

108TH CONGRESS  
2D SESSION

# H. R. 5373

To authorize the Secretary of the Interior to enter into contracts for the use of excess storage and conveyance capacity of the Fryingpan-Arkansas Project, Colorado, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2004

Mr. BEAUPREZ (for himself 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 enter into contracts for the use of excess storage and conveyance capacity of 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. FEASIBILITY STUDY.**

4 (a) AUTHORIZED.—Pursuant to Federal reclamation  
5 law (the Act of June 7, 1902, and all Acts amendatory  
6 thereof or supplementary thereto), the Secretary of the In-  
7 terior is authorized to conduct a feasibility study to deter-  
8 mine the most feasible method of meeting the present and

1 future water supply and related storage requirements  
2 within the area served by the Fryingpan-Arkansas Project,  
3 including the potential enlargement of Fryingpan-Arkan-  
4 sas facilities. In conducting such study, the Secretary shall  
5 take into consideration the Preferred Storage Options  
6 Plan Report published September 21, 2000, by the South-  
7 eastern Colorado Water and Storage Needs Assessment  
8 Enterprise and Final PSOP Implementation Committee  
9 Report dated April 19, 2001 (hereinafter referred to as  
10 the “PSOP Reports”), the intergovernmental agreement  
11 dated May 27, 2004 among the City of Pueblo, the City  
12 of Aurora, the Southeastern Colorado Water Conservancy  
13 District, the City of Fountain, the City of Colorado  
14 Springs, the Board of Water Works of Pueblo, Colorado  
15 (hereinafter referred to as the “Regional IGA”), and the  
16 need to ensure compliance with the Arkansas River Com-  
17 pact as executed by the states of Colorado and Kansas  
18 on December 14, 1948 (hereinafter referred to as the “Ar-  
19 kansas River Compact”).

20 (b) FUNDING.—Before funds are expended for the  
21 study authorized by this section, the Southeastern Colo-  
22 rado Water Activity Enterprise shall first agree to partici-  
23 pate in the feasibility study and to fund, at a minimum,  
24 50 percent of the costs of such study. The Southeastern  
25 Colorado Water Activity Enterprise’s share of the costs

1 may be provided partly or wholly in the form of services  
2 directly related to the conduct of the study, as determined  
3 by the Secretary. Costs incurred prior to the enactment  
4 of this Act to develop the PSOP Reports may be credited  
5 toward such Enterprise's share of the costs of the feasi-  
6 bility study, as determined by the Secretary.

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

11 (d) FURTHER AUTHORIZATION REQUIRED FOR CER-  
12 TAIN EXPENDITURES.—No funds shall be expended for  
13 the construction of enlargements, or any other alternative  
14 identified in the feasibility study authorized by this section  
15 for which authority does not currently exist, without fur-  
16 ther authorization by Congress.

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

1 **SEC. 2. SECRETARY AUTHORIZED TO ENTER INTO CON-**  
2 **TRACTS FOR THE USE OF EXCESS STORAGE**  
3 **AND CONVEYANCE CAPACITY OF THE**  
4 **FRYINGPAN-ARKANSAS PROJECT, COLO-**  
5 **RADO.**

6 The Act of August 16, 1962, as amended, (76 Stat.  
7 389 et seq., as amended), is amended further by adding  
8 at the end the following new sections:

9 “SEC. 8. (a)(1) Except as provided in Section 9, and  
10 subject to the provisions of this Act and all other applica-  
11 ble Federal statutes, the Secretary is authorized to enter  
12 into contracts with any entity, private or public, (herein-  
13 after referred to as ‘entity’), for the use of excess capacity  
14 in the Fryingpan-Arkansas Project for the purpose of di-  
15 verting, storing, impounding, pumping, exchanging, or  
16 conveying nonproject water for irrigation, domestic, mu-  
17 nicipal and industrial, or any other beneficial purpose.

18 “(2) In entering into such contracts, the Secretary  
19 shall take into consideration the PSOP Reports, the Re-  
20 gional IGA and the need to ensure compliance with the  
21 Arkansas River Compact.

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

24 “(1) to the extent such contracts are with an  
25 entity that does not have an allocation of Project  
26 carry over storage space pursuant to the allocation

1 principles adopted by the Southeastern Colorado  
2 Water Conservancy District on November 29, 1979,  
3 and confirmed by the District Court of Pueblo Coun-  
4 ty in Civil Action No. 40487 by decree dated Decem-  
5 ber 18, 1979, including any subsequent modifica-  
6 tions made by the District that are confirmed by the  
7 District Court; the contracts shall not impair or oth-  
8 erwise interfere with the ability of an entity that  
9 does have an allocation of Project carry over storage  
10 space to enter into contracts for the use of excess  
11 water storage and conveyance capacity pursuant to  
12 this section 8; and

13 “(2) except as provided in section 9, before en-  
14 tering into such a contract with an entity that will  
15 use water stored or conveyed under such contract  
16 outside of the natural basin of the Arkansas River  
17 within Colorado, the Secretary shall provide the  
18 Southeastern Colorado Water Conservancy District a  
19 first right of refusal, exercisable within 90 days, to  
20 enter into contracts for the use of excess water stor-  
21 age and conveyance capacity made available to the  
22 individual or entity that will use water stored or con-  
23 veyed under such contract outside of the natural  
24 basin of the Arkansas River within Colorado; Pro-  
25 vided, in no event shall the Southeastern Colorado

1 Water Conservancy District enter into a sub-con-  
2 tract with an entity that will use water stored or  
3 conveyed under such contract outside of the natural  
4 basin of the Arkansas River.

5 “(c) Subject to the provisions of subsection (b), the  
6 Secretary may enter into contracts authorized by this sec-  
7 tion upon such terms and conditions as the Secretary may  
8 determine to be just and equitable. The term of any such  
9 contract shall be for such period, not to exceed 40 years,  
10 as the Secretary deems appropriate. Upon expiration, such  
11 contracts may be renewed upon such terms and conditions  
12 as may be mutually agreeable to the Secretary and the  
13 contractor for the use of excess capacity.

14 “(d) All charges established pursuant to this section  
15 shall be just and equitable as to the rates paid by the those  
16 entities that receive project water from the Fryingpan-Ar-  
17 kansas Project facilities.

18 “(e) Prior to the execution of any contracts under  
19 this section, the Secretary shall execute an agreement with  
20 the Southeastern Colorado Water Activity Enterprise to  
21 provide guidelines for the terms to be contained in the con-  
22 tracts executed pursuant to this section. Such guidelines  
23 shall appropriately address impacts associated with water  
24 operations under the contracts, surcharges established by  
25 the Enterprise, reimbursement of costs incurred, and

1 water quality monitoring, as identified by the South-  
2 eastern Colorado Water Activity Enterprise and the Sec-  
3 retary.

4       “SEC. 9. (a) The Secretary of the Interior may enter  
5 into new and renewal contracts with the City of Aurora,  
6 Colorado, or an enterprise of the City, for a term not to  
7 exceed the term referenced in Section 8(c), for the use  
8 of excess capacity in the Fryingpan-Arkansas Project for  
9 the purpose of diverting, storing, impounding, pumping,  
10 exchanging, or conveying nonproject water for irrigation,  
11 domestic, municipal and industrial, or any other beneficial  
12 purpose. Such contracts shall be—

13               “(1) limited to waters appropriated from the  
14 Arkansas River held by the City of Aurora, Colo-  
15 rado, or an enterprise of the City that—

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

19                       “(B) are water rights described in a Colo-  
20 rado Water Court water rights application  
21 pending as of December 7, 2001, or an amend-  
22 ment or re-filing thereof, as long as such  
23 amendment or re-filing does not increase the  
24 draft of water from the Arkansas Basin that  
25 would have been available to City of Aurora,

1 Colorado, or an enterprise of the City under the  
2 original application;

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

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

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

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

24 “(3) take into consideration the need to ensure  
25 compliance with the Arkansas River Compact as exe-



1       cuted by the states of Colorado and Kansas on De-  
2       cember 14, 1948.

3       “(b) Prior to the execution of any renewal contract  
4 with the City of Aurora, the Secretary of the Interior shall  
5 execute an Agreement with the Southeastern Colorado  
6 Water Activity Enterprise, which agreement shall provide  
7 guidelines for the terms to be contained in a renewal con-  
8 tract executed pursuant to this section. Such guidelines  
9 shall appropriately address those impacts associated with  
10 water operations under the contracts, such as storage and  
11 convenience charges, surcharges established by the Enter-  
12 prise, reimbursement of costs incurred, and water quality  
13 monitoring, as identified by the Southeastern Colorado  
14 Enterprise and the Secretary.

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

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

21       “SEC. 10. (a) Nonproject water diverted, stored, im-  
22 pounded, pumped, exchanged, or conveyed under a con-  
23 tract entered into pursuant to section 8 or 9 shall be ex-  
24 empt from any acreage limitation provisions of the Act  
25 of June 17, 1902 (32 Stat. 388), and Acts amendatory

1 thereof and supplementary thereto including, but not lim-  
2 ited to, the Warren Act of 1911, the Reclamation Reform  
3 Act of 1982 (96 Stat. 1263; 43 U.S.C. 390aa-zz-1) and  
4 from any farm unit size limitations established pursuant  
5 to section 4(c)(5) of the Act of August 11, 1939 (Chapter  
6 717; 16 U.S.C. 59–2(c)(5)).

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

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

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

23 “SEC. 11. (a) Excess water storage capacity of the  
24 Fryingpan-Arkansas Project to divert, store, impound,  
25 pump, exchange, or convey nonproject water made avail-

1 able under contracts executed pursuant to the provisions  
2 of sections 8 and 9 shall not be utilized so as to increase  
3 diversion of nonproject water from the natural basin of  
4 the Colorado River within Colorado into another river  
5 basin for delivery or storage unless—

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

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

20           “(3) the diversion is the subject of an intergov-  
21          ernmental agreement or other contractual arrange-  
22          ment executed after the date of the enactment of  
23          this section, between the beneficiary of such  
24          transbasin diversion and the water conservation dis-  
25          trict, as defined under Colorado law, from within

1       whose boundaries the waters are proposed for diver-  
2       sion; or

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

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

20       “(c) This section shall not be considered as precedent  
21       for any other Congressionally authorized project.”.

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