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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

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

March 19, 2002

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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

Tuesday, March 19, 2002
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to call, at 10:30 a.m., in room 1334, Longworth House Office Building, Hon. Ken Calvert [Chairman of the Subcommittee] presiding.

STATEMENT OF THE HONORABLE KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CALVERT. The Subcommittee on Water and Power will come to order.

The Committee is meeting today to hear testimony on H.R. 3881, to authorize the Secretary of 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.

Mr. CALVERT. Under rule 4B of the Committee rules, any oral opening statements at the hearing are limited to the Chairman and the ranking minority member. If other members have statements, they can be included in the hearing record by unanimous consent.

Last year, we heard testimony that analyzed the preliminary Census 2000 data. This data shows clearly that 11 public land States of the American West head the list of America's fastest-growing States and continue to attract people, both Americans looking for new opportunities and immigrants in large numbers. Testimony indicated that all of the top five fastest-growing States within the United States are in the West, including Colorado.

Today, the legislation before us addresses the desire of local communities in Colorado to develop and manage water resources over

the next several decades to meet this demand. The proposed legislation provides an opportunity to look at an existing Federal project, the Fryingpan-Arkansas Project, to see if managing the resources in a different way can provide the added water required to meet the demands of a growing population in southeastern Colorado. It is the hope of this Committee that the parties involved can use this opportunity to resolve the competing demands for limited water supply in this area.

Today, we will hear from several witnesses to present the issues associated with this proposed legislation. We have two members testifying this morning that are co-sponsors of H.R. 3881. I would like to introduce Congressman Hefley, who is the sponsor of the bill and a member of the Full Committee, and Congressman Moran at this time.

I would like to also ask unanimous consent that Congressman Hefley and Congressman Moran be permitted to sit on the dais following their statements. Without objection, so ordered.

Since the Minority is not present, there will be no opening statement but will be entered into the record at a later time.

[The prepared statement of Mr. Calvert follows:]

Statement of The Honorable Ken Calvert, Chairman, Subcommittee on Water and Power

Last year we heard testimony that analyzed the preliminary Census 2000 data. This data shows clearly that the 11 public lands states of the American West head the list of America's fastest-growing states and continue to attract people—both Americans looking for new opportunities and immigrants—in large numbers. Testimony indicated that:

All 5 of the top 5 fastest growing states are in the West: including Colorado.

Today, the legislation before us addresses the desire of local communities in Colorado, to develop and manage water resources over the next several decades, to meet this demand. The proposed legislation provides an opportunity to look at an existing Federal Project (the Fryingpan–Arkansas Project) to see if managing the resources in a different way can provide the added water required to meet the needs of the growing population in southeastern Colorado. It is the hope of this committee that the parties involved can use this opportunity to resolve the competing demands for the limited water supply in this area. Today, we will hear from several witnesses to present the issues associated with this proposed legislation.

I look forward to hearing from the witnesses.

With that, I would recognize Mr. Hefley for his testimony.

STATEMENT OF THE HON. JOEL HEFLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. HEFLEY. Mr. Chairman, thank you very much and thank you for having a hearing on H.R. 3881, which would authorize studies relating to enlarging Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake and the Fryingpan-Arkansas Project in Colorado.

The short title, however, of this bill is a little bit of a misnomer. Although the second part of the bill does authorize the study of enlarging two of these three reservoirs, the most important impact of the bill comes in the first part, the reoperations to allow the storage of 48,000 acre feet of water—an additional 48,000 acre feet of water in two existing reservoirs. Since most of you on this Committee are Westerners, you can imagine what an addition of 48,000 acre feet means in a dry environment.

This bill is particularly needed in Colorado at this time. Over the past decade, Colorado has seen unprecedented growth. It grew enough over the last decade that we picked up an additional congressional seat in the redistricting that just occurred. My own district, the Fifth District of Columbia, had to lose 200,000 people in the redistricting because we have grown so fast.

But growth brings with it infrastructure demands; and, of course, in the West the most important of those infrastructure demands is water. The bill before you is the result of discussions between members of the Southeast Colorado Water Conservation District aimed at providing for the State's water needs for the next 50 years. The storage study committee estimated Colorado needs an additional 175,000 acre feet of water storage to meet those needs.

The committee also adopted a preferred storage operation plan to address those needs. This bill will put the first part of that plan in motion.

Over the past 20 years we have seen a change in the way we manage water in the West. The old way of building new dams and reservoirs has become so difficult politically as to be almost impossible. Thirteen years ago the Environmental Protection Agency killed the Two Forks Dam and Reservoir Project which would have supplied the Denver area with water even though it would have been privately funded and built largely on private land, and every year we face a struggle on Animas LaPlata Project in the Four Corners. As a result, we have been forced to look for new ways to meet our water needs. This bill and the plan it embodies reflect these new methods.

When we were debating Two Forks 13 years ago, one of its opponents said we didn't need Two Forks, that we could meet our water needs if we only used the capacity of our existing reservoirs better. Well, that is what this bill would allow. We need the water in Colorado, and this plan will allow us to do it in an intelligent and an environmentally sensitive way.

I urge the support of H.R. 3881 and look forward to today's testimony and to working with you on passing this legislation.

Mr. Chairman, if I might, I would like to submit for the record letters from Action 22, which is a southern Colorado Arkansas River action group which focuses on these kinds of subjects in Colorado, a letter in support of this bill, the Arkansas River Outfitters Association in support of this bill, and the Board of Water Works of Pueblo, Colorado, which is also in support of this bill. If we could put those in the record, I would appreciate it.

Mr. CALVERT. Without objection, so ordered.

[The information referred to follows:]

P.O. Box 4097
503 N. Main, Suite 324
Pueblo, CO 81003

Action 22
Southern Colorado

March 15, 2002 FAXED

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Chairman-elect Richard Golenda
Treasurer Chuck Brown
Secretary Dennis Murphy
Past Chair Clarke Becker

REGIONAL VICE CHAIRS
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The Honorable Joel Hefley
2230 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Hefley:

Action 22, Inc., is a volunteer membership organization of individuals, businesses, associations, city and county governments in twenty-two southern Colorado counties with a common interest in the future of southern Colorado. The mission of Action 22 is to speak with a single unified voice on issues of mutual concern facing south and southeast Colorado. **Action 22 is the voice of southern Colorado in Denver and in Washington D.C.**

Action 22 represents a 36,530 sq. mile area (35% of the state) consisting of 850,000 citizens, 19.5% of the state's population.

Action 22 reviewed and studied the Needs Assessment Report that documented the need for additional water storage capacity to meet the growing demands in southeastern Colorado through the year 2040.

The Board of Directors, on a supermajority vote (2/3 of all counties), supports the Southeastern Colorado Water Conservancy District's Preferred Storage Options Plan (PSOP). This plan is essential to meeting the future water resource needs of communities and farms in southeastern Colorado.

Action 22 urges your support on the proposed feasibility studies for the expansion of Turquoise Lake and Pueblo Reservoir.

Sincerely,

Joseph F. Rall

Joseph F. Rall, Chairman
Board of Directors

(719) 560-9697
(888) 799-1799
Fax (719) 546-1558
www.action22.org

World Class River Adventure

House Resources Subcommittee on Water and Power
1522 Longworth HOB
Washington, D.C. 20515

March 11, 2002

Honorable Representatives;

The Directors of the Arkansas River Outfitters Association would like to voice our support for H.R. 3881 authorizing implementation of the Southeastern Colorado Water Conservancy District's Preferred Storage Options Plan (PSOP). While river outfitter support for the construction or enlargement of reservoirs in the West is something of an anomaly, our support should indicate to you that this is indeed a worthwhile and necessary project that will benefit not only the citizens of the District, but also the whitewater rafting industry, the brown trout fishery, and the local mountain economy which derives significant income from these natural resources.

Like many rivers in the West, the Arkansas River faces an onslaught of competing forces for the use and consumption of her water. While many factors will play a role in how that water is ultimately distributed, there is no question that water storage is the key to flexibility in the system and maximization of the value derived from each acre foot. The Preferred Storage Options Plan represents the best collaborative efforts of the many interest groups in the District to arrive at a plan for the future that addresses regional growth, the preservation of agriculture, natural resource values, and recreational considerations. If the Arkansas River can be all things to all people, we believe that the storage plan outlined in this legislation is the best way to achieve that end.

Questions regarding our commitment to the Preferred Storage Options Plan may be addressed to Greg Felt at 719-539-7476.

Sincerely,

Bob Hamel
Chairman
Arkansas River Outfitters Association

Greg Felt
Chairman
AROA Water Resources Committee

Arkansas River Outfitters Association
50905 Hwy. 50 West
Cañon City, CO 81212

Board of Water Works
of Pueblo, Colorado

319 W. 4th Street • P.O. Box 400 • Pueblo, Colorado 81002-0400 • 719/584-0250

March 13, 2002

VIA FAX

The Hon. Diana DeGette
U.S. House of Representatives
1530 Longworth House Office Bldg.
Washington, D.C. 20515

The Hon. Bob Schaffer
U.S. House of Representatives
212 Cannon House Office Bldg.
Washington, D.C. 20515

The Hon. Joel Hefley
U.S. House of Representatives
2230 Rayburn House Office Bldg.
Washington, D.C. 20515

The Hon. Tom Tancredo
U.S. House of Representatives
1123 Longworth House Office Bldg.
Washington, D.C. 20515

The Hon. Scott McInnis
U.S. House of Representatives
215 Cannon House Office Bldg.
Washington, D.C. 20515

The Hon. Mark Udall
U.S. House of Representatives
115 Cannon House Office Bldg.
Washington, D.C. 20515

Re: Benefits from H.R. 3881 -
Reoperation/Enlargement of Pueblo Reservoir

Dear Colorado Delegation:

On behalf of the Board of Water Works of Pueblo, Colorado, I would like to take this opportunity to explain the benefits which will accrue to the citizens of this city if H.R. 3881 is enacted. First let me point out that the Board of Water Works of Pueblo, Colorado (the Board) consists of five members which are elected by the citizens living within the city limits of Pueblo. The Board is autonomous from City Council. In the City Charter the Board is given the authority to independently manage the water rights and water treatment and distribution system for the citizens of Pueblo.

The Board has been actively participating with the Southeastern Colorado Water Conservancy District (the District) and other water users in the Arkansas River basin for over four years to develop additional storage space in two Fryingpan-Arkansas Project Reservoirs that would assist municipal entities, including Pueblo, to better serve their customers with existing water rights. (See attached Resolution.) As I am sure you are aware, a key to making full use of one's water rights in Colorado is sufficient storage space to hold that water for use during drought periods. H.R. 3881 would authorize the storage of non-project water in project facilities and authorize a feasibility study for the enlargement of Pueblo and Turquoise Reservoirs.

Previous Boards have left Pueblo with a very ample supply of water. At the present time, we have sufficient supplies to serve a city of 360,000 to 400,000 people with associated business and industry. The Board will obtain additional storage space from the enlargement of Pueblo Reservoir. This additional space will allow the Board to better manage its water rights.

There are presently concerns with our efforts to create additional storage space in Fryingpan-Arkansas storage projects and we are working with the District and other water users to mitigate and satisfy these concerns. The Board is currently working with the District, the City of Pueblo, and other water users to reach an agreement that would maintain a 100 cfs flow in the Arkansas River through the City of Pueblo before any exchanges could be made into any of this new storage space which will be made available in Pueblo Reservoir. We believe, it is not the intent of water users to short the reach of the river through Pueblo in their efforts to get water into storage. We hope to eventually reach an agreement with these other parties.

Sincerely,

Vera Ortegon

Vera Ortegon
Board President

Attachment

c: The Hon. Doug Yoder
House Resources Subcommittee
on Water and Power
1522 Longworth HOB
Washington, D.C. 20515-6404

Board Members
Alan Hamel
Steve Arveschoug

sgc

RESOLUTION NO. 2001-7

A RESOLUTION OF SUPPORT FOR THE SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT'S PREFERRED STORAGE OPTIONS PLAN AND THE NECESSARY FEDERAL LEGISLATION TO BEGIN THE IMPLEMENTATION OF THE PLAN.

WHEREAS, the Southeastern Colorado Water Conservancy District (District)serves nine counties in the Arkansas River Basin in Colorado, including the City of Pueblo, through the storage facilities and water of the Fryingpan Arkansas Project, and

WHEREAS the District, through the Storage Study Committee of the District Water Storage Needs Assessment Enterprise developed a Water and Storage Needs Assessment Report in December of 1998, that documented the need for additional water storage capacity to meet the growing demands in southeastern Colorado through the year 2040, and

WHEREAS the District's Study Committee, made up of municipal and agricultural water providers; environmental and recreational interests; and state and federal natural resource agencies, including the Board of Water Works of Pueblo, Colorado, developed a Preferred Storage Options Plan in September of 2000, to document the analysis of various storage alternatives and determine the best approach to provide additional water storage, and

WHEREAS the Preferred Storage Options Plan provides 122,100 acre feet of storage for present and future needs and includes re-operations storage in existing Fryingpan Arkansas Project East Slope Storage Facilities to better utilize existing capacity and water resources, and proposes the enlargement of Pueblo Reservoir and Turquoise Reservoir to provide for future storage demands and,

WHEREAS, the Board of Water Works has been an active participant in this planning process, and whose customers, the citizens of Pueblo, can be major beneficiaries of the implementation of the Preferred Storage Options Plan, and,

WHEREAS, the implementation of the Preferred Storage Options Plan will require congressional authorization of federal feasibility studies of the proposed enlargement projects and authorization for the Re-Operations Storage Contract and,

WHEREAS, the Southeastern Colorado Water Conservancy District continues to work with water user groups and other interested parties throughout the state in an effort to gain state-wide support for the proposed federal legislation and the Preferred Storage Options Plan,

NOW, THEREFORE, BE IT RESOLVED that the Board of Water Works of Pueblo, Colorado, supports the Southeastern Colorado Water Conservancy District's Preferred Storage Options Plan and its implementation and,

BE IT FURTHER RESOLVED that the Board of Water Works of Pueblo, Colorado, encourages our congressional representatives to work aggressively and together to secure passage of the proposed legislation.

ADOPTED THIS 20TH DAY OF MARCH, 2001.

BOARD OF WATER WORKS OF PUEBLO, COLORADO

Vera Ortegon, President

James H. Gardner, Secretary-Treasurer

Kevin F. McCarthy, Vice-President

Alan C. Hamel, Executive Director

Julie A. Scaplo, Vice-President

William F. Mattoon, Board Attorney

Michael W. Stillman, Vice President

Mr. HEFLEY. With that, Mr. Chairman, I will end my testimony and respond to any questions you might have.

Mr. CALVERT. I thank the Gentleman.

[The prepared statement of Mr. Hefley follows:]

Statement of The Honorable Joel Hefley, a Representative in Congress from the State of Colorado

Mr. Chairman, and members of the subcommittee, I appreciate the subcommittee's scheduling this hearing on my bill, H.R. 3881, which would authorize the Secretary of Interior to engage in studies relating to the enlarging Pueblo Dam and Reservoir, and Sugar Loaf Dam and Turquoise Lake of the Fryingpan–Arkansas Project in Colorado.

Over the past 10 years, Colorado and particularly the Front Range of Colorado have seen unprecedented growth. Where once a motorist traveling down I–25 between Denver and Colorado Springs had his drive broken only by the town of Castle Rock, today the northern half of that drive is an almost unbroken stretch of development. The well-known landmarks of a decade ago are now lost behind new construction. Indeed, the growth has been such that Colorado will gain a congressional seat in the next election. My own district, the Fifth, had to lose almost 400,000 constituents in the recent reapportionment.

This growth has resulted in obvious demands on the area's infrastructure, the most important of which is water. Over the years, the state's water needs have been met by the tireless efforts of legislators, water engineers and attorneys who first pushed for the great water projects which supply the state, then developed the legal framework in which that water could be used.

But over the past 10 years, or perhaps longer, attitudes toward water storage projects have changed. About 13 years ago, the Environmental Protection Agency effectively killed the Two Forks Dam project, which would have been a privately financed reservoir to serve the needs of the Denver area. And, for even longer, we have debated construction of the Animas–La Plata project in southwest Colorado. And still the population grew, as did the need.

Recognizing this need, in 1998, members of the Southeastern Colorado Water Conservancy District, the operator of the Fryingpan–Arkansas project, formed a Storage Study Committee to begin discussions on how to meet it. An initial study, conducted in late 1998, determined a need for an additional 173,100 acre-feet of storage over the next 40 years. Follow-on studies by the Bureau of Reclamation and the Study Committee examined over 30 options to meet the projected demand, including expansion of the Pueblo Reservoir. These studies determined that the best option was utilize the existing reservoirs.

By September 2000, the Storage Study Committee's findings congealed into a Preferred Storage Options Plan, or PSOP. This plan calls for re-operations storage, or the use of excess capacity in existing reservoirs to store non-project water under long-term contracts with the Bureau of Reclamation. It also called for enlargement of the Pueblo and Turquoise reservoirs by 75,000 and 19,000 acre-feet respectively; for a variety of water quality monitoring and water banking programs; and preservation of a portion of the municipal outlet works capacity at Pueblo Dam for future domestic needs in the lower Arkansas River valley.

The Water Conservancy District first approached me regarding this legislation in March 2000. At the beginning of this Congress, they asked me to be its sponsor and I was happy to do so. H.R. 3881 begins the implementation process for the Preferred Storage Option Plan.

The first part of the bill—the re-operations segment—authorizes the Secretary of the Interior to enter into contracts with cities and towns comprising the Southeast Colorado Water Conservation District that need to store non–Project water to meet their current and future domestic needs.

Second, the bill authorizes the Secretary to study the proposed enlargement of the Pueblo and Turquoise Reservoir. These studies would be funded by the District and by the communities that participate in the PSOP.

Third, the bill authorizes the Secretary to enter temporary contracts to facilitate a water bank program in the basin. Such a pilot water bank program has already been approved by the Colorado State Legislature.

The legislation also authorizes the Bureau of Reclamation to contract for the use of excess storage capacity by the city of Aurora and Pueblo West. And finally, the bill assures that the use of excess capacity in the existing storage facilities of the Fry–Ark project under the new Reclamation contracts will not be used to increase

diversions out of the Colorado or Arkansas river basins without agreements or protections.

H.R. 3881 is not the solution to Colorado's water problem but it is an important first step toward finding the 173,000 acre-feet the state will need in the next 40 years. Through intelligent use of existing resources, the process outlined in H.R. 3881 will provide for the storage of 48,000 acre-feet of non–Project water. That is water available under existing water rights held by cities and towns within the District's nine-country service area. Further, it will do this while continuing to honor the District's existing obligations under the 1962 authorizing legislation and interstate compacts.

As with any western water issue, this is something of a work in progress. Its present form came about, not only from the PSOP process, by as the result of lengthy negotiations this year between the District and the City of Aurora and the City of Pueblo. The debate continues. Today, we will hear other comments and concerns voiced by Pueblo, the Colorado River District, the state of Kansas and even the Bureau. Where water is scarce, everyone has an opinion on how it should be used.

Thirteen years ago, when the great western water debate was over Two Forks, a member of one environmental group claimed the state could meet its needs through better utilization of existing smaller reservoirs. Thirteen years later, that is basically what H.R. 3881 will do. I look forward to working with the various affected groups to address their concerns and to working with this subcommittee on passing this bill.

Thank you.

Mr. CALVERT. Mr. Moran, you may begin your testimony.

STATEMENT OF THE HON. JERRY MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. MORAN. Mr. Chairman, I appreciate the opportunity to be here today and to testify on H.R. 3881; and I appreciate the opportunity to sit here at this table with the distinguished Gentleman from Colorado.

Communities, the environment, agricultural and other economic interests all utilize this limited resource, water; and I want to discuss today a particular body of water, the Arkansas River and how it highlights the value of this important resource.

The Arkansas River enters Kansas in the western border of Colorado near the small town of Coolidge, population 88. The river works its way eastward across the State to Arkansas City, where it continues into Oklahoma. Along that route, it passes through the towns of Garden City, Dodge City, Larned, Great Bend, Hutchinson and many others. It provides the only source of surface water for most southwestern Kansas communities.

Parts of the Arkansas are a dry riverbed now for as many as 8 months out of the year. However, if you look at our State map, it is easy to see if that this river has been the lifeblood of many communities that grew up out of the otherwise dry prairie.

Even today, the Arkansas River is celebrated in our State. The Wichita River Festival is an annual event organized in Wichita for the sole purpose of drawing Kansans together to recreate in and around this vital resource. In Kansas, the Arkansas River is more than an important source of water for municipalities. It is an important emotional and cultural asset for people who otherwise would not experience the joy of water.

Because of its significance to economic development, water use along the Arkansas basin has long been controversial. The waters of the Arkansas River are the only renewable source of water, and

scarce water flows provide water for development of our municipalities, both large and small. The river provides recreation opportunities and opportunities for tourism. Business and manufacturing depend upon the Arkansas River for the existence of commerce on the High Plains, and agriculture relies on this water to irrigate one of the highest-volume farming regions in the country. Rights to use the water from the Arkansas River are vested and are some of the oldest rights in our State.

The first compact regulating the Arkansas River was negotiated between Colorado and Kansas; and, since 1950, we have had an agreement about who can use water and how much. The current compact has been interpreted by the courts with a series of lawsuits.

Kansas sued Colorado in 1901, 1928, and 1985 over the use of the river's water. The latest subject of this dispute was the issue concerning the Colorado wells and the resulting low flow of water across the State line into our State. The last court case stemmed from Colorado pumping activity. Dated back to 1968, this case was ultimately decided by the United States Supreme Court.

In a ruling last June, the Supreme Court declared that Colorado had overused its water under the compact and owed Kansas damages for loss of its water. A special master was appointed in 2001 to work with both States to find and avoid future disputes over the amount of water crossing the State lines. The dollar amount for the settlement has yet to be determined; and, in addition to the costs of damages, suits have created an enormous burden in litigation fees for each of our States to bear. Kansas alone has spent $17 million litigating with Colorado, and Colorado has paid an estimated $11 million in legal expenses.

The legislation before the Committee today has significant concerns for Kansas as the primary downstream State user of Arkansas River water. This legislation has potential to damage areas of Kansas that depend solely on that river.

If Colorado is allowed to increase their storage vessels by 122,000 acre feet, it certainly means less water for Kansans. Water quality is another concern. EPA requires TMDLs to be set for the waters in this river. Water quality is worse in low flow conditions of the river, and the stream flow reductions to Kansas could cause tremendous difficulties in our State for meeting the TMDL requirements.

The Arkansas River Compact Administration was formed back in 1949 to deal with issues between our States, and we should not bypass that compact administration when dealing with expansion of water storage that would normally flow downstream and eventually into our State.

This legislation is particularly troubling coming on the heels of the latest court decision. After a decision last year, representatives of both States indicated they hoped to stay out of the courts in the future. At a time when we should be considering advanced measures of conserving water and maximizing its use for many interests as possible, we will be heading back to the courts. People in both Kansas and Colorado value water and recognize the limitations of a scarce commodity and believe that it is not in the best course of action for the citizens of either State to pursue this legislation.

I would like to thank the Chairman and other members of the Committee for allowing me to testify. I live in a city that is struggling with access to water. We have low flow toilets and reduced flow shower heads and outside watering restrictions, so I know in my own community the difficulty that access to water presents. When members of the Colorado delegation meet with their community leaders, I understand the difficult situation that they are facing. I am willing to look for ways to work with Mr. Hefley and other members of the Colorado delegation, and I thank you again.

This issue is of such importance, Mr. Chairman, that we have today testifying before your Committee Attorney General Carla Stovall and David Pope, our Chief Engineer of the State of Kansas, Division of Water Resources, representing the State's Governor.

Again, I thank you for your time and will stand for any questions.

Mr. CALVERT. I thank the Gentleman.

[The prepared statement of Mr. Moran follows:]

Statement of The Honorable Jerry Moran, a Representative in Congress from the State of Kansas

Mr. Chairman, Ranking Member Smith, and other members of the subcommittee, thank you for allowing me the opportunity today to testify on H.R. 3881. As members of the Water and Power subcommittee, you have to deal with one of the most difficult resource issues facing the Western United States: water.

Water disputes have long divided regions, communities, states, and even countries. As members of this subcommittee you are faced with a constant barrage of requests from water users. Communities, the environment, agricultural, and other economic interests all utilize this limited resource. I want to discuss with you today how a particular body of water, the Arkansas River, characterizes the value of this important resource.

The Arkansas River in Kansas

The Arkansas River enters Kansas at the western border with Colorado, near the small town of Coolidge, population 88. The River works its way eastward across the state to Arkansas City, where it continues into Oklahoma. Along the route, the Arkansas passes through the towns of Garden City, Dodge City, Larned, Great Bend, and Hutchinson, and provides the only source of periodic surface water for most southwestern Kansas communities.

Parts of the Arkansas are a dry riverbed now for as many as eight months out of the year. However, looking at our state map, it is easy to see that in earlier times the River was the lifeblood for communities that grew out of the otherwise dry prairie. The towns and roads of southwest Kansas follow the path carved by the Arkansas.

Even today, the Arkansas River is celebrated in our state. The Wichita River Festival is an annual event each May, organized solely for the purpose of drawing Kansans together to recreate on and around the only river in the area. In Kansas, the Arkansas River is more than an important source of water for municipalities; it's an important emotional benefit for people who otherwise would not see water except that coming from wells, pumped from the High Plains Aquifer deep underground.

History of Arkansas River Water Use

Because of its significance to economic development, water use in the Arkansas basin has long been controversial. The waters of the Arkansas River are the only renewable source of waters and have tremendous significance to Southwest Kansas. The scarce river flows provide water for the development of municipalities, large and small. The river provides recreation opportunities for tourism. Business and manufacturing depend on Arkansas water for the existence of commerce on the High Plains. Agriculture relies on the water to irrigate one of the highest-volume farming regions of the country. Rights to use the water from the Arkansas River are vested and some of the oldest in the state of Kansas.

The first compact regulating Arkansas River water was negotiated over 50 years ago. Since 1950, Kansas and Colorado have had agreements about who can use how much water. The current compact was reached after interpretation from the courts

through a series of lawsuits. After spending more than a century fighting over these waters, Kansas and Colorado finally seem to have reached a court-imposed compromise.

State Disputes Involve Legal Action and Lead to Lengthy Court Debates

Kansas sued Colorado in 1901, 1928, and 1985 over the use of the river's water. The latest subject of dispute regarding this river was the issue of Colorado wells and the resulting flow at the Kansas state line. The last court case stemmed from Colorado pumping activity dating back to 1968. This case was litigated for nearly ten years and ultimately was heard by the Supreme Court.

In a ruling last June, the Supreme Court declared that Colorado owed Kansas millions of dollars for loss of water. Over 15 years after the case was initiated, the dispute finally entered into the remedy phase. A special master was appointed in September, 2001, to work with both states to find a way to avoid future disputes over the amount of water crossing the state line.

A dollar amount for the settlement has yet to be determined, but the most conservative estimates indicate that Colorado will pay Kansas about $22 million for money the state and our farmers lost over the thirty-year period. In addition to these costs and the strain on human resources, suits create an enormous burden of litigation fees for states to bear. In the last court case alone, Kansas spent over $17 million. Colorado paid an estimated $11 million in legal expenses.

Potential Consequences of Legislation Affecting the Water Compact

The legislation before the committee today has caused great concern for Kansas as the primary downstream state. This legislation has the potential to damage Kansas areas that depend on Arkansas River water.

Certainly if Colorado is allowed to increase their storage vessels by 122,000 acre feet, that would mean less water for Kansas. Water quality is another very big concern. EPA required Total Maxium Daily Loads (TMDL) be set for the waters of the Arkansas. Some TMDLs have been established and some are still to be set. Water quality is worse in "low flow" conditions of the river, and the reduction of streamflow to Kansas could cause tremendous difficulty in meeting new water quality regulations.

There is no doubt that this legislation would cause damage to Kansas and to its citizens who depend on this water. In 1949 the Arkansas River Compact Administration was formed to deal with these types of technical issues. The Compact Administration should not be bypassed when considering expansion and storage of water that would normally flow down stream and eventually into Kansas.

This legislation affecting compact violations is particularly troubling coming on the heels of the latest court decisions. After the latest decision last year, representatives of both states commented that they hoped to stay out of court in the future. I fear that the proposed legislation before the committee today would set us down the path of more litigation and unnecessary costs for both the state of Kansas and the state of Colorado. At a time when we should be considering advanced measures of conserving water and maximizing its use for as many interests as possible, we will be heading back to the courts. People in both states uniquely value water and recognize the limitations of such a scarce commodity, and is not the best course of action for the citizens of either states.

I would again like to thank the chairman and other members of the committee for allowing me to testify, especially to those members of the Colorado delegation. I live in a city struggling to access enough water. When members of the Colorado delegation meet with their community leaders from Aurora, Pueblo or others, I do understand the difficulty of the situation.

I look forward to working with members of the committee on this legislation. Thank you again.

Mr. CALVERT. I certainly understand water problems, being from California, some of our friends from the Upper Basin States and other places. But rather than ask questions, I would ask if the two of you would like to come up to the dais, and we will ask for testimony, and then we will be able to ask questions of the panel.

Mr. MORAN. Thank you, Mr. Chairman.

I would ask unanimous consent to place in the record testimony from the Associated Ditches of Kansas.

Mr. CALVERT. Without objection, so ordered.

[The information referred to follows:]

Statement of the Associated Ditches of Kansas with Respect to H.R. 3881

The Associated Ditches of Kansas is a group of six non-profit ditch companies which hold vested rights to the use of a total of 140,000 acre feet of the waters of the Arkansas River. Water diverted from that river in the exercise of those rights is used to irrigate thousands of acres of farm land from the Colorado–Kansas state line to Garden City, Kansas.

The river flow is regulated by John Martin Reservoir, located upstream from the state line. It is operated by the Chief of the United States Corps of Engineers in accordance with the Arkansas River Compact, an interstate compact between the states of Kansas and Colorado and approved by the United States Congress which apportions the waters of the Arkansas River between those two states.

The Associated Ditches have become extremely sensitized to the possible impacts of any development in the State of Colorado which may influence the amount of water available for them to divert from the Arkansas River. That sensitivity is the result of the protracted and very expensive interstate litigation between the states of Colorado and Kansas in the United States Supreme Court over the depletion in the state line flow of the river caused by the extensive well development in the State of Colorado. That Court has found that the unaugmented pumping of the Colorado wells violated the Arkansas River Compact and we are waiting for its determination of what kind of reimbursement of damages it will assess against the State of Colorado for that violation.

Because of that sensitivity, we are especially concerned about the prospect of any new depletions in the flow of the waters of the Arkansas River into John Martin Reservoir, and ultimately across the state line. We have been told by the proponents of Colorado's storage project that the enlarged upstream storage capacity and the re-operation of the Fryingpan Arkansas project will have no impact on the state line flows. We heard similar assurances about the post-compact wells, so we are understandably skeptical about such assurances now. As a result, we have asked our technical advisors to analyze, as best they could in the short time available, all of the various impacts of the proposal, including environmental, as well as hydrologic.

Those advisors have not had a chance to fully analyze the technical work that has been done in the Colorado studies to promote a storage project. What they have been able to do, tells them that the hydrologic work stopped short of looking for answers to the critical questions that trouble us about the proposal. For example, state line impacts have not been specifically addressed, and water quality and environmental impacts caused by increased upstream water use have not been considered. Their concerns are discussed in the attached Technical Appendix.

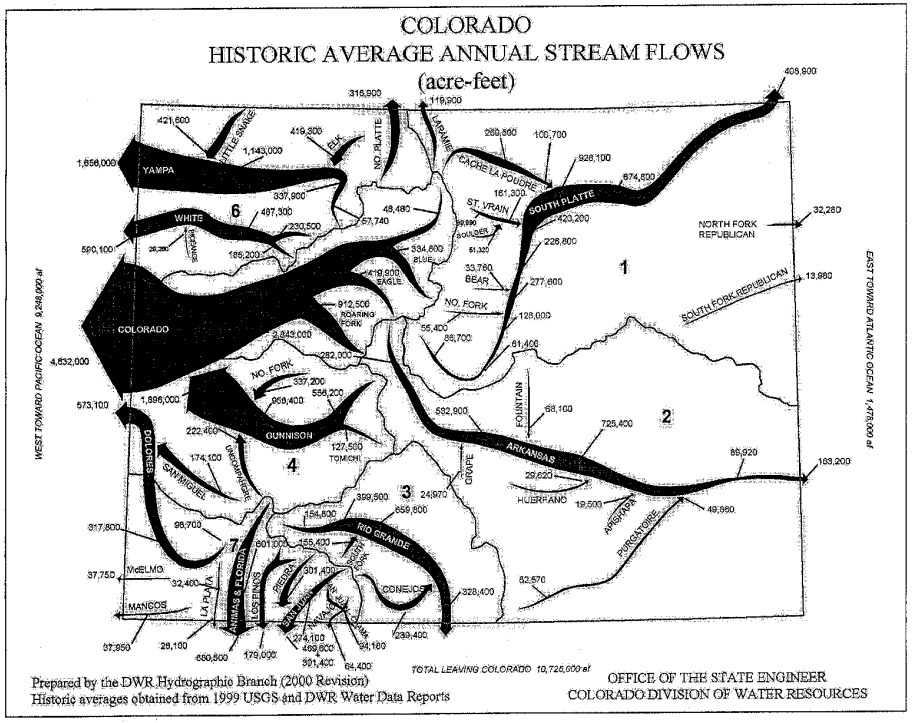
It was clear to them that those studies, performed to support the Preferred Storage Option Plan, were designed to optimize the upstream storage capacity for the purpose of maximizing yields from the waters of the Arkansas River, not to find out whether the operation of that optimized storage capacity and the population growth it supports would have an impact on the amount and quality of the waters of the Arkansas River available for storage in John Martin Reservoir that would be usable by the Associated Ditches.

It is inconceivable to us that the addition of 122,000 acre feet of new storage capacity upstream from Pueblo can be justified merely to reregulate transmountain return flows alone. Indeed, the project's proponents readily admit that this large storage capacity will also be used to store peak flows of the waters of the Arkansas River which would, in the absence of such capacity, flow downstream for storage in John Martin Reservoir and be available for use by the Associated Ditches.

This Subcommittee on Water and Power should be equally concerned about such impacts; it should require that the project not diminish the quantity nor impair the quality of water delivered at the Colorado–Kansas state line. If H.R. 3881 studies find a detrimental impact, the project must be reformulated to avoid such a result. If such a reformulation cannot protect state line flows, the project should not go forward. It would be totally inappropriate for the Congress to authorize project modifications that would result in another violation by the State of Colorado of the Arkansas River Compact.

Clearly, we are not anxious to endure another long drawn out and expensive course of litigation in the United States Supreme Court over this issue. Yet, until we have seen credible proof that the adverse impacts we fear will not occur, we can see no real difference between the State of Colorado violating the compact through unaugmented well pumping and violating it by skimming the peak flows of the river with upstream storage so as to prevent their being available for storage in John Martin Reservoir.

Figure 1


COLORADO
HISTORIC AVERAGE ANNUAL STREAM FLOWS
(acre-feet)
WEST TOWARD PACIFIC OCEAN 9,248,000 af
EAST TOWARD ATLANTIC OCEAN 1,478,000 af
TOTAL LEAVING COLORADO 10,726,000 af
YAMPA
WHITE
COLORADO
GUNNISON
DOLORES
SAN MIGUEL
LA PLATA
ANIMAS & FLORIDA
LOS PINOS
RIO GRANDE
CONEJOS
SAN LUIS
SAN JUAN
MANCOS
McELMO
NO. PLATTE
LARAMIE
CACHE LA POUDRE
SOUTH PLATTE
ST. VRAIN
BOULDER
BEAR
NO. FORK
BLUE
EAGLE
ROARING FORK
TOMICHI
FOUNTAIN
ARKANSAS
HUERFANO
APISHAPA
PURGATOIRE
NORTH FORK REPUBLICAN
SOUTH FORK REPUBLICAN
1
2
3
4
6
7
Prepared by the DWR Hydrographic Branch (2000 Revision)
Historic averages obtained from 1999 USGS and DWR Water Data Reports
OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES

TECHNICAL APPENDIX

ATTACHMENT TO THE STATEMENT OF THE ASSOCIATED DITCHES OF KANSAS WITH RESPECT TO H.R. 3881

This attachment includes additional material in support of the statement of the Associated Ditches of Kansas regarding H.R. 3881. It is intended to offer a more detailed basis for the position that an inadequate technical analysis has been performed by proponents of the proposal to enlarge Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake, Fryingpan–Arkansas Project, Colorado. The authors of the Colorado reports state that their conclusions are in many cases based on old data (e.g., use of aerial photographs from the 1970s to assess wetland impacts) and should be considered essentially qualitative. They note that the purpose of their analysis was to aid in the selection of alternative scenarios and that approval of the project must be based on more thorough studies. The Associated Ditches of Kansas (hereafter referred to as "Kansas) requests that all further studies that might be authorized by passage of H.R. 3881 include a careful consideration of the issues and concerns expressed in our statement and in this technical appendix.

BASIS OF REVIEW

The questions and concerns listed below are based upon our preliminary review of the following documents:

- Preferred Storage Options Plan. Prepared by GEI Consultants, Inc, September 21, 2001.
- Final PSOP Implementation Committee Report: Addendum to Preferred Storage Options Plan Report, April 19, 2001
- Preferred Storage Options Plan Proposed Federal Legislation. Prepared by Southeastern Colorado Water Conservancy District, September 2001.
- Hydrologic analysis: Technical and Environmental Analysis of Storage Alternatives. Prepared by Montgomery Watson, March 2000.
- Water Quality Issues: Technical and Environmental Analysis of Storage Alternatives. Prepared by Montgomery Watson, June 2000.
- Environmental Issues: Technical and Environmental Analysis of Storage Alternatives. Prepared by ERO Resources Corporation, March 2000.

QUESTIONS AND CONCERNS ASSOCIATED WITH THE PROPOSED WATER STORAGE ENLARGEMENT PROJECTS AND THE TECHNICAL ANALYSES OF THEIR HYDROLOGICAL, ENVIRONMENTAL AND WATER QUALITY IMPACTS

1. The lack of attention devoted to potential adverse water quantity/quality impacts to Kansas in the documents listed above is surprising. Kansas was hard-pressed to find any specific evaluation of state line impacts. In sections where these documents address key project considerations, constraints, and potential fatal flaws, there are no concerns expressed regarding potential adverse impacts to Kansas. Such an omission raises questions of technical credibility for it is difficult to envision how the creation of over 122,000 acre-feet (AF) of additional storage in Colorado would not impact state line interests. This additional storage amounts to 75 percent of the historic average annual flow of the Arkansas River at the Colorado/Kansas border, as shown in Figure 1. It is unacceptable to disregard this important point and, further, to neglect the accompanying fundamental shifts in the day-to-day operations of the Fryingpan–Arkansas system.

2. In the few places where there is any reference to state line impacts, the documents state that such impacts will not be significant or adverse. Kansas does not believe that the data presented supports this conclusion. It defies logic that the proposals would not adversely impact state line flows. If Colorado were not intending to store water which would otherwise have come into Kansas, why did the Southeast Colorado Water Conservancy District file new water rights applications in 2000 to capture high flows in the new reservoir storage space?

3. The documents that we reviewed do not clearly answer this key question:

What additional water will be stored that is not currently being stored, and where does it originate?

The availability for storage of an additional 122,000 AF indicates by simple water "mass balance" principles that the water has been diverted from other destinations.

4. We hope that the Subcommittee members recognize how much sophisticated computer modeling underlies the proposals for system re-operation and additional storage. These sophisticated models rely on numerous assumptions that must be based on reliable data. As Kansas stakeholders know from the most recent round of litigation before the United States Supreme Court concerning the Arkansas River

Compact, modeling assumptions are not always consistent with reality and can lead to incorrect conclusions. The Associated Ditches are particularly interested in having engineering and economic consultants review the relevant models, beginning with the models that Colorado interests are using to generate water demands, water conservation and water reuse activities as of 2040. A similar review of the water rights models developed by GEI and Montgomery Watson/Black & Veatch using the Colorado State University (CSU) model, MODSIM is appropriate. Kansas' experience indicates that small changes in modeling assumptions often produce opposing outcomes. Until interested parties in Kansas have had the opportunity to thoroughly review the relevant models, they should be considered interim and subject to change.

5. Kansas would like to learn more about the water conservation and water reuse proposals that are envisioned by the project proponents. Kansas' interest centers on the fact that effective water conservation and reuse reduces the need for additional storage. Furthermore, since a large portion of the additional storage is expected to be used to satisfy population growth demands, one can infer that the flows reaching the state line will include a significant volume of municipal return flow which has inherently inferior water quality.

6. Colorado's assurances that Kansas will not be negatively impacted by the proposed re-operation/additional storage are not adequately supported. Colorado is suggesting that on an average annual basis, there will be little change in stream flow at the state line. Kansas is not comfortable with this finding. Even if it were true, Kansas interests could still be negatively impacted because they are affected by flows, not only on an average annual basis, but also on a much smaller "time step" basis. Obviously, the Associated Ditches are concerned with river flows during irrigation months, particularly during dry periods. Kansas is also keenly interested in the distinction between dry year and average year flows.

There are additional examples of the importance of the timed distribution of water flows. Water quality regulation in the Arkansas River in Kansas is based on extremely low flow conditions. Various total maximum daily loads (TMDLs) have been and are being applied to the Arkansas River in Kansas, and all of these are flow dependent. Our state has recently established a long-term management plan for the Ogallala Aquifer, which includes the objective of using "excess flow" in the Arkansas River to recharge the Ogallala Aquifer. Unfortunately, the documents listed above are not sufficiently detailed to predict how the high flow regime will be affected at the state line and whether Kansas can utilize flows in times of historic surplus for aquifer recharge.

7. In addition to the requirement for more specific and detailed information regarding flow regime changes, better information is needed regarding anticipated water quality changes. At the present time, water users in Kansas are the recipients of extremely poor water quality from Colorado. In fact, the Colorado Water Quality Control Division (CWQCD) has acknowledged that the Arkansas River at the state line is one of the most saline rivers in the United States. Many aspects of the proposed re-operation/additional storage program have the potential to impair water quality further. A number of quality impacts are addressed in the technical reports, such as increased evaporation from the enlarged storage facilities, which will increase constituent concentrations. However, most non-hydrological impacts have been ignored. For example, there will be substantially more municipal and industrial effluent in the river, a topic that was not addressed by the documents reviewed. Representatives of the Kansas Department of Health and Environment (KDHE) and the CWQCD have been exploring potential ways for the states to work collaboratively and cooperatively on water quality issues for almost two years. These representatives should be interviewed by proponents of HR–3881 to explore the compatibility between system re-operation/increased storage and enhanced water quality at the state line.

8. Spring snowmelt "flushing" flows into Kansas are important for many reasons. Aquifer recharge, mentioned above, is one such reason. Another reason is that one of the five major objectives of the Upper Arkansas Sub-basin Management Plan, developed over the past four years by the Kansas Department of Water Resources (DWR) and water users in the Upper Arkansas Sub-basin, is to restore historic river channel characteristics (in other words, to transform the river geomorphology into a more natural condition). This work is being done in cooperation with the U.S. Army Corps of Engineers (USACE). In the absence of periodic flushing flows, the ability to accomplish this will be impaired. As another example, extensive modeling work by the Kansas Geological Survey has demonstrated that decreased flows in the Upper Arkansas River have enhanced migration of saline river flows into the Ogallala Aquifer, thereby increasing aquifer salinity concentrations over a large

area along the Arkansas River corridor. There is concern that this phenomenon will be aggravated by the proposed system re-operation/additional storage.

9. Although many regulatory and permitting issues related to compliance with the National Environmental Policy Act (NEPA), recreation classifications, wildlife habitat, threatened and endangered species, Section 404 permits, etc. have been addressed in the technical reports, the analyses admittedly are frequently based on old data and may no longer be relevant. These reports note that their analyses are intended to help rank alternative scenarios and that approval of the project must be based on more thorough environmental studies and appropriate impact statements.

10. Members of the Associated Ditches are struck by the potential for inconsistent federal action in Kansas, in association with HR–3881. For example, the United States Environmental Protection Agency (USEPA) is requiring Kansas (under a consent decree) to prepare TMDL's for every major watershed in Kansas within eight years, including the Upper Arkansas River. At the same time, under HR–3881, the Federal Government could be advocating a project, which might seriously impact the ability of Kansas Water Users to comply with the Upper Arkansas TMDL. Similarly, the USACE and USEPA are concerned about potential adverse impacts to jurisdictional wetlands, waters of the US, and riparian corridors in association with water delivery/storage systems, and this could be at odds with the proposed storage plan. In conclusion, Kansas requests that United States Congress be highly cognizant of the potential for federal agencies (and federal programs) to be at cross-purposes via H.R. 3881.

Statement of the Associated Ditches of Kansas, Harold D. Knoll, President

The validity of the major questions we raised in the March 19, 2002 testimony with respect to H.R. 3881 was confirmed by our engineering consultant's further review of Environmental Issues (ERO Resources Corporation, March 2000) and Water Quality Issues (Montgomery Watson, June 2000) reports. These reports were prepared during the development of the Preferred Storage Options Plan (PSOP) by the Southeastern Colorado Water Conservancy District (SECWCD) and Colorado Springs Utilities (CSU). Water quality and environmental impacts on water users in Kansas which would likely result from the proposed projects were not addressed quantitatively or to Kansas' satisfaction in those initial studies.

Such a result was inevitable, given the failure of those investigations to adopt a watershed or integrated approach. Our review of those studies supports our earlier statements that increases in water storage in Colorado will have detrimental effects on water users in Kansas. The methods and limited scope of those studies precluded any consideration of those detrimental impacts to Kansas. The authors state that the purpose of the environmental and water quality analyses was only to assist in ranking proposed storage alternatives. Such an objective inherently omits consideration of downstream (specifically state-line) impacts, and avoids asking the question:

How does water chemistry change at the Colorado–Kansas border?

Review of data sources and methods used in the reports demonstrate the inadequacy of the studies in addressing this important question.

Data Sources

Many site specific environmental impacts were apparently discussed in meetings and/or other personal communication with representatives from the U.S. Forest Service (USFS), U.S. Fish and Wildlife (FWS), Environmental Protection Agency (EPA), Bureau of Reclamation (Reclamation), Bureau of Land Management (BLM), Colorado Division of Wildlife (CDOW), Colorado State Parks, and the U.S. Army Corps of Engineers (Corps). While these agencies are certainly appropriate sources of information, the type of data described suggests only qualitative and cursory analysis.

Examination of the potential for site specific wetland impacts was based primarily on 1970's National Wetlands Inventory (NWI) aerial photography. Delineations were not field-verified for current conditions. Again, no attempt was made to study possible wetland impacts in Kansas.

Often qualitative assessments were used to make quantitative judgments. For example, increased toxicity in the Upper Arkansas River Basin is possible according to the analysis, but then the authors state, "Additional study would be required to determine whether the potential change in toxicity due to increased West Slope imports is significant" (Water Quality Issues, p.9–22). The omission of this potential effect in the list of "fatal flaws" is significant.

Lack of Watershed Approach

Only site specific impacts from the proposed action(s)which might be required to satisfy storage demands were examined. That approach considered only questions such as: What happens to the Turquoise Reservoir if it is enlarged? The lack of a watershed approach prevents assessment of impacts at downstream locations, therefore the approach incorrectly characterized the full scope of effects. Specific objections to the study's conclusions arising from the lack of an integrated watershed approach to assess impacts include:

1. The Water Quality Issues report specifically states that increased inflows to the Turquoise and Twin Lakes Reservoirs "would aggravate existing channel erosion problems" (p. 9–13). But the increase in sediment loads combined with predicted decreased retention time in these reservoirs has a significant potential for impacting downstream water quality, yet that issue was not considered. Furthermore, transport of pollutants commonly associated with sediment loads, such as some heavy metals and nutrients, was not a factor in the analysis.

2. In the reports, impacts to water quality that would be a direct result of project operation were never combined with the impacts of water quality changes that may occur as a result of increased water use. It is critically necessary to address all impacts related to the increased water use demand made possible by the various storage alternatives in order to identify potential "fatal flaws" in the different scenarios. For example, the Water Quality Issues document admits that "Increased base flows in Fountain Creek would contribute additional sediment load to the lower Arkansas River" (p.9–22). The increased flows (attributed to increased municipal return flows with inherently degraded water quality) were not considered as impacts resulting from operation of the various storage alternatives, and hence are not included as decision variables in the different scenarios. But the full potential impact of the storage plan must consider the cumulative sediment loads from changes in the Twin Lakes and Turquoise Reservoirs operations together with the loads from Fountain Creek to appropriately assess downstream impacts.

3. The interaction of possible changes with current conditions was not considered. For example, the report states that changes to water depth and water quality are not anticipated in association with the enlargement of the Pueblo Reservoir. The report then states that the combination of increased residence time (which may result from enlargement) and the expected future increases in nutrient loading (regardless of enlargement) may degrade water quality (p.9–8—9–11). The report should not thus blithely dismiss the impact of enhancement of nutrient loading caused by increased residence time simply because the project is not the sole source of water quality degradation.

4. The simple mass-balance model used to simulate salinity, which is based solely on concentrations in West Slope diversion water and municipal return flows, together with the effects of lake evaporation, is inadequate. Failure to include salinity associated with anticipated urban landscaping return flows and future wastewater return flows in the Pueblo region cannot help but underestimate the magnitude of actual future effects, and hence the impact to Kansas. Furthermore, simulations of salinity in the Lower Arkansas River indicated little change in average annual concentrations; however changes in average monthly levels may be significant, namely a 10–15% increase in the spring months. Increased salinity of the river flow directly impacts the ability of the Associated Ditches to provide suitable water for crop irrigation.

5. The Water Quality Issues report acknowledges potential future problems associated with changes in the flow regime for Colorado as the US Environmental Protection Agency and the Colorado Department of Public Health and Environment begin to implement TMDLs, but does not consider changes in flow regime to be important to the TMDLs already being developed and/or implemented in Kansas. But those analyses must recognize the requirement for TMDL development within Colorado, and its regulatory impacts on the proposed projects' operation. Responsible planning and management mandate that new water projects be in compliance with all regulatory requirements.

6. Impacts to riparian habitat or wetlands along the Arkansas River, Williams Creek, Fountain Creek or other effected streams were not considered.

7. Nonpoint source loads from agricultural runoff, such as nutrients and bacteria were not considered.

8. The authors clearly state that environmental modeling was not used for any part of the assessment. Such an admission acknowledges the shallowness of the study.

9. Construction-related impacts were not considered. While such impacts can be mitigated to a certain extent, practical experience proves that these loads can still be significant. They should be addressed.

The methods used to rank storage alternatives failed to address water quality and environmental issues to Kansas's satisfaction. Use of outdated and qualitative data, and lack of a watershed approach do not validate conclusions presented in these studies. The cursory fashion in which the PSOP was formulated with regard to consideration of downstream impacts is wholly inadequate to support Congressional authorization of, and the expenditure of federal money for further study of the proposed options.

Even without such further study, and based on review of the Environmental Issues and Water Quality Issues reports, it is clear that increasing storage in the Arkansas River Basin within Colorado would be detrimental to agricultural and municipal water users in Kansas. The reports acknowledge increased loadings without expressing concern for downstream impacts. Kansas already receives water of poor quality from Colorado, and the proposed changes in the water regime will further limit the beneficial uses of the Arkansas River in Kansas.

Mr. CALVERT. The first witness is John W. Keys, III, Commissioner of the Bureau of Reclamation, United States Department of Interior.

John, why don't you take a seat there. You are recognized for what time you may consume.

STATEMENT OF JOHN W. KEYS, III, COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

Mr. KEYS. It is a pleasure to be here today and provide testimony on proposed House bill 3881, which would authorize the Bureau of Reclamation to engage in studies to use excess capacity from and enlarge Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake of the Fryingpan-Arkansas Project in Colorado.

I would ask that my full written statement be included in the record.

Mr. CALVERT. Without objection, so ordered.

Mr. KEYS. Mr. Chairman, Reclamation has two main objectives in working with the Southeastern Colorado Water Conservancy District. The first is to protect the facilities and authorized purposes of the existing Fryingpan-Arkansas Project and, second, to work with the district to do the proper studies of enlargement of Pueblo and Sugar Loaf Dams. These project purposes that we will protect are domestic and municipal water supplies, supplemental irrigation water, hydropower generation, flood control, recreation and conservation of fish and wildlife resources.

Under the 1962 Act, the use of water and facilities of the project are subject to three interstate compacts: the Colorado Kansas Compact, the Upper Colorado River Basin Compact and the Colorado River Compact. House bill 3881 would authorize Reclamation to conduct studies for the enlargement of Pueblo Dam and Reservoir, Sugar Loaf Dam and Turquoise Lake. It would also authorize the Secretary to enter into contracts for the use of excess storage and conveyance capacity in each of those facilities in Colorado.

Reclamation supports the concept in H.R. 3881 of using the excess capacity in reclamation facilities but within legal and policy parameters to optimize the benefits provided by the projects. Use of excess capacity may offer lower costs and more environmentally friendly solutions to water users than building new facilities. However, our concerns with H.R. 3881 are numerous.

As stated before, the Fryingpan-Arkansas Project is a multi-purpose project. Any feasibility study must assess the overall impacts

of the proposed reoperation of existing facilities and project purposes and impact of planned enlargements on those same facilities and project purposes as well as the new ones, and the study must assess any impact that the enlargements of redelegations of water and new operations might have on the interstate compacts.

H.R. 3881 refers to the Preferred Storage Options Plan Report, PSOP, and the final PSOP Implementation Committee Report as describing the proposed enlargements and the use of excess capacities to deliver additional water supply. H.R. 3881 limits the scope of studies it would authorize to only those provisions described in the PSOP reports. These reports represent only the district's interests and not necessarily those of the Federal Government.

The scope of any feasibility study for enlarging Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake of the Project must be significantly broader than that proposed in H.R. 3881. It must address the other purposes and responsibilities of the project.

Rather than authorize a district to fund the study, as proposed in proposed H.R. 3881, Reclamation recommends that any legislation authorize up to 50 percent of the total cost of feasibility studies. Such language would ensure that the studies would be done to Reclamation standards. The PSOP reports could be used to represent the district's interest, and interests of the public and stakeholders would be protected. We estimate the Federal share of the study to be about $2 million.

Section 2 of H.R. 3881 appears to suggest that congressional authorization of a feasibility study might be sufficient to authorize construction at the dam without need for Congress to consider construction after the study is done. Although the 1939 Act is still on the books, Reclamation has not done business in this matter for over 30 years. We encourage you only to authorize an appropriate feasibility study at this time. Should construction be warranted and agreed upon, we will return to ask for specific construction authority after the study is done.

The sections of H.R. 3881 that deal with contracts are very complicated and prescriptive and in some cases would have adverse impacts upon the project and other water users. We have begun a full legal and policy analysis of these contract provisions, and we will share that review with the Committee when it is completed.

Finally, the application of revenues collected under the legislation is not consistent with current Reclamation law.

Mr. Chairman, Reclamation commends the district for its efforts to address its future water needs. We believe we can work with them to complete a feasibility study for enlarging Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake that will help them reach their water supply goals, protect the original project purposes and honor all of the applicable compacts. We would be happy to work with the sponsor and the Committee to develop legislative language that will achieve the sponsor's goals while addressing our concerns with H.R. 3881 as introduced.

That completes my statement, and I would certainly try to answer any questions that you have.

Mr. CALVERT. I thank the Gentleman for his testimony.

[The prepared statement of Mr. Keys follows:]

Statement of John W. Keys, III, Commissioner, Bureau of Reclamation, U.S. Department of the Interior

My name is John Keys, and I am Commissioner of the U.S. Bureau of Reclamation (Reclamation). I am pleased to provide the Administration's views on H.R. 3881, which would authorize the Secretary of the Interior to engage in studies relating to enlarging Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake of the Fryingpan–Arkansas Project in Colorado. While the Administration supports the efforts of the Southeastern Colorado Water Conservancy District to plan for future water needs, we cannot support H.R. 3881 as written.

Congress authorized the Fryingpan Arkansas Project (Project) in 1962 as a multipurpose, transmountain, trans-basin water diversion and delivery project in Colorado. It makes possible an average annual diversion of 69,200 acre-feet of surplus water from the Fryingpan River and other Colorado River tributaries on the western slope of the Rocky Mountains to the Arkansas River basin on the eastern slope. Water diverted from the western slope, together with available water supplies in the Arkansas River Basin, provides an average annual water supply of 80,400 acre-feet for both municipal/domestic use and supplemental irrigation in the Arkansas Valley. The Project includes a hydroelectric power plant with a generating capacity of 200 megawatts. Additional authorized Project purposes include flood control, recreation, conservation of scenery, natural, historic and archeologic objects on Project lands, and conservation and development of fish and wildlife resources. Further, under the 1962 Act, the use of Project water is subject to numerous inter-state compacts. This includes the Colorado–Kansas compact. The Project has been operated and maintained by Reclamation since its completion.

The Southeastern Colorado Water Conservancy District (District) represents the irrigation and municipal and industrial water users served by the Project water supply. The District is responsible for repaying the United States for the cost of Project works associated with the irrigation and municipal and industrial functions of the Project, plus applicable interest. The District also pays a proportionate share of annual operation and maintenance (O&M) of the Project.

H.R. 3881 authorizes the Secretary of the Interior (Secretary), through the Bureau of Reclamation, to conduct studies for the enlargement of Pueblo Dam and Reservoir, Sugar Loaf Dam and Turquoise Lake. The legislation also authorizes the Secretary to enter into contracts for the use of excess storage and conveyance capacity in east slope facilities of the Fryingpan–Arkansas Project, Colorado.

Reclamation supports the concept expressed in H.R. 3881 of using the excess capacity in Reclamation facilities, within legal and policy parameters, to optimize the benefits provided by the projects. Use of excess capacity may offer lower costs and more environmentally friendly solutions to water users than building completely new facilities.

However, our concerns with H.R. 3881 are numerous. My testimony today highlights a few of these concerns.

Feasibility Studies

The Fryingpan–Arkansas Project is a multipurpose project whose authorizing legislation imposes, in addition to authorized Project purposes, legal obligations on Reclamation including compliance with the interstate compact on the Arkansas River between Colorado and Kansas. Therefore, any feasibility study must assess the overall impacts of the proposed re-operation of existing facilities, on contracts, and the impact that the use and operation of planned enlargements of Project facilities might have on other users of Project water and on the interstate compact.

H.R. 3881 refers to the Preferred Storage Options Plan (PSOP) Report of September 21, 2000, and the Final PSOP Implementation Committee Report of April 19, 2001, as documents describing the various aspects of proposed enlargements at two reservoirs and the use of excess capacity of existing facilities in delivering these additional water supplies. H.R. 3881 limits the scope of studies it would authorize to only the provisions described in the PSOP reports themselves. These reports, products of considerable effort and forward thinking by the District, were prepared by consultants to the Southeastern Colorado Water Conservancy District and Enterprise Board, and, as such, represent only the District's interests, and not necessarily those of the Federal government.

Because Fryingpan–Arkansas is a Federal multi-purpose Project which Reclamation must operate in compliance with inter-state compact obligations, Reclamation's role is different from and broader than that of the District and, therefore, the scope of any feasibility studies relating to enlarging Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake of the Fryingpan–Arkansas Project must be significantly broader than that proposed in H.R. 3881. While the PSOP studies are very

useful tools in presenting the District's interests, Reclamation's role is to analyze the impacts of the proposed action at Pueblo Dam on all the beneficiaries of Project water, as well as on the multiple Project purposes including upland recreational improvements around Turquoise Lake, and on the inter-state compacts. Under Congressional directives and long-standing Reclamation policy, a feasibility study performed by Reclamation must study a range of alternatives to determine the best approach to meeting identified needs.

Rather than authorize a District to fund the total cost of the studies, either partly or wholly in the form of services, as proposed in H.R. 3881, the Department recommends that any legislation authorize up to 50% of the total cost of feasibility studies. This would ensure that feasibility studies appropriate for the nature and complexities of the Project are designed, written, and completed to Reclamation's standards, using the PSOP reports as a foundation expressing the District's interests, and with a shared ownership of the end product. In this manner, the Secretary, through Reclamation, can ensure that the interests of the public and stakeholders have been considered, to the extent possible, through the public process required by Reclamation law, while sharing the costs with the District consistent with current Reclamation policy. We estimate the cost of the federal share of such studies to be about $2 million.

Congressional Authorization of Construction

Section 2 of H.R. 3881 appears to suggest that congressional authorization of a feasibility study may be sufficient to authorize initiation of construction at the Dam, without the need to go back to Congress for additional specific construction authorization. Although this law (the Act of August 4, 1939) is still on the books, it conflicts with how Reclamation has done business for over 30 years. Reclamation encourages the Committee to authorize only an appropriate feasibility study relating to enlarging Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake of the Fryingpan–Arkansas Project in Colorado. Reclamation will request that Congress provide for construction authorization if results of the feasibility study justify that work.

Legal Precedents

The sections of H.R. 3881 dealing with contracts are very complicated and, if enacted, could set many precedents Reclamation-wide. The current language of H.R. 3881 is very prescriptive and could cause unintended and adverse precedents for Reclamation contracts with other entities for excess storage capacity and the delivery of non-project water through project facilities. Reclamation has begun a full legal and policy analysis of the precedent-setting actions set forth in H.R. 3881. When it is completed, we will send a copy to the Committee.

Reclamation also has concerns about the implications for potential water delivery contractors arising from the various restrictions imposed by H.R. 3881 on the Secretary's contracting authority. For example, H.R. 3881 states that Reclamation can contract with any entity delivering water for municipal or other purposes, but the entity must first have signed an agreement with the District under certain terms listed in the legislation. These terms include a provision for payment of any surcharges set by the District. This requirement alone could provide significant leverage to the District to impose substantial surcharges as a prerequisite to an agency's entering into a contract with the Secretary.

Finally, the application of revenues collected under the legislation, not related to the surcharges of the District, is not consistent with current Reclamation law.

Conclusion

Reclamation appreciates the District's forward thinking and collaborative planning efforts in developing its PSOP reports. While we applaud their efforts to plan for the future, we must recognize the many complexities of the Project. Unlike many Reclamation projects, the Fryingpan–Arkansas Project was developed for multiple uses from the beginning, so our role is different and broader than the District's. Reclamation is committed to build upon the good work done by the District. As such, the Department proposes that Congress authorize Reclamation to conduct a feasibility study consistent with the AReclamation Manual Directives and Standards for feasibility studies@, with a shared ownership of the end product; and to produce contracting authorities consistent with and complementary to Reclamation law.

Reclamation commends the Southeastern Colorado Water Conservancy District and Enterprise Board for its efforts to address its future water needs. Reclamation would be happy to work with the sponsor and the Committee to develop legislative language that would achieve the sponsor's goals while addressing our concerns with H.R. 3881 as introduced. This concludes my statement and I would be pleased to answer any questions.

Mr. CALVERT. Maybe we can expand on this a little bit.

Section 2a of the Act begins by stating, the Secretary of Interior is hereby authorized to engage in storage space studies up to and including the feasibility study pursuant to section 8 of the Federal Water Project Recreation Act and section 9a of the Act on August 4 of 1939. As may be appropriate relating to the enlarging of Pueblo Dam and Reservoir and Sugar Loaf Dam and Turquoise Lake, explain what the implication of these sections are.

Mr. KEYS. Well, sir, if you look at the 1939 Act, the language in there actually takes it all the way to construction; and what we are saying is we would like to do the feasibility study and then come back for specific authorization to do construction, rather than this one authorization carry it all the way through the process.

Mr. CALVERT. Has there been precedent for that already? I mean, as far as going ahead and doing the feasibility and moving directly to construction?

Mr. KEYS. Yes, sir. In the 1940's and 1950's, it was done that way on a regular basis. But, like I said, for the last 30 years we have not done it that way. We think we need to do a feasibility study and come back and let the Congress know what the results of that feasibility study are before specific construction is authorized.

Mr. CALVERT. How long would that feasibility study take?

Mr. KEYS. We think we can do it in a couple of years, sir.

Mr. CALVERT. Thank you.

Mr. Hefley.

Mr. HEFLEY. Well, we certainly want to work with you on your concerns, and the Bureau is concerned. Where were you when we were trying to develop this bill? Because we thought we worked with everybody to work out whatever we could on this.

Mr. KEYS. Mr. Chairman, Mr. Hefley, we worked with the people from southeast Colorado, but we were not part of the decision-making process in doing the designs and actually doing the drafting of the bill.

Mr. HEFLEY. Mr. Chairman, I guess that is all I have at this point.

We do want to work with you and try to work it out. I am not sure I agree with all of your concerns, but we don't want this bill to be a bill which hurts anybody—the downstream compacts, isn't it true that the law determines how much water under the compacts we send downstream to Kansas?

Mr. KEYS. Mr. Chairman, Mr. Hefley, the State law determines that. All of our projects are built within State water rights. Then we operate those projects within those water rights, and all of our water rights are subject to the compacts that are negotiated between those States. So we are subject to those. The existing project is subject to them, and any resulting project should be subject to those State water rights and the compacts.

Mr. HEFLEY. Mr. Chairman, you are aware of this better than anybody because you are a recipient of the Colorado River drainage system, but everything starts in Colorado when we talk about water. I think there is one little stream that comes out of Wyoming up on the border and into Colorado, but all the other rivers run out of Colorado. So the Poudre goes into Nebraska, and we have to deal

with a compact on the Poudre. The Arkansas River goes into Kansas, and we deal with the compacts for the Arkansas River, and they are entitled to their share of the water. And the Rio Grande goes into New Mexico and Texas and Colorado, goes to California—through a number of States.

So it is a tough situation when we start dealing with water; and everybody gets very, very nervous when we start dealing with water because you don't want your communities dried up. The thing that limits Colorado's future growth is water. That is the one thing that limits it, and the need to store water. We don't get much rain. We get snow in the wintertime, and we need to be able to store that snow in the wintertime for beneficial use later on in the year, whether it be going downstream to the compacts or be for use within the State of Colorado.

The Bureau of Reclamation has worked very well with us, and we hope that you will work with us as we try to develop this bill to make it work for everybody. We have no intention of damaging anybody with this piece of legislation, but we do think that it has a two-prong importance. The first is that some of the municipalities can store their water in Pueblo Reservoir; and that is—as I indicated in my testimony, maybe the most important part of this whole thing is the ability to store their water, it is their water, to be able to store it there. And, second, to look at the idea of expanding these reservoirs for future storage.

After Two Forks, which was approved all the way up and down the line until the EPA Director, who happened to be in the first Bush administration and didn't know Two Forks from anything, arbitrarily, after it passed all the permitting and had gone on for years, he arbitrarily canceled it, I said, there will never be another major water project built in the West after this kind of example ever again. So you have to do something to be able to capture and store more of this water.

Of course, that is the business you are in, Mr. Keys; and I hope that you will work with us on this.

Mr. KEYS. We would pledge to work with both the sponsor and the Committee to work on the bill to make it acceptable and then to do the necessary studies so that our project facilities, their purposes and so forth are protected and to help southeast Colorado come up with what they need to do.

Mr. CALVERT. Thank you, and I would be happy to work with everybody to try to accommodate that.

Mr. Moran.

Mr. MORAN. Mr. Chairman, thank you for allowing me to be in a Committee that is so cooperative. It is pleasing to be here and hear the testimony. I thank Mr. Keys for his comments.

I would only ask that the feasibility study include the role compliance with the compact. Is that something that is considered in your feasibility study? Is it one of the three compacts that you described?

Mr. KEYS. Mr. Chairman, it is part and parcel of meeting the water rights that we would have to obtain from the State before we could build the project. The study would determine how much water is available, how we would meet the compact and provide the waters that folks are looking for.

Mr. MORAN. So a project that is determined feasible by the Bureau of Reclamation would be in compliance with the compacts?

Mr. KEYS. Mr. Chairman, that is correct. It has several levels of feasibility. One is economic feasibility and the other is whether it will work or not. And certainly State water rights are part of the decision of whether it will work.

Mr. MORAN. Thank you, Mr. Chairman.

Mr. CALVERT. Thank you. Any further questions for this witness?

Mr. HEFLEY. If I might ask one more question, why would it take 2 years to do this feasibility study? Don't you have most of the data and so forth at hand?

Mr. KEYS. Mr. Chairman and Mr. Hefley, we have the data on what southeast Colorado wants to do, but we need to go back and look at the other purposes of the project to be sure that they are protected, to see if there are other purposes that should be expanded at the same time. While we are raising the dam, it would be a shame to raise it to a certain level and another half of foot might provide so many other benefits or maybe the last half of foot that you are looking for has done some damage that you can get away from. So we would take a look at all the other purposes of the project at the same time, using that information from southeast Colorado and what they need.

Mr. HEFLEY. You still think it would take about 2 years?

Mr. KEYS. Yes, sir.

Mr. CALVERT. I thank the Gentleman for his testimony.

Our second panel is the Honorable Carla Stovall, the Attorney General for the State of Kansas; the Honorable Jim Null, Councilman, City of Colorado Springs, State of Colorado; and David Pope, Chief Engineer, State of Kansas Department of Agriculture, Division of Water Resources.

Mr. CALVERT. Ms. Stovall, you may begin your testimony.

STATEMENT OF THE HONORABLE CARLA STOVALL, ATTORNEY GENERAL, STATE OF KANSAS

Ms. STOVALL. Mr. Chairman, thank you very much for the privilege of being here. Congressman Moran, thank you for the invitation to come as well.

I do appear in opposition to this particular piece of legislation, and my testimony will build on what Congressman Moran talked about to help the Committee members understand what the litigious nature of these water resources are for both of these States. It is litigation between Kansas and Colorado, litigation that has spanned a century, litigation with the dubious distinction of being one of the foremost water cases in this United States. I offer the testimony to show why passage and implementation of this law would cause deep concerns to us and we believe potentially cause additional litigation.

As Congressman Moran said, we have spent, as Kansans, $17 million already on this litigation which has lasted 17 years. Anything that gets in the way of resolving this litigation we think would be detrimental to the interests of the citizens of Colorado as well as Kansas.

While it is my intent to talk about the litigation, David Pope, our Chief Engineer, will be able to provide information to the

Committee about the technical nature of the impact of this potential legislation.

Throughout the last century, Kansas and our citizens have battled with Colorado in the courts in a continuous battle to obtain our equitable share of the Arkansas River. Kansas first sued Colorado in the U.S. Supreme Court in 1901, alleging that they were depleting our water. It was the first time the United States Supreme Court said it would authorize original jurisdiction between two States suing one another over interstate water issues. In 1907, unfortunately for Kansas, the United States Supreme Court found that we hadn't adequately proved a depletion, but nonetheless had indicated that we are right to have exercised our right.

In the early part of the 20th century, the dispute waged on. Kansas water users actually sued the water users of Colorado to stop their increasing use. Colorado then sued Kansas in the U.S. Supreme Court in 1927 seeking an injunction against our water users suing their water users. We countered with a second request to the Supreme Court to enjoin again the continuing increases in water use by Colorado.

In 1943, the United States Supreme Court made a decision that really encouraged, if not directed, both States to enter a compact so that we weren't all the time in litigation but that we had a compact that would govern the use of this water. This Congress approved that compact in 1949; and it was, of course, signed by the President of the United States at that time.

But, nonetheless, in 1985 Kansas was again forced to go to court, again to the United States Supreme Court, because of violations of the compact. The case was assigned by the U.S. Supreme Court to a Special Master who conducted 177 days of trial and made a report to the United States Supreme Court. In a unanimous decision written by the Chief Justice, William Rehnquist, in 1995, the United States Supreme Court agreed with the Special Master and found that Colorado had indeed violated the compact in direct violation of the rights of Kansas.

One of the things the Chief Justice found in that decision was not only do we disagree about implementation of the compact but we don't even agree on how to pronounce the river. It is the Arkansas River that we are dealing with once it comes into the State of Kansas.

But after that decision in 1995 we went back to trial again. Two more reports by the Special Master, a second argument before the State—the Nation's highest court resulted in the decision of 2001 that Congressman Moran mentioned. There the Court found that we have been shorted 428,005 acre feet of water since 1950. That is real water to real Kansans that we were deprived of.

In keeping with the precedent-setting character of the ongoing dispute with us in court, the latest decision, the one issued in June of last year, represents the largest monetary award one State has ever been—had handed them down against them over the objection of the other State. It was also the first interstate water compact case in which prejudgment interest was awarded for a compact violation. It is also the most definitive statement by the United States

Supreme Court that water compact damage claims are not barred by the Eleventh Amendment to the Constitution.

This litigation has been precedent setting in many, many respects but has taken us a long to time to get to where we are. Kansas has virtually won at every stage of the proceeding thus far. Notwithstanding those victories, we still have substantial issues to resolve, and that has to do with future compliance of the compact. How does Colorado get to Kansas the water that we are entitled to? That is the next phase. We engaged in about 4 months of negotiation this fall to try to resolve that ourselves without going back to the Court. We fell far short of being able to resolve that.

I would submit to you members of this Committee that anything that interferes, that has an impact in the Arkansas River is going to have substantial depletions to us and put off farther an ultimate decision by the Supreme Court and/or any successful negotiations we could possibly have. David Pope, our Chief Engineer, will talk about the specifics of why we believe technically this proposed legislation causes us problems.

But I would suggest to you anything that increases the amount of water capacity to be stored in Colorado necessarily affects us. We believe we are still 11,000 acre feet short every year of water under the compact that we are entitled to. Storing any additional water means that we are not getting the water that we are entitled to. So we would very strongly oppose even approving this as the feasibility study which the Bureau of Reclamation supported, and we would simply ask you not to let this go any farther because of the significant depletions and damage that would result.

Thank you very much for the privilege of testifying before you.

Mr. CALVERT. Thank you. Happy to know what we do in this Committee for attorneys throughout the country.

[The prepared statement of Ms. Stovall follows:]

Statement of The Honorable Carla J. Stovall, Attorney General, State of Kansas

Distinguished members of the Subcommittee, my name is Carla J. Stovall, Attorney General for the State of Kansas. I wish to thank you for allowing me to appear today to testify in opposition to H. R. 3881.

This testimony will provide some background information on the litigation between the States of Kansas and Colorado over the waters of the Arkansas River; litigation spanning a century; litigation with the dubious distinction of being one of the foremost disputes in the country for generating United States Supreme Court precedent in interstate water law. I offer this testimony to show why passage and implementation of H.R. 3881 would cause deep concern to Kansas and potentially cause additional litigation in the event passage results in increased violations of the Arkansas River Compact by Colorado, a result all too likely in Kansas' view.

Throughout the entire last century, Kansas and its citizens engaged in court battles with Colorado in a perpetual legal attempt to obtain Kansas' equitable share of the Arkansas River. Kansas first sued Colorado in the U.S. Supreme Court in 1901, alleging Colorado was unfairly depleting streamflows to Kansas' detriment. When the Supreme Court, in 1902, refused Colorado's request that the case be dismissed, it affirmed for the first time that it would exercise its original jurisdiction to determine the equitable apportionment of interstate waters. In 1907, however, the high court decided that Kansas had not proven enough depletions to warrant an injunction against Colorado to halt its expanding use of the Arkansas River waters.

In the early part of the 20th Century, the contentious dispute raged on between Kansas and Colorado over how to share the waters of the Arkansas River. Kansas water users began suing Colorado water users to stop Colorado's increasing use. Colorado then sued Kansas in the U.S. Supreme Court in 1927 seeking an injunc-

tion against the Kansas water-user suits, and Kansas countered with a second request to the Court to enjoin continuing increases in use by Colorado. The Supreme Court's 1943 decision in that case led to, and in fact explicitly encouraged, the negotiation of the Arkansas River Compact (Compact), an agreement between Kansas and Colorado that was ratified by Congress in 1949 after three years of negotiations between the states.

In 1985, Kansas filed in the U.S. Supreme Court its latest suit against Colorado. This case was assigned to a Special Master who conducted 143 days of trial and then reported to the U.S. Supreme Court with a recommendation that it find Colorado had violated the 1949 Compact through groundwater pumping which materially depleted usable flows. The Supreme Court, in a unanimous 1995 decision authored by Chief Justice Rehnquist, agreed with the Special Master's assessment and had no difficulty in concluding that Colorado had caused material depletions of the usable flows of the Arkansas River, in violation of the Compact.

After some 63 more days of trial, two more reports by the Special Master to the Supreme Court, and a second argument before the Court, the most recent decision was issued in June 2001. The Supreme Court's ruling determined that Colorado violated the Arkansas River Compact by depriving Kansas of 428,005 acre-feet of water from 1950 through 1996 (one acre-foot is 325,851 gallons). As a result of the Court's decision, Colorado will have to pay money damages to Kansas to compensate for the its injury.

In keeping with the precedent-setting character of the ongoing dispute between Kansas and Colorado, the latest Supreme Court decision represents the largest monetary award ever made in an interstate water compact case and the first and only such award imposed over the objection of the defendant state. This was also the first interstate water compact case in which prejudgment interest was awarded for a compact violation. The case also represents the most definitive statement ever by the Court that interstate water compact damage claims based on losses of individual water users are not barred by the Eleventh Amendment to the U.S. Constitution.

Notwithstanding Kansas' substantial victories fought and won in the Supreme Court, victories achieved despite bitter and aggressive opposition by the State of Colorado, the most important aspect of the case remains to be concluded. The final phase of our 17 year battle with Colorado is scheduled to begin in June of this year. The Special Master will determine perhaps the most important question in the case: What must Colorado do in order to come into compliance with the 1949 Compact?

H.R. 3881 threatens to cause new depletions of the usable flows of the Arkansas River in violation of the 1949 Compact. Kansas' experts confirm the common sense notion that capturing and using additional water in Colorado, or intensifying current uses, will deplete the flows that now support uses downstream in Kansas. The legislation would authorize operation of a water bank allowing storage of existing non–Fryingpan–Arkansas project water in the reservoir. This storage may result in expanded and more consumptive uses of pre-compact water rights, thus depleting streamflows to KS. Storage of new water in any enlarged reservoir space has the certain potential to intercept water that would otherwise flow downstream for use in Kansas.

The Congress should not, in my view, step into the middle of the pending interstate litigation on the Arkansas River by enacting the proposed legislation. To do so would exacerbate and rekindle the current suit. Colorado has not sought Kansas' input, but rather has rebuffed Kansas' attempts to provide such input on the enlargement and intensified operation of Pueblo Reservoir.

In sum, it is inconsistent with the equal footing of the States to consider such potentially detrimental legislation over the objections of the affected downstream state. I therefore recommend against passage of H.R. 3881.

Mr. CALVERT. Our next witness is the honorable Jim Null, Councilman, City of Colorado Springs.

STATEMENT OF THE HONORABLE JIM NULL, COUNCILMAN, CITY OF COLORADO SPRINGS, STATE OF COLORADO

Mr. NULL. Good morning, Mr. Chairman and members of the Subcommittee. I am Jim Null, a member of the Colorado Springs City Council. I appreciate the opportunity to testify here today on H.R. 3881 sponsored by Congressmen Hefley, McInnis, Schaffer and Tancredo. This bill which is of great importance to the City of

Colorado Springs—great importance, and I appreciate the leadership of our congressional delegation for introducing this legislation.

Colorado Springs is the second largest metropolitan area in the State of Colorado and the home to a number of military installations, including the Air Force Academy, Fort Carson, NORAD and Peterson Air Force Base. We sit at the base of Pikes Peak and find ourselves in a beautiful place to work, recreate and raise a family. We have experienced rapid growth in the past 5 years, an 18 percent increase overall. In fact, the population has nearly tripled in the last 30 years. Our community continues to draw new industry and residents.

We have a history of providing reliable, cost-effective utility services to our customers, including domestic, commercial and industrial water supplies, despite our location in a very arid part of the country. H.R. 3881 will allow us to continue to meet that responsibility in a manner which maximizes the efficiency of both existing infrastructure and existing water supplies, thereby minimizing the need for new storage and the acquisition of additional water rights within and outside the basin. With this legislation, we can avoid new reservoir construction and water transfers from other basins or from agricultural to municipal use.

In 1990, we began a water planning process to determine our needs through the year 2040, based upon realistic growth projections. We found that though our existing water supply decrees may be adequate, there was a need for additional storage and delivery infrastructure. 1996, the city adopted a plan of action which identified a number of approaches for meeting our future water demands, including water conservation, existing system improvements and a new southern delivery system from Pueblo Reservoir.

As part of this plan, Colorado Springs Utilities approached the Southeastern Colorado Water Conservancy District and indicated our need for additional storage. The district then conducted a water and storage needs assessment on behalf of all district members, including Colorado Springs. Colorado Springs Utilities fully supported this district-wide effort. That study confirmed the need for additional storage capacity in order to provide firm yield to municipal entities and analyzed a wide range of alternatives to meet that demand, including project reoperations which would allow the storage of nonproject water in the Fry-Ark Project space and reservoir enlargements.

Both reoperations and enlargement of these reservoirs ranked very favorably in terms of cost, operational effectiveness and environmental/socio-economic factors. Thus, it was decided by the district members to proceed with these options. Colorado Springs has committed to pay for and receive approximately 50 percent of the additional storage capacity available through reoperations and enlargements, totaling 58,000 acre feet of storage, a critical component in meeting our future water requirements.

Colorado Springs and the Southeast District were not alone in undertaking these planning efforts. Over 40 entities participated in the storage study process, including such entities as the Arkansas River Outfitters Association, the Colorado Division of Wildlife and the Pueblo Board of Water Works, the body responsible for providing water service to the City of Pueblo, our neighbor to the

immediate south. Reoperation implementation costs were estimated at $2.5 million, with enlargement implementation for the first 4 years, that is, preconstruction, amounting to another $2 million. Actual enlargement costs have been estimated at $110 million. Substantial investments have already been made to date.

The advocates of H.R. 3881 have also been very careful to consider and attempt to accommodate the needs of a variety interests. Of course, in our western water rights system, decrees issued by our water courts will contain provisions to assure the water rights of others are not in any way injured. However, we have also attempted to accommodate the concerns of parties who don't even hold water rights. For example, the project proponents have voluntarily committed to not exercise their lawful water exchange rights at such times as the flow in the Arkansas River below the Pueblo Dam is below 100 cubic feet per second. In order to achieve this goal, Colorado Springs and other supporters of this legislation have agreed to curtail their ability to exchange water and store it in Pueblo Reservoir. This commitment is a good-faith effort to reach a compromise which recognizes that such minimum flows will serve recreation, fish and environmental values.

We have also inserted a provision in the bill designed to constrain additional future transbasin diversions absent consent from the basin of origin. The language of this action remains the subject of ongoing discussions, but I believe it is fair to say that all parties agree upon the objective of the legislation, that is, the efficient utilization of decrees and resources.

I am also aware of some concerns expressed by the City of Pueblo, as compared to the Board of Water Works, but can assure you that the project proponents are actively engaged in talks with the city. This includes an exchange of written proposals designed to alleviate their concerns through a mutually beneficial approach to water management. I believe such a solution is certainly possible without requiring any amendments to H.R. 3881. We have encouraged the City of Pueblo to join the rest of us in supporting this legislation and to participate in this project so they can acquire the ability to store water and release it for their legitimate downstream needs.

H.R. 3881 is project-specific legislation and hence holds no implications for other Bureau projects. However, it should not go without saying that there is ample precedent for such a practical and useful approach to meeting water supply demands in the West, including H.R. 1235 by Representative George Miller of California and S. 2594 by Senator Wayne Allard of Colorado, each of which were adopted during the 106th Congress.

As you can see, H.R. 3881, which confirms that nonproject water can be stored in excess Fry-Ark Project space and authorizes the study which is the precursor to project enlargements, is a very worthwhile and necessary piece of legislation which will go a long way toward meeting our future water demands in the entire Arkansas Valley and certainly in our city. Further, and you probably don't hear this very often, it has no fiscal note for the Federal taxpayer. We are funding this undertaking ourselves and not requesting any Federal appropriation. It is a bill I hope you will look upon favorably.

I thank you for this opportunity to testify and am available to answer any questions you might have.

Mr. CALVERT. I thank the Gentleman for his testimony.

[The prepared statement of Mr. Null follows:]

Statement of James Null, Colorado Springs City Council

Good morning Mr. Chairman and Members of the Subcommittee. I am Jim Null, a member of the Colorado Springs City Council. I appreciate the opportunity to testify here today on H.R. 3881, by Congressmen Hefley, McInnis, Schaffer and Tancredo. This bill which is of great importance to the City of Colorado Springs and I appreciate the leadership of our Congressional delegation for introducing this legislation.

Colorado Springs is the second largest metropolitan area in the state of Colorado and the home to a number of our military installations, including the Air Force Academy, Fort Carson, NORAD, and Peterson Air Force Base. It is located within the Southeastern Colorado Water Conservancy District and is, in fact, the largest "customer" of that District in terms of population served. We sit at the base of Pikes Peak and find ourselves in a beautiful place to work, recreate and raise a family. That is undoubtedly part of the reason why we have experienced rapid growth in the past five years, an 18% increase overall. In fact, the population has nearly tripled in the last 30 years. Our community continues to attract new industry and residents.

We have a history of providing reliable, cost-effective utility services to our customers, including domestic, commercial and industrial water supplies, despite our location in a very arid part of the country. H.R. 3881 will allow us to continue to meet that responsibility in a manner which maximizes the efficiency of both existing infrastructure and existing water supplies, thereby minimizing the need for new storage and the acquisition of additional water rights within and outside the basin. With this legislation, we can avoid new reservoir construction and water transfers from other basins or from agricultural to municipal use.

Colorado Springs possesses a very diverse water supply and delivery system, with over 75% of its water coming from the Colorado River Basin through transbasin diversion projects. The remainder is obtained from the Pikes Peak watershed or from the Arkansas River itself via the Fountain Valley Pipeline. The latter delivers our Fryingpan–Arkansas Project water.

In 1990, we began a water planning process to determine our needs through the year 2040 based upon realistic growth projections. We found that though our existing water supply decrees may be adequate, there was a need for additional storage and delivery infrastructure. In 1996, the City adopted a plan of action which identified a number of approaches for meeting our future water demands, including water conservation, existing system improvements, and a new southern delivery system from Pueblo Reservoir.

As part of this action plan, Colorado Springs Utilities approached the Southeastern Colorado Water Conservancy District and indicated our need for additional storage. The Southeastern Colorado Water Conservancy District then conducted a water and storage needs assessment on behalf of all District members, including Colorado Springs. Colorado Springs Utilities fully supported this district-wide effort. That study confirmed the need for additional storage capacity in order to provide firm yield to municipal entities and it analyzed a wide range of alternatives to meet that demand, including project re-operations and reservoir enlargements. Project re-operations, which better utilizes existing storage facilities, would allow for the use of excess capacity in existing Fry–Ark Reservoirs. In particular, it would allow for the storage of "non-project" water in the Fryingpan–Arkansas project space.

In addition to authorizing re-operations, this legislation calls for a study of the feasibility of enlarging Pueblo Reservoir and Turquoise Reservoir. These enlargement studies are a critical first step in future water planning and development in the Arkansas River Valley. Both re-operations and enlargement of these reservoirs ranked very favorably in terms of cost, operational effectiveness and environmental/socio-economic factors. Thus, it was decided by the District members to proceed with these options. Colorado Springs has committed to pay for and receive approximately 50% of the additional storage capacity available through re-operations and enlargements, totaling approximately 58,000 acre-feet of storage, a critical component in meeting our future water supply requirements.

Colorado Springs and the Southeast District were not alone in undertaking these planning efforts. Over 40 entities participated in the storage study process, including the Upper Arkansas Water Conservancy District, the City of Canon City,

Arkansas River Outfitters Association, Colorado Division of Wildlife, City of Florence and the Pueblo Board of Water Works, the body responsible for providing water service to the City of Pueblo, our neighbor to the immediate south. Re-operation implementation costs were estimated at over $2.5 million, with enlargement implementation for the first four years, i.e., preconstruction, amounting to another $2 million. Actual enlargement costs have been estimated at $110 million. Substantial investments have already been made to date.

The advocates of H.R. 3881 have also been very careful to consider and attempt to accommodate the needs of a variety of interests. Of course, in our western water rights system, decrees issued by our water courts will contain provisions to assure that water rights of others are not in any way injured. However, we have also attempted to accommodate the concerns of parties who don't even hold water rights. For example, the project proponents have voluntarily committed to not exercise their lawful water exchange rights at such times as the flow in the Arkansas River below the Pueblo Dam is below 100 cubic feet per second. In order to achieve this goal, Colorado Springs and other supporters of this legislation have agreed to curtail their ability to exchange water and store it in Pueblo Reservoir. This commitment is a good-faith attempt to reach a compromise, which recognizes that such minimum flows will serve recreation, fish and environmental values.

We have also inserted a provision in the bill designed to constrain additional future transbasin diversions absent consent from the basin of origin. The language of this section remains the subject of ongoing discussions, but I believe it is fair to say that all parties agree upon the objective of the legislation, i.e., the efficient utilization of existing decrees and resources.

I am also aware of some concerns being expressed by the City of Pueblo (as compared to the Board of Water Works), but can assure you that the project proponents are actively engaged in talks with the City. This includes an exchange of written proposals designed to alleviate their concerns through a mutually beneficial approach to water management. I believe that such a solution is certainly possible without requiring any amendments to H.R. 3881. Colorado law, as developed over the last century, recognizes the seniority of the project participant's existing decrees and pending water right applications which will be utilized in project operations. That same set of statutes also dictates that the state Water Conservation Board is the "only" entity entitled to hold "instream flow decrees," with such decrees being found throughout the basin. Finally, state law also identifies, consistent with the federal Clean Water Act, a set of regulatory provisions which ensure that "dilution is not the solution to pollution," and that water quality requirements, though of paramount importance, cannot impair the right to divert water and place it to beneficial use. Investments made to date by others without consideration of these preexisting legal and factual premises may have been unwise, but they are investments which nonetheless should be accommodated to the extent practicable. We have encouraged the City of Pueblo to join the rest of us in supporting this legislation, and to participate in this project so as to acquire the ability to store water in available space and release it for their legitimate downstream needs.

H.R. 3881 is project-specific legislation, and hence holds no implications for other Bureau projects. However, it should not go without saying that there is ample precedent for such a practical and useful approach to meeting water supply demands in the West, including H.R. 1235 by Representative George Miller of California and S. 2594 by Senator Wayne Allard of Colorado, each of which were adopted during the 106th Congress.

As you can see, H.R. 3881, which confirms that non-project water can be stored in excess Fry–Ark Project space and authorizes the study which is a precursor to project enlargements, is a very worthwhile and necessary piece of legislation which will go a long way towards meeting future water demands in the entire Arkansas Valley and certainly in my City. Further, and you probably do not hear this very often, it has no fiscal note for the federal taxpayer—we are funding this undertaking ourselves and not requesting any federal appropriation. It is a bill that I hope you will look upon favorably.

I thank you for this opportunity to testify and am available to answer any questions.

Mr. CALVERT. Next, David Pope, Chief Engineer, State of Kansas Department of Agriculture.

STATEMENT OF DAVID POPE, CHIEF ENGINEER, STATE OF KANSAS DEPARTMENT OF AGRICULTURE, DIVISION OF WATER RESOURCES

Mr. POPE. Thank you, Mr. Chairman and distinguished Members of Congress. My name is David Pope, Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources. I am here representing Governor Bill Graves to testify in opposition to H.R. 3881.

We believe passage of H.R. 3881 would have a long-term detrimental effect on the interests of the State of Kansas, including a reduction in the quantity and quality of water on which it relies.

I am a member of the Arkansas River Compact Administration. That compact, which was negotiated between the States and approved by Congress in 1949, was designed to settle disputes and divide and apportion the waters of the Arkansas River and its benefits arising from the construction of John Martin Reservoir and basically to maintain conditions as they were at the time of ratification.

The Arkansas River is essentially the only renewable water supply in southwest Kansas and provides critical water supplies through direct diversion from the river to agriculture and significant recharge to area aquifers. Kansas uses 100 percent of the water reaching the State line almost all of the time. The bill places these limited supplies in jeopardy.

As you heard, the legislation would, No. 1, authorize the feasibility study to enlarge Pueblo Reservoir and Turquoise Lake and, second, modify the current authorization by allowing reoperation of the Fryingpan-Arkansas Project. So this is simply not a bill authorizing a study. It would allow significant changes to occur.

The district expects to increase storage and supplies to Colorado water users with no additional imports from the Colorado River Basin. This means native water in the Arkansas River Basin which currently comes to Kansas would be the only source. Kansas believes the goal is not feasible without increasing the consumptive use of water in Colorado, which then takes water from Kansas.

As you heard from the Attorney General, the Supreme Court is currently considering remedies for Colorado's violations of the Arkansas River Compact, and the State of Kansas has serious concerns about whether the proposed changes in operations and additional storage can be accomplished without additional violations of the compact.

I would note that, while the compact does not prevent future beneficial development of the river in either State, an important proviso is that the waters of the Arkansas River shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under the compact by such future developments or construction.

The proposed legislation contains no meaningful safeguards to ensure compact compliance. Kansas has not been consulted in drafting provisions, and we have no other forum except here before Congress.

Additional storage in Pueblo Reservoir will be derived either from native Arkansas River Basin supplies or from imports of the Colorado River Basin water. The legislation appears to address

potential for expanded use of Colorado River Basin supplies, but no such protection again is provided for the Arkansas River Basin to and Kansas.

Water quality is a very serious concern to Kansas. The Arkansas River is of high quality but degrades as water flows from the Rocky Mountains to the State line. The use and reuse of water in Colorado increases the concentration of natural constituents and degrades the quality of water. The proposed legislation could further degrade water quality of the river at the State line.

Dr. Donald Whittemore of the Kansas Geological Survey recently conducted an extensive study of water quality in the Arkansas River Basin in southwest Kansas. His studies show the water quality Kansas receives from Colorado has deteriorated over time. The concentrations of sulfate is extremely high at the State line and averages about 2,000 parts per million of sulfate alone.

Currently, the Arkansas River flows at the State line are classified as high to very high for salinity hazard to field crops. Any additional increase in salinity will only decrease the usability of water that Kansas receives. The river and adjacent alluvium are already too bad to use for municipal supply and take extraordinary treatment. The high flows that are occasionally available are waters that are needed to provide flushing flows to the river system into Kansas, and those are very important to us as well.

In summary, Kansas and Colorado have been in dispute concerning the water supply available in the river for almost as long as we have been States. Colorado is the upstream State, which means that Kansas must be ever vigilant and ensure protection from any enterprise in Colorado that may affect its water supply. There is no additional water available for the proposed uses in this legislation. Its purposes cannot be achieved without negative effects on the quality and the quantity of water on which Kansas relies.

Mr. CALVERT. I thank the Gentleman.

[The prepared statement of Mr. Pope follows:]

Statement of David L. Pope, Chief Engineer, Kansas Department of Agriculture Division of Water Resources

Distinguished members of the Subcommittee, my name is David L. Pope, Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources. I am here representing Kansas Governor Bill Graves. I am testifying in opposition to H. R. 3881.

We believe passage of H.R. 3881 would have a long-term detrimental effect on the interests of the state of Kansas, including a reduction in the quantity and quality of water on which it relies.

Arkansas River Compact

I am a Kansas member of the Arkansas River Compact Administration (ARCA) of the Arkansas River Compact. Negotiated between Kansas and Colorado, and approved by Congress in 1949, the compact was designed to settle existing disputes and remove cause for future controversy, as well as to divide and apportion the waters of the Arkansas River and the benefits arising from the construction of John Martin Reservoir. The compact was intended to maintain conditions as they were at the time of ratification.

ARCA is composed of three members each from Kansas and Colorado, with each state allowed one vote. Business must be conducted with unanimous agreement. ARCA is chaired by a federal representative appointed by the President. This individual is a non-voting member.

History

The Arkansas River flowing east out of Colorado into Kansas has played a crucial role in the development of the history and economy of the state of Kansas. Between Kansas statehood in 1861 and Colorado statehood in 1876, the river was largely unregulated. Sometimes flowing across Kansas nearly a half mile wide, it offered great opportunities for development.

The first use of the Arkansas River for irrigation in Kansas was just downstream from the state line in 1880. Development in Colorado, and subsequent shortages of surface water supplies to Kansas irrigation ditches, has resulted in extensive litigation between the states before the U.S. Supreme Court.

Our disputes are presently pending again before the Court. Colorado has continued to develop wells and major reservoirs in the Arkansas River Basin upstream of Kansas since 1950, which resulted in the filing of the present litigation, Kansas vs. Colorado, in 1985. In 1995, the U.S. Supreme Court found Colorado in violation of the compact due to post-compact well development.

Although this case is in the remedy phase and remains unresolved, Colorado now is proposing additional development as set forth in the Preferred Storage Options Plan (PSOP) of the Southeastern Colorado Water Conservancy District. H.R. 3881 would provide protections for other Colorado water users and other Colorado River Basin states. However, it does not mention the Arkansas River Compact, the pending litigation, or the state of Kansas. Neither does it provide protection to Kansas rights under the compact.

The area in Kansas affected by this proposed legislation is on the High Plains, a semi-arid area where irrigated agriculture is critical to the regional economy. Kansas relies on the benefits of the conservation storage in John Martin Reservoir, some 60 miles upstream of the state line in Colorado, as provided for in the compact.

The Arkansas River is essentially the only renewable water supply in Southwest Kansas, providing critical water supplies through direct diversion from the river to agriculture. It also provides significant recharge to area aquifers. The aquifers supply wells that are pumped for irrigation, industry, municipalities and other uses. Kansas uses 100 percent of the flow at the state line, basically all the time. The proposed bill places these limited water supplies in jeopardy.

Basis of Opposition

The proposed legislation would: (1) authorize a feasibility study of enlarging Pueblo Reservoir and Turquoise Lake, and, (2) modify the current authorization for the Fryingpan–Arkansas Project.

Kansas opposes this legislation for a number of reasons. Passage has the long-term potential for adverse effects on the quantity and quality of the water Kansas receives across the state line. It would likely lead to the shifting of current uses of water from Kansas to Colorado. It provides the mechanisms for Kansas water supplies to be consumed in Colorado. As a result, new compact violations by Colorado can be expected to occur if the ultimate purposes of H.R. 3881 are achieved.

H.R. 3881 would authorize new contracts, including temporary contracts for water banking, which make project storage space available for non-project water. These project modifications are referred to as "reoperation." We believe the reoperation of the project will materially deplete the flow and degrade the quality of the water flowing to Kansas. Before authorizing legislation is considered, proponents should obtain Kansas' agreement that the proposals will not materially deplete the flow or degrade the quality of water at the state line. Kansas is the downstream state. Its water supply would be jeopardized by the proposed legislation.

Proponents of H.R. 3881 want to do whatever is feasible to maintain or improve the use of water by agriculture within the district, at the same time increasing present supplies to municipal and other users. Although the legislation does not specify the amount of storage immediately available for contract, our review of the PSOP indicates an additional 49,500 acre feet of available storage space. The historical average yield to Kansas from the Arkansas River is approximately 150,000 acre feet, although it may vary greatly. Just this portion of the PSOP increase for storage is equivalent to one third of Kansas' average water supply.

The district expects to accomplish this with no additional imports from the Colorado River Basin. This means native water in the Arkansas River Basin which currently comes to Kansas would be the only source. Adopting the legislation would enable Colorado to reduce flows into Kansas. Kansas believes the goal is not feasible without increasing the consumptive use of water in Colorado, which takes water from Kansas.

Proposed sources of storage

The bill's effect would be to increase storage and intensify the use of water in the basin in Colorado to the detriment of existing water uses in Kansas. This would be contrary to the compact and the interests of Kansas generally.

The existing project authorization allows for limited storage of native water during the winter and at times when John Martin Reservoir is spilling. In addition, imported water from the Colorado River Basin or "trans-mountain" project water is stored, and certain municipal trans-mountain return flows are stored by exchange. This bill would expand the storage in the project, resulting in:

- Storage of Arkansas River water rights presently used for irrigation, facilitated by a new Colorado water banking statute and proposed rules. The water bank proposal has the potential for expanded use of pre-compact water rights by allowing increased diversion and reducing the return flow from these rights.
- Storage, by exchange, of water identified as trans-mountain irrigation return flows into Pueblo Reservoir. These exchanges would facilitate the storage of Arkansas River flows that are a part of Kansas' current water supply.

Both of these potential storage sources would hold water higher in the river system, reducing flows to the state line. The proposed legislation would facilitate these changes in operation immediately within existing storage capacity. If Pueblo Reservoir were ultimately enlarged, this practice would be expanded.

Colorado has relied on the existence of trans-mountain water in the system to partially offset the impacts of post-compact well pumping. However, the quantities of trans-mountain return flows were never sufficient to fully offset the well effects. Compact violations have been continuous. These compact violations are the subject of the current litigation, and the U.S. Supreme Court has found that violations have occurred. Storage of additional water in Pueblo Reservoir by exchange would worsen the current situation.

The Supreme Court currently is considering the remedies for Colorado's violations of the Arkansas River Compact in the reach from Pueblo Dam to the Kansas state line. The state of Kansas has serious concerns about whether the proposed changes in operations and additional storage can be accomplished without additional violations of the Arkansas River Compact. The compact says:

> "This Compact is not intended to impede or prevent future beneficial development of the Arkansas River basin in Colorado and Kansas...which may involve construction of dams, reservoirs and other works for the purposes of water utilization or control, as well as the improved or prolonged functioning of existing works; Provided, That the waters of the Arkansas River...shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this Compact by such future developments or construction."

The Special Master appointed by the court concluded that the compact apportioned the waters of the Arkansas River, as well as the conservation benefits associated with John Martin Reservoir: "The Compact was intended to and does apply to all waters originating in the natural drainage basin of the Arkansas River and its tributaries upstream of the state line. This includes return flows from the use of such water, and to tributary groundwater." The Special Master concluded, "The Compact is intended to protect such usable flows from material depletion caused by any increased consumptive use..."

The proposed legislation contains no meaningful safeguards to ensure compact compliance. Kansas has not been consulted in drafting the provisions, and we have no other forum but Congress.

Additional storage in Pueblo Reservoir will be derived either from the native Arkansas River Basin supplies or from imports of Colorado River Basin water. In either case, enlarged use and consumption of water will occur unless limitations are put in place to prevent expanded use from either source. The legislation appears to address potential for expanded use of Colorado River Basin supplies, but no such protection is provided for Kansas' Arkansas River Basin supplies.

Water Quality

Water quality is a serious concern to Kansas. The Arkansas River is of high quality near its headwaters but degrades as the water flows from the Rocky Mountains to the state line. The use and reuse of water in Colorado increases the concentration of natural constituents and degrades the quality of the water. Water quality from the river and adjacent alluvium in Kansas is so poor that municipalities along the river must use special treatment methods to make it fit for public water supply. The proposed legislation could further degrade water quality of the Arkansas River at the state line.

Recent studies show the water quality Kansas receives from Colorado has deteriorated over time. Increases in sulfate have adverse effects on irrigation and other water uses. Dr. Donald Whittemore of the Kansas Geological Survey recently conducted an extensive study of water quality in the Arkansas River basin in Southwest Kansas. He found the concentration of sulfate in the low flow regime doubled between 1906 and 1973. This study also looked at the concentration of sulfate data available for 1964 through 1970 and compared it to the 1987 through 1999 period. Sulfate concentrations continued to increase over the range of flows from the earlier period to the later period. One reason for this is the increased water consumption in Colorado.

The Kansas Department of Health and Environment has reviewed the sulfate concentrations over different flow regimes as well. Sulfate concentrations are higher at low river flows. Sulfate concentrations vary during higher river flows, but are on average less than low flow concentrations. Reduced flows of the Arkansas River at the state line would mean increased sulfate concentration in the river water.

Currently, Arkansas River flows at the state line are classified as high to very high for salinity hazards to field crops. Any additional increases in salinity will only decrease the usability of the water supplies Kansas receives. Water users in Kansas routinely assess the quality of the water available at their headgate when deciding whether to divert water to the fields.

Water quality in the Arkansas River system is invariably linked to the quantity of water available, and reduction in the state line flow may cause a further deterioration of water quality. The build-up of contaminants is partially flushed when flows increase, but these high-flushing flows are some of the very flows that are proposed to be stored under the PSOP. Colorado has failed to provide data or analyses that show the proposed changes will not materially reduce the quality of the water at the state line.

Summary

Kansas and Colorado have been in dispute concerning the water supply available in the Arkansas River Basin for almost as long as they have been states. Colorado has the benefit of being the upstream state, which means that Kansas must be ever vigilant and ensure protection from any enterprise in Colorado that may affect its water supply. Colorado has continued development efforts without regard to Kansas' expressed concerns, as evidenced by lack of reference to Kansas in this legislation. The proposed legislation would allow further development upstream of Kansas without regard for present uses in Kansas. There is no additional water available for the uses proposed in this legislation. Its purposes can not be achieved without negative effects on the quality and quantity of the water on which Kansas relies.

Mr. CALVERT. Ms. Stovall, I understand your concerns from your testimony on the proposed legislation, but also in your testimony you bring up that you are even opposed to a feasibility study. Now as I understand it from the Department of Reclamation and from our prior witness, that during a feasibility study that the State water rights certainly must be protected in order to move that feasibility report forward. Certainly operation of the project would be done by the Department of Reclamation.

It has been my experience that if a project is built properly that it certainly can protect your water rights and, in fact, have potentially beneficial use for downstream users as well as the State of Colorado if it is done properly. Are you opposed to any kind of feasibility report being done, or is it just—.

Ms. STOVALL. It was simply based on our experts, that we can predict what an accurate feasibility study would result in and that is to say it is not feasible because there will be a depletion to Kansas water rights. So my suggestion, why bother and why take 2 years of Bureau of Reclamation time? We have, as well, not always agreed with everything that the Federal agencies have indicated is appropriate in this river basin and are somewhat concerned as well.

We are 11,000 acre feet short every year. There simply is no way for Colorado to store additional water because there is no additional water. We are this much short all the time now. So it is best to leave this on the shelf and don't even get started with it because of the risk of depletions to us.

Mr. CALVERT. Are you saying that flood flow water—you use 100 percent even during a flood flow event every single year?

Ms. STOVALL. The flood flow events are so rare they are not really worthy of authorizing the study. In addition, as David said, when on the rare occasions there is surplus water that comes down, it has that flushing effect that helps us with the quality that is so very important and now is so bad that it is putting the crops at risk.

Mr. CALVERT. Can't you operate a dam and have flushing events? We do that on the Colorado, obviously. I mean, we released water under the prior Secretary of Interior to have those so-called budding events for other purposes. I imagine that is for endangered species or protection of habitat areas or something like that.

Ms. STOVALL. David, our Chief Engineer, may be able to talk about the technical aspects. What my understanding is, after these 17 years of litigation, any flushing that happens with water that comes from the reservoir is water we are entitled to anyway, so there is no surplus there.

Mr. CALVERT. I was just curious. Was Art Littleworth, the water master, involved in the dispute between Kansas and Colorado?

Ms. STOVALL. Arthur Littleworth. He is still the Special Master and most eager to see this case be resolved.

Mr. CALVERT. He is a resident of my district in California. We are experts on water dispute in my part of the country.

Ms. STOVALL. He has done a fabulous job and—I would note, and he has voted for Kansas at every step of the litigation.

Mr. CALVERT. Mr. Pope, you are the engineer, so I will ask you for the technical questions.

In an operation of a dam, couldn't you not protect beneficial use of downstream users and the rights of those who have water—utilization of water downstream and at the same time operate the dam? Theoretically, Reclamation would operate it properly to make sure that the type of problems that may come up are taken care of in the operation of the project itself?

Mr. POPE. Mr. Chairman, certainly in theory.

Mr. CALVERT. We do a feasibility report. If you are an equal participant in that feasibility report, theoretically—and certainly State water rights, as the Gentleman has indicated, would be recognized. What would be the problem with moving forward with a feasibility report?

Mr. POPE. Well, basically again, we are not convinced that there is excess water to work with.

Mr. CALVERT. Wouldn't it come up in a feasibility report? I mean, if in fact that is what a feasibility report is going to have to do, we are going to have to determine that you have water that we can use downstream and that your rights are protected.

Mr. POPE. I understand. Mr. Chairman, of course, I would remind you, the commissioner's statement that the legislation, as it is drafted, is very directive to the Bureau of Reclamation in regard

to what they can even look at in a feasibility study. So there are some restrictions, as I understand it, in this legislation.

Mr. CALVERT. Maybe we can help in that regard.

Mr. POPE. I think that would certainly be very critical if it is going to move forward at all.

Second, I think the reoperation activities that are quite prescriptive in the bill are another area of concern, even leaving aside potential enlargement of the reservoirs. So it is another area of concern.

Mr. CALVERT. Thank you.

Mr. Hefley.

Mr. HEFLEY. Thank you, Mr. Chairman. You have done an excellent job of questioning, so I don't have much left, but I guess I would ask Mrs. Stovall the same question. If we can't—if we can't meet your needs—I mean, you have gone through the court, and they have determined what you are entitled to, and if we can't meet that in the feasibility study, we can't do it. But you still are absolutely opposed to even a feasibility study because you are just assuming that that can't be done, is that true?

Ms. STOVALL. Seems to me that we ought to have some level—and clearly, it is your decision. It seems to me, to engage in a 2-year study, necessarily costing money, that there ought to be some basic threshold that Colorado could show to us initially to say there is probable cause or it is more likely than not that there is adequate water or some minimum threshold to suggest that it is worth engaging in a 2-year feasibility study.

If we have a choice between the bill as it is and a feasibility study and that is all, we would want only the feasibility study. I am suggesting we can probably save 2 years of time and effort by Federal staff to even begin. There is no water there.

Mr. HEFLEY. You would be basically opposed to any additional storage in Colorado on any river that flows into Kansas; is that correct?

Ms. STOVALL. The Arkansas River is the river that flows in.

Mr. HEFLEY. There are no other streams that flow in?

Ms. STOVALL. It is the one that we have the compact with.

Mr. HEFLEY. It is interesting to me that Nebraska did the same thing with the Two Forks Project. At that time we were sending five times as much water downstream as the compacts demanded. And although—from the court case, Kansas was not getting it out of the Arkansas, but some of the others were, and Nebraska fought the Two Forks Project as well because, of course, the downstream States want all of the water that they can possibly get.

Jim, we appreciate you being here. Let me go back to you, Ms. Stovall. You would not have any objection to the first part of the bill, I suppose, the municipalities storing additional water in the existing facilities that weren't part of the project. But you wouldn't have any objection to that, I suppose.

Ms. STOVALL. I don't. But I defer to David for the understanding of what the technical aspects of that might be. He clearly has a better understanding of the technical pieces than I do.

Mr. HEFLEY. Mr. Pope, do you have any objection to that?

Mr. POPE. Yes, Representative Hefley. I think that there are concerns there. The current authorization for the Fryingpan Arkansas

Project really allows, of course, West Slope water to be stored, as I understand it, and also winter water storage. But it is pretty restrictive beyond that. And we do have—the complexity of this system is such that it has been very difficult to track all of the exchanges and all of the other things that occur. And we just candidly ended up on the short end of the stick. So I would be very cautious before I can answer that question yes. It is hard for me to understand all of the details of that at this point.

Mr. HEFLEY. Jim, again, thanks for you being here. You are talking—on that first part of the bill, you are talking about your water, aren't you? Water that belongs to the City of Colorado Springs?

Mr. NULL. That is correct. All decreed water rights in existence now, in fact, out to 2040.

Mr. HEFLEY. As far as you are concerned, that has nothing to do with Kansas whatsoever?

Mr. NULL. That is correct. And we do have faith for the other part of the bill and the Bureau that their feasibility will show it one way or the other.

Mr. HEFLEY. Thank you very much. Thank you, Mr. Chairman. Thank you.

Mr. CALVERT. Mr. Moran.

Mr. MORAN. Mr. Chairman, I have no questions. I thank you for the courtesies extended to me and the witnesses from Kansas today.

Mr. CALVERT. I just have one quick question. I am not totally familiar with the hydraulics between Colorado and Kansas. But I was curious from —I always think that more storage is better than less. That is my particular experience in California. But it is possible to divert water—we are in an agreement with Colorado in the upper and lower basin states right now to limit California's use to its allocated amount of 4.4 million acrefeet a year. Obviously Colorado will pick up water from that. Is it possible to do—transfer water storage into those facilities to add additional storage of water? Just curious. Mr. Null, would you be aware of that?

Mr. NULL. I don't know.

Mr. CALVERT. I probably would have to ask the Gentleman from Reclamation. Because I was curious. I was looking at that. If you have additional storage, you have additional flexibility. But that would be something that would come up in a feasibility study, I would assume.

Mr. NULL. That is right. What we would use is decreed water rights water. Existing. We would not be looking at transferring any water out of any other basin that isn't already decreed and on line.

Mr. CALVERT. Thank the Gentleman.

Mr. HEFLEY. Mr. Chairman, one other last comment to these wonderful witnesses from Kansas. You have an outstanding Congressman here sitting next to me who represents your interests very well. I was going to correct him on his pronunciation in private so that it wouldn't embarrass him, but it seems that the whole State has trouble reading Arkansas River. But we will work on that with you.

Mr. MORAN. Mr. Chairman, I would only say that perhaps we would not have these problems today had Kansas not voluntarily

given up that portion of Colorado formally known as the Kansas Territory.

Mr. CALVERT. Well, I want to thank the witnesses for their testimony and answering our questions, and we will now introduce the next panel. Let me see if I can pronounce this name properly. Steve Arveschoug, General Manager, Southeastern Colorado Water Conservancy District; Melinda Kassen, Director of the Colorado Water Project, Trout Unlimited; and Anne Castle, the Special Counsel, the City of Pueblo for Water Matters, State of Colorado.

I will be a little informal here and say Steve, you can start your testimony when you are ready.

STATEMENT OF STEVE ARVESCHOUG, GENERAL MANAGER, SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT

Mr. ARVESCHOUG. Mr. Chairman, thank you. You did a very good job in pronouncing that name.

Mr. Hefley, thank you for the opportunity, Congressman, to testify on your bill. Appreciate your initiative and effort in this. It is very important, as you know, to Southeastern Colorado.

To give the Committee just a quick background, I am General Manager of the Southeastern Colorado Water Conservancy District. The District covers nine counties in Southeastern Colorado. We are the local sponsor for the Fryingpan Arkansas Project. We hold the water rights for the project, allocate water to cities and farms in our committees each year, and help meet the repayment costs for the project through a local tax.

The Fry-Ark Project is very much and was intended to be a regional project covering all of Southeastern Colorado, both urban communities such as Colorado Springs and Pueblo, as well as rural communities in Southeastern Colorado.

Mr. Chairman and members, I am here today to ask you to support, not withstanding previous testimony, H.R. 3881, because it provides very important solutions to problems in Southeastern Colorado. We call the elements of H.R. 3881 our preferred storage options plan.

Mr. Chairman, we didn't just dream up this plan one night in a dark room. We have spent years working on this effort. It has involved literally hundreds of people and local entities working together collaboratively in coming up with this storage plan. We started this effort in 1996, developing what we call our storage study committee. They did a water and storage needs assessment report that told us that if we didn't develop additional storage, we would be short in meeting our water supply needs in the future.

We then went on to analyze alternatives. We looked at everything including main stem reservoirs, new facilities, as we did our analysis.

What we concluded in that years of study that we did is we were best served by looking at better utilizing the existing facilities of the Fry-Ark Project to meet our demands. Our goal was to help our constituents in our nine-county service area meet their water demands into the year 2040.

That effort was locally funded. And we are here today through H.R. 3881 to continue that local funding approach to meeting our

concerns. We have a problem, but we are willing to help provide the solution for that problem.

We also spent a lot of time analyzing the surrounding issues. We realize that in our basin you cannot just develop water resources absent consideration of environmental and recreation issues. Mr. Chairman, the big pile I threw on the corner of your table here is representative of the studies that we have done on a local level looking at not only our needs, but other needs in the basin as we move forward with our planning process.

So our preferred storage options plan in this legislation represents about a 5-year effort, because frankly we need additional water. As Congressman Hefley put it, we are an arid state. This year, as we sit here today, our snow pack is well below average, about 60 percent. The river is running also well below average. If we don't have additional storage to meet those types of dry cycles, we fall short, we can't meet the obligations we have set out for our constituents.

And, obviously Southeastern Colorado is growing. In addition to being dry, we have growth. We have more people. Our current population in Southeast Colorado is about 680,000 people, projected to be as much as 1.5 million people by the year 2040. And we need to be prepared for that type of growth.

Cities, as well as farming communities, as well as ditch companies, need additional storage, Mr. Chairman, Mr. Hefley, to manage their existing supplies. We need additional storage to help with the development of a water bank concept that we have been working with the State legislature on. We need additional storage to allow our farmers to make full use of their winter-stored water rights. This is very much a regional project designed to meet regional needs, including the communities of Pueblo and Colorado Springs, as well as rural parts of our district.

I feel a little bit outnumbered from the testimony that came before us and the panel that is joining me up here. But I can tell you I am very much not alone. I am here today representing 30 local, regional and State entities that support our initiative because we have taken a thoughtful approach to trying to provide a solution to our problems.

I also represent 20 communities who have signed commitments with the district that they want to participate directly in the preferred storage options plan. These are the same communities, Mr. Chairman, that participated in the development of the Fryingpan Arkansas Project, that project designed to meet year 2000 demands. We are trying to do the same thing our forefathers did in preparing for the year 2040.

With that, Mr. Chairman, I would ask for this Subcommittee's support of H.R. 3881.

[The prepared statement of Mr. Arveschoug follows:]

Statement of Steve Arveschoug, General Manager, Southeastern Colorado Water Conservancy District, Pueblo, Colorado

Chairman Calvert, Congressman Hefley, and members of the Subcommittee, thank you for the opportunity to testify today in support of H.R. 3881. I'm Steve Arveschoug, General Manager of the Southeastern Colorado Water Conservancy District (the District). I've worked with the constituents of the District on the development of this legislation for nearly five years, and I'm excited and pleased

that the Committee will now consider supporting this local initiative to prepare for the future water resource needs in southeastern Colorado along the Arkansas River.

H.R. 3881 represents just the starting point in the implementation of the District's Preferred Storage Options Plan (the PSOP), a plan that is designed to help provide additional water storage capacity to serve the future domestic and irrigation water needs of the 680,000 constituents of the District's nine-county service area, while protecting water quality, and assuring that recreation and fishery values are represented and enhanced.

Before I discuss the Preferred Storage Options Plan further, and address the specifics of the legislation, allow me to offer some important background information.

Background—The Southeastern Colorado Water Conservancy District is the local sponsor of the Fryingpan–Arkansas Project (the Fry–Ark Project), a multipurpose project constructed by the Bureau of Reclamation (Reclamation) that stores and delivers water for municipal and agricultural use within the nine-county service area of the District, Arkansas River basin, Colorado. The Fry–Ark Project was authorized by Congress in 1962 and provides a supplemental supply of water, and storage for native agricultural and municipal water supplies, to serve a population of 680,000 and to irrigate approximately 200,000 acres within the District.

As this Committee understands too well, building consensus among the diverse set of interests in water resources is challenging. Many efforts to wisely plan for the effective use of water bog down for decades, just give up, or are never even started because of the commitment it takes to work through the issues and solve problems. I can tell you there have been days in this process that I would have found it a much easier trek to just give up. But, there is a great deal at stake in this effort.

Like other regions in the western United States, southeastern Colorado is growing. The District's population is expected to grow to over 1.5 million by the year 2040. Most of that growth will occur within Colorado Springs and Pueblo, but several of the rural communities within the District will grow as well.

In addition to the population growth pressures, the District's smaller communities, especially those east of Pueblo who rely on groundwater for their main water supply, need to develop a higher quality drinking water supply for their residents. Additional water storage will help them do that. And, additional storage will help communities better manage the water they have already developed. The state of Colorado is also developing a water-banking program for the Arkansas River basin. Long-term, the success of the water bank will depend on additional storage.

Support for the PSOP and H.R. 3881—The District's Preferred Storage Options Plan was crafted to meet these diverse, regional needs. And, it has local, regional, and statewide support. The supporters of the PSOP include:

- Pueblo County
  - Board of Water Works of Pueblo
  - Pueblo County Board of Commissioners
  - Pueblo West Metro District
  - St. Charles Mesa Water District
- Arkansas Valley
  - City of Lamar
  - Otero County Board of Commissioners
  - City of La Junta
  - Crowley County Board of Commissioners
- Upper Arkansas
  - Penrose Water and Sanitation District
  - City of Florence
  - City of Canon City
  - Town of Poncha Springs
  - City of Salida
  - Upper Arkansas Water Conservancy District
- El Paso County
  - Colorado Springs Utilities, City of Colorado Springs
  - City of Fountain
  - Widefield Water District
  - Security Water and Sanitation District
  - Fountain Valley Authority

Regional and Statewide Entities
Action 22 (an organization of 22 counties in southern Colorado)
Colorado Counties Inc.
Colorado Water Conservation Board
Colorado Department of Natural Resources
Southeastern Colorado Water Conservancy District
Recreation and Environmental Organizations
Arkansas River Outfitters Association
Colorado Board of Parks and Outdoor Recreation
Friends of the Arkansas

The support from the local communities that represent the nine-county service area of the District comes as a result of a nearly five-year effort to study District-wide water and storage needs, assess storage and resource management alternatives, address water quality and recreation needs, and provide assurances that existing uses and entitlements in the Fry–Ark Project would be protected. It involved thousands of hours of work by the local Storage Study Committee (the SSC), which included municipal, agricultural, recreation, environmental, and state and federal resource management agencies (a membership list of the Storage Study Committee is attached as Exhibit No. One).

This Storage Study Committee first developed a "Water and Storage Needs Assessment Report" (December 1998) to determine District-wide demands for water and storage to meet domestic and agricultural needs into the year 2040. That report indicated a need for an additional 173,100 acre-feet of storage to provide for growth and to sustain agricultural water supplies. The SSC, through the District, then asked the Bureau of Reclamation to do an investigation of the technical feasibility of enlarging Pueblo Reservoir (August 1999). In addition to Reclamation's study of Pueblo Reservoir, the SSC working with hired and staff engineers, evaluated over 30 different alternatives to meet the projected demand. That evaluation lead to the conclusion that we were best served by focusing our efforts on the existing Fry–Ark Project reservoirs as a means to help meet future demands. The SSC then began to evaluate how the existing reservoirs could be better used, and that effort, after many hours of study and consideration, and public meetings, lead to the development of the Preferred Storage Options Plan and the PSOP Implementation Committee Report, which provides the operational details for the PSOP.

Elements of the Preferred Storage Options Plan—The Southeastern Colorado Water Conservancy District's Preferred Storage Options Plan, as adopted by the District Board in September 2000, (PSOP) includes the following elements:

1. Re-operations Storage—use of excess capacity in existing Fry–Ark Project Reservoirs to store non–Project water under long-term contracts with Reclamation
2. Enlargement of Pueblo Reservoir and Turquoise Reservoir—up to 75,000 acre-feet of conservation storage added to Pueblo Reservoir (needed by the year 2013), and up to 19,000 acre-feet of conservation storage added to Turquoise Reservoir (needed by the year 2025)
3. Enterprise Water Management Storage'to provide storage for irrigation purposes and for a water bank
4. Long-term Water Quality Monitoring Program'to establish a water-quality baseline so that any potential changes in water quality can be determined and responded to accordingly
5. Pueblo Flow Management Program" a 100 cfs target minimum flow (proposed to be a threshold to reduce or curtail PSOP participant operations) in support of the City of Pueblo's Legacy Project
6. Preserve Capacity for Future Arkansas Valley Conduit—a commitment from all PSOP participants to continue to reserve a portion of the municipal outlet works capacity at Pueblo Dam for the future development of the Arkansas Valley Conduit to serve the domestic water needs of communities in the lower Arkansas River valley in Colorado.
7. Protection of the Winter Water Storage Program'the establishment of a Winter Water Spill Credit Program designed to offset the impacts of any spill of winter-stored water in Pueblo Reservoir.
8. Implementation Committee Report'the Storage Study Committee and the proposed partners in the development of the PSOP developed an Implementation Committee Report to address the details of how the re-operations storage and the enlarged storage would be operated so as to protect the current interests in the Fry–Ark Project

Supporting Studies—The development of the PSOP was truly a local effort to plan for the future water resource needs of southeastern Colorado. In addition to the PSOP itself, the Storage Study Committee studied the many issues surrounding the development of additional water storage. Those studies included:

Hydrologic Analysis Report (March 2000)
Environmental Issues Report (March 2000)
Water Quality Issues Report (June 2000)
Socioeconomic Issues Report (March 2000)
Cultural Resources Issues Report (March 2000)
Permitting and Regulatory Issues Report (March 2000)
Engineering and Cost Issues Report (June 2000)

These supporting studies were not intended to be conclusive. They were designed to identify the many issues that would need to be addressed as the PSOP is implemented. And, H.R. 3881 starts the implementation process for the Preferred Storage Options Plan.

The Need for Federal Legislation—First, it's important to note that H.R. 3881 doesn't authorize the enlargement of Pueblo Reservoir or Turquoise Reservoir. As I'll explain, the legislation only directs Reclamation do feasibility studies of the proposed enlargements. And H.R. 3881 does not ask for a federal appropriation. Local communities will fund the study effort that is being requested.

H. R. 3881 has two main purposes.

The first objective of H.R. 3881 is to better utilize existing capacity in the Fry–Ark Project reservoirs to help meet growing demand for storage. Section 3 of the legislation would authorize the Secretary of Interior to enter into contracts with cities and towns within the District that need to store non–Project water to supply their current and future domestic supply needs. This is Phase I of the District's PSOP referred to as re-operations storage, the goal being to make full use of existing capacity in the Project without interfering with the current entitlements to Project water and storage. These new storage contracts help communities meet their water needs through the year 2013. At that point new storage capacity will need to be developed and that's why we're asking for the enlargement studies.

There is a very important element to this new contract authority established in Section 3. Under subsection (d) of Section 3, entities wanting a re-operations contract from Reclamation must have first agreed to the protections established in the PSOP. Before a contract is executed the contractor must have an agreement in place with the District that commits them to participate in the Long-term Water Quality Monitoring Program, the Pueblo Flow Management Program, the Winter Water Spill Credit Program, and to share in the costs of developing the re-operations contract authority.

I understand that Reclamation may view this approach as a limitation on their discretion to contract with whomever they want, but it's probably the most important piece of this legislation. It protects the other interests in the Fry–Ark Project that are not direct participants in the re-operations contracting. This requirement does not set aside Reclamation's National Environmental Policy Act (NEPA) review process that will be done before executing these storage contracts. Indeed, that process may identify other environmental or recreation issues that will need to be addressed before a contract is executed. The commitments we're asking for are not a requirement on Reclamation. The water users will need to make the commitment to these programs to help protect water quality, fish and wildlife, and recreation interests. To date, the District has executed a memorandum of agreement with eight communities seeking storage contracts from Reclamation totaling 38,300 acre-feet. The commitments to these programs are already in place.

There is precedent in looking to the water districts involved in the Fry–Ark Project before contracts are executed. The Operating Principles of the Project require that Reclamation seek the approval of the Colorado River Water Conservation District before Colorado River water in Ruedi Reservoir (a west slope feature of the Fry–Ark Project) can be contracted to an entity out of the basin. That's an important protection for the Colorado River basin. H.R. 3881 doesn't create the same sort of approval process, but it would require that protections be in place for the Arkansas River basin, as described in the PSOP, before Reclamation executes a "re-operations" contract.

Secondly, Section 2 of the legislation would authorize the Secretary of Interior to study the proposed enlargement of Pueblo Reservoir and Turquoise Reservoir. Both reservoirs are Fry–Ark Project facilities on the east slope. The studies would be done in cooperation with the District and would be funded by the District and the communities that are participants in the PSOP. It's important that these federal-level studies take a closer look at the many issues identified in the District's study process. While the outcome of these studies should not be predetermined, it is essential that the studies consider the District's Preferred Storage Options Plan and the many commitments to water quality, flow protection, and support of agricultural and municipal water supplies that are established in the PSOP. Without these elements—the Long-term Water Quality Monitoring Program, Pueblo Flow Manage-

ment Program, Winter Water Spill Credit, and preservation of infrastructure for the Arkansas Valley Conduit—the development of additional storage capacity in the basin, through the enlargement of Fry–Ark Project facilities, will not meet the diverse needs of the District's constituents.

In addition to the main goals of maximizing the use of existing storage capacity and planning for future enlargements, H.R. 3881 also provides authority to the Secretary of Interior to execute temporary contracts to facilitate a water bank program in the basin. The Colorado legislature approved the development of a pilot water bank program in the Arkansas basin. Section 9 of the legislation would make it clear that the Fry–Ark Project facilities could be used to support the operation of the water bank.

The legislation also authorizes Reclamation to contract for the use of excess storage capacity by the City of Aurora and Pueblo West. The City of Aurora is not in the Project service area, so their use of the Project storage will at all times be subordinate to the needs of in–District water users. Pueblo West entered the District later than other communities so they are not eligible for a storage contract as described in Section 3, but will be given the option to execute a long-term If and When contract.

Lastly, Section 12 of H.R. 3881 provides protections to the Colorado River basin and the Arkansas River basin. This section of the legislation was negotiated with the Colorado River Water Conservation District and parties in the Arkansas River basin for nearly a year. It assures that the use of excess capacity in the existing storage facilities of the Fry–Ark Project under the new Reclamation contracts will not be used to increase diversions out of the Colorado River basin or the Arkansas River basin without agreements and protections. It allows existing trans-basin diversions to continue so long as new infrastructure is not needed for the diversion. This section of the legislation continues to be discussed among the parties.

Local Commitment to the PSOP and H.R. 3881—At the present time, the District has secured the participation of twenty (20) communities and water providers within the District, representing the 680,000 constituents of the District, for the implementation of the PSOP. These entities have signed agreements with the District requesting 38,300 acre-feet of re-operations contract storage and 69,775 acre-feet of enlargement storage. H.R. 3881 represents the first step in meeting these expectations. In order to meet their growing demands these communities need the ability to contract with Reclamation for the use of excess capacity by the year 2003. And, they need an enlargement of Pueblo Reservoir by the year 2013, and the enlargement of Turquoise Reservoir by the year 2025. This is definitely a long-range plan to provide for the future water needs of rural and urban communities within the Southeastern District.

Building Consensus for the PSOP and Addressing the Issues—Throughout the development of the PSOP and this federal legislation we have identified issues of concern that must be addressed as the PSOP is implemented. Many of those issues relate to recreation at the Fry–Ark Project's reservoirs or on the Arkansas River above and below the reservoirs. Pueblo Reservoir, the Fry–Ark Project's main storage facility (350,000 acre-feet covering 6,000 surface acres), averages over one million visitors each year to the Colorado State Park campgrounds and boating facilities. Most years Pueblo Reservoir is the most- visited state park in Colorado. In addition, the Fry–Ark Project is used to help manage flows in the upper Arkansas River to support fishing and rafting opportunities in the communities of Buena Vista and Salida, Colorado. This flow management effort is called the Upper Arkansas Flow Management Program, and for over ten years it has been a cooperative effort of the Colorado Department of Natural Resources, including State Parks and the Division of Wildlife, the Bureau of Reclamation, the Arkansas River Outfitters Association, local communities in the upper Arkansas, the Southeastern District, and water-right owners from throughout the basin.

Under Reclamation's leadership the Fry–Ark Project has made a tangible commitment to the fish and wildlife and recreation interests within the Arkansas River basin. And, that commitment will continue and be enhanced under the District's preferred Storage Options Plan.

In working with the county commissioners in Lake County we identified the need to consider land-use and recreation issues associated with the Project's Turquoise Reservoir and Twin Lakes Reservoir. At the present time we are drafting an agreement and scope of work with Lake County to cooperatively study alternatives to enhance recreation opportunities in and around the Fry–Ark Project reservoirs that are in their county. We are also hopeful that the feasibility study of the enlargement of Turquoise that's being asked for in H.R. 3881 will address the county's questions regarding the potential impacts to recreation at Turquoise Reservoir when the reservoir is enlarged (not planned for until the year 2025).

The City of Pueblo Issue—Before the PSOP was completed in September of 2000, the District's Storage Study Committee and District staff worked with staff from the City of Pueblo's Planning Department in an effort to consider flow issues below Pueblo Dam through the City of Pueblo. While we were working on our storage plan the City was working on the Arkansas River Legacy Project with the assistance of the Corps of Engineers. We realized that our future plans for additional storage had to work with the City's plan to provide greater recreation opportunities on the river below Pueblo Dam.

The participants in the development of the PSOP agreed to develop a "Pueblo Flow Management Program" that would target a 100 cfs minimum flow below Pueblo Dam and would operate similar to the successful Upper Arkansas Flow Management Program. The commitment to this Pueblo Flow Management Program is included in the District's Preferred Storage Options Plan Report (September 2000), the PSOP Implementation Committee Report (April 2001) and now in H.R. 3881.

As currently written, H.R. 3881, Section 3 (Section 8, d) would require all water users contracting with Reclamation for use of excess capacity in the Fry–Ark Project to sign an agreement with the District committing to "cooperate in a flow management program designed to maintain target minimum flows of 100 cfs on the Arkansas River just below Pueblo Dam." The PSOP participants have been working with attorneys representing the City of Pueblo over the last several months in an attempt to add details to the flow program and, in response to the City's concerns, have agreed to establish the 100 cfs target flow as set threshold whereby they would reduce or curtail storage operations at times when flows in the river below Pueblo Dam are at or below 100 cfs.

The City has recently filed for a "recreation in-channel diversion" (RICD) water right for 100 cfs during the winter storage period (November 15 to March 14) and 500 cfs during the remainder of the year. That water right is for a city-planned boating course. That RICD water right has the potential to stop any future water development in the lower Arkansas, including making it nearly impossible for communities in the Arkansas Valley to execute future water exchanges of their own water rights through the planned for Arkansas Valley Conduit, a project that is vital to the future of towns like La Junta and Rocky Ford. It would also make it nearly impossible for cities like Fountain to exchange their water into Pueblo Reservoir, which is a must if they are to provide water for their constituents.

The City's recent RICD filing certainly adds a new twist to the discussions on the Pueblo Flow Management Program, but the PSOP participants are committed to seeking a win/win resolution of this issue. That commitment is represented in H.R. 3881 and by our record of performance with the Upper Arkansas Flow Management Program.

I would refer the Subcommittee to the written testimony of the Arkansas River Outfitters Association with whom we've worked very closely for ten years. Cooperation is the key to the success of this program and that same approach has great potential for the Pueblo Flow Management Program.

It's important for the City of Pueblo to understand that the Fry–Ark Project is a regional water supply project that meets the needs of communities throughout the Southeastern District, including Pueblo and at least 20 other cities and towns, as well as farmers in the Arkansas Valley. Through the Board of Water Works of Pueblo the citizens of Pueblo benefit today from the storage and exchange of water into Pueblo Reservoir. The citizens of Pueblo also benefit from the recreation opportunities at Pueblo Reservoir. Those opportunities will be enhanced with the additional storage capacity.

The Board of Water Works of Pueblo currently has a long-term storage contract to use excess capacity in Pueblo Reservoir to store non-project water for the benefits of the citizens of Pueblo. Other communities in the District, whose citizens also pay taxes to repay the Fry–Ark Project construction and O&M costs, want that same opportunity, and that opportunity would be granted to them through H.R. 3881.

The PSOP was designed to be a regional project just like the original Fry–Ark Project. It will benefit communities District-wide, including Pueblo. The Board of Water Works of Pueblo has signed an agreement with the District securing their participation in the future enlargement of Pueblo Reservoir. Based upon that agreement the proposed enlargement would provide Pueblo an additional 5,000 acre-feet of storage to help meet their future demand for water. Again, other communities in the District are working toward the same goal of providing water resources to their citizens.

All the participants in the PSOP process understand that the development of water resources to meet population growth and irrigation needs must work with environmental and recreation needs. And, that is the goal of the PSOP. To the extent we have not fully addressed the concerns of the City of Pueblo regarding recreation

below Pueblo Dam or their compliance with their wastewater discharge permit requirements, we will continue to work toward a positive resolution. In fact, the PSOP participants met on March 13 and are prepared to offer another proposal to the City of Pueblo to address their concerns.

The Arkansas River Compact—Throughout the process of developing the PSOP we involved local citizens and organizations through the Storage Study Committee decision-making process. In addition to this committee process, all of our Storage Study Committee meetings were open to the public, and we maintained a mailing list of individuals and entities that had an interest in the outcome of the PSOP. The state of Kansas was included on that mailing list. They had the opportunity to review and comment on our Preferred Storage Options Plan Report, both a draft report and final report. We have also kept the Arkansas River Compact Commission fully informed of our plans.

The PSOP Report considered impacts on flows to the Kansas–Colorado state line as part of the analysis. A computer simulation model of the Fryingpan–Arkansas (Fry–Ark) Project and the proposed storage alternatives was developed to analyze each of the storage alternatives with the projected storage requests. The model includes Fry–Ark Project water and storage facilities, the storage enlargements being proposed, and the existing water rights involved in the storage proposals. Reservoir and streamflow impacts were investigated from the headwaters downstream to the Avondale gage and Lake Meredith, including Fountain Creek. Impacts at the Avondale gage show little variation from historical streamflows. The average annual streamflow is expected to increase zero to two percent over historical streamflows, depending upon the storage scenario. This small change is because streamflow at the Avondale gage is primarily demand driven, and demands downstream of the Avondale gage are not shown to change for future conditions. Based on the modeling results, the hydrologic analysis concluded that there would be no negative hydrologic impacts on state line flows.

In addition, the state of Kansas has previously raised concerns regarding how the PSOP may impact on the Arkansas River Compact. Our understanding of the Arkansas River Compact is that it did not apportion the unusable flows of the Arkansas River Basin. As Article IV. D of the Arkansas River Compact states "the waters of the Arkansas River . . . shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this compact by such future developments or construction." (Emphasis added.) Instead of apportioning unusable flows, the Compact provided that it was not intended to impede or prevent future beneficial development of additional water that was unusable when the Compact was signed and, in fact, Article IV. D expressly approves such development. While the opportunity to develop additional, heretofore unusable waters of the Arkansas River above John Martin Reservoir is very limited, it is not impeded by the Compact. We are not aware of any provision in the Compact that entitles Kansas to a share of the benefits if additional storage in Colorado develops previously unusable flows. While implementation of the PSOP may allow for some development of infrequent storage opportunities for additional water that was unusable when the Compact was signed, the primary benefit of implementation of the PSOP will be better management of existing supplies.

Most of the water captured by re-operations and enlarged space will be transmountain water and legally reusable consumptive use credits. With that said, it is our intent that any development of additional storage capacity through the PSOP is done in complete compliance with the Arkansas River Compact. And, throughout the federal-level studies requested in H.R. 3881, we expect that Reclamation will continue to involve the state of Kansas and the Arkansas River Compact Commission.

Conclusion: I consider H.R. 3881 to be the most significant water resources legislation for Southeastern Colorado since the authorization of the Fryingpan–Arkansas in 1962. The Fry–Ark Project was designed and built to meet the year 2000 water demands in the Arkansas River basin in Colorado. Community leaders from throughout the basin worked together to create the vision for the Fry–Ark Project. Their vision has certainly paid off, but it wouldn't have been accomplished without a lot of cooperation and compromise that followed the 1962 Act of Congress.

The communities in southeastern Colorado have again come together to plan for their future water resource needs. This time the target is the year 2040. Again we need the expertise and cooperation of the Bureau of Reclamation, and we're again asking Congress to get us started by passing legislation, H.R. 3881. Like before there will be a need for cooperation and compromise as our plans move forward. But, we can't continue the process without the blessing of Congress.

Today, I'm asking that the members of the House Resources Water and Power Subcommittee support H.R. 3881. It will help southeastern Colorado continue the local initiative to prepare for our future. Thank you.

Mr. CALVERT. I thank the Gentleman for his testimony.

Melinda Kassen, Director of the Colorado Water Project, Trout Unlimited. You are recognized.

STATEMENT OF MELINDA KASSEN, DIRECTOR, COLORADO WATER PROJECT, TROUT UNLIMITED

Ms. KASSEN. Thank you, Mr. Chairman. As a preliminary matter, I would ask that my testimony and our report which was submitted, Dry Legacy, be included in the record.

Mr. CALVERT. Without objection, so ordered.

Ms. KASSEN. Thank you. Trout Unlimited is—I am here today for Trout Unlimited because my job for Trout Unlimited is to try to keep water in the rivers for the fish. And while we certainly appreciate the efforts of Southeastern to look at a variety of options in terms of storage to meet municipal demand, our concerns with H.R. 3881 is that it doesn't go far enough to deal with some of the other issues in addition to providing storage for municipal demands. And this bill has the potential to create significant adverse impacts on the Arkansas River, particularly in a 10-mile stretch between Pueblo Reservoir and the City of Pueblo.

This stretch is the subject of a 6-year Army Corps of Engineers project called the Arkansas River Legacy Project, which is a river restoration project. It is a six-and-a-half million dollar project, roughly, and the Corps is 4 years into that project.

One of the goals of this project is to create a wild, self-sustaining fishery. And because of the way 3881 is currently drafted, it would not protect the value associated with that Corps project. The Arkansas River Legacy Project was not just funded by the Corps. The City of Pueblo has put in money. The State of Colorado, through Great Outdoors Colorado, has put in money. Trout Unlimited has raised money in addition to 400 hours of sweat equity working on restoration. We think that it is critical that the value of this project not be lost, as Southeastern addresses the storage issues of its water users.

H.R. 3881, by taking the PSOP and using that as the foundation for the feasibility study, puts a minimum hundred cfs flow target, a voluntary target, into a river that currently runs at 2,000 to 2,500 cfs in the summer. We believe that the bill as drafted sets a course which doesn't allow for the environmental reviews which will be a requirement down the road to really look at and develop the science of what is necessary to satisfy other project purposes of the Fryingpan Arkansas Project, particularly fish and wildlife conservation.

We hope that this bill can be amended to ensure that the science developed would allow for the goal of the Corps project to be achieved. 3881 deals virtually exclusively with storage. In addition to the fish and wildlife issues, there are socioeconomic issues. I think Ms. Castle for the City of Pueblo will talk about how Pueblo feels, that it may be something of a loser in the construct of this

bill. You heard already from Kansas in terms of their feelings that they are a loser under this bill.

I would urge the Committee on behalf of Trout Unlimited to take a step back, broaden the scope, and deal with all of the issues that are involved here, not just storage but protection of the Federal investment to the Arkansas River Legacy Project, as well as consideration of protection for the basin of origin, the Colorado River, because there is also a recreational economy on that side of the Rocky Mountains.

We made a number of recommendations in our testimony. I do believe that it is possible, given what we know about the project now, to work those issues out and, as Mr. Hefley said, to satisfy everybody. I am hopeful that we can do this. But we believe that it is imperative not to lose the value that the Corps project has contributed to this area and to protect a fishery that is widely used by Pueblo citizens. There are a lot of lower economic status citizens in the City of Pueblo who use this fishery. TU has contributed to it's viability. It is our hope that it will be protected as Southeastern grows. Thank you.

[The prepared statement of Ms. Kassen follows:]

Statement of Melinda Kassen, Director, Colorado Water Project, Trout Unlimited

Good morning Mr. Chairman and members of the subcommittee. I am honored today to be here to discuss Trout Unlimited's interests in, and opposition to H.R. 3881, a bill to authorize the re-operation of, and a study to enlarge, Pueblo Reservoir and other Bureau of Reclamation (Bureau) Fryingpan–Arkansas Project (Fry–Ark) facilities. I am the director of the Colorado Water Project for Trout Unlimited; my resume and disclosure form are attached to this testimony.

INTRODUCTION

Trout Unlimited (TU) is a national non-profit organization with 125,000 members nationally and over 8,200 in Colorado. TU's Southern Colorado Greenback chapter, based in Pueblo, CO, has approximately 230 members. TU's mission is to conserve, protect and restore coldwater fisheries and their habitats. The goal of the Colorado Water Project is to restore and maintain stream flows for healthy coldwater fisheries and to increase meaningful public participation in decisions regarding water allocation.

Both TU's Colorado state council and its local chapter have shown a longstanding and active interest in restoring the coldwater portion of the Arkansas River. For example, TU has been involved in projects to protect the Upper Arkansas River from high flows associated with increased transmountain diversions made possible by the Fry–Ark Project. TU was party to the Federal Energy Regulatory Commission's relicensing process for the Salida Hydro plant on the South Arkansas River. Another area TU chapter has worked with the Bureau of Land Management (BLM) and the Colorado Division of State Parks in their partnership for the Arkansas Headwaters Recreation Area via the Citizens Task Force, to bridge the gap between different groups of recreational users. In partnership with the BLM, TU volunteers have established angler access points along the river. TU has been involved in numerous projects to restore greenback cutthroat trout within the Arkansas River basin. Local TU volunteers have contributed more than 4000 hours a year in conservation and education programs for the Arkansas River Basin. National TU's Colorado Water Project also recently released a report, Dry Legacy (copies attached and available at Dry Legacy or www.cotrout.org) that highlighted low flow problems on the South Fork Arkansas River and Fooses Creek (one of its tributaries), as well as recommendations for solving the problem.

In my testimony today, I would like to make three main points:

First, as drafted, H.R. 3881 creates a project that would have significant negative impacts on the City of Pueblo, the Arkansas River, and the Colorado River basin. Those impacts include both further degradation of already seriously degraded aquatic ecosystems in two major river basins in Colorado and a significant reduction of

the benefits of an environmental restoration and recreation project, the Arkansas River Legacy Project, now underway.

Second, because H.R. 3881 is drafted to foreordain some critical components of the project, the bill effectively blocks meaningful evaluation of the alternatives for the project in the feasibility study and environmental review. As an example, the bill calls for a target minimum flow below Pueblo dam of 100 cubic feet per second (cfs). This flow has already been demonstrated to be grossly inadequate for a healthy fishery, but because that number is in the bill, the Bureau's ability to determine and require an adequate flow would be highly circumscribed. As a result, designing the project to minimize impacts and crafting appropriate mitigation will not occur.

Third, Colorado's water management system is complicated, with complex and difficult problems. Simple solutions, such as the storage capacity increase proposed in H.R. 3881, may address one interest's issues, but do not necessarily lead to a better situation for all affected interests. As this committee is wrestling with in the case of California's CALFED legislation, increasing storage may be part of the solution, but it must be integrated into a more comprehensive approach to solving the regional problems. H.R. 3881 does not even begin to take that more comprehensive approach, and therefore fails to advance an overall resolution.

THE ARKANSAS RIVER LEGACY PROJECT

In many places, the Arkansas River is a highly managed system, as much a tangle of plumbing as a river. Little remains of its natural ecosystem through much of its more than 325 miles in Colorado. Substantial quantities of the water flowing through the basin come from west of the continental divide, as a result of several transmountain diversion projects, including the Fry–Ark that is the focus of H.R. 3881. Pueblo Reservoir, which is part of the Fry–Ark Project, closed its gates in 1975. Prior to then, the reach of river from the dam site down to the Arkansas River's confluence with Fountain Creek was a warm water environment. With the reservoir in place, this reach of the river became a coldwater environment. However, the river was also highly channelized below Pueblo Reservoir, as a result of older flood control measures and served initially as a conduit for high volume summer flows destined to satisfy the water rights of Lower Arkansas River basin farms, and deliveries under interstate compact to the State of Kansas.

The native coldwater fish species from the Arkansas (greenback cutthroat trout) was listed as an endangered species in 1973 (downgraded to threatened in 1978). These fish are in trouble due both to the introduction of non-native species and to the basin's severe water management regime that has destroyed the natural flow patterns in many places. Given this listing, persons interested in healthy coldwater fisheries saw the tailwater reach below Pueblo Reservoir as a place to recover coldwater fishery habitat. However, Pueblo Reservoir only releases a meager 100–200 (cfs) to the stream for the five-month winter period, when there is little irrigation demand downstream and water users instead store water in the reservoir for summer use. These winter flows are insufficient to allow trout to survive through the winter and establish a breeding population. Thus, the Colorado Division of Wildlife has managed the reach of the Arkansas River from Pueblo Reservoir downstream to the City of Pueblo in the last several decades as a "put-and-take" trout fishery, stocked with catchable-size trout. None-the-less, the fishing in this reach of the river is a significant recreational amenity even now, particularly for Pueblo's large, low-income population.

Recognizing the recreational and habitat potential for this reach of river, in 1998, the US Army Corps of Engineers began a major effort to restore a 9.5 mile reach of the Arkansas, from below Pueblo Reservoir downstream to the confluence with Fountain Creek. Teaming with the Colorado Division of Wildlife, the City of Pueblo, two local school districts, the University of Southern Colorado, and several local environmental and recreational groups, the Corps embarked on the Arkansas River Corridor Legacy Project (Legacy Project). Funds for the project come from the Corps, Great Outdoors Colorado (the recipient of Colorado lottery proceeds), the City of Pueblo and other team members. The Corps is expecting the total project to cost $6.6 million, with a 35% share being paid by non-federal partners. (The Corps' share is capped at $5 million.) Completion is expected in 2004. There are several additional components of the Legacy Project in which the Corps is not directly involved (including enhancements of Pueblo's nature center—located adjacent to the river—nature trails and zoo exhibits) which bring total project costs to $8.75 million

The local TU chapter is one of the partners in the Legacy Project. Within the past four years, the chapter secured a $2,500 grant through TU's Embrace-a–Stream program to buy and place boulders in the river several miles downstream of Pueblo

Reservoir for habitat restoration purposes. In addition, the chapter has contributed over 400 hours of volunteer time planting trees and reclaiming the riparian corridor of this reach.

One aspect of the Legacy Project, scheduled to enter construction as early as November 2002, will be to construct a winter low flow channel within the current river corridor. This will allow the concentration of wintertime low flows to maintain sufficient habitat so that fish could over-winter successfully. With the additional restoration efforts, the Legacy Project partners hope to nurture a wild fishery for this reach upon completion. But the Legacy Project will not just yield recreational amenities; it will also give the Pueblo area a fully functioning ecosystem, with all the positive values that entails.

Because of the work that TU and others have put into improving the value of the Arkansas River resource through Pueblo, TU believes that it is imperative to protect flows in this reach of the river.

IMPACTS OF THE PUEBLO RESERVOIR RE-OPERATION AND POTENTIAL ENLARGEMENT

Passage of H.R. 3881 would authorize an immediate re-operation of Pueblo Reservoir to enable storage and transport of additional water and would fund studies to look at enlarging Pueblo Reservoir. The Arkansas River is a highly over-appropriated river in a semi-arid region. Because Colorado adheres to the prior appropriation system of water allocation, the state administers water rights in the order of their seniority. The municipalities that support H.R. 3881, including the Cities of Colorado Springs and Aurora, do so because the re-operation and enlargement of Pueblo Reservoir will increase their ability to make "exchanges" of water upstream into Pueblo Reservoir that will supply their burgeoning populations' needs. (In an "exchange," a water user diverts water from a different location that was originally decreed and then supplies water from a different source to those diverters whom the change would otherwise adversely affect.) The current operating regime and storage capacity of the Reservoir limit the quantity of water that these cities can now exchange within—and outside—the basin. (Aurora sits in the Platte River Basin adjacent to, but north of, the Arkansas River Basin; Colorado Springs straddles Fountain Creek, a major tributary of the Arkansas.) As a result, they are not able to exercise some of their decreed water rights. The re-operation of Pueblo Reservoir allowed by H.R. 3881 would enable additional exchanges to occur now; the proposed enlargement would further expand the beneficiaries' ability to make new exchanges.

There are two significant practical effects that would result from passage of H.R. 3881, as introduced, on aquatic ecosystems. The first is a substantial decrease in flows in the Arkansas River below Pueblo Reservoir through the City of Pueblo. Historic summer flows in this reach of the river are typically in excess of 2000 cfs, with a minimum of close to 500 cfs. With the enlargement and re-operation that H.R. 3881 would set in motion, the Southeastern Colorado Water Conservancy District and the entities who intend to store additional water in Pueblo Reservoir commit only to a voluntary "flow management program" that will "target" a flow of 100 cfs in this reach—a few percent of typical summer flows and potentially an 80% decrease from the historic summer low flow condition, with no guarantee of even that amount. Despite that existing winter flows are insufficient to support a wild fishery now, H.R. 3881's increased storage and target minimum would reduce them to the low end of their range (100 cfs).

The second major category of adverse impacts is to the Colorado River basin through increased transmountain diversions. The course that H.R. 3881 sets appears to allow for increases in transmountain diversions, using the existing infrastructure of the Fry–Ark project as well as the proposed expansion. The Fryingpan River is a lively tributary to the Roaring Fork River, which is itself a tributary to the mighty Colorado River. 69,200 acre feet of water, a large portion of the native flows of the Fryingpan River, cross the continental divide for the Fry–Ark project now, along with additional water from non-federal projects, such as the Homestake Project that Colorado Springs and Aurora jointly own and operate. When Congress authorized the original project, Congress provided mitigation for the loss of native flows on the Colorado River side of the divide by constructing Ruedi Reservoir, which provides 100,000 acre feet of use to west slope water users for a variety of purposes. The expansion and re-operation proposed in H.R. 3881 has the potential to increase Colorado River depletions beyond the quantity that could be diverted for non-project purposes without the infrastructure of the Fry–Ark Project and beyond the quantity for which Congress originally provided mitigation. The result is likely to be an expanded transmountain diversion, without any provision for additional

mitigation for the basin of origin, and certainly no mitigation for the adverse impact to the basin of origin's aquatic resources.

The complexity of accounting for water transfers within the Arkansas River Basin, as well as within the Fry–Ark project itself, makes it difficult to determine at this time what the actual effects of expansion and re-operation may be. Doing so should be a major focus of the analysis of this proposed project during its environmental review. However, additional transmountain diversions out of the Colorado River Basin, a basin that has its own interstate compact delivery requirements, its own phenomenal growth, its own burgeoning recreational economy that relies on healthy river flows, and its own endangered species, is an outcome that Congress should avoid.

These two major categories of impacts—de-watering in the Legacy Project reach of the Arkansas River, as well as unmitigated impacts in the Colorado River Basin resulting from additional transmountain diversions—need to be thoroughly examined in the feasibility study and associated environmental review. However, H.R. 3881 defines the project and some key features, such as the target minimum flow, in a way that will prevent carefully designing the project, its operations, and environmental components to address these adverse effects and create the greatest benefit for all Coloradans.

THE BUREAU'S CHALLENGE

As members of this subcommittee well know, the Intermountain West is one of the fastest growing regions in the county, with Colorado as no exception. Colorado is projected to add one million residents in the next generation to the four million who already call the state home. In a state that gets, on average, 15 inches of rain annually, this growth will strain the state's water resources. Colorado is typical of the West in that irrigated agriculture uses the vast majority of the state's limited water resources, exceeding 80% of all consumptive water use. Unlike the population, however, the water supply will remain essentially constant over the next generation, given the limits of hydrology and the delivery requirements under the Arkansas River compact with Kansas. In the quest to develop the water supplies necessary to meet the demands of growing cities, there are hard choices to make and balances to strike between fueling that growth and preserving rural communities dependent on an agricultural economy that is already highly subsidized. However, in this balancing act, it is also important not to sacrifice the aquatic environments on which much of the "New West" recreational and tourism economy depends. And, as Members of this Committee know well, our laws require that federal actions occur without endangering native species on the verge of extinction.

Most western states use some form of the prior appropriation system to allocate water resources. Colorado employs a particularly pure form of this system. Thus, as the state's water courts consider requests for new or changed water rights, they cannot consider impacts on the environment in making decisions. Nor can a water court consider whether the exercise of a water right may adversely affect a local economy.

In this case, the municipalities supporting the re-operation and enlargement already hold water rights that, if exercised all together, would virtually dry up the Arkansas River in the stretch between Pueblo Reservoir and Fountain Creek through the City of Pueblo if they had the additional storage that H.R. 3881 would provide. Yet, Colorado law does not provide any legal venue in which to consider directly the adverse effects on the environment or the recreational amenity that would result from the cities exercising their water rights. It is simply not illegal in Colorado to dry up streams.

As a practical matter, this system causes many of Colorado's rivers and streams to run dry at some time of the year. The Colorado Division of Wildlife maintains a database that has identified at least 571 rivers where low flows are a limiting factor on the health of aquatic communities. It was not until 1973—a century after issuance of decrees for the state's most senior water rights—that the state recognized the need to protect rivers by keeping some water in the stream. Since the creation of the state's instream flow protection program, a single state agency has been allowed to appropriate water for environmental protection purposes, but the state program has been limited in many respects. Almost all of the rights it holds are quite junior (in a system based on seniority) and the quantities are only for minimum amounts, thus limiting the habitat protection they afford. Today the program protects fewer than 20 percent of the coldwater streams in Colorado (and only a handful of others). Of the 25,000 miles of streams in the Arkansas River Basin (a figure that includes both perennial and ephemeral streams), the state's program covers just over 600 miles of streams (none of which are on the mainstem of the Arkansas River).

Colorado's political leaders now recognize that this approach to water may have suited 19th century miners and ranchers, but is inappropriate for Colorado's current and future residents and economy. Recognizing that fish and people need water flowing in the state's rivers, Colorado's legislature is now considering improving the program for protecting flowing rivers.

By contrast, when considering its actions, the federal government not only may, but also is required to, consider the needs of fish, wildlife, endangered species, recreation, local economies and a host of other interests affected by water projects. However, the tools federal agencies have available for protecting rivers in the West have been little used in areas affected by this project. First, the federal agencies with lands reserved from the public domain can obtain federal reserved rights dating to when their lands were withdrawn; however, there are no federal reserved rights in the Arkansas River Basin, and none pending that would help protect the Arkansas River between Pueblo Reservoir and Fountain Creek. Similarly, some federal agencies, in the context of exercising their administrative authorities, can impose bypass flow requirements, for example, through permits; however, there are few operating in the Arkansas River Basin.

As part of the changes H.R. 3881 seeks, the legislation should ensure that the Bureau considers how best to ensure protection of the flow levels that will restore the Arkansas River consistent with the Corps' Legacy Project. TU urges an amendment to H.R. 3881 to direct the Bureau not to enter into contracts unless they allow release of flow levels to the affected reach of the Arkansas sufficient to establish and maintain a wild fishery.

The Bureau's role throughout the West was initially to reclaim the arid lands. While early Bureau projects focused on irrigation, and to a lesser extent municipal use, over time the purposes of Bureau projects have expanded. More recent projects, including the Fry–Ark, include power generation, as well as recreation and fish and wildlife protection or enhancement. As described in the testimony from the City of Pueblo, the Fry–Ark project enabled better use of the fertile lands in the lower Arkansas River Basin, as well as provided these other benefits.

The irony, of course, is that, even with the Fry–Ark project, the future of irrigated agriculture remains hazy. Today, the farm economy depends on substantial federal subsidies. In addition, Colorado has obligations under the Arkansas River Compact to deliver certain quantities of water downstream to the State of Kansas. Making those compact deliveries has meant some curtailment of agricultural rights on the Colorado side of the border. In addition, as municipal growth takes increasing amounts of water to sustain, agricultural water users are hard pressed to hang on to their valuable water rights.

Nowhere is there a better example of this phenomenon than in Otero County, Colorado, located in the Lower Arkansas River Basin. There, the City of Aurora, one of the same municipalities that would benefit greatly from the re-operations and enlargement that H.R. 3881 contemplates, bought out most of the water users along the Rocky Ford Ditch. Acquiring agricultural water rights is often the cheapest way for thirsty cities to enlarge their water supplies. The effects of this purchase and the transfer of the water rights out of the county and Arkansas River Basin on the local economy and community have been significant.

One of the many conditions imposed on Aurora's transfer of these water rights was that the City would have to demonstrate conservation of water within its service area. Certainly, given the huge burden that a basin of origin shoulders when a remote water user diverts water out of the basin, this type of condition is not only reasonable but also imperative. Yet, H.R. 3881 is silent on the need for those who would benefit from the transfer of water out of the Arkansas or Colorado Rivers to conserve the water removed. The bill should direct those in the basins of use to ensure that the water transferred is conserved to the maximum extent possible. A particularly galling example is diverting water out-of-basin, drying up recreational and environmental treasures, for delivery to subdivisions with covenants that favor—or even require—blue grass lawns (that demand profligate watering). Precious out-of-basin water should be used most efficiently, and not for watering city sidewalks or landscape unsuitable for an arid climate.

Finally, the Bureau must determine how to meet the fish and wildlife purposes of the Fry–Ark Project on both sides of the Continental Divide. We suggest that the Project not be used to de-water the Arkansas River between Pueblo Reservoir and Fountain Creek, and not allow any expansion or re-operation of project facilities to harm the Colorado River Basin tributaries that contribute their flows to the Arkansas and South Platte River Basins. While Section 12 of the bill appears to limit the additional draw on the Colorado River, it does allow new depletions if accompanied by compensatory storage for west slope water users. Given the realities of the west slope economy, and given the fish and wildlife purposes of the initial project, TU

urges Congress to ensure that the Bureau not only considers compensatory storage, but also ensures protection of the remaining aquatic and recreational values of the Fryingpan River valley.

In this complex situation, it is important for the Bureau to take the lead to helping the Arkansas River Basin respond to the growth pressures it faces. That means fine-tuning the water management that the Bureau's Fry–Ark Project makes possible. But, particularly given the Corps' and its partners' investment in the Legacy Project, it is important for the Bureau to act as well to protect the fish and wildlife benefits that are also within the purposes of the original Fry–Ark Project.

BALANCING ARKANSAS RIVER PROTECTION AND SUPPLYING WATER FOR GROWTH

TU is not opposed to growth; we recognize that the Rocky Mountain West generally, and southeastern Colorado in this instance, is going to grow. That said, TU believes that the only way to grow responsibly is to do so while protecting important environmental and recreational resources. In a state like Colorado, these protections are necessary to preserve the quality of life. This is especially the case where such resources have been the centerpiece of cooperative federal/state/local restoration efforts. In considering this bill, the subcommittee needs to determine how best to protect the federal investment, through the Corps, in the Arkansas River Legacy Project, including sustaining flows in the reach subject to restoration. H.R. 3881 should not start a process that will lead to the Bureau taking action that will undermine this Corps initiative, done in concert with local and state government, as well as local citizen groups and individuals' support.

Therefore, we believe that Congress must direct the Bureau to impose reasonable requirements in the contracts and project features authorized by H.R. 3881 to protect both the aquatic environment within the Corps' Legacy Project area and that of the Colorado River Basin. H.R. 3881 should not function to create winners and losers. Rather, the bill should ensure balance in its outcome. TU believes that amendments to the bill can accomplish a more even-handed outcome. Such amendments would require:

- Re-operation to be done in a way that protects flows in the Corps' Legacy project reach to accomplish that project's goals. In this regard, while TU supports Pueblo's proposal to limit re-operation and use of enlarged capacity when flows through the City of Pueblo are less than 500 cfs in the summer and 100 cfs in the winter, we also stress that the legislation direct that ultimate minimum and target flows be set to support a healthy wild fishery based on a thorough scientific evaluation done during the environmental review process;
- Re-operation to be done both to protect the aquatic resources as well in the basin-of-origin tributaries out of which additional transmountain diversions may be made, and to provide appropriate mitigation for west slope water users;
- That the water for municipal use made available as a result of reservoir re-operations (or reservoir enlargement after the study H.R. 3881 authorizes is completed), and in particular as a result of increased transmountain diversions, be the subject of conservation requirements within the area of use;
- Integration of any re-operation or expansion with the needs of the affected local communities, including the City of Pueblo and the recreation and tourism based communities on the West Slope; and
- Authorization of funds, if necessary, to buy water rights to accomplish the above.

Thank you for your attention and consideration. I would be happy to answer any questions.

Mr. CALVERT. Thank the Gentlelady.

Ms. Castle, you may begin your testimony.

STATEMENT OF ANNE CASTLE, SPECIAL COUNSEL, THE CITY OF PUEBLO WATER MATTERS, STATE OF COLORADO

Ms. CASTLE. Thank you, Mr. Chairman. I am Anne Castle, and I am special legal counsel to the City of Pueblo for Water Matters. With me here is today is Mike Occhiato, the President of the Pueblo City Council, Lee Evett, the city manager, Dave Galli, the assistant city manager, and Tom Florzak, the city attorney. Their

presence today indicates how serious a concern this legislation is for the City of Pueblo.

Pueblo is a city of about a hundred thousand people located about a hundred miles south of Denver on the front range of the Rockies. It is bisected by the Arkansas River. Why is Pueblo concerned? Quite simply, Pueblo is concerned because this legislation is going to substantially decrease the flows in the Arkansas River in the segment that flows through the city.

As Councilman Null said, Colorado Springs, for example, intends to store private water rights, water rights that belong to Colorado Springs, in the space that is created by the reoperation of the Fryingpan Arkansas facility that would be allowed by H.R. 3881. Those are water rights that used to be taken to irrigate fields downstream of the City of Pueblo. Instead, the reoperation of this project would allow those water rights to be stored upstream, and so the water wouldn't be flowing through the city any more. It is going to be stopped at Pueblo Dam, from there taken in a pipeline to Colorado Springs or, as this legislation allows, to Aurora, a city over a hundred miles away and located in an entirely different river basin and not even within the Southeastern District.

So the legislation has the potential to substantially decrease flows in the part of the river that flows through the city. Why is that a problem? Three reasons. Ms. Kassen has talked about the Army Corps of Engineers Arkansas River restoration project. That is a $6-1/2 million project that the City of Pueblo is cost-sharing in and will pay 35 percent of the cost of that project. That project is based on the assumption that existing conditions will continue, that Pueblo Dam will continue to operate the same way and be the same size, and that the river flows that exist currently will continue.

Well, if that is not the case, if the reoperations goes forward, if the reservoirs are enlarged and the flows are reduced, then the restoration project is jeopardized.

Second reason. The city has added on to the Corps restoration project with its own Arkansas River Legacy Project, which is more work to revitalize the river area within Pueblo, to rehabilitate a nature center, expand a river trail system, and to construct a boating course in a small segment of the river right in the middle of the city to provide some recreation opportunities for this low income area. Pueblo has a population that is over 19 percent poverty level, as opposed to the much reduced or much lesser poverty levels in the cities that will benefit from this project.

Third reason. The city's wastewater treatment plant discharges at a location on the downstream edge of the city limits. And it is—quite simply, its discharge permits are based on the amount of historical flow in the river at that point. If the flows go down, if the flows get lower, then the discharge permit has to change. The requirements have to be tightened up, and that is a very expensive proposition for the city.

It has been estimated that cost of upgrade to the city's wastewater treatment plant that would be required is about $10 million. So, as Mr. Hefley said, this is a project that will benefit municipalities and allow municipalities to store private water rights in what

is now a Federal project. Those municipalities are going to get great benefits, no question about that.

And the City of Pueblo doesn't oppose this legislation in concept. But the benefits to the municipalities have to be balanced by a sharing of the burden that is borne by the City of Pueblo in the form of reduced flows.

This legislation is going to create significant changes in the river, and they are changes for the worse for Pueblo. That reach of the river is going to be reduced substantially. The lion's share of the benefits are going to cities far away. Some of this water is going to be removed from the Arkansas Valley entirely and used by the City of Aurora.

We are not asking that the project be stopped. We are not suggesting that there shouldn't be any reduction in flows. What Pueblo is asking for is that a floor be established, a bare minimum level of water flow that will continue to exist after this project is reoperated and after those reservoirs are enlarged, so that the City of Pueblo will continue to have a live, healthy stream flowing through it, not a dry ditch, for the benefit of its citizens. Thank you, Mr. Chairman.

[The prepared statement of Ms. Castle follows:]

Statement of Anne J. Castle, Esq., Holland & Hart LLP, Special Water Counsel, on Behalf of the City of Pueblo, Colorado,

H.R. 3881 would authorize the Secretary of Interior to enter into contracts that would effectively increase the capacity of Pueblo Reservoir available for the storage of non-federal water rights by a substantial amount, and also authorize feasibility and other studies relating to the proposed physical enlargement of Pueblo Dam and Reservoir. As discussed in more detail below, the City of Pueblo, Colorado opposes H.R. 3881, as currently proposed, because the legislation would result in substantial, additional depletion of the already severely impacted Arkansas River as it flows through Pueblo.

I.TESTIMONY OF MICHAEL A. OCCHIATO, PRESIDENT, PUEBLO CITY COUNCIL

Pueblo is a community of approximately 105,000 people located on the semi-arid plain in southeastern Colorado, and serves as the medical, financial, retail and cultural center for 350,000 people from the Continental Divide east to Kansas, and from the City of Fountain south to the New Mexico border. Located at the confluence of the Arkansas River and Fountain Creek (see the location map attached at Tab B), Pueblo has been an important trading and population center for over 300 years. Spanish and French explorers visited in the sixteenth century and Zebulon Pike explored the area in 1806 when it became part of the United States. The present day city of Pueblo was incorporated in 1886 as a consolidation of three previously existing towns. From the 1870s until after completion of the Moffat Tunnel in 1928, which allowed the diversion of rail traffic across the continental divide at a more northern location, Pueblo was a thriving industrial and railroad city, second in population only to Denver. The Arkansas River has always been an important part of the City, due both to its prominent role in commerce and industry and as a source of water for the community. The River may have divided the City geographically, but it has also united the people of our community both as a devastating force of nature such as occurred in the 1921 flood, and as the peaceful riparian habitat enhancing the urban core of the City adjacent to our City parks, river trails and nature center.

We have very serious, continuing concerns regarding the impact that passage of H.R. 3881 will have upon our community. Before addressing the flaws in this bill, a brief history of the original Fryingpan–Arkansas Project, of which Pueblo Reservoir is an integral part, may be helpful.

During the early 1930s, Pueblo and the Arkansas Valley experienced a severe drought, which created near dustbowl conditions. This continued for many years, preventing otherwise fertile soil from being productive throughout the normal grow-

ing season. In the mid–1950s, President Dwight D. Eisenhower visited Pueblo and the Arkansas Valley. He took this opportunity to experience firsthand the blighted conditions of the soil and the plight of the region's farming communities. In good, wet years, nature stored heavy-packed snow in the high Rocky Mountains. Farmers had water for the initial part of the growing season, but not all of the growing season, as run-off in the early part of the season prevented water from being available later in the year. This flow regime made it difficult for the farming community to harvest good crops and utilize the fertile soil to its full potential. After many years of local citizens selling cast iron frying pans to generate funds for lobbying Congress, President John F. Kennedy visited Pueblo and signed legislation authorizing the Bureau of Reclamation to begin building the Fryingpan–Arkansas Project, part of which is Pueblo Reservoir located less than 10 miles upstream from Pueblo. This project brings surplus water from the western slope of Colorado to southeastern Colorado for use by the people of southeastern Colorado. Once completed in 1975, Pueblo Reservoir provided relief to the farm communities downstream as a more reliable source of precious water for both agriculture and domestic use.

Now, nearly thirty years later, there are those that see the project's usefulness not in terms of preserving the River and the life which it brings to southeastern Colorado, but as a vehicle to transfer and store additional water for use elsewhere. Both the economic difficulties of farming and the value of water to thirsty metropolitan cities—such as Aurora which lies more than 100 miles north of Pueblo—are exerting pressure to remold the project into a vehicle to transfer more water away from Pueblo and the region generally, by making possible additional upstream exchanges of water, that previously flowed through the City to downstream users. As explained below by Ms. Castle in her testimony, H.R. 3881 as presently drafted, will allow further exchanges and transfers, and conceivably could at times dry up the Arkansas River through Pueblo.

As presently written, Pueblo must oppose H.R. 3881. First, we do this because the bill authorizes reoperation of the project and contemplates enlargement of water storage space in a manner that will benefit other entities far from the Arkansas River while burdening Pueblo. These burdens are the additional depletion of the Arkansas River as it flows through Pueblo, thereby diminishing the value of the River as an important and irreplaceable amenity for the City and its residents. Second, the project may thwart the City's efforts to restore the riparian habitat and enhance recreation through Pueblo under the Arkansas River Corridor Legacy Project (the "Legacy Project") being undertaken by the United States Army Corps of Engineers in partnership with Pueblo. The Legacy Project, which involves improvements to approximately ten miles of the River as it runs through the core of the City, has been long in planning, and enjoys the support and cooperation of numerous entities, including the Pueblo Natural Resources and Environmental Education Council, funding from Great Outdoors Colorado and the provision of lands and easements from the Pueblo Conservancy District. Third, the River may be depleted to such a degree that costly improvement to the City's wastewater treatment facilities will be required, even though the improvements will not result in corresponding environmental or health benefits. A reasonable quantity of water must be present in the River to allow fish and other aquatic life to thrive, before an advanced level of wastewater treatment becomes the limiting factor.

Pueblo would be able to support this legislation if it provided enforceable mechanisms to protect minimum flows of 100 cubic feet per second ("cfs") through Pueblo during the winter months (November 15 through March 15), and 500 cfs in the summer release months (March 16 through November 14). Without this protection, depletions to the River through the City can only increase with the reoperation and enlargement of Pueblo Reservoir, and the "voluntary" minimum flow level that is currently specified in the bill as a desirable "target" flow is unenforceable and insufficient.

We acknowledge that an enlarged Pueblo Reservoir would also somewhat enhance the existing reservoir as a recreational amenity. Notwithstanding this, we believe that the harm which would come from the present bill far outweighs its benefits to Pueblo. We also feel it is important to ensure that sufficient quality water is available to our neighboring communities downstream.

Pueblo remains committed to pursuing an appropriate, cooperative resolution of the issues that will allow for increased water storage opportunities in Pueblo Reservoir to improve water supply reliability, while protecting the interest of Pueblo and its residents in preserving appropriate minimum flow levels in the Arkansas River through Pueblo. We sincerely ask for this Subcommittee's cooperation in either amending the bill to resolve our concerns or to delay the measure for a reasonable time to allow the affected state interests to develop an appropriate solution.

II.TESTIMONY OF ANNE J. CASTLE

The reoperation and physical enlargement of the storage capacity in Pueblo Reservoir that is the subject of H.R. 3881, has been proposed and developed by the Southeastern Colorado Water Conservancy District (the "Southeastern District"), and a group of some of its constituents dominated by municipal water providers, including the cities of Colorado Springs and Aurora (respectively located more than 40 and 100 miles from Pueblo Reservoir and the Arkansas River). These entities will reap the greatest benefits of the increased water storage capacity, while the lion's share of the negative impacts of the project will be borne by Pueblo. Pueblo's concerns and fears that H.R. 3881 and the proposed reservoir reoperation and enlargement project will materially harm Arkansas River flows and Pueblo's interests are confirmed by the studies and reports prepared for the Southeastern District and referenced in the bill. See, e.g., "Preferred Storage Options Plan Report," Sept. 21, 2000 (the "PSOP Report"), p. 31 (stating "[r]e-operation storage will facilitate additional river exchanges that could impact stream flows below Pueblo Dam," and confirming that flows from a reoperated Pueblo Reservoir as low as 49 cfs will occur).

Pueblo has been engaged for many months in discussions with the Southeastern District and the municipal water providers supporting the project, in an attempt to reach a mutually acceptable resolution of Pueblo's concerns. Pueblo has advocated, unsuccessfully thus far, for the development of enforceable limitations on uses of the increased storage capacity in Pueblo Reservoir that could further diminish outflows from the Reservoir below minimum acceptable levels. It is unreasonable and inequitable for the entities that will be able to significantly increase the value and yield of their water rights through the proposed reoperation and enlargement, to insist that they be allowed to do so to the maximum extent possible, without some reasonable level of mitigation to the impacted Arkansas River environment through Pueblo.

Pueblo has also been actively participating in the Water Court processes initiated by the Southeastern District, Aurora, and others relating to water rights issues associated with the reoperation and enlargement of Pueblo Reservoir. Pueblo, too, is pursuing its own claim for a junior water right for recreational flows in the Arkansas River. Colorado's Water Courts, however, do not provide a ready forum or adequate remedy for the injuries that will be caused by the significant additional depletion of flows that will occur as a direct result of H.R. 3881 and the proposed project.

A. Arkansas River Flows through Pueblo Already Diminished. Since construction of Pueblo Reservoir, the flow regime of the Arkansas River as it runs into and through Pueblo has been increasingly the subject of management and manipulation to satisfy the needs of the agricultural and municipal interests that rely on water from the River. One significant impact is a very substantial reduction in flows in the River from mid–November to mid–March each year. During this period, the Southeastern District operates its "winter storage program," and the outlet on Pueblo Reservoir is virtually shut down. Attached at Tab C are two recent photographs depicting the Arkansas River with winter flows (measured at approximately 70 cfs on the day of the photos) through downtown Pueblo. Flows in the River increase during the spring and summer months when releases of water called for by downstream irrigators are made.

The existence of Pueblo Reservoir just upstream of the City diminishes flows in the Arkansas River through Pueblo by allowing for the upstream "exchange" of water into the Reservoir of water that has traditionally flowed through the City to satisfy downstream water rights. Under these exchanges, which are the subject of Water Court decrees, water is stored in Pueblo Reservoir, rather than being taken out of the River at original points of diversion downstream, thereby reducing the flow of the River through Pueblo. Such decreed exchanges are currently being operated by the Cities of Colorado Springs and Aurora, among others.

B. H.R. 3881 Will Further Reduce Flows. The authorization of H.R. 3881 for reoperation of the east slope facilities of the Fryingpan–Arkansas Project (Sec. 3 of the proposed bill) will take effect immediately to facilitate additional exchanges of downstream water rights to storage and conveyance facilities upstream of Pueblo. This reoperation is sought because the authority of the Bureau of Reclamation to enter into contracts for the storage of "non-project" water in Fryingpan–Arkansas Project facilities has been challenged. In addition, the PSOP Report, specifically incorporated in the proposed bill, expands the definition of "excess water storage capacity," thereby effectively creating a larger federally subsidized storage reservoir for private use.

As acknowledged in the PSOP Report, the proposal to expand the storage capacity of Pueblo Reservoir has the potential to result in further dewatering of the river as it flows through Pueblo, by providing additional storage capacity into which

water can be exchanged upstream. The current ability of several municipalities to operate their decreed exchanges is limited by the availability of upstream storage, and an enlarged Pueblo Reservoir will allow more water to be exchanged. A new water supply pipeline for the delivery of additional water from Pueblo Reservoir north to Colorado Springs and neighboring communities is currently in the planning stages.

The bottom line is that upstream exchanges of Arkansas River water rights that cannot be operated currently due to the limited availability of storage in Pueblo Reservoir, would be able to operate if the Pueblo Reservoir reoperation and enlargement sought in H.R. 3881 proceeds. The result will be further reduction in Arkansas River flows through Pueblo, as the exchanged water is transferred out of, rather than flowing from Pueblo Reservoir.

C. Negative Impacts to the Legacy Project, Including Fish, Wildlife, and Recreation. The Legacy Project being undertaken at an estimated cost of $6.6 million, as a partnership between the Corps of Engineers and Pueblo, is intended to rehabilitate fish and wildlife habitat and improve public recreational opportunities in a 10-mile reach of the Arkansas River, stretching from Pueblo Dam downstream through the City. The anticipated benefits to Pueblo and the riverine environment that will result from the Legacy Project, which is scheduled to be completed in 2004, will evaporate if Arkansas River flows substantially diminish below current levels. Pueblo believes that a wintertime flow of 100 cfs through the City is the minimum level that would be sufficiently protective of the improved wildlife habitat, re-established fish populations, and recreational aspects of the Legacy Project. The "voluntary," "target" flow of 100 cfs at the outfall of the Dam, provided for in H.R. 3881 and supporting documents is not an adequate guarantee or protection of the investment in the Legacy Project.

The significant negative impacts to fish and wildlife, and recreational opportunities on the Arkansas River through Pueblo that could result from H.R. 3881 would also be contrary to the original purposes of the Fryingpan–Arkansas Project, which include "supplying water for irrigation, municipal, . . . and for other useful and beneficial purposes incidental thereto, including recreation and the conservation and development of fish and wildlife . . .." Pub. L. No. 87–590, 76 Stat. 389 (1962) (emphasis added.) The interests of the municipal water providers that are supporting the Pueblo Reservoir reoperation and enlargement should not be advanced, to the exclusion and at the expense of the other intended purposes of the original project.

D. The Proposed Project Will Diminish Water Quality. Passage of H.R. 3881 will exacerbate the poor water quality conditions that exist at certain times in the Arkansas River. The reoperation and proposed enlargement will not only result in decreased quantity of water through Pueblo, but also will allow distant municipalities to take high quality upstream water out of the system, and substitute treated sewage effluent or lower quality downstream water by exchange. The relatively high levels of selenium carried into the Arkansas River by Fountain Creek is a widely-recognized water quality issue of increasing concern to the regulatory community. Further flow reductions in the Arkansas River obviously will reduce the dilutive capacity of the River, making the impacts of the poor quality from Fountain Creek even more acute.

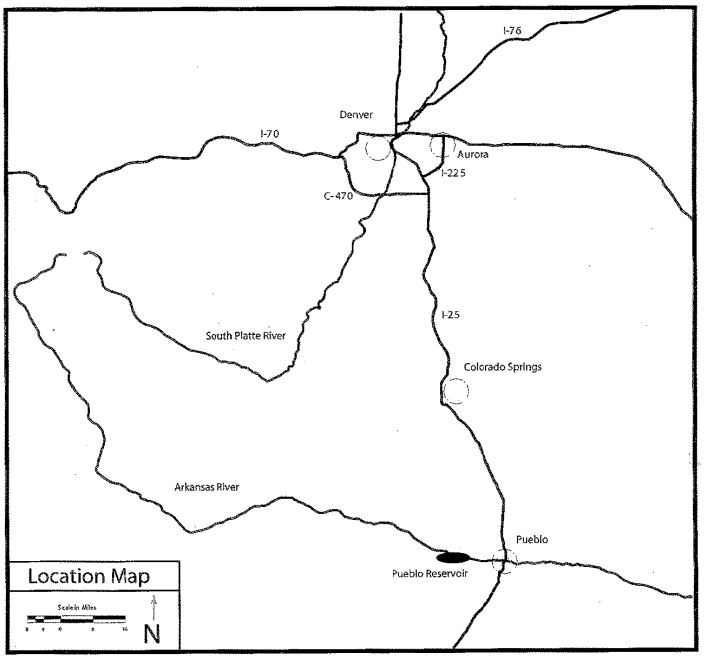
Additionally, further flow reductions in the Arkansas River will pose potentially significant compliance problems for Pueblo's municipal wastewater treatment plant (the "Treatment Plant"), by reducing the amount of dilution flow that is available to mix with treated effluent discharged from the plant. If this occurs, Pueblo may be required to implement costly additional treatment processes in order to comply with future discharge permitting requirements of the United States Environmental Protection Agency and the Colorado Department of Public Health and Environment. These issues are compounded by the fact that the discharge point for Pueblo's Treatment Plant is located immediately downstream from the confluence of the Arkansas River and the already poor quality flows from Fountain Creek.

E. Conclusion/Proposed Solution. Pueblo is not conceptually opposed to reoperation or enlargement of the Fryingpan–Arkansas facilities, including Pueblo Reservoir. However, these changes that benefit entities far away from the facilities must be balanced with a recognition of the great potential for detrimental impact on the City located in the midst of those facilities. Pueblo's proposed amendments to H.R. 3881 would simply protect a minimum flow of water through the City and prevent new exchanges from drying up the River entirely. The minimum flows sought to be protected (100 cfs during the winter, and 500 cfs during the remainder of the year) are less than the average flows that exist currently in this section of the River (see the graph attached at Tab D.)

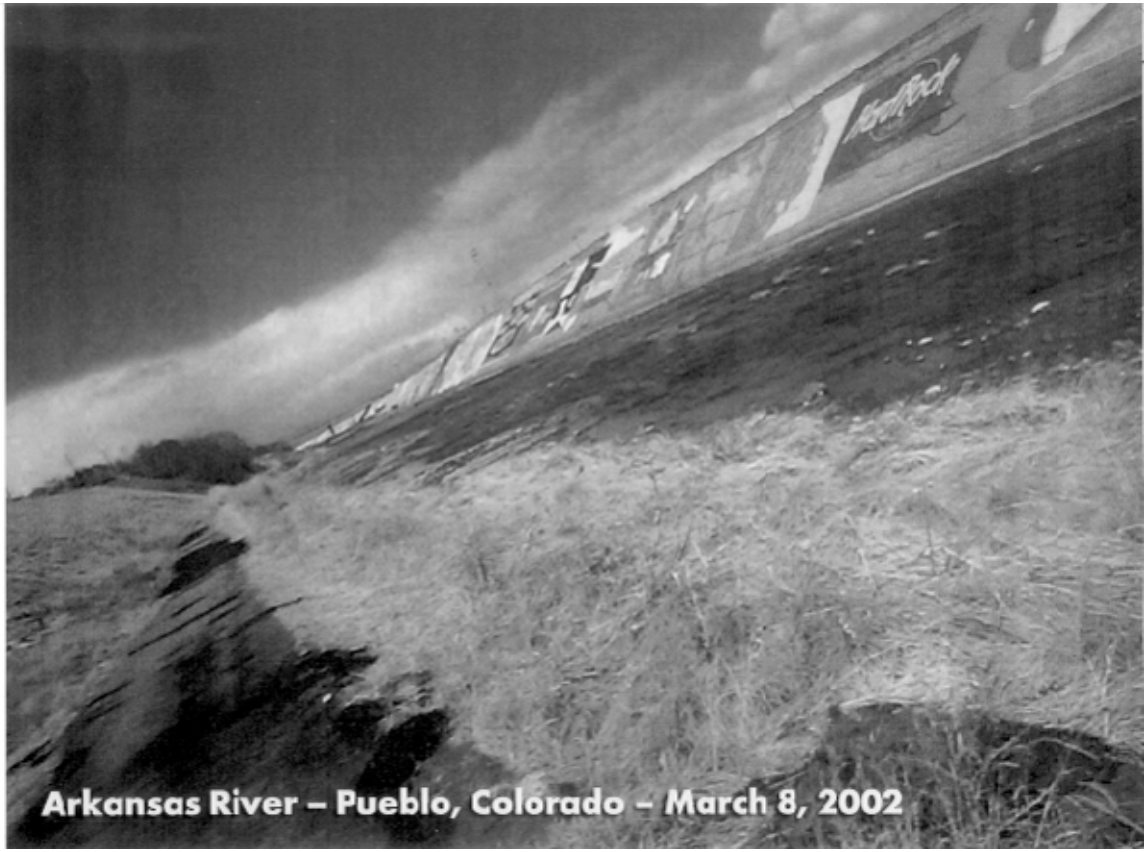
Pueblo remains hopeful that an appropriate, cooperative resolution of the issues can be achieved that will allow for increased water storage opportunities in Pueblo

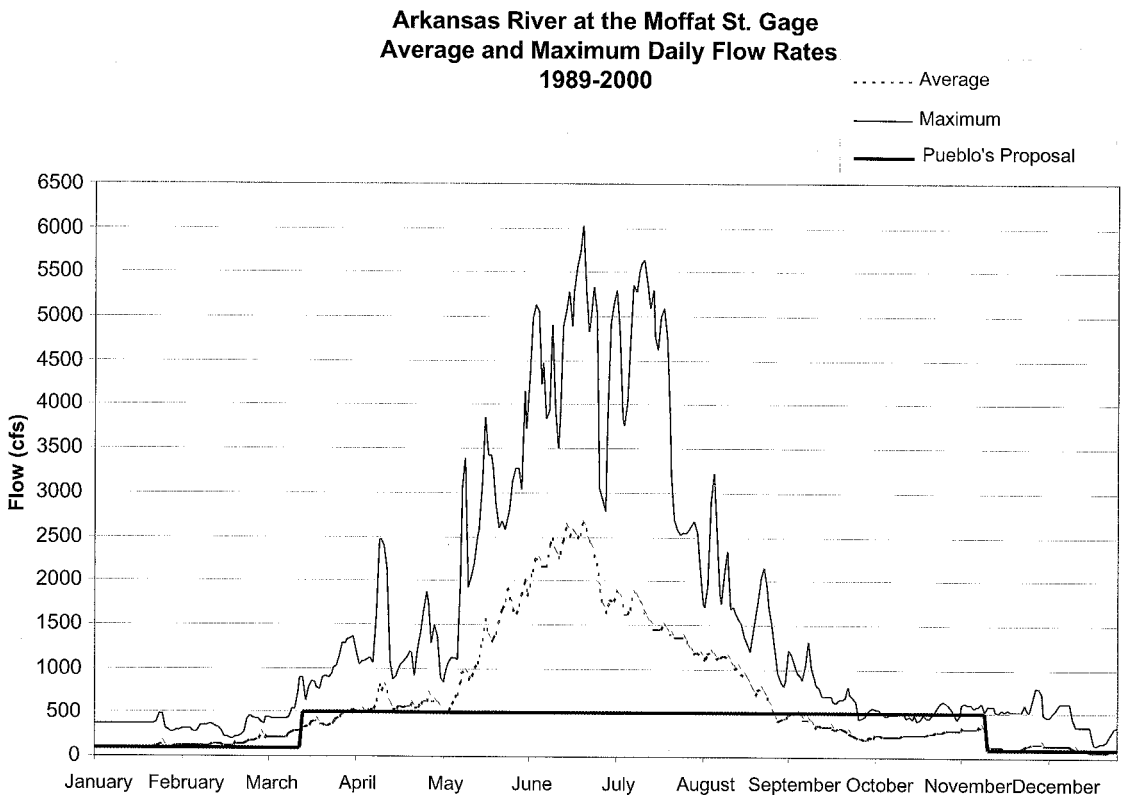
Reservoir to improve water supply reliability for the municipal water providers, while protecting the interests of Pueblo and its residents in preserving appropriate minimum flow levels in the Arkansas River through Pueblo. Again, Pueblo recognizes that as with all similar projects, a balancing of the potential water supply benefits of the proposed reoperation and enlargement project, against the resulting negative impacts must occur; however, the balance proposed by the Southeastern District and others as proposed in H.R. 3881 is vastly unfair to Pueblo and its residents.

[Attachments follow:]



Arkansas River – Pueblo, Colorado – March 8, 2002


Arkansas River – Pueblo, Colorado – March 8, 2002


Arkansas River at the Moffat St. Gage
Average and Maximum Daily Flow Rates
1989-2000
Average
Maximum
Pueblo's Proposal
Flow (cfs)
6500
6000
5500
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
January
February
March
April
May
June
July
August
September
October
November
December

Mr. CALVERT. Thank you for your testimony.

I think I will ask a question, and all three witnesses can address this.

If, in fact, a feasibility report was to move forward, isn't it true that not just the economic issues have to be addressed, not just the water rights, State water right issues must be addressed, but community issues must be addressed and environmental issues must be addressed. Isn't that correct?

Mr. ARVESCHOUG. Mr. Chairman, I guess I will start. I would answer yes to your question. The work that we have done is not intended to be conclusive. We look specifically at our storage needs. We looked at other issues as well. But we fully expect the Bureau of Reclamation to look at all issues, including recreation and environmental issues, not just the work that we have done, Mr. Chairman, but all issues presented.

And, just for the record, we are not asking Congress to authorize the enlargements. The reference to the 1939 Act is to provide legal authority for the feasibility studies themselves. I am not an attorney, and so I can't give you the details of that.

Mr. CALVERT. You are the only one that isn't, I suspect.

Mr. ARVESCHOUG. We are not asking for you to authorize the enlargements. We want to be very thoughtful about this process. We realize it will take time. Our constituents need the additional storage in a reasonable amount of time. But we know Reclamation needs to do a thorough job in the studying the issues surrounding enlargement.

Mr. CALVERT. Thank you. Ms. Kassen.

Ms. KASSEN. The short answer is yes, that a feasibility study should address environmental impacts. Our concern with the way the bill is drafted is that it seems to sort of preordain the outcome of the feasibility study. And I would second what Commissioner Keys said earlier, that the bill be amended to allow the Bureau the flexibility to look at all of those issues and all of the options that they ordinarily consider, and not be limited in any way. And I don't believe that what Mr. Arveschoug said is contrary to that, at least right here.

Ms. CASTLE. In addition to that, Mr. Chairman, I would point out that the feasibility study portion of the legislation applies only to the proposed enlargement of the reservoirs and not the proposed reoperations, meaning the authorization to enter into contracts with entities for the storage of nonproject water.

Reoperations would create a 48,000 acrefoot bucket within this Federal project, within the existing space. That causes the City of Pueblo the same concerns as I just expressed. That is not the subject of a feasibility study.

Mr. CALVERT. Well, I think hopefully we can work out something that would address those issues if we move forward here on a feasibility study. The City of Pueblo, through your testimony—and I can understand you have made a significant investment in this water park and certainly other things that have been going on down that river.

What rights to the water do you have ultimately outside of obviously what is going on in the community, and the water is passing through there? But do you actually have a water right to that?

Ms. CASTLE001. A couple of answers to that. The water rights that are used within the city's municipal water system are operated by our Board of Water Works, which would, no question about it, benefit from the authorization of this legislation.

However, the Board of Water Works doesn't have the responsibilities that the city council has to protect all of the interests of its citizens.

Second, the City of Pueblo has filed just recently for a water right to protect its proposed boating course in the reach of the river through the city. But I will tell you, Mr. Chairman, Mr. Hefley, that this is not a water rights matter. Colorado water law does not deal with the protection of minimum flows in this type of context. That is just not what it was set up to do. Colorado water rights law protects water rights from injury and doesn't deal well with the situation that we are describing where we are trying to protect a minimum level of flow in the river that has always flowed through the city, but that this legislation jeopardizes.

Mr. CALVERT. Well, let me ask one final question. Because I am looking at a photograph that has average and maximum daily flow rates that was brought up in your testimony, and your proposal would obviously want to increase that amount of water even—that is above the average flow rate sometimes during the year; isn't that correct?

Ms. CASTLESE 004. No. Let me be very clear about that, Mr. Chairman. We are not proposing to try to increase the amount of natural flow. What we are trying to do is protect what is there at a minimum level. So if the flow in the river, the natural flow that would be in the part of the river that flows through the city, is less than the 500 cfs protection that we are asking for during the irrigation season, then we are not trying to bump that up to 500, we are just trying to protect what is there.

As you can see from that chart that was attached as Tab D to our written testimony, most of the time the average flows in the river considerably exceed the minimum levels that we are asking to be protected. What we are suggesting, that the flows just not drop below that level if they would have been above it naturally. If they are already naturally below it, then there is nothing more to do. We just don't want it to get lower than that.

Mr. CALVERT. Thank you. Mr. Hefley.

Mr. HEFLEY. Thank you, Mr. Chairman. It is good to see Steve Arveschoug here today. I would like to tell you, Mr. Chairman, that Steve was an outstanding State representative for years in Colorado. But he had a campaign technique, which was to walk between the two major cities in his district, Canyon City and Pueblo, about 50 miles every campaign year, and I would go down and walk a portion of that with him. I am so glad he is in this job now and not in the State legislature, so I don't have to go down there and walk that distance any more. Steve, good to see you here.

Mr. ARVESCHOUG. Thank you, Mr. Hefley.

Mr. HEFLEY. It is obvious that we have got competing values here. That is what hearings are for, to weigh those competing values. And I find myself frankly agreeing with all of the values that have been expressed here today, except for the one I guess where Kansas doesn't even want a feasibility studio. I don't agree with

that. And we may have to do some discussion on how we accomplish the competing values.

But, for instance, for Trout Unlimited, I was—in the redistricting, I have—I will now again—I did when I first started in Congress, and I will now again represent the upper reaches of the Arkansas River to the headwaters up at Leadville. I remember when I represented it before there was a big debate about the Elephant Rock Dam. And I happened to side with Trout Unlimited and Chaffee County against the City of Colorado Springs. I was on the other side because I thought that you were right in that. That was a value that we should support.

And I think Pueblo is a wonderful community, who has done a wonderful job of spiffying up its image that—this river walk and all of that kind of thing. The representatives of Pueblo should be commended on what they have done in this. And I don't want to do anything to give you a dry ditch. I think the Legacy Project is an excellent project. I want that to continue.

Two weeks ago I was down in Chaffee County and reintroducing myself to folks down there and came back along the Arkansas, which is one of the prettiest drives that you can have in the State of Colorado through that Arkansas River Canyon, and stopped repeatedly to watch fishermen fish in the stream there. You know, we want these values. And now how do we get to them? And I think the feasibility study is the way to do that.

But let me ask you, Ms. Castle, the Pueblo Board of Water Works and the Southwest District say that the reoperation and the reservoir enlargement will benefit the citizens in the vicinity of Pueblo. Is that not correct?

Ms. CASTLE. As I said, Mr. Hefley, the Board of Water Works will benefit from the reoperation and proposed enlargement of the reservoir because they have water rights to store there. They are like the cities of Colorado Springs and Aurora in that the project can benefit them, and we certainly don't deny that. But the Board of Water Works has a very narrow scope. It is not their job, as it is the Pueblo City Council's, to protect all of the interests of the folks in Pueblo, including the recreational interests and the fish and wildlife interests that are part of the original purposes of the Fryingpan Arkansas Project.

Mr. HEFLEY. Well, I would assume that when they say benefit the citizens of Pueblo, they weren't just talking about the—them storing their water rights so they can have drinking water. I thought they probably meant some of the other values as well. But maybe I am wrong about that.

Ms. CASTLE. Well, I think that city council has made a determination that the burdens of this legislation on the city and the folks within it and the folks in the Pueblo area that enjoy the benefits of the river as it flows through the City of Pueblo, that those outweigh the benefits to the water board.

Mr. HEFLEY. OK. Steve, this bill would require entities receiving a contract from Reclamation using excess capacity in Pueblo Reservoir to participate in a flow management program to help maintain flows below Pueblo Dam through the City of Pueblo. How did this requirement come about? And do you believe that it address

the issues raised by the City of Pueblo? I would assume you, too, don't want a dry ditch down there.

Mr. ARVESCHOUG. No, Mr. Hefley, I don't. I am a citizen of Pueblo, represented Pueblo in the legislature, and I don't want to see the Arkansas River through Pueblo dry up.

Let me tell you why we have that requirement in the bill. When we were in the middle of our study on enlarging Pueblo Reservoir, looking at this concept of reoperations which, Mr. Chairman, if we have time I would like to explain that concept a little further because I think it would answer some of Kansas's questions and some of the other questions that are here.

But when we were doing our study, Pueblo was also in the midst of their Legacy Project looking and doing a study with the Corps of Engineers. We knew that, obviously, and we shared information with city staff. They shared information with us.

We knew that in the work that we were doing, if communities who needed space in Pueblo were going to operate an exchange, that that would have an impact on that reach of the river below Pueblo Dam, not a significant impact if you look at the modeling, but it will have an impact. That is recognized in our study. And that is why we say we need to develop a flow management program.

Mr. Chairman, Mr. Hefley, you know this. There is precedent for what we were proposing. In the Upper Arkansas reach of the river we participate with the Bureau of Reclamation in an Upper Arkansas Flow Management Program. The Department of Natural Resources provides flow recommendations to the Bureau of Reclamation. Then the project is operated to enhance fishery and recreation in the upper reach of the river.

Frankly, we thought that model would work pretty good for flows below Pueblo Dam. That is why we included it in the legislation as kind of a prerequisite for entities having a storage contract. They had to commit to participating in a flow management program.

Mr. HEFLEY. Well, Steve, without the preferred storage options plan, would there be any protection under existing law to maintaining the flows through the City of Pueblo?

Mr. ARVESCHOUG. I think Anne spoke to that a little bit. Most of the water rights we are talking about are senior water rights. The exchanges on the river are senior. They are senior to anything the City of Pueblo is filing for now and would have the right, as long as the water is there, to divert that water. There is no legal protections for flows below the reservoir.

We consider the preferred storage options plan as a good mechanism or foundation to develop the necessary flow protection because Colorado law does not accommodate that at the present time.

Mr. HEFLEY. Well, you have heard the testimony from the State of Kansas, and they have raised, I think, important questions regarding compliance with the Arkansas River Compact. How will compact issues be dealt with as the preferred storage option plan moves forward?

Mr. ARVESCHOUG. Well, we also heard from Commissioner Keys. We would echo his comments that the studies on the enlargement will take a very close look at compact compliance. It is our sense

and our intent that we do not want to develop water resources in Colorado out of compliance with the compact, so we would expect that the study that would be done by Reclamation would take a close look at those issues.

One key point here. The feasibility study that looks at enlargement would also look at the district having a junior flood storage right at Pueblo Reservoir. That right comes into priority only when John Martin Reservoir is spilling, only when other senior water rights in the basin are met, and when flows at the State line are in excess of usable flows to Kansas.

It is very much a junior water right that we would be storing under the enlargement. Under the reoperations concept, we are going to be storing existing senior water rights in Colorado, and return flows from trans-mountain water. We have requests for about 38,000 acrefeet of reoperations storage space to use existing capacity. That is all existing water, not new water. It is us better managing water rights that we already have and has no impact to State line flows.

Mr. HEFLEY. Thank you very much, Steve. Thank all of the witnesses. And, Mr. Chairman, thank you so much for this hearing this morning. And I hope the Committee will look favorably on this legislation. I am happy to work with you, your staff, and with the others that are interested to try to make this bill workable for all of these values that we talked about. Thank you.

Mr. CALVERT. I will be happy to work with you and our friend from Kansas and all of the others to hopefully work out a solution to this problem. With that—Steve, you have—.

Mr. ARVESCHOUG. I am sorry. Someone handed me a card and I said I boo-booed here. I need to ask that the record reflect my testimony today. And I would submit my reports for the record as well.

Mr. CALVERT. Without objection. All of that will be entered into the record.

Ms. CASTLE. May I just do the same, Mr. Chairman? May I submit my remarks?

Mr. CALVERT. Without objection, so ordered. We will leave the record open for additional questions to be submitted and for those answers to be delivered to the Committee.

[The letter submitted for the record by Mr. Arveschoug follows:]

Submitted for the record
4-03-02

SOUTHEASTERN COLORADO
Water Conservancy District
"Your investment in water"

March 22, 2002

The Honorable Ken Calvert
Chairman
Subcommittee on Water and Power
U. S. House of Representatives
Committee on Resources
1522 Longworth HOB
Washington, D.C. 20515

Dear Chairman Calvert and Subcommittee Members:

First, thank you for the opportunity to testify before the Water and Power Subcommittee on Congressman Hefley's legislation—H.R. 3881.

During the March 19, 2002 hearing on H.R. 3881 the Subcommittee heard testimony from the City of Pueblo and the State of Kansas that referred to the proposed "re-operation" of the Fryingpan-Arkansas Project, specifically Pueblo Reservoir. As I stated during my response to Congressman Hefley's questions, I believe it would be helpful for the record of the hearing to include a more detailed description of the re-operations concept.

Section 3 of H.R. 3881 will provide Reclamation with the clear authority to contract for certain uses of excess storage capacity in the existing Fry-Ark Project. For many years now Reclamation has executed annual contracts with water users to store non-Project water in excess capacity in Pueblo Reservoir. These annual contracts are called "If & When" contracts because the non-project water stored is subject to spill when the capacity is needed to store Project water. Reclamation has executed these annual If & When contracts for many years.

As a part of the development process for the Preferred Storage Options Plan, the District proposed to Reclamation that the original Fry-Ark Project authorization allows for long-term storage contracts with municipalities in the Southeastern Colorado Water Conservancy District to use excess capacity in the Project. In the past Reclamation had repeatedly said that they did not have the authority to execute long-term storage contracts for use to store M&I water. To date Reclamation has not changed that position and they will only execute one-year contracts, except as I noted in my previous testimony, for the individual case of the Board of Water Works of Pueblo.

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email: contact@secwcd.com • web site: www.secwcd.org

Water users are now again asking (through H.R. 3881) for the option to have long-term contracts with Reclamation to use excess capacity in the Project (that's what we call Project "re-operations"). Like the annual contracts, the long-term "re-operation" contracts would be If & When and thereby subordinate to the storage of Project water to meet Project purposes. The long-term contracts provide the water users with some assurance that they will be able to use storage capacity in the Project when it is available. From that basis they can invest in their own delivery-system infrastructure as needed.

The municipal entities that use excess capacity in the Project today, through annual If & When contracts or Pueblo's long-term contract, store water that is legally and physically available to them under existing decrees. This water includes some storable native Arkansas River water; the consumptive use portion of water acquired from farmers in the basin, and Colorado River basin trans-mountain water (including return flows). This is the same water that will be stored under the re-operations contracts that will be authorized by H.R. 3881.

The State of Kansas and the City of Pueblo both raised issues regarding the potential impact of the proposed PSOP on river flows. As a part of the development of the PSOP we assessed the potential change in the river flows out to the year 2040 with full operation of enlarged storage capacity and the use of re-operations storage using a MODSIM model with a 1966 to 1995 period of record. The results of our analysis are documented in the March 2000 Hydrologic Analysis Report, and are summarized in Section 3.4 (Water System Modeling, pages 42-52) of the Preferred Storage Options Plan Report that has been provided to the Subcommittee.

The Hydrologic Analysis Report considered flow impacts at six points on the Arkansas River, using historic stream flow data for USGS gages as a basis for projected flows given re-operations and enlargement storage. Those gage sites included: 1) Arkansas River near Malta (upper Arkansas); 2) Arkansas River near Granite (upper Arkansas); 3) Arkansas River near Wellsville (upper Arkansas; 4) Arkansas River above Pueblo (the river just below the Pueblo Dam up stream of the city of Pueblo); 5) Arkansas River near Avondale; and 6) Fountain Creek at Pueblo.

Our analysis indicates that flows below Pueblo Dam (the "above Pueblo" gage) will not be reduced. In fact, the PSOP Report and the Hydrologic Report clearly state "The simulated mean monthly stream flow show little difference compared to the historic mean monthly stream flow." There will not be a "significant" reduction in flows as stated in the City of Pueblo's testimony.

Likewise, flows on the lower river as measured at the Avondale gage should be relatively unchanged as compared to historic flows. Stream flows in the lower Arkansas actually would be somewhat greater than historic stream flows because of increased flows on Fountain Creek.

For the Subcommittee's use I've enclosed a copy of the Hydrologic Analysis Report, which will provide a detailed description of our stream flow analysis.

I've also attached four extra copies of the PSOP Report and the PSOP Implementation Committee Report as promised. In addition, I would ask that the record include the letters of support and resolutions that are attached. These clearly document the basin-wide and statewide support for the PSOP.

Again, thank you for the opportunity to offer testimony in support of Congressman Hefley's H.R. 3881. As you know, this legislation means a great deal to the citizens of southeastern Colorado.

Sincerely,

Steve Arveschoug
General Manager

cc: Congressman Joel Hefley
Larry Hojo
Colorado Congressional Delegation
SECWCD Board
Brian Person, USBR

Mr. CALVERT. With that, we thank you and we are adjourned.
[Whereupon, at 12:05 p.m., the Subcommittee was adjourned.]

The following information was submitted for the record:

- Adams, Hon. Jamie Clover, Kansas Secretary of Agriculture, Statement submitted for the record
- Barela, Hon. Kenneth, Mayor, City of Fountain, Colorado, Letter submitted for the record
- Kuhn, R. Eric, General Manager, The Colorado River Water Conservation District, Letter submitted for the record
- Scar, Dick, Director, Friends of the Arkansas, Letter submitted for the record
- Tauer, Paul E., Mayor, City of Aurora, Colorado, Letter submitted for the record

[The statement submitted for the record by Mr. Adams follows:]

Statement of The Honorable Jamie Clover Adams, Kansas Secretary of Agriculture

This written testimony is to alert the Subcommittee to potential endangered species implications posed by the projects outlined in H.R. 3881. The bill raises serious concerns for the Kansas Department of Agriculture, and those concerns revolve around issues of flood flows in the Arkansas River, including their capture, and endangered fish species.

As I understand H.R. 3881, the bill would authorize a feasibility study for enlarging the Pueblo Reservoir and Turquoise Lake to capture and store flood flows, or unusable water, from the Arkansas River. There are endangered species issues related to flow regimes and quality of waters in downstream segments of the Arkansas River.

Several prairie fishes that were once widespread and abundant in prairie stream ecosystems downstream from the Rocky Mountains have declined markedly in their distribution and abundance. One such species is the Arkansas River Shiner. In 1998, the Arkansas River Shiner was federally designated by the U.S. Fish and Wildlife Service as an endangered species. In Kansas, portions of the Cimarron and Arkansas rivers were ultimately designated as critical habitat for this species. Specifically, the Kansas portion of the Arkansas River, which stretches east from Highway 27 in Hamilton County in far western Kansas to the Kansas–Oklahoma state line, was designated as critical habitat. Excluded from that designation was a 12-mile stretch of the river where it passes through the city of Wichita. The U.S. Fish and Wildlife Service has noted that Colorado actions can, if proper care is not taken, adversely modify critical habitat in Kansas.

The Arkansas River Shiner is a mainstream channel fish species that likes a wide, sandy-bottomed environment. The shiner spawns downstream of sandbars during May, June and July. Spawning occurs coincident with peak river flows. The eggs are non-adhesive and buoyant, so they drift in the current and hatch after two to four days. Although minimum or optimal flow requirements are not known, it is clear that the species is strongly influenced by river flows and it appears dependent on periodic intensive river flows during the spring and summer.

The shiner is native to the Arkansas River Basin and, before 1985, it was widespread. However, populations disappeared rapidly during the mid–1980s, which prompted the federal endangered species listing. Although all causes of the decline in shiner numbers are not known, extensive demands on water in the river, reservoir construction and alteration of flow regimes appear to be the factors having the greatest impact on populations of the Arkansas River Shiner and several other prairie fish species.

In recent years, much of the discussion between Kansas and Colorado has focused on water quantity issues. However, endangered species issues ranging from the black-tailed prairie dog to salmon to prairie fish populations are receiving increasing national attention. I appreciate the opportunity to provide you information for your deliberations on H.R. 3881.

[The letter submitted for the record by Mr. Barela follows:]

CITY OF FOUNTAIN

APRIL 2, 2002

The Honorable Ken Calvert, Chairman
Subcommittee on Water and Power Resources
Committee on Resources
United States House of Representatives
1522 Longworth HOB
Washington, D.C. 20515

RE: House Resolution 3881 (Pueblo Reservoir Reoperation/ Enlargement)

Dear Chairman Calvert:

The City of Fountain, Colorado, submits this letter in order to supplement the record of the hearing held before the Subcommittee on Water and Power Resources on March 19, 2002, on H.R. 3881, regarding reoperation and enlargement of Pueblo Reservoir. Fountain supports this legislation, which is designed to more efficiently use Colorado s limited water resources, in part by allowing more complete use of water imported to the Arkansas River basin from the Colorado River.

Fountain is a small city located on Fountain Creek, upstream of its confluence with the Arkansas River, in the Arkansas River basin. During the last decade, Fountain experienced enormous growth which brought its population to 15,197 in 2000. It is one of the fastest-growing cities on the Colorado front range. Population projections for the year 2020 range from 30,000 to 37,000. Accommodating this growth has been a major challenge to the city, whose residents are working people with low to moderate incomes.

During this period of great growth, the city has had to significantly expand its water resources and infrastructure just to keep up with its ongoing needs. Fountain now obtains its water supply from the Fryingpan–Arkansas (Fry–Ark) project and from several wells located within the city. Fountain s allocation of Fry–Ark water is approximately 2,000 acre-feet per year, and is delivered via the Fountain Valley Conduit. Because the Fry–Ark water is insufficient to meet all of Fountain s water needs, the city supplements the Fry–Ark supply with water from its wells, although the wells supply water of inferior quality. Although the Fry–Ark water is reusable, Fountain can fully reuse its share only if the Pueblo Reservoir reoperation and enlargement projects are approved.

The Pueblo Reservoir reoperation and enlargement projects will enable Fountain to obtain maximum use of all of its water supplies by providing a storage vessel for the city s reusable Fry–Ark return flows and certain other water rights. The city is not in a position to acquire a sufficient supply of expensive senior water rights on Fountain Creek and to construct storage and other water system infrastructure on its own. Therefore, the Pueblo Reservoir reoperation and enlargement projects are the city s only realistic options.

We urge the subcommittee to support H.R. 3881, in order to allow the necessary resolutions and feasibility studies required to further evaluate the Pueblo Reservoir reoperation and enlargement projects. Our city s future depends upon this.

Sincerely yours,

Kenneth Barela,
Mayor

cfc/m

cc: Colorado Congressional delegation
City Council, City of Fountain
Steve Arveschoug, General Manager, Southeastern Colorado Water Conservancy District

[The following letter was submitted for the record by R. Eric Kuhn, General Manager, The Colorado River Water Conservation District:]

THE COLORADO RIVER WATER CONSERVATION DISTRICT

MARCH 15, 2002

The Honorable Ken Calvert, Chairman
Subcommittee on Water and Power
U.S. House of Representatives
Committee on Resources
1522 Longworth HOB
Washington, D.C. 20515

RE: H.R. 3881

Dear Chairman Calvert and Members of the Committee:

Thank you for this opportunity to share the views and concerns of the Colorado River Water Conservation District (River District) regarding H.R. 3881. The River District is a political subdivision of the State of Colorado that is responsible for the conservation, use, and development of the water resources of the Colorado River basin to which the State of Colorado is entitled under the 1922 and 1948 Colorado River compacts. The River District includes all or part of 15 counties in west-central and northwest Colorado, comprising 28 percent of the state.

Roughly 80% of Colorado s population resides east of the Continental Divide, while approximately 80% of the moisture in the state falls, principally as snow, west of the Divide. Colorado has developed an extensive network of surface and underground water conveyance structures, which divert water transmountain from Colorado s western slope to its population and agricultural centers on the eastern slope. Among the largest of these systems are U.S. Bureau of Reclamation projects: the Colorado–Big Thompson Project and the Fryingpan–Arkansas Project. The latter being the subject of H.R. 3881.

The River District supports the general purposes of H.R. 3881, namely more efficient use of Colorado s limited water resources especially the more complete use of water imported to the Arkansas River basin from the Colorado River basin.

The River District has provided input to relevant sections of H.R. 3881, specifically Section 12, which assures mitigation for increased diversions of water from the headwaters of the Colorado River basin into the Arkansas River basin. However, we have an unresolved concern with the language in Section 12, Paragraph (1) regarding precisely what constitutes an increased diversion that would be subject to the mitigation requirements of this section.

The total amount of both project and non-project water which would be transmountain diverted as a result of the Fryingpan–Arkansas Project was an issue when Congress debated and enacted the authorizing legislation for the Project. The following brief excerpt from a House Resources Committee hearing on the Fryingpan–Arkansas Project s authorizing legislation from 1960 highlights our concerns today:

Chairman Aspinall. What is the total amount that will be subject to diversion from western Colorado to eastern Colorado if this legislation is approved?

Mr. Ogilvie (U.S. Bureau of Reclamation, Assistant Regional Director, Denver): It will be the 40,000 presently coming from Twin Lakes plus an additional 15,000 for Twin Lakes plus the 69,100 through the Fryingpan–Arkansas tunnel. That adds up to approximately 124,000 acre-feet.

Chairman Aspinall. Thank you.

It was on the assurance of such limitations that Chairman Aspinall and western Colorado agreed to support the authorizing legislation for the Fryingpan–Arkansas Project in 1960. It is similar commitments that we seek today. Adequate provisions for mitigation of activities authorized under H.R. 3881 must be included in this legislation for any water which is conveyed through or stored in project facilities in excess of that contemplated at the time of, and included under, the Fryingpan–Arkansas Project s authorization.

The Bureau constructed Ruedi Reservoir as a project feature as mitigation for western Colorado s loss of water resulting from Fryingpan–Arkansas Project diversions from the Colorado River basin to the Arkansas River basin. However, there is no compensatory mitigation for additional non-project water which may be

transmountain diverted as a result of the activities authorized under H.R. 3881. Accordingly, the language in Section 12 was drafted to address those additional diversions to ensure protection to present and future western Colorado water users.

We are working with the proponents of H.R. 3881 to resolve the question of which existing non-federal, transmountain diversion projects should be grand fathered under the provisions of Section 12, Paragraph (1) and which projects represent increased diversions and therefore would be subject to the mitigation provisions of Paragraphs (2) through (4). However, to date, we have not reached agreement on mutually acceptable language to assure that the language of this paragraph will not be the subject of future dispute. Only with resolution of this final issue can the River District and western Colorado support passage of H.R. 3881.

Thank you for your time and consideration of our views and concern.

Sincerely,

R. Eric Kuhn,
General Manager

cc: Colorado Congressional delegation
Board of Directors
Steve Arveschoug

[The letter submitted for the record by Mr. Scar follows:]

Friends of the Arkansas

P.O. Box 924, Buena Vista, Co 81211

3/19/02

House Resources Subcommittee on Water and Power
U.S. House of Representatives
1522 Longworth HOB
Washington, D.C. 20515

Dear Members of the Subcommittee:

These comments pertain to H.R. 3881, introduced by Congressman Joel Hefley. We respectfully request that they be included in the hearing record on this bill.

Friends of the Arkansas is grassroots citizens' organization with the mission of preventing the construction of any dam on the mainstream of the upper Arkansas River between the headwaters and Pueblo Reservoir.

We believe that the Preferred Storage Options Plan outlined in H.R. 3881 presents the best alternative for providing water to the various water users served by the Southeastern Colorado Water Conservancy District. We commend those who drafted this plan for the cooperation among water rights holders and public groups that they were able to achieve. We feel that the plan will provide the needed water with less environmental damage than other alternative plans.

Friends of the Arkansas supports H.R. 3881 and urges this subcommittee to approve it and pass it on to the full Committee with the recommendation that it be passed by the full House.

We appreciate your consideration of these comments.

Sincerely,

Dick Scar

Dick Scar
Director

Keeping the Upper Arkansas Free Flowing

[The letter submitted for the record by Mr. Tauer follows:]

Submitted for the record

PAUL E. TAUER

Mayor
1470 South Havana Street
Aurora, Colorado 80012
303-739-7015
FAX: 303-739-7123

HR ~~1714~~ 3881
Statement of
Paul E. Tauer, Mayor
City of Aurora, Colorado

Mr. Chairman, I am Paul Tauer, Mayor of the city of Aurora, Colorado. The city of Aurora strongly supports HR 1714 and recommends its passage.

Aurora is the third largest city in Colorado. We are a growing, family oriented community with a population of approximately 290,000 people. For those of you unfamiliar with Colorado, Denver is our suburb to the west! We have worked hard over the years to ensure that we have the infrastructure, including sufficient water, to meet the needs of our residents. HR 1714 is a critical element in our ability to meet the water needs of our community.

The legislation represents the best in water resource management. It authorizes the "reoperation of the facilities," allowing more flexibility and more efficient use of them. By allowing additional uses, municipalities may make better use of their own existing water resources. The use of excess capacity will provide additional revenues for the repayment of federal indebtedness, operation and maintenance, and dam safety activities.

A section in the legislation provides for long-term contracting of "if-and-when" use of excess capacity storage space. Aurora needs this type of contract to properly manage our water resources in the Arkansas River and provide for the reliability of our water supply. Aurora's use of this space has no negative impacts on other project users. Under the terms of our existing agreement with the other users, if there is no space available for our water, it is released.

This legislation also provides for local entities to study the feasibility of enlargement of Pueblo and Turquoise reservoirs. Such studies will be paid for by the local beneficiaries of the studies at no cost to the federal government. While Aurora is not currently a participant in the potential enlargements, the City wholly supports this effort. Aurora would become a willing participant in enlargement should all of the Southeastern Colorado Water Conservancy District's constituents' needs be met, and the opportunity became available.

To meet the needs of our citizens, Aurora has acquired significant water rights throughout Colorado over the last fifty years. In conjunction with the city of Colorado Springs in the 1960s, Aurora developed the Homestake Project. Since that time, we have continued to identify and acquire water that was available. Making water available for our citizens from our most recent acquisition of water from the Rocky Ford Ditch is one of the issues that make HR 1714 necessary. We are proud of our record of working with areas impacted by our purchases including; revegetation, payments in lieu of taxes to affected governments and assistance to local governments.

This legislation meets Aurora's need to contract for excess capacity use in Pueblo Reservoir on a long-term basis. Aurora currently stores water in the reservoir on one-year contracts, which do not provide certainty from one year to the next. Long-term certainty is critical to the City. Aurora's interest is only for storage, not for water from the Project. We have our own water supplies. We need to have adequate storage to utilize those supplies.

This legislation is based on a significant agreement between the Southeast Colorado Water Conservancy District and the city of Aurora in settlement of a dispute over the Bureau of Reclamation's authority to contract with Aurora. This dispute originally surfaced in 1983 and, again recently, with Aurora's additional purchase of Rocky Ford Ditch water rights. Aurora and the District have cooperatively addressed and resolved the disagreement on contracting authority, and it is reflected in this legislation.

The lower Arkansas Valley water rights play a significant role in Aurora's water resource portfolio and represent a major investment. Aurora needs the certainty that this water will be available to its citizens, as is provided for in this legislation. I respectfully urge your support.

Thank you.

Paul E. Tauer
Mayor
City of Aurora