allocations and limitations pur-  
18 suant to Contract No. 5–07–70–W0086, as amend-  
19 ed, between the Southeastern Colorado Water Con-  
20 servancy District and the United States, and the al-  
21 location principles adopted by the Southeastern Col-  
22 orado Water Conservancy District on November 29,  
23 1979, and confirmed by the District Court of Pueblo  
24 County in Civil Action No. 40487 by decree dated  
25 December 18, 1979, including any subsequent modi-

1       fifications made by the District that are confirmed by  
2       the District Court,

3               “(4) the yield of the project from its West Slope  
4       and East Slope water rights, or

5               “(5) the capacity in Reclamation project facili-  
6       ties which is needed to satisfy project purposes and  
7       contractual obligations with a term exceeding one  
8       year existing at the time of the execution of a con-  
9       tract under the authority of this subsection.

10       “(b) The term of any contract executed pursuant to  
11       this section shall not exceed the remaining term of Con-  
12       tract No. 5–07–70–W0086, as amended, between the  
13       Southeastern Colorado Water Conservancy District and  
14       the United States. The Secretary shall renew any contract  
15       executed pursuant to this section at the end of the con-  
16       tract term on such conditions as the Secretary finds to  
17       be just and equitable. The term of such contract renewal  
18       shall be for a duration no less than the term granted the  
19       Southeastern Colorado Water Conservancy District under  
20       the contractual arrangement negotiated upon the expira-  
21       tion of Contract No. 5–07–70–W0086.

22       “(c) To the extent water stored under the project’s  
23       winter water storage program spills from Pueblo Reservoir  
24       due to execution of a contract executed pursuant to this  
25       section, it will not be considered impairment or inter-

1 ference under subsection (a)(5) if the holders of such  
2 stored water are compensated by a credit for purchase of  
3 project water to replace such spilled water, such credit to  
4 be financed by a surcharge as described in subsection  
5 (d)(4) imposed on contracts executed pursuant to this sec-  
6 tion.

7 “(d) The Secretary shall not execute a contract pur-  
8 suant to this section with any entity that has not signed  
9 an agreement with the Southeastern Colorado Water Ac-  
10 tivity Enterprise—

11 “(1) agreeing to reimburse an appropriate  
12 amount of the Southeastern Colorado Water Activity  
13 Enterprise’s implementation and development costs,  
14 including such costs reimbursed to the United  
15 States, incurred in determining and making excess  
16 storage or conveyance capacity available for such  
17 storage of nonproject water by municipal water pro-  
18 viders within the project boundaries,

19 “(2) agreeing to cooperate in a flow manage-  
20 ment program designed to maintain target minimum  
21 flows of 100 c.f.s. on the Arkansas River just below  
22 Pueblo Dam, as provided in the Implementation  
23 Committee Report dated April 19, 2001,

24 “(3) agreeing to participate in a long-term  
25 water quality monitoring program as outlined in the

1       Implementation Committee Report dated April 19,  
2       2001, and

3               “(4) agreeing to pay any surcharges determined  
4       appropriate and necessary by the Southeastern Colo-  
5       rado Water Activity Enterprise Board of Directors,  
6       as described in the Preferred Storage Options Plan  
7       Report published September 21, 2000, by the South-  
8       eastern Colorado Water and Storage Needs Assess-  
9       ment Enterprise and the Final PSOP Implemen-  
10       tation Committee Report dated April 19, 2001.

11       All such charges established by the Southeastern Colorado  
12       Water Activity Enterprise shall be paid by the person or  
13       by the agency or entity, private or public, which contracts  
14       for the use of excess capacity, directly to the Southeastern  
15       Colorado Water Activity Enterprise, not to the Secretary,  
16       at such times and in such manner as the Southeastern  
17       Colorado Water Activity Enterprise may direct.

18               “SEC. 9. (a) The Secretary is authorized to enter into  
19       temporary contracts with any agency or entity, private or  
20       public, operating a water bank established pursuant to  
21       Colorado law, for use of facilities of the Fryingpan-Arkan-  
22       sas Project for the impounding, storage, and carriage of  
23       nonproject water for irrigation, domestic, municipal, in-  
24       dustrial, and other beneficial purposes.

1       “(b) No contract executed under the authority of sub-  
2 section (a) shall impair or otherwise interfere with—

3           “(1) the project’s authorized purposes,  
4           “(2) the ability of the project contractors to  
5 meet existing Federal repayment obligations,  
6           “(3) the storage allocations and limitations pur-  
7 suant to contract No. 5–07–70–W0086, as amended,  
8 between the Southeastern Colorado Water Conser-  
9 vancy District and the United States, and the alloca-  
10 tion principles adopted by the Southeastern Colorado  
11 Water Conservancy District on November 29, 1979,  
12 and confirmed by the District Court of Pueblo Coun-  
13 ty in Civil Action No. 40487 by decree dated Decem-  
14 ber 18, 1979, including any subsequent modifica-  
15 tions made by the District that are confirmed by the  
16 District Court,

17           “(4) the yield of the project from its West Slope  
18 and East Slope water rights, or

19           “(5) the capacity in Reclamation project facili-  
20 ties which is needed to satisfy project purposes and  
21 contractual obligations existing at the time of the  
22 execution of a contract under the authority of this  
23 subsection.

24       “(c) The Secretary shall not execute a contract pur-  
25 suant to this section with any entity that has not signed

1 an agreement with the Southeastern Colorado Water Ac-  
2 tivity Enterprise, unless the entity requesting the contract  
3 is the Southeastern Colorado Water Activity Enterprise.

4       “SEC. 10. All revenue generated pursuant to con-  
5 tracts executed under sections 8, 9, 13, and 14, except  
6 for those revenues generated pursuant to the surcharges  
7 described in section 8(d)(4), shall be credited first to a  
8 proportionate share of annual operations and maintenance  
9 costs and then to repayment of the project in the year  
10 the contract revenue is generated until such time as the  
11 costs of the project have been repaid: *Provided, however,*  
12 That the revenues so credited shall not be applied so as  
13 to reduce the amount of the current annual payments due  
14 to the Secretary from the project contractors or any other  
15 parties that are responsible for paying outstanding reim-  
16 bursable construction costs. Once the costs of the project  
17 have been repaid, all revenue generated pursuant to con-  
18 tracts executed under sections 8, 9, 13, and 14 except for  
19 those revenues generated pursuant to the surcharges de-  
20 scribed in sections 8(d)(4), shall be credited first to annual  
21 operations and maintenance costs and then to the Rec-  
22 lamation fund, to be used exclusively for the purpose of  
23 financing extraordinary operations and maintenance, re-  
24 habilitation, and replacements of project facilities.

1       “SEC. 11. Nonproject water diverted, stored, im-  
2 pounded, pumped, or conveyed under a contract entered  
3 into pursuant to sections 8, 9, 13, and 14 shall be exempt  
4 from any acreage limitation provisions of the Act of June  
5 17, 1902 (32 Stat. 388), and Acts amendatory thereof and  
6 supplementary thereto including, but not limited to, the  
7 Reclamation Reform Act of 1982 (96 Stat. 1263; 43  
8 U.S.C. 390aa–390zz–1) and from any farm unit size limi-  
9 tations established pursuant to section 4(c)(5) of the Act  
10 of August 11, 1939 (Chapter 717; 16 U.S.C. 590z–  
11 2(c)(5)): *Provided, however,* That in the event such non-  
12 project water is commingled with project water in Rec-  
13 lamation project facilities, and the resulting commingled  
14 supply is used to irrigate lands in a project contractor’s  
15 service area, then such commingled water shall bear the  
16 same acreage limitations or farm unit size limitations as  
17 the project water unless—

18           “(1) contract provisions are in effect which pro-  
19 vide that project or nonproject water, or both, will  
20 be accounted for on a quantitative basis, that project  
21 water will not be delivered to ineligible land, and  
22 that appropriate charges, as determined by the Sec-  
23 retary, will be paid for the project water, and

1           “(2) the charges for the use of the excess ca-  
2        pacity include an appropriate interest component, as  
3        determined by the Secretary.

4           “SEC. 12. Excess water storage capacity in certain  
5        east slope facilities to divert, store, impound, pump, or  
6        convey nonproject water made available under contracts  
7        executed pursuant to the provisions of section 8 and excess  
8        water storage capacity for the impounding, storage, and  
9        carriage of nonproject water made available under con-  
10       tracts executed pursuant to the provisions of sections 13  
11        and 14 shall not be utilized so as to increase diversion  
12        of nonproject water from the natural basins of the Colo-  
13        rado or Arkansas Rivers within Colorado into another  
14        river basin for delivery or storage unless—

15           “(1) the diversion is the subject of a decree en-  
16        tered prior to the effective date of this section for  
17        which no new infrastructure is necessary to divert  
18        the water out of the natural basin, or

19           “(2) the diversion is the subject of an agree-  
20        ment in existence on the date of the enactment of  
21        this section, contemplating additional diversions di-  
22        verted through or stored in the facilities authorized  
23        by this Act, between the beneficiary of such  
24        transbasin diversion and either the water conserva-  
25        tion district, as defined under Colorado law, from

1       within whose boundaries the waters are proposed for  
2       diversion or, in the absence thereof, a water conserv-  
3       ancy district, as defined under Colorado law, that  
4       is a project contractor and from within whose  
5       boundaries the waters are proposed for diversion, or

6               “(3) the diversion is the subject of an intergov-  
7       ernmental agreement or other contractual arrange-  
8       ment executed after the date of the enactment of  
9       this section, between the beneficiary of such  
10      transbasin diversion and either the water conserva-  
11      tion district, as defined under Colorado law, from  
12      within whose boundaries the waters are proposed for  
13      diversion or, in the absence thereof, a water conserv-  
14      ancy district, as defined under Colorado law, that  
15      is a project contractor and from within whose  
16      boundaries the waters are proposed for diversion, or

17               “(4) the beneficiary of such transbasin diver-  
18      sion provides compensatory storage or alternate  
19      water supply in an amount equal to the quantity di-  
20      verted out of the basin for the benefit of either the  
21      water conservation district, as defined under Colo-  
22      rado law, from within whose boundaries the waters  
23      are proposed for diversion or, in the absence thereof,  
24      a water conservancy district, as defined under Colo-  
25      rado law, that is a project contractor and from with-

1       in whose boundaries the waters are proposed for di-  
2       version.

3       “SEC. 13. (a) The Secretary of the Interior may enter  
4       into contracts with the City of Aurora, Colorado, or an  
5       enterprise of the City, for a term not to exceed the remain-  
6       ing term of Contract No. 5–07–70–W0086, as amended,  
7       between the Southeastern Colorado Water Conservancy  
8       District and the United States, for use of storage or car-  
9       rying capacity excess of the requirements of the  
10      Fryingpan-Arkansas Project, Colorado, for the impound-  
11      ing, storage, and carriage of nonproject water for domes-  
12      tic, municipal, industrial, and other beneficial purposes:  
13      *Provided*, That, as to Arkansas River water, the City or  
14      an enterprise of the City has complied with section 12 by  
15      execution of an intergovernmental agreement between the  
16      City of Aurora, Colorado, or an enterprise of the City, with  
17      the Southeastern Colorado Water Conservancy District.

18       “(b) The Secretary of the Interior may enter or renew  
19      contracts with the City of Aurora, Colorado, or an enter-  
20      prise of the City, following the remaining term of Contract  
21      No. 5–07–70–W0086, as amended, between the South-  
22      eastern Colorado Water Conservancy District and the  
23      United States, for individual terms not to exceed 25 years,  
24      for use of storage or carrying capacity excess of the re-  
25      quirements of the Fryingpan-Arkansas Project, Colorado,

1 for the impounding, storage, and carriage of nonproject  
2 water for domestic, municipal, industrial, and other bene-  
3 ficial purposes: *Provided*, That the term of any such con-  
4 tracts entered shall not be for a duration that exceeds the  
5 term of any contract entered with the Southeastern Colo-  
6 rado Water Conservancy District upon the expiration of  
7 Contract No. 5–07–70–W0086 or thereafter, and *Provided*  
8 *further*, That, as to Arkansas River Water, the City or  
9 an enterprise of the City has complied with section 12 by  
10 execution of an intergovernmental agreement between the  
11 City of Aurora, Colorado, or an enterprise of the City, with  
12 the Southeastern Colorado Water Conservancy District, in  
13 addition to the intergovernmental agreement provided in  
14 subsection (a).

15       “(c) No contract executed under the authority of sub-  
16 section (a) or (b) shall impair or otherwise interfere  
17 with—

18           “(1) the project’s authorized purposes,  
19           “(2) the ability of the project contractors to  
20        meet existing Federal repayment obligations,  
21           “(3) the storage allocations and limitations pur-  
22        suant to Contract No. 5–07–70–W0086, as amend-  
23        ed, between the Southeastern Colorado Water Con-  
24        servancy District and the United States, and the al-  
25        location principles adopted by the Southeastern Col-

1 orado Water Conservancy District on November 29,  
2 1979, and confirmed by the District Court of Pueblo  
3 County in Civil Action No. 40487 by decree dated  
4 December 18, 1979, including any subsequent modi-  
5 fications made by the District that are confirmed by  
6 the District Court,

7 “(4) the yield of the project from its West Slope  
8 and East Slope water rights,

9 “(5) the capacity in Reclamation project facili-  
10 ties which is needed to satisfy project purposes and  
11 contractual obligations existing at the time of the  
12 execution of a contract under the authority of this  
13 subsection, or

14 “(6) the ability of qualified entities located  
15 within the project service boundaries to enter into  
16 contracts for the use of excess water storage and  
17 conveyance capacity pursuant to section 8 or any  
18 other authority under Reclamation law.

19 “SEC. 14. (a) The Secretary of the Interior may enter  
20 into contracts with the Pueblo West Metropolitan District,  
21 Colorado, or an enterprise of the District, supplying water  
22 for municipal and other purposes within the project  
23 boundaries, for the use of excess water storage and con-  
24 veyance capacity for nonproject water in certain east slope  
25 facilities for use of storage or carrying capacity excess of

1 the requirements of the Fryingpan-Arkansas Project, Col-  
2 orado, for the impounding, storage, and carriage of non-  
3 project water for domestic, municipal, industrial, and  
4 other beneficial purposes: *Provided, however,* That such  
5 contracts shall not impair or otherwise interfere with—

6           “(1) the project’s authorized purposes,

7           “(2) the ability of the project contractors to  
8 meet existing Federal repayment obligations,

9           “(3) the storage allocations and limitations pur-  
10 suant to Contract No. 5–07–70–W0086, as amend-  
11 ed, between the Southeastern Colorado Water Con-  
12 servancy District and the United States, and the al-  
13 location principles adopted by the Southeastern Col-  
14 orado Water Conservancy District on November 29,  
15 1979, and confirmed by the District Court of Pueblo  
16 County in Civil Action No. 40487 by decree dated  
17 December 18, 1979, including any subsequent modi-  
18 fications made by the District that are confirmed by  
19 the District Court,

20           “(4) the yield of the project from its West Slope  
21 and East Slope water rights, or

22           “(5) the capacity in Reclamation project facili-  
23 ties which is needed to satisfy project purposes and  
24 contractual obligations with a term exceeding one  
25 year, not including any contract executed pursuant

1 to the authority in section 13, existing at the time  
2 of the execution of a contract under the authority of  
3 this subsection, or

4 “(6) the ability of qualified entities located  
5 within the project service boundaries to enter into  
6 contracts for the use of excess water storage and  
7 conveyance capacity pursuant to section 8.

8 “(b) The term of any contract executed pursuant to  
9 this section shall not exceed the remaining term of Con-  
10 tract No. 5–07–70–W0086, as amended, between the  
11 Southeastern Colorado Water Conservancy District and  
12 the United States. The Secretary may enter or renew con-  
13 tracts with the District, or an enterprise of the District,  
14 pursuant to this section, following the remaining term of  
15 Contract No. 5–07–70–W0086, as amended, between the  
16 Southeastern Colorado Water Conservancy District and  
17 the United States, for individual terms not to exceed 40  
18 years: *Provided*, That the term of any such contracts en-  
19 tered shall not be for a duration that exceeds the term  
20 of any contract entered with the Southeastern Colorado  
21 Water Conservancy District upon the expiration of Con-  
22 tract No. 5–07–70–W0086 or thereafter.

23 “(c) To the extent water stored under the project’s  
24 winter water storage program spills from Pueblo Reservoir  
25 due to execution of a contract executed pursuant to this

1 section, it will not be considered impairment or inter-  
2 ference under subsection (a)(5) if the holders of such  
3 stored water are compensated by a credit for purchase of  
4 project water to replace such spilled water, such credit to  
5 be financed by a surcharge as described in subsection  
6 (d)(4) imposed on contracts executed pursuant to this sec-  
7 tion.

8       “(d) The Secretary shall not execute a contract pur-  
9 suant to this section with Pueblo West Metropolitan Dis-  
10 trict, or an enterprise of the District, until that entity has  
11 signed an agreement with the Southeastern Colorado  
12 Water Activity Enterprise—

13       “(1) agreeing to reimburse an appropriate  
14 amount of the Southeastern Colorado Water Activity  
15 Enterprise’s implementation and development costs,  
16 including such costs reimbursed to the United  
17 States, incurred in determining and making excess  
18 storage or conveyance capacity available for such  
19 storage of nonproject water by municipal water pro-  
20 viders within the project boundaries,

21       “(2) agreeing to cooperate in a flow manage-  
22 ment program designed to maintain target minimum  
23 flows of 100 c.f.s. on the Arkansas River just below  
24 Pueblo Dam, as provided in the Implementation  
25 Committee Report dated April 19, 2001,

1           “(3) agreeing to participate in a long-term  
2       water quality monitoring program as outlined in the  
3       Implementation Committee Report dated April 19,  
4       2001, and

5           “(4) agreeing to pay any surcharges determined  
6       appropriate and necessary by the Southeastern Colo-  
7       rado Water Activity Enterprise Board of Directors,  
8       as described in the Preferred Storage Options Plan  
9       Report published September 21, 2000, by the South-  
10       eastern Colorado Water and Storage Needs Assess-  
11       ment Enterprise and the Final PSOP Implemen-  
12       tation Committee Report dated April 19, 2001.

13       All such charges established by the Southeastern Colorado  
14       Water Activity Enterprise shall be paid by the person or  
15       by the agency or entity, private or public, which contracts  
16       for the use of excess capacity, directly to the Southeastern  
17       Colorado Water Activity Enterprise, not to the Secretary,  
18       at such times and in such manner as the Southeastern  
19       Colorado Water Activity Enterprise may direct.”.

○