

108TH CONGRESS
2D SESSION

H. R. 4691

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2004

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

A BILL

To authorize the Secretary of the Interior to engage in a feasibility study relating to long-term water needs for the area served by the 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 The purposes of this Act are as follows:

5 (1) To authorize the Secretary of the Interior
6 (hereinafter referred to as “the Secretary”) to en-
7 gage in a feasibility study relating to present and fu-
8 ture water supply and related storage requirements

1 of the area served by the Fryingpan-Arkansas
2 Project, Colorado.

3 (2) To amend the Act of August 16, 1962, as
4 amended (76 Stat. 389 et seq.), to authorize the
5 Secretary to enter into contracts for the use of ex-
6 cess storage and conveyance capacity of the
7 Fryingpan-Arkansas Project, Colorado, for non-
8 project water for municipal, water banking, and
9 other beneficial purposes.

10 **SEC. 2. FEASIBILITY STUDY.**

11 (a) AUTHORIZED.—Pursuant to Federal reclamation
12 law (the Act of June 7, 1902, and all Acts amendatory
13 thereof or supplementary thereto), the Secretary, through
14 the Bureau of Reclamation, is authorized to conduct a fea-
15 sibility study to determine the most feasible method of
16 meeting the present and future water supply and related
17 storage requirements within the area served by the
18 Fryingpan-Arkansas Project, including the potential en-
19 largement of Fryingpan-Arkansas facilities. In conducting
20 such study, the Secretary shall take into consideration the
21 Preferred Storage Options Plan Report published Sep-
22 tember 21, 2000, by the Southeastern Colorado Water and
23 Storage Needs Assessment Enterprise and Final PSOP
24 Implementation Committee Report dated April 19, 2001
25 (hereinafter referred to as the “PSOP Reports”), the

1 intergovernmental agreement dated May 27, 2004, among
2 the City of Pueblo, the City of Aurora, the Southeastern
3 Colorado Water Conservancy District, the City of Foun-
4 tain, the City of Colorado Springs, and the Board of
5 Water Works of Pueblo, Colorado, and the need to ensure
6 compliance with the Arkansas River Compact as executed
7 by the States of Colorado and Kansas on December 14,
8 1948.

9 (b) FUNDING.—Before funds are expended for the
10 study authorized by this section, the Southeastern Colo-
11 rado Water Activity Enterprise shall first agree to partici-
12 pate in the feasibility study and to fund, at a minimum,
13 50 percent of the costs of such study. The Southeastern
14 Colorado Water Activity Enterprise’s share of the costs
15 may be provided partly or wholly in the form of services
16 directly related to the conduct of the study, as determined
17 by the Secretary. Costs incurred prior to the enactment
18 of this Act to develop the PSOP Reports may be credited
19 toward such Enterprise’s share of the costs of the feasi-
20 bility study, as determined by the Secretary.

21 (c) STUDY TO BE SUBMITTED.—The Secretary shall
22 submit the feasibility study authorized by this section to
23 the President and the President Pro Tempore of the Sen-
24 ate and the Speaker of the House of Representatives.

1 (d) FURTHER AUTHORIZATION REQUIRED FOR CER-
 2 TAIN EXPENDITURES.—No funds shall be expended for
 3 the construction of enlargements, or any other alternative
 4 identified in the feasibility study authorized by this section
 5 for which authority does not currently exist, without fur-
 6 ther authorization by Congress.

7 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
 8 authorized to be appropriated \$4,000,000 to conduct the
 9 feasibility study authorized by this section.

10 **SEC. 3. SECRETARY AUTHORIZED TO ENTER INTO CON-**
 11 **TRACTS FOR THE USE OF EXCESS STORAGE**
 12 **AND CONVEYANCE CAPACITY OF THE**
 13 **FRYINGPAN-ARKANSAS PROJECT, COLO-**
 14 **RADO.**

15 The Act of August 16, 1962 (76 Stat. 389 et seq.,
 16 as amended), is amended by adding at the end the fol-
 17 lowing new sections:

18 “SEC. 8. (a)(1) Except as provided in section 9, and
 19 subject to the provisions of this Act, including, but not
 20 limited to section 5, and all other applicable Federal stat-
 21 utes, the Secretary is authorized to enter into contracts
 22 with any entity, private or public, including those oper-
 23 ating or participating in a water bank established pursu-
 24 ant to Colorado law (hereinafter referred to as an “enti-
 25 ty”), for the use of excess capacity in the Fryingpan-Ar-

1 kansas Project for the purpose of diverting, storing, im-
2 pounding, pumping, exchanging, or conveying nonproject
3 water for irrigation, domestic, municipal and industrial,
4 or any other beneficial purpose.

5 “(2) In entering into such contracts, the Secretary
6 shall take into consideration 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 (hereinafter referred
11 to as the “PSOP Reports”), the intergovernmental agree-
12 ment dated May 27, 2004, among the City of Pueblo, the
13 City of Aurora, the Southeastern Colorado Water Conser-
14 vancy District, the City of Fountain, the City of Colorado
15 Springs, and the Board of Water Works of Pueblo, Colo-
16 rado, and the need to ensure compliance with the Arkan-
17 sas River Compact as executed by the States of Colorado
18 and Kansas on December 14, 1948.

19 “(b) The Secretary is authorized to enter into con-
20 tracts pursuant to this section provided that—

21 “(1) such contracts shall not impair or other-
22 wise interfere with—

23 “(A) the Fryingpan-Arkansas Project’s au-
24 thorized purposes;

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

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

10 “(D) the storage allocations and limita-
11 tions pursuant to Contract No. 5-07-70-
12 W0086, as amended, renewed or superseded,
13 between the Southeastern Colorado Water Con-
14 servancy District and the United States, and
15 the allocation principles adopted by the South-
16 eastern Colorado Water Conservancy District
17 on November 29, 1979, and confirmed by the
18 District Court of Pueblo County in Civil Action
19 No. 40487 by decree dated December 18, 1979,
20 including any subsequent modifications made by
21 the District that are confirmed by the District
22 Court;

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

1 “(F) the ability of individuals or entities
2 located within the natural basin of the Arkan-
3 sas River within Colorado to enter into con-
4 tracts for the use of excess water storage and
5 conveyance capacity pursuant to section 8 of
6 this Act or any other authority under Reclama-
7 tion law.

8 “(2) To the extent such contracts are with an
9 entity that does not have an allocation of Project
10 carry over storage space pursuant to the allocation
11 principles adopted by the Southeastern Colorado
12 Water Conservancy District on November 29, 1979,
13 and confirmed by the District Court of Pueblo Coun-
14 ty in Civil Action No. 40487 by decree dated Decem-
15 ber 18, 1979, including any subsequent modifica-
16 tions made by the District that are confirmed by the
17 District Court (‘nonqualified’ entities); the contracts
18 shall not impair or otherwise interfere with the abil-
19 ity of qualified entities located within the natural
20 basin of the Arkansas River within Colorado to enter
21 into contracts for the use of excess water storage and
22 conveyance capacity pursuant to this section 8. Ex-
23 cept as provided in section 9, before entering into
24 such a contract with an individual or entity that will
25 use water stored or conveyed under such contact out-

1 side of the natural basin of the Arkansas River within
2 Colorado, the Secretary shall provide the South-
3 eastern Colorado Water Conservancy District a first
4 right of refusal, exercisable within 90 days, to enter
5 into contracts for the use of excess water storage and
6 conveyance capacity made available to the individual
7 or entity that will use water stored or conveyed under
8 such contract outside of the natural basin of the Ar-
9 kansas River within Colorado. In no event shall the
10 Southeastern Colorado Water Conservancy District
11 enter into a subcontract with an individual or entity
12 that will use water stored or conveyed under such
13 contract outside of the natural basin of the Arkansas
14 River.

15 “(3) Nothing in sections 8 through 12 of this
16 Act shall—

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

19 “(B) increase diversions of nonproject
20 water from the natural basin of the Colorado
21 River within Colorado into another river basin
22 for delivery or storage, except as provided in
23 section 12 of this Act;

24 “(C) affect in any way contracts, or the re-
25 newal of contracts, entered into pursuant to au-

1 thority other than section 8 of this Act, includ-
2 ing, but not limited to, Contract Nos.
3 00XX6C0049 and 009D6C0048 between the
4 Board of Water Works of Pueblo, Colorado,
5 and the United States, or the renewal of Con-
6 tract Nos. 00XX6C0049 and 009D60048; Con-
7 tract No. 6-07-70-W0090 (formerly Agree-
8 ment No. 14-06-700-6019) between the Cities
9 of Aurora and Colorado Springs and the United
10 States; Contract No. 7-07-7010056 between
11 Twin Lakes Reservoir and Canal Company and
12 the United States; Contract No. 9-07-70-
13 W0099 between the United States and High
14 Line Canal Company; and Contract No.
15 039E6C0117 between Board of Water Works of
16 Pueblo and the United States; or

17 “(D) affect the interpretation or implemen-
18 tation of existing law or legislation for any
19 other congressionally authorized water project.

20 “(c) Subject to the provisions of subsection (b), the
21 Secretary may enter into contracts authorized by this sec-
22 tion upon such terms and conditions as the Secretary may
23 determine to be just and equitable. The term of any such
24 contract shall be for such period, not to exceed 40 years,
25 as the Secretary deems appropriate. Upon expiration, such

1 contracts may be renewed upon such terms and conditions
2 as may be mutually agreeable to the Secretary and the
3 contractor for the use of excess capacity.

4 “(d) The Secretary shall establish such charges, sub-
5 ject to subsection (e), for the use of excess capacity as
6 the Secretary deems appropriate. Such charges shall con-
7 sist of the following components:

8 “(1) One component shall reflect either—

9 “(A) construction costs based on either the
10 original cost, the estimated current costs, or
11 other appropriate measure of costs, including
12 interest as provided in paragraph (3) of this
13 subsection, of constructing the Fryingpan-Ar-
14 kansas Project facilities involved; or

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

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

20 “(3) Except in the case of a market based rate,
21 when excess capacity in Fryingpan-Arkansas Project
22 facilities will be used to divert, store, impound,
23 pump, or convey nonproject water for municipal and
24 industrial purposes, an interest component using the

1 rate determined by the Secretary in accordance with
2 the Water Supply Act of 1958 (43 U.S.C. 390b).

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

9 “(f) Prior to the execution of any contracts under this
10 section, the Secretary shall execute an agreement with the
11 Southeastern Colorado Water Activity Enterprise to pro-
12 vide guidelines for the terms to be contained in the con-
13 tracts executed pursuant to this section. Such guidelines
14 shall appropriately address impacts associated with water
15 operations under the contracts, surcharges established by
16 the Enterprise, reimbursement of costs incurred, and
17 water quality monitoring, as identified by the South-
18 eastern Colorado Water Activity Enterprise and the Sec-
19 retary.

20 “(g) Any contract executed under this section shall
21 contain a provision pursuant to which the contracting enti-
22 ty agrees to cooperate in a voluntary flow management
23 program designed to maintain a target minimum flow of
24 100 cfs just below Pueblo Dam.

1 “SEC. 9. (a) The Secretary of the Interior may enter
2 into new and renewal contracts with the City of Aurora,
3 Colorado, or an enterprise of the City, for a term not to
4 exceed the term referenced in section 8(c), for use of stor-
5 age or carrying capacity excess of the requirements of the
6 Fryingpan-Arkansas Project, Colorado, for the purpose of
7 impounding, storage, and carriage of nonproject water for
8 domestic, municipal, industrial and other beneficial pur-
9 poses. Such contracts shall be—

10 “(1) limited to the storage and carriage of wa-
11 ters appropriated from the Arkansas River held by
12 the City of Aurora, Colorado, or an enterprise of the
13 City that—

14 “(A) are decreed water rights and owned
15 by the City of Aurora, Colorado, or an enter-
16 prise of the City as of December 7, 2001;

17 “(B) are water rights described in a Colo-
18 rado Water Court water rights application
19 pending as of December 7, 2001, or an amend-
20 ment or refiling does not increase the draft of
21 water from the Arkansas Basin that would have
22 been available to the City of Aurora, Colorado,
23 or an enterprise of the City under the original
24 application;

1 “(C) result from water lease agreements
2 existing as of December 7, 2001, including any
3 renewal or replacement contact for no more
4 than the existing amount of water;

5 “(D) result from interruptible supply
6 agreements or water bank transactions author-
7 ized under Colorado law, and operating no more
8 than five calendar years during any period of
9 ten consecutive calendar years; or

10 “(E) is traded to, or exchanged with, the
11 City of Aurora, Colorado, or an enterprise of
12 the City for one of the foregoing items (A)
13 through (C) as long as such trade or exchange
14 does not increase the draft of water from the
15 Arkansas River Basin that would have been
16 available to the City of Aurora, Colorado, or an
17 enterprise of the City under subparagraphs (A)
18 through (C);

19 “(2) are for water obtained by the City of Au-
20 rora, Colorado, or an enterprise of the City from the
21 Colorado River consistent with section 12;

22 “(3) contain a provision pursuant to which the
23 City of Aurora agrees to cooperate in a voluntary
24 flow management program designed to maintain a

1 target minimum flow of 100 cfs just below Pueblo
2 dam;

3 “(4) include a provision whereby the City of
4 Aurora, Colorado, or an enterprise of the City,
5 agrees to participate in a long-term water quality
6 monitoring and management program as outlined in
7 the Implementation Committee Report dated April
8 19, 2001; and

9 “(5) take into consideration the need to ensure
10 compliance with the Arkansas River Compact as exe-
11 cuted by the States of Colorado and Kansas on De-
12 cember 14, 1948.

13 “(b) Prior to the execution of any renewal contact
14 with the City of Aurora, the Secretary of the Interior shall
15 execute an Agreement with the Southeastern Colorado
16 Water Activity Enterprise, which agreement shall provide
17 guidelines for the terms to be contained in a renewal con-
18 tact executed pursuant to this section. Such guidelines
19 shall appropriately address those impacts associated with
20 water operations under the contracts, such as storage and
21 convenience charges, surcharges established by the Enter-
22 prise, reimbursement of costs incurred, and water quality
23 monitoring, as identified by the Southeastern Colorado
24 Enterprise and the Secretary.

1 “(c) Any contract executed under the authority of
2 subsection (a) or (b) shall be in compliance with the provi-
3 sions of section 8(b)(1).

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

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

10 “(1) That portion of the charges established
11 pursuant to section 8(d) and 9(d) which is attrib-
12 utable to the component which reflects interest shall
13 be credited as a general credit to the Reclamation
14 Fund.

15 “(2) That portion of the charges established
16 pursuant to section 8(d)(2) and the comparable pro-
17 vision of 9(d) shall be credited against the appro-
18 priate project operation, maintenance, and replace-
19 ment costs.

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

23 “(A) If reimbursable Federal construction
24 costs are outstanding for the Fryingpan-Arkan-
25 sas project at the time revenues are received,

1 then all remaining revenues shall be covered
2 into the Reclamation Fund and credited to the
3 Fryingpan-Arkansas Project. All remaining rev-
4 enues shall be credited against such reimburs-
5 able costs in a manner the Secretary deems to
6 be just and equitable as to the reimbursable
7 purposes which are involved. The revenues so
8 credited shall not be applied so as to reduce the
9 amount of the current annual payments due the
10 Secretary from the project contractors or any
11 other parties responsible for paying outstanding
12 reimbursable project construction costs unless
13 and until the party's current annual payment
14 due exceeds the remaining reimbursable con-
15 struction costs payable by the party.

16 “(B) If no reimbursable Federal
17 Fryingpan-Arkansas Project construction costs
18 are outstanding at the time revenues are re-
19 ceived, then all remaining revenues shall be
20 credited to a separate fund, established in the
21 Treasury of the United States, to be known as
22 the Fryingpan-Arkansas Project Fund, which
23 shall remain available, without appropriation,
24 for new federally funded construction on the
25 project, including, but not limited to, additions,

1 rehabilitations and betterments, safety of dams
2 modifications, and major capital replacements,
3 applied against the Federal reimbursable costs,
4 if any, of such new construction in such manner
5 as the Secretary deems just and equitable as to
6 the Federal reimbursable project purposes in-
7 volved. No expenditures may be made from the
8 Fryingpan-Arkansas Project Fund without the
9 express written consent of the Secretary and
10 the Enterprise.

11 “(b) DIRECT PAYMENTS.—Payments generated pur-
12 suant to contract terms established under section 8(f) and
13 the comparable provisions of 9(b) shall be made directly
14 by the contractors to the Southeastern Colorado Water
15 Activity Enterprise.

16 “SEC. 11. (a) Nonproject water diverted, stored, im-
17 pounded, pumped, exchanged, or conveyed under a con-
18 tract entered into pursuant to section 8 or 9 shall be ex-
19 empt from any acreage limitation provisions of the Act
20 of June 17, 1902 (32 Stat. 388), and Acts amendatory
21 thereof and supplementary thereto including, but not lim-
22 ited to, the Warren Act of 1911, the Reclamation Reform
23 Act of 1982 (96 Stat. 1263; 43 U.S.C. 390aa et seq.) and
24 from any farm unit size limitations established pursuant

1 to section 4(c)(5) of the Act of August 11, 1939 (Chapter
2 717; 16 U.S.C. 590z-2(c)(5)).

3 “(b) Notwithstanding subsection (a), if such non-
4 project water is commingled with project water in Rec-
5 lamation project facilities, and the resulting commingled
6 supply is used to irrigate lands in a project contractor’s
7 service area, then such commingled water shall bear the
8 same acreage limitations or farm unit size limitations as
9 the project water unless—

10 “(1) contract provisions are in effect which pro-
11 vide that project or nonproject water, or both, will
12 be accounted for on a quantitative basis, that project
13 water will not be delivered to ineligible land, and
14 that appropriate charges, as determined by the Sec-
15 retary, will be paid for the project water; and

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

19 “SEC. 12. (a) Excess water storage capacity of the
20 Fryingpan-Arkansas project to divert, store, impound,
21 pump, or convey nonproject water made available under
22 contracts executed pursuant to the provisions of sections
23 8 and 9 shall not be utilized so as to increase diversion
24 of nonproject water from the natural basin of the Colorado

1 River within Colorado into another river basin for delivery
2 or storage unless—

3 “(1) the diversion is the subject of a decree en-
4 tered prior to the effective date of this section for
5 which no new infrastructure or legal approvals are
6 necessary to divert the water out of the natural
7 basin;

8 “(2) the diversion is the subject of an agree-
9 ment in existence on the date of the enactment of
10 this section, contemplating additional diversions di-
11 verted through or stored in the facilities authorized
12 by this Act, between the beneficiary of such
13 transbasin diversion and the water conservation dis-
14 trict, as defined under Colorado law, from within
15 whose boundaries the waters are proposed for diver-
16 sion;

17 “(3) the diversion is the subject of an intergov-
18 ernmental agreement or other contractual arrange-
19 ment executed after the date of the enactment of
20 this section, between the beneficiary of such
21 transbasin diversion and the water conservation dis-
22 trict, as defined under Colorado law, from within
23 whose boundaries the waters are proposed for diver-
24 sion; or

1 “(4) the beneficiary of such transbasin diver-
2 sion provides compensatory storage or alternate
3 water supply in an amount equal to the quantity di-
4 verted out of the basin for the benefit of the water
5 conservation district, as defined under Colorado law,
6 from within whose boundaries the waters are pro-
7 posed for diversion.

8 “(b) Prior to executing any agreement, or arrange-
9 ment or agreement for provision of compensatory storage
10 or alternative water supply, that allows for increased di-
11 versions of nonproject water as described in subsection
12 (a), the parties to such agreements or arrangements shall
13 submit the agreement or arrangement to the Secretary,
14 who, within 30 days, shall submit such agreement or ar-
15 rangement to the President Pro Tempore of the Senate
16 and the Speaker of the House of Representatives for a
17 period of not less than 60 days.

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

○