

110TH CONGRESS
1ST SESSION

H. R. 2277

To authorize the Secretary of the Interior to conduct 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

MAY 10, 2007

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

A BILL

To authorize the Secretary of the Interior to conduct 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 con-
7 duct 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, to
4 authorize the Secretary to enter into contracts for
5 the use of excess storage and conveyance capacity of
6 the Fryingpan-Arkansas Project, Colorado, for non-
7 project water for municipal, water banking, and
8 other beneficial purposes.

9 **SEC. 2. FEASIBILITY STUDY.**

10 (a) AUTHORIZED.—Pursuant to Federal reclamation
11 law (the Act of June 7, 1902, and all Acts amendatory
12 thereof or supplementary thereto), the Secretary, through
13 the Bureau of Reclamation, is authorized to conduct a fea-
14 sibility study to determine the most feasible method of
15 meeting the present and future water supply and related
16 storage requirements within the area served by the
17 Fryingpan-Arkansas Project, including the potential en-
18 largement of Fryingpan-Arkansas facilities. In conducting
19 such study, the Secretary shall take into consideration the
20 following:

21 (1) The Preferred Storage Options Plan Report
22 published September 21, 2000, by the Southeastern
23 Colorado Water and Storage Needs Assessment En-
24 terprise and Final PSOP Implementation Committee

1 Report, dated April 19, 2001 (hereinafter referred to
2 as the “PSOP Reports”).

3 (2) The intergovernmental agreement dated
4 May 27, 2004, among the City of Pueblo, the City
5 of Aurora, the Southeastern Colorado Water Conser-
6 vancy District, the City of Fountain, the City of Col-
7 orado Springs, and the Board of Water Works of
8 Pueblo, Colorado.

9 (3) The need to ensure compliance with the Ar-
10 kansas River Compact as executed by the States of
11 Colorado and Kansas on December 14, 1948.

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

24 (c) STUDY TO BE SUBMITTED.—The Secretary shall
25 submit the feasibility study authorized by this section to

1 the President and the President Pro Tempore of the Sen-
2 ate and the Speaker of the House of Representatives.

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

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

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

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

20 “SEC. 8. (a)(1) Except as provided in section 9, and
21 subject to the provisions of this Act and all other applica-
22 ble Federal statutes, the Secretary is authorized to enter
23 into contracts with any entity, private or public, including
24 those operating or participating in a water bank estab-
25 lished pursuant to Colorado law (hereinafter referred to

1 as an ‘entity’), for the use of excess capacity in the
2 Fryingpan-Arkansas Project for the purpose of diverting,
3 storing, impounding, pumping, exchanging, or conveying
4 nonproject water for irrigation, domestic, municipal and
5 industrial, or any other beneficial purpose.

6 “(2) In entering into such contracts, the Secretary
7 shall take into consideration the following:

8 “(A) The preferred Storage Options Plan Re-
9 port published September 21, 2000, by the South-
10 eastern Colorado Water and Storage Needs Assess-
11 ment Enterprise and Final PSOP Implementation
12 Committee Report dated April 19, 2001 (hereinafter
13 referred to as the ‘PSOP Reports’).

14 “(B) The intergovernmental agreement dated
15 May 27, 2004, among the City of Pueblo, the City
16 of Aurora, the Southeastern Colorado Water Conser-
17 vancy District, the City of Fountain, the City of Col-
18 orado Springs, and the Board of Water Works of
19 Pueblo, Colorado.

20 “(C) The need to ensure compliance with the
21 Arkansas River Compact as executed by the States
22 of Colorado and Kansas on December 14, 1948.

23 “(b) The Secretary is authorized to enter into con-
24 tracts pursuant to this section the extent that such con-
25 tracts shall not impair or otherwise interfere with—

1 “(1) the Fryingpan-Arkansas Project’s author-
2 ized purposes;

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

8 “(3) such contractual obligations as the Sec-
9 retary has to Fryingpan-Arkansas Project contrac-
10 tors at the time of the execution of a contract under
11 the authority of this title;

12 “(4) the storage allocations and limitations pur-
13 suant to Contract No. 5–07–70–W0086, as amend-
14 ed, renewed or superseded, between the South-
15 eastern Colorado Water Conservancy District and
16 the United States, and the allocation principles
17 adopted by the Southeastern Colorado Water Con-
18 servancy District on November 29, 1979, and con-
19 firmed by the District Court of Pueblo County in
20 Civil Action No. 40487 by decree dated December
21 18, 1979, including any subsequent modifications
22 made by the District that are confirmed by the Dis-
23 trict Court;

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

4 “(6) the ability of individuals or entities located
5 within the natural basin of the Arkansas River with-
6 in Colorado to enter into contracts for the use of ex-
7 cess water storage and conveyance capacity pursuant
8 to section 8 of this Act or any other authority under
9 Reclamation law.

10 “(c) To the extent such contracts are with an entity
11 that does not have an allocation of Project carry over stor-
12 age space pursuant to the allocation principles adopted by
13 the Southeastern Colorado Water Conservancy District on
14 November 29, 1979, and confirmed by the District Court
15 of Pueblo County in Civil Action No. 40487 by decree
16 dated December 18, 1979, including any subsequent modi-
17 fications made by the District that are confirmed by the
18 District Court (‘nonqualified’ entities); the contracts shall
19 not impair or otherwise interfere with the ability of quali-
20 fied entities located within the natural basin of the Arkan-
21 sas River within Colorado to enter into contracts for the
22 use of excess water storage and conveyance capacity pur-
23 suant to this section 6.

24 “(d) Except as provided in section 9, before entering
25 into such a contract with an individual or entity that will

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

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

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

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

23 “(3) affect the interpretation or implementation
24 of any law related to any other water project author-

1 ized before the date of the enactment of this section;
2 or

3 “(4) affect in any way contracts, or the renewal
4 of contracts, entered into pursuant to authority
5 other than this section, including, but not limited to,
6 the following:

7 “(A) Contract Nos. 00XX6C0049 and
8 009D6C0048 between the Board of Water
9 Works of Pueblo, Colorado, and the United
10 States.

11 “(B) The renewal of Contract Nos.
12 00XX6C0049 and 009D60048; Contract No.
13 6-07-70-W0090 (formerly Agreement No. 14-
14 06-700-6019) between the Cities of Aurora
15 and Colorado Springs and the United States.

16 “(C) Contract No. 7-07-7010056 between
17 Twin Lakes Reservoir and Canal Company and
18 the United States.

19 “(D) Contract No. 9-07-70-W0099 be-
20 tween the United States and High Line Canal
21 Company.

22 “(E) Contract No. 039E6C0117 between
23 Board of Water Works of Pueblo and the
24 United States.

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

10 “(g) The Secretary shall establish such charges, sub-
11 ject to this section, for the use of excess capacity as the
12 Secretary deems appropriate. Such charges shall consist
13 of the following components:

14 “(1) One component shall reflect either—

15 “(A) construction costs based on either the
16 original cost, the estimated current costs, or
17 other appropriate measure of costs, including
18 interest as provided in paragraph (3), of con-
19 structing the Fryingpan-Arkansas Project fa-
20 cilities involved; or

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

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

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

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

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

1 “(j) Any contract executed under this section shall
2 contain a provision pursuant to which the contracting enti-
3 ty agrees to cooperate in a voluntary flow management
4 program designed to maintain a target minimum flow of
5 100 cfs just below Pueblo Dam.

6 “SEC. 9. (a) The Secretary of the Interior may enter
7 into new and renewal contracts with the City of Aurora,
8 Colorado, or an enterprise of the City, for a term not to
9 exceed 40 years, for use of storage or carrying capacity
10 excess of the requirements of the Fryingpan-Arkansas
11 Project, Colorado, for the purpose of impounding, storage,
12 and carriage of nonproject water for domestic, municipal,
13 industrial and other beneficial purposes. Such contracts
14 shall be—

15 “(1) limited to the storage and carriage of wa-
16 ters appropriated from the Arkansas River held by
17 the City of Aurora, Colorado, or an enterprise of the
18 City that—

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

22 “(B) are water rights described in a Colo-
23 rado Water Court water rights application
24 pending as of December 7, 2001, or an amend-
25 ment or refiling does not increase the draft of

1 water from the Arkansas Basin that would have
2 been available to the City of Aurora, Colorado,
3 or an enterprise of the City under the original
4 application;

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

9 “(D) result from interruptible supply
10 agreements or water bank transactions author-
11 ized under Colorado law, and operating no more
12 than five calendar years during any period of
13 10 consecutive calendar years; or

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

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

1 “(3) contain a provision pursuant to which the
2 City of Aurora agrees to cooperate in a voluntary
3 flow management program designed to maintain a
4 target minimum flow of 100 cfs just below Pueblo
5 Dam;

6 “(4) include a provision whereby the City of
7 Aurora, Colorado, or an enterprise of the City,
8 agrees to participate in a long-term water quality
9 monitoring and management program as outlined in
10 the Implementation Committee Report, dated April
11 19, 2001; and

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

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

1 monitoring, as identified by the Southeastern Colorado
2 Enterprise and the Secretary.

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

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

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

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

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

22 “(3) All remaining revenues in excess of those
23 in paragraphs (1) and (2) shall be credited as fol-
24 lows:

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

19 “(B) If no reimbursable Federal
20 Fryingpan-Arkansas Project construction costs
21 are outstanding at the time revenues are re-
22 ceived, then all remaining revenues shall be
23 credited to a separate fund, established in the
24 Treasury of the United States, to be known as
25 the Fryingpan-Arkansas Project Fund, which

1 shall remain available, without appropriation,
2 for new federally funded construction on the
3 project, including, but not limited to, additions,
4 rehabilitations and betterments, safety of dams
5 modifications, and major capital replacements,
6 applied against the Federal reimbursable costs,
7 if any, of such new construction in such manner
8 as the Secretary deems just and equitable as to
9 the Federal reimbursable project purposes in-
10 volved. No expenditures may be made from the
11 Fryingpan-Arkansas Project Fund without the
12 express written consent of the Secretary and
13 the Enterprise.

14 “(b) Payments generated pursuant to contract terms
15 established under section 8(i) and the comparable provi-
16 sions of 9(b) shall be made directly by the contractors to
17 the Southeastern Colorado Water Activity Enterprise.

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

1 from any farm unit size limitations established pursuant
2 to section 4(c)(5) of the Act of August 11, 1939 (Chapter
3 717; 16 U.S.C. 590z-2(c)(5)).

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

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

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

20 “SEC. 12. (a) Excess water storage capacity of the
21 Fryingpan-Arkansas project to divert, store, impound,
22 pump, or convey nonproject water made available under
23 contracts executed pursuant to the provisions of sections
24 8 and 9 shall not be used so as to increase diversion of
25 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.”.

○