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FRYINGPAN-ARKANSAS PROJECT AT 45: SUSTAINABLE WATER FOR THE 21ST CENTURY

OVERSIGHT FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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OVERSIGHT FIELD HEARING ON "THE FRYINGPAN-ARKANSAS PROJECT AT 45: SUSTAINABLE WATER FOR THE 21ST CENTURY"

Friday, June 1, 2007
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Natural Resources
Pueblo, Colorado

The Subcommittee met, pursuant to call, at 9:00 a.m., in the Fortino Ballroom, Pueblo Community College, 900 W. Orman Avenue, Pueblo, Colorado, Hon. Grace Napolitano [Chairwoman of the Subcommittee] Presiding.

Present: Representatives Napolitano, Lamborn, Udall, Salazar and Perlmutter.

STATEMENT OF THE HON. GRACE NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

[Video clip played.]

Mrs. NAPOLITANO. Ladies and gentlemen, I was made aware of this clip yesterday, and I am glad that I brought it, because this is exactly where we're at today. This is our future, and it was just as evident and true then as it is today.

Again, I'm Congresswoman Grace Napolitano with the Subcommittee on Water and Power. Good morning, and welcome to our Subcommittee field hearing, and we'll now come to order.

This is the second in a series of oversight field hearings on sustainable water. Our first one was in the City of Pomona in California, dealing with perchlorate and other contaminants, and this hearing will focus on the Fryingpan-Arkansas Project. However, the question I'm interested in is far broader: What lessons can be learned from the Fryingpan-Arkansas Project about wasting water in general?

The Bureau of Reclamation has jurisdiction over the 17 western states, and the Bureau comes under the jurisdiction of the Subcommittee. And one of the aims I have is to be able to assess the water needs of the western states who are facing many challenges, whether it is climate change, drought cycles, contaminants and various other areas, so this is but one in a series of hearings to be able to determine and assess the communities which face

challenges now and in the future being able to have a say that will go into the record.

I'd like to begin by welcoming our guests to the Subcommittee today. First my friend and colleague who approached me about the area—and by the way, I am open to field hearings, so whoever feels they have an issue or wants to be able to bring information to the table that is pertinent—Representative John Salazar, who has been a most gracious host. John.

Second on my left is Congressman Mark Udall, another good friend.

To my right, I have my Ranking Member who has been sitting with me in the Subcommittee now for a while, Mr. Lamborn, and thank you, Mr. Lamborn, for being with us. I really appreciate it.

Also we have Representative Ed Perlmutter from Jefferson County. Welcome.

And I think that takes care of our colleagues. And staff is Zach.

Kiel. Stand up, Kiel. Republican staff. I just want to be sure we don't leave anybody out, OK?

I ask consent that Representative Perlmutter be allowed to sit on the dais with the Subcommittee this morning and to participate in the Subcommittee proceedings. Without objection, so ordered.

I'll begin the hearing with a brief statement and then recognize the members for short statements. And ladies and gentlemen, you'll be held to the 5-minute rule. You'll have a timer. I don't think you can all see it, but I'll turn it to whoever is speaking. We have many witnesses and a lot of ground to cover, and we need to be out of this facility by I believe it's 12:00 or 12:30. 12:30, so we don't want to belabor that.

Let's see. We start off now with Mr. Lamborn for 5 minutes.

[The prepared statement of Mrs. Napolitano follows:]

Statement of The Honorable Grace F. Napolitano, a Representative in Congress from the State of California

Good morning. I want to welcome our witnesses and guests this morning. I am so very happy to be here in the beautiful state of Colorado, and I look forward to all the testimony this morning. It is very important to me as Chairwoman to get this Subcommittee out of Washington, D.C. and hear the perspectives of local people. There are no better experts on the realities of our ever-increasing water supply challenges than those on the ground, in the community.

I also want to take just a moment to thank our very gracious hosts—the administration and staff of the Pueblo Community College, and Congressman John Salazar and his staff. You have provided a perfect facility for our hearing this morning. On behalf of myself and Congressman Nick Rahall, who is the Chairman of the House Committee on Natural Resources, I thank you for your hospitality.

This field hearing is the second in a series of field hearings this Subcommittee intends to conduct this year on sustainable water supplies for the west. All over the west, population growth, coupled with increased drought and decreased snow pack and rainfall due to the impacts of global warming, are already stressing our water supplies. Further, the infrastructure we currently have in place, often projects authorized and built decades ago long before we could have ever foreseen these challenges, may not necessarily be adequate to maintain sustainable water supplies well into the future.

No one understands this issue better than the communities of Southeastern Colorado. Today's hearing, aptly titled, "The Fryingpan-Arkansas Project at 45: Sustainable Water for the 21st Century," will focus on western water management challenges in Colorado through the lens of the Fryingpan-Arkansas Project.

Like so many of the water projects in my home state of California, I understand this is a controversial issue. But this Subcommittee has a history of confronting such issues in a fair and bipartisan way. We accommodated as many witnesses as

we could today so that we will get the full range of views on this issue. I am eager to listen.

Specifically, I hope to hear from our witnesses regarding the Congressionally-authorized purposes of the Fryingpan-Arkansas project, the role of the project in sustaining agriculture and communities in Southeast Colorado, and the new challenges facing water users, water managers, and Front Range cities facing unprecedented growth, climate change, and increasing needs for reliable water supplies.

STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. LAMBORN. Thank you all for being here. I also want to thank you, Chairwoman Napolitano, for coming here to our wonderful State of Colorado to learn more about the challenges that we face in meeting our current and future water needs.

As a new Member of Congress, I appreciate the opportunity to serve on this important Subcommittee, and I am certainly honored to serve as the acting Ranking Member on this Subcommittee while my colleague, Cathy McMorris Rodgers, is on maternity leave. While I am new to the ways of Washington, D.C., the challenges facing Colorado with respect to water are certainly not new to me. The old adage of build them and they will come no longer applies here in Colorado. They'll come anyway.

We have many water challenges facing us here. Past generations had the same challenges and they rose to the occasion by building visionary projects like the Fryingpan-Arkansas Project. And I really enjoyed that clip. The sense of history in seeing that was really special to me.

Mrs. NAPOLITANO. Thank you, Mr. Lamborn, and I'd like to ensure that that is entered into the record.

Mr. LAMBORN. The Fryingpan-Arkansas is a multi-use project that brings benefits to cities like Colorado Springs, but to irrigators as well. Now we have the opportunity to meet new water challenges, and the project can play a big role in our future water supply picture for not just my constituents, but for everyone in the region.

Today is an opportunity to focus on the future and to appreciate the collaborative efforts that have brought us all to where we are today. Over the years, stakeholders have marched gradually toward more compromise, but consensus has been elusive. What's important today is that we march to the future and not get stuck in the past.

Different perspectives will be heard today. Congressman Salazar and I have both introduced legislation regarding the Preferred Storage Option Plans (PSOPs), and there are significant differences. We are both working to further the needs and priorities of our districts though, and I am convinced that there is ample room for compromise. If we and everybody here do not step up to finalize solutions, the entire region will suffer, and that's not acceptable.

It's important to note that while PSOP is important, Colorado Springs has alternative options to address its needs; however, many communities downstream do not have that same opportunity, which is why the leadership is critical to moving forward for the benefit of all affected communities. Should an alternative to PSOP be pursued, many concessions and benefits to entities in the

Arkansas River Valley would be lost forever, and it would be a shame to lose what could have been a win/win situation just because of the obstructionism of a few.

It's amazing to me that a handful of self-appointed experts want to dictate to other communities and cities what their future and destiny should be. No one has that right. The people of Colorado Springs would never dream of telling another city or community what its future should be, and they just ask that they be given that same fair treatment in return.

This hearing is a great opportunity to move past the rhetoric and work on real solutions. I do not expect us to resolve all of the issues surrounding projects in the Fry-Ark today, but this hearing is a good opportunity to move this process forward and hear all concerns and hopefully find true common ground. I hope the hearing has a positive and constructive purpose and tone, as opposed to any kind of name calling or criticism. I look forward to working with all parties to meet this goal.

Thank you. And thank you, Chairwoman Napolitano.

[The prepared statement of Mr. Lamborn follows:]

Statement of The Honorable Doug Lamborn, a Representative in Congress from the State of Colorado

Thank you all for being here. I also want to thank you, Chairwoman Napolitano, for coming to our wonderful state of Colorado to learn more about the challenges that we face in meeting our current and future water needs.

As a new Member of Congress, I appreciate the opportunity to serve on this important subcommittee and I am certainly honored to serve as the Acting Ranking Member on this subcommittee while my colleague Cathy McMorris Rodgers is on maternity leave.

While I am new to the ways of Washington, DC, the challenges facing Colorado with respect to water are certainly not new to me. The old adage of "build it and they will come" no longer applies here in Colorado. They'll come anyway.

We have many water challenges facing us here. Past generations had the same challenge and they rose to the occasion by building visionary projects like the Fryingpan-Arkansas project. Our communities would not be what they are today without this project. The FryArk is a multi-use project that brings benefits to cities like Colorado Springs but to irrigators as well. Now, we have the opportunity to meet new water challenges and the project can play a big role in our future water supply picture for not just my constituents but for everyone in the region.

Today is an opportunity to focus on the future and to appreciate the collaborative efforts that have brought us all to where we are today. Over the years, stakeholders have marched gradually towards more compromise but consensus has been elusive. What's important today is that we march to the future and not get stuck in the past.

Differing perspectives will be heard today. Congressman Salazar and I have both introduced legislation regarding the Preferred Storage Options Plan and there are significant differences. We are both working to further the needs and priorities of our districts, yet I am convinced that there is ample room for compromise. If we and everyone here do not step up to finalize solutions, the entire region will suffer and that's not acceptable.

It is important to note that while PSOP is important, Colorado Springs has alternate options to address its needs. However, many communities downstream do not have that same opportunity, which is why leadership is critical to moving forward for the benefit of all affected communities. Should an alternative to PSOP be pursued, many concessions and benefits to entities in the Arkansas River Valley would be lost forever, and it would be a shame to lose what could have been a win-win situation outcome just because of the obstructionism of a few.

It is amazing to me that a handful of self-appointed experts want to dictate to other communities and cities what their future and destiny should be. A few have even said, for instance that Colorado Springs should not grow any more. No one has that right. The people of Colorado Springs would never dream of telling another

community what its future should be, and they just ask that they be given the same fair treatment in return.

This hearing is a great opportunity to move past the rhetoric and work on real solutions. I do not expect us to resolve all of the issues surrounding projects in the FryArk today, but this hearing is a good opportunity to move this process forward and hear all concerns and find true common ground. I hope it has a positive and constructive purpose and tone, as opposed to name calling and criticism. I look forward to working with all parties to meet this goal.

Thank you.

Mrs. NAPOLITANO. Thank you very much, and we will now proceed to our next member, Representative Salazar.

STATEMENT OF THE HON. JOHN SALAZAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. SALAZAR. Thank you, Madam Chair.

First of all, I want to thank you for allowing us to be here in Pueblo and for your visit as well. Today I'd like to talk a little bit about the Arkansas basin. I'd like to talk about an individual who has been and lived through it his entire life. This is about a young boy in the Arkansas basin, John Singletary, who sold his gold frying pan to try to raise money for the Fryingpan-Arkansas Project.

Little Johnny dreamed of the day when farmers in the lower Arkansas Valley would never have to worry about future water needs. He remembers going to Rocky Ford with his father and seeing a booming farm town, which seemed to have melon stands on every street corner. In 1962, as we just saw, President Kennedy came to Pueblo to sign the Fryingpan-Arkansas Project into law. The Fry-Ark Project was being built to deliver water to the agricultural-based communities east of Pueblo.

In committee hearing the legendary Congressman and Committee Chairman, Wayne Aspinall, who we heard President Kennedy speak about, laid out his argument for the Fryingpan-Arkansas Project. Aspinall stated that only 17,000 acre-feet of water would be used for the municipalities in the Arkansas Basin and of that only 5,000 acre-feet outside the lower Ark for Colorado Springs.

He said that of the 219,100 acre-feet of usable project water, that an overwhelming majority of the 184,000 acre-feet would be designated for irrigated agriculture. That's roughly 85 percent of the water for agriculture. Simply put the Fry-Ark was approved by Congress and signed by President Kennedy for the primary purpose of serving agriculture in the Arkansas basin.

Today I am sad to say that agriculture is no longer the focus of the Fry-Ark Project. Even worse, the project is turning into an instrument to move water from the ag-based communities like Crowley County and Rocky Ford, to growing metropolises, sprawling communities, and sometimes out of basin. Promises made to these farm communities have not made up for the fact of the total community damage caused by their drive. And while Aurora cannot legally purchase Fry-Ark Project water, the Bureau of Reclamation has allowed Aurora to utilize the Fry-Ark facilities to move clean mountain water via exchange from water they purchased off the farm. The water taken off the farm will never return. The water taken out of the basin will never return. The trend leaves no hope

for agriculture or for ag-based communities, nor for them to survive. I believe that it is immoral for large cities to rob the future of small towns for the sake of growth.

Thomas Jefferson once said, "Encouragement of agriculture I deem as one of the essential principles of our government and consequently those which ought to shape this administration." Jefferson believed that the most moral society was one where agriculture is a predominant vocation. I agree with Jefferson; this is a moral issue.

Through the actions of the Bureau of Reclamation and thirsty cities, farmers and small-town folks are being kicked out to the curb in towns like Rocky Ford so that urban areas can continue to grow and build another strip mall. When the farmer shuts down his operation when the water is moved, so does the fertilizer salesman, the banker, the tractor, the tractor repairman, and the farm workers all lose their jobs. The dried-up farm community can never return to their heyday.

And for whose benefit? We know for whose benefit. And to add insult to injury, the Bureau of Reclamation has been complicit in moving water with annual one-year leases with Aurora since 1986 and is now proposing a 40-year lease that is almost completed. The Bureau has not made the case why they have the authority to contract with Aurora using Fry-Ark facilities. Furthermore, I would argue today that the Bureau doesn't have the authority to do so. I'm anxious to hear the testimony today of the witnesses that determined the original intent of the Fryingpan-Arkansas Project and the authority that the Bureau has to contract with out-of-basin entities.

One thing I know for sure. John Singletary, who now is the president of the Lower Arkansas Water Conservancy District, didn't help his parents to sell these gold frying pans so that water could be moved out of the Arkansas Basin.

Thank you.

[The prepared statement of Mr. Salazar follows:]

Talking Points of The Honorable John Salazar, a Representative in Congress from the State of Colorado

- As a young boy in the Arkansas Basin, John Singletary sold gold frying pans
- Little Johny dreamed of a day when farmers in the Lower Arkansas Valley would never have to worry about future water needs
- He remembers going to Rocky Ford with his father and seeing a booming farm town, which seemed to have melon stands on every street corner.
- In 1962 President Kennedy came to Pueblo to sign the Fryingpan-Arkansas Project into law.
- The Fry-Ark project would be built to deliver water to Agricultural based communities East of Pueblo.
- In Committee Hearings, the legendary Congressman and Interior Chairman Wayne Aspinall laid out his argument for the Fry-Ark Project.
- Aspinall stated that only 17,000 acre feet of water would be used only for the municipalities in the Arkansas basin; and of that only 5000 acre feet outside the Lower Ark for Colorado Springs. He said that of the 219,100 acre feet of usable project water that an overwhelming majority of 184,600 acre feet would be designated for irrigated agriculture. That's roughly 85% of the water for agriculture.

(source, Subcommittee on Irrigation and Reclamation, Interior Committee, June 9-11, 1953)

- Simply put, the Fry-Ark was approved by Congress and signed by President Kennedy for the primary purpose of serving agriculture in the Arkansas Basin.

- Today, I am sad to say that agriculture is no longer the focus of the Fry-Ark project. Even worse, the Project is turning into an instrument to move water from Agriculturally-based communities like Crowley County and Rocky Ford to growing metropolitan sprawling communities—sometimes out of basin.
- Promises made to these farm communities have not made up for the fact of the total community damage caused by their dry-up
- And, while Aurora cannot legally purchase transbasin Fry-Ark Project water, the Bureau has allowed Aurora to utilize the Fry-Ark facilities to move clean Mountain water via exchanges from water they've purchased off the farm.
- The water taken off the farm will never return.
- The water taken out of the basin will never return.
- This trend leaves no hope for agriculturally based communities to survive.
- It is immoral for large cities to rob the future from small towns for the sake of growth
- Thomas Jefferson said "Encouragement of agriculture...I deem as one of the essential principles of our government, and consequently those which ought to shape its administration." Jefferson believed the most moral society is one where agriculture is the predominant vocation.
- I agree with Jefferson, this is a moral issue. Through the actions of the Bureau of Reclamation and thirsty cities, farmers and small town folk are being kicked to the curb in towns like Rocky Ford so that Aurora can build another strip mall.
- When the farmer shuts down his operation when the water is moved, so does the fertilizer sales man, the banker, the tractor repair man and farm workers lose their jobs. The dried up farm community can never return to their heyday. And for whose benefit?
- To add insult to injury, the Bureau or Reclamation has been complicit in moving water with annual one-year leases with Aurora since 1986 and with a new 40-year lease that's almost completed.
- The Bureau has not made the case why they have authority to contract with Aurora using Fry-Ark facilities.
- Furthermore, I argue that the Bureau doesn't have the authority to do so.
- I am anxious to hear the testimony of today's witnesses to determine the original intent of the Fryingpan-Arkansas Project and the authority that the Bureau has to contract with out of basin entities
- One thing I know for sure, John Singletary didn't help his parents sell golden frying pans so Aurora can transfer water from the Arkansas Basin.

Mrs. NAPOLITANO. Now I will move on to Congressman Mark Udall.

STATEMENT OF THE HON. MARK UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. UDALL. Thank you, Madam Chairwoman.

Good morning to all of you.

Madam Chairwoman, I would ask the panel's consent that my entire statement would be submitted for the record.

Mrs. NAPOLITANO. Without objection, so ordered.

Mr. UDALL. Thank you. I want to keep my remarks relatively short so that we can hear from this very influential and well-informed group of witnesses that we have today and then we can open it up for questions and comments.

In my remarks that I prepared for the record, I harkened back to the days of the initial approvals of the Fry-Ark Project, and I note that my Uncle Stewart, who was John Kennedy's Secretary of Interior, played a role in seeing this project come to fruition, but also my father, Morris Udall, who worked closely with Chairman Aspinall and had great respect for Chairman Aspinall, noted in a newsletter to his constituents that after the approval of the legislation that the only way that it moved forward was because the house delegation in particular in Colorado came to common con-

sensus on how to move forward. And I think that's both the challenge and the opportunity that faces us here today as we hold this very important hearing.

If we can find consensus—and I believe we can—the future is bright. But that consensus has to be based, I believe, on the needs and the outlooks and the sensibilities of particularly the people who live in the Arkansas Valley drainages.

And with that spirit, Chairwoman, I'd like to yield back any time that I do have remaining. But again, I want to thank all of you for coming out, for being involved in this way. There's nothing more important to us in the west. The lifeblood of our communities, the lifeblood of what makes us westerners of course is water.

I was even—Congressman Salazar, Congressman Lamborn, Congressman Perlmutter, for some reason I was dreaming about the water last night and preparing for this hearing today. And I think we all should be of course incredibly thankful how green it is all over this wonderful State of Colorado as we experienced a wet—actually a normal winter, a normal spring, and I'm certainly thankful that there's grass for our cattle, there's water for our reservoirs, and there will be water in which we can fish and enjoy the great outdoors in this State of Colorado. I know we come here with the same purpose in line, which is to protect all of the communities of Colorado together as Coloradans.

Thank you, Madam Chairwoman. I yield back to you whatever time I have remaining.

[The prepared statement of Mr. Udall follows:]

Statement of The Honorable Mark Udall, a Representative in Congress from the State of Colorado

Thank you, Madam Chairwoman, and thank you for bringing our Subcommittee to Pueblo for today's oversight hearing.

I join my delegation colleagues in welcoming you to Colorado and particularly to the great valley of the Arkansas River, which is linked with our Western Slope by the Fryingpan-Arkansas project that is the focus of today's hearing.

I think today's hearing will help us to understand not just how the project has developed in the 45 years since President Kennedy signed its authorizing legislation, but also the role it can play in this new 21st Century. And I hope the result will be to lay a sound foundation for decisions the subcommittee and the Congress will be asked to make in the near future.

Taken together, the witnesses scheduled to testify no only possess great expertise regarding the Fryingpan-Arkansas Project's past and present but also represent a range of views about its future.

I look forward to listening to their testimony and learning from what they have to tell us.

But before yielding back my time, I want to share with everyone here today a bit of history about the project that I think is not only relevant for today's hearing but that can perhaps stand us in good stead as we go forward.

The final step in authorizing the Fryingpan-Arkansas project was taken by President John F. Kennedy, when he signed the authorizing legislation in August, 1962.

But that was hardly the beginning of the story.

As Mr. Long notes in his statement, the idea of a big Reclamation project to bring West Slope water into the Arkansas valley originated many years earlier, and in supporting it President Kennedy—and his Secretary of the Interior, my uncle Stewart Udall—followed the lead of the Eisenhower Administration.

And the idea had Congressional support, especially in the Senate. But for many years, the Colorado delegation was not of one mind on the subject, because of concerns about the different effects the project could have on different parts of the State.

Those concerns were particularly important for Congressman Wayne Aspinall, who was one of my predecessors—and one of Representative Salazar's as well—in representing Coloradans living west of the Continental Divide.

In 1959, Representative Aspinall became the Chairman of what was then the Committee on Interior and Insular Affairs and now is the Committee on Natural Resources. As such, he played a key role in developing the provisions that enabled the Colorado delegation to come together in support of a bill to authorize the Fryingpan-Arkansas project and in having that legislation favorably reported from the committee and then winning its passage by the House of Representatives on June 13, 1962.

The bill's passage in the House was noted in a newsletter to his constituents from another Member of Chairman Aspinall's committee—my father, Morris K. Udall, of Arizona.

He had strongly supported the legislation, speaking in favor of it on the House floor, and hailed its passage by the House as "an immensely important political breakthrough" and a precedent for other reclamation projects.

And in explaining the reason for that breakthrough, he directed his constituents' attention to what he thought—and, looking back, what I think today—was the key part of the Committee's report on the bill.

That part of the report said—and here let me quote it directly—

> "The Fryingpan-Arkansas project has been under study and consideration for over 30 years. It has been ready for authorization for 8 years. However, it was not until recently that all interested parties in parties in the State of Colorado were able to agree on the development."

My father's message to his constituents was that it was agreement among the Colorado delegation in Congress that made passage of the bill—and construction of the project—possible.

That was what he saw as one of the lessons of the legislation President Kennedy signed 45 years ago. And, in my opinion, that same message bears repeating here today, not just to my constituents, but to all Coloradans.

As a practical matter, I think none of us who represent some Coloradans can win passage of legislation dealing with the Fryingpan-Arkansas project—or anything else that affects people in more than one part of the state—unless that legislation is acceptable to everyone in the delegation. And as a matter of public policy, I think it would be wrong to even try to pass such legislation otherwise.

In Wayne Aspinall's time, one of the hurdles that had to be overcome to develop that consensus was concern about the adverse effects on the areas from which waters would be diverted. And in the years since, as population growth and changes in our economy have increased the demand for water in our cities, towns, and suburbs, those concerns have become even greater and more widespread. The demise of plans for a big Two Forks reservoir and the rejection of Referendum A by voters in every Colorado county are signals that times have changed. In some ways, that can make it harder to achieve consensus, but it does not change the fact that consensus is needed.

Speaking for myself, I want everyone to know that I am ready to work with all my colleagues to try to achieve consensus, but that in doing so I will never forget the need to carefully consider the impacts on all concerned, including those in the areas from which water is proposed for diversion.

Thank you, Madam Chairwoman, and I look forward to hearing from our witnesses.

* * *

FOR RELEASE June 21, 1962

Congressman's Report
By Morris K. Udall

"Out of the Fryingpan—Hope and a Lesson for Arizona"

The growth of our West is to a great degree the story of reclamation. Roosevelt, Hoover, Grand Coulee, and the other projects have nearly exhausted the choice, low-cost dam sites. Future projects pose more difficult engineering problems. Water must be carried longer distances; new engineering ideas are needed to help put the water where the people are.

On June 13, the House voted to bring into being a sound engineering dream—the Fryingpan-Arkansas project. If the Senate goes along this project will bring water and power to semi-arid southeastern Colorado. Water will be collected high in the Rocky Mountains on the west side of the Continental Divide. It will be sent churning eastward through a six-mile-long tunnel drilled through the Rockies at an altitude of 10,000 feet. Then the water will tumble down the eastern slope through

a series of canals, reservoirs and power generating plants and into the Arkansas River.

Farmers who today don't know if they'll be able to harvest the crops they now plant will be assured of water to stabilize production. Colorado Springs, Pueblo and other thirsty municipalities will have more and better water to supply increasing populations. Badly-needed energy for farms, homes and industries will be created. Disastrous floods will be curtailed. The minimum flow of water needed for fishing and other recreation activities will be assured.

In the 10-12 years needed to complete the project, the federal government will invest $170 million. Over a 50-year span, $153 million of this will be repaid. (Only monies invested in fish and wildlife, recreation and flood control are not reimbursable).

The Fryingpan-Arkansas project has been under study for three decades. It has been officially before Congress since 1953. President Eisenhower strongly supported it. President Kennedy wholeheartedly endorses it. Yet the project drew heavy fire in the House—from those who ridiculed the idea of a trans-mountain tunnel as a "Rube Goldberg Project" and those who asserted the $170 million will simply be money thrown away. Members of Congress are always looking for "economy votes" and reclamation is often a likely target—especially from the big city Eastern members. One of the principal critics of the tunnel idea was a Long Beach Congressman whose people turn on their taps to draw water which has come 200 miles across the desert from the Colorado River through many mountain tunnels.

In the House debate on this bill, I made these statements:

"Based upon some of the debate here today, one might assume that this was $170 million we are going to throw down a rat hole somewhere. Reclamation does not cost; it pays. This is not a drain on the taxpayer. This will be paid back—nearly all of it paid back—with interest."

"Let us go back to 1911. If one had been asked to select the 10 least likely places in America to be major cities, I think Phoenix would have headed this list. It was a dry city of 12,000; when these people occasionally did get water it came all at once—right in the living room—and flooded everyone out. It was a hot and barren country. When Teddy Roosevelt and other farsighted leaders—and I can hear the opponents in the Congress in those early days laughing at this Rube Goldberg project in Arizona—supported this type of reclamation, they probably did not fully realize that would happen. Yet this first major project has now paid off. It cost $20 million. The federal government takes out of Phoenix $200 million every year in federal income taxes. Phoenix has 700,000 people; it is one of the nation's major cities. Phoenix would be a little town today except for the foresight of the Congress back in the 1900's when it decided to invest $20 million."

The Fryingpan-Arkansas project diversion idea is in many respects a scientific and technological breakthrough. Passage by the House is an immensely important political breakthrough—one that bodes well for the $1 billion Central Arizona Project which will come before Congress if the Supreme Court acts favorably in the California-Arizona water suit. The lesson for Arizonans is contained in the Interior Committee report on the bill:

"The Fryingpan-Arkansas project has been under study and consideration for over 30 years. It has been ready for authorization for 8 years. However, it was not until recently that all interested parties in the State of Colorado were able to agree on the development."

In Arizona we have achieved substantial unity over the Central Arizona Project. The more we strengthen that unity, the better our chances for getting the financing which will bring in the water we must have to expand our state's economy.

Mrs. NAPOLITANO. Thank you, Congressman Udall.

And now we will hear from Congressman Perlmutter.

STATEMENT OF THE HON. ED PERLMUTTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. PERLMUTTER. Thank you, Madam Chair.

And it gives me great pleasure to be here for this hearing. I had another hearing in Pueblo a number of years ago when I was in the State senate, and it was an issue where water was at the forefront just as it is today. And I think it's key for all of us to really

take the clip that we saw to heart, because I think for me, it was a very inspirational speech and presentation by the President.

And I think what it reflected was cooperation and compromise, and most specifically if you heard at the beginning, there were Congressmen and women from California and all the Congressmen and Senators from Colorado. And the president said this is cooperation and compromise, taking water from the Pacific and sending it to the Atlantic, and the project was one that was marked by cooperation and compromise.

And the President's statements—and I have to disagree with my friend to my right here, Congressman Salazar. The President said this project is an investment in the future of this country, an investment that will pay large dividends. It is an investment in the growth of the west, in the new cities and industries which this project helps make possible.

There has got to be cooperation between and among cities and counties, farming communities, industry, the recreational sector of our economy. This is a great project that was built with the money of all of the people of the United States of America and all the citizens of the State of Colorado. I hate to see the conflict that arises between this part of the state and the district that I represent, which is Jefferson County, Adams County, and Arapahoe County.

This is a project that's been marked by cooperation, compromise, and a vision of the future, and I hope it remains that way. And as Representative Udall said, this is a day where I believe we're going to get testimony from outstanding witnesses and experts who have looked at this issue for a long time, have many different feelings about it, but I believe there is a real opportunity to bring compromise.

I can say I've been in the Congress for five months now, and beyond Iraq, this is the subject that comes up in my office more often than anything else. I've met with people from Pueblo and from Aurora and from Colorado Springs, and I would love to see an agreement reached.

Madam Chair, thank you for having us here.

[The prepared statement of Mr. Perlmutter follows:]

Statement of The Honorable Ed Perlmutter, a Representative in Congress from the State of Colorado

I thank the Chairwoman, Congresswoman Napolitano, of the Water and Power Sub Committee for inviting me to attend this important and useful meeting on water issues in the West and in particular the Fryingpan-Arkansas Project. I also want to thank the witnesses here today who will be talking with us about the issue of water and how it affects different communities around our state.

I do believe that above all today, this hearing will showcase how critical water needs are in Colorado and throughout the West and how important it is that we all work together to find solutions to complicated and challenging water issues.

I am familiar with many of the issues that will be presented today and I also know that many of the witnesses here today and others not here are playing a critical role in working together to reach a consensus regarding the Fryingpan-Arkansas project.

Most importantly, I believe there is opportunity to find a compromise and I would like to see and encourage a solution. I strongly support the Bureau of Reclamation in issuing a 40 year lease agreement to Aurora.

I look forward to working with all of you, my colleagues in the House and the Senate as we move forward toward consensus.

I would like to recognize Mayor Tauer of Aurora and Mark Pifher and Bill Groffy from Aurora Water for traveling from my district to participate in this hearing today.

Again, thank you and I look forward to hearing from the witnesses.

Mrs. NAPOLITANO. Thank you, Congressman.

Mrs. NAPOLITANO. I'd like to ask that both Mr. Bill Long, President of Southeastern Colorado Conservancy District in Pueblo, and Mr. Mike Ryan, Regional Director of Great Plains Region, U.S. Bureau of Reclamation, Billings, Montana, please step up.

And as they're coming up, I just welcome both of you. Delighted to be back in Colorado. I was in Denver not too long ago talking, listening about water, and I certainly look forward to the testimony here. It is important to me as the Chairwoman of the Subcommittee to hear the perspectives of the local people, because there are no better experts on the realities of the ever- increasing water supply challenges that you, the local entities, face.

Allow me to take just a fraction of a moment to thank the Pueblo Community College, the administration and staff, John Salazar and his staff for providing us with this venue and being so gracious to host our field hearing. And it takes a great amount of work to be able to put these together and planning so that it can be what it's supposed to be, and that's to obtain information from the communities.

On behalf of myself and the Chairman of the House Committee on Natural Resources, Mr. Rahall, thank you for your hospitality.

And no one understands this issue better than the communities of southeastern Colorado, and so today's hearing is very aptly titled "The Fryingpan-Arkansas Project at 45: Sustainable Water for the 21st Century." And it's going to be focused on the western water management challenges in Colorado through the lens of the Fryingpan-Arkansas Project.

Like the projects in my district in my home State of California, I do understand controversy. I'm not new to it. But the Subcommittee has a long history of confronting such issues in a fair and bipartisan way. We accommodated as many witnesses as we could, tried to be as fair as we could, and I think Mr. Lamborn will bear that out.

Mr. LAMBORN. [nods head.]

Mrs. NAPOLITANO. To get the full range of the views and provide input from those affected, we are very eager to listen to you. More specifically I hope to hear from our witnesses regarding the congressionally authorized purposes of the Fry-Ark Project and the role of that project in sustaining agriculture and communities in southeast Colorado, and of course the new challenges facing water users, water managers, and the Front Range cities facing unprecedented growth, climate change, and increasing needs for reliable water supplies. And how, more specifically and to the point on my end, is how conservation, storage and recycling are used, to what extent, and how are they being used to prepare this area for all of the above.

I'm pleased to yield now to—I'm sorry. I got a little out of sorts here. I don't always conduct the hearings the way it's programmed. I go with my feelings.

Now I want to go forth and begin to ask the panel to hear their testimony, and your testimony will be in the record, gentlemen, so I ask, if you would, to highlight the points that you want to make unless you really want to read the reports.

So we'll start off with Mr. Long.

STATEMENT OF BILL LONG, PRESIDENT, SOUTHEASTERN COLORADO CONSERVANCY DISTRICT, PUEBLO, COLORADO

Mr. LONG. Good morning, Chairwoman Napolitano and members of the committee. I am Bill Long, President of the Southeastern Colorado Conservancy District, and on behalf of the district and myself, thank you for the opportunity to testify today.

The southeast district is a Colorado statutory water conservancy district formed in 1958 to hold water rights for and repay the Fryingpan-Arkansas Project. The Fry-Ark legislation enacted in 1962 and amended in 1978 created a multi- purpose water project that converts water from the Colorado River Basin on the west slope of Colorado to the Arkansas River Basin on the east slope of Colorado. For nearly half a century, Southeastern's board of directors has grappled with the challenge to develop, manage, and protect water and related resources in an environmentally and economically responsible manner.

The Arkansas River, an over-appropriated system, is most always short of supply to meet the demand. While development of the Fry-Ark Project has greatly benefited the Arkansas Valley, operation of the project is not without challenges and unmet needs.

Demand for water in the Arkansas Valley has increased, especially in drought years. As a result of the Kansas v. Colorado lawsuit decision and other issues, the state has drastically increased regulation of ground water pumping. These actions have substantially reduced the available water supply for the Arkansas Valley. Municipalities from other regions attempting to export some of the Arkansas's very limited supply of native water using Fry-Ark Project facilities have created challenges for water users in the Arkansas Valley as well as the southeast district.

The Fry-Ark authorizing act, nor any documents incorporated by reference, provides no explicit authority for the Secretary of Interior to enter into contracts for use of Fry-Ark excess-capacity space, to store or exchange native Arkansas River water rights for use outside of the Arkansas River basin in Colorado.

The possible exception is the city of Aurora, with whom the southeast district has reached a mutual agreement. It is not in the overall best interests of the district and its constituents for the project to be used in nonauthorized ways which could potentially hurt the project's intended beneficiaries. These challenges highlight the need for leadership in developing conservation programs and cooperative opportunities to assure a sustainable water supply for future generations in the Arkansas Valley.

To meet future demands, we must better utilize existing capacities in Fry-Ark Project reservoirs to help meet the growing demand for storage without interfering with the current entitlement project water and storage. We must develop additional water storage, including expansion of existing Fry-Ark Projects, to meet future demands of project beneficiaries.

We must finance and construct the Arkansas Valley conduit. The Bureau of Reclamation identified the water quality and quantity problems in the lower valley as early as 1950, and the problems have only gotten worse. More than 40 water providers of the lower valley with at least 16 under current enforcement orders to improve water quality have joined together in support of the conduit. The conduit proponents have reviewed the feasibility of developing the Arkansas Valley pipeline and have reached the following conclusion: There is an adequate water supply to make the conduit feasible, but the financial capabilities of the participating agencies are inadequate to fund construction of the conduit under the 100 percent funding requirements; however, conduit participants could afford to pay a share of the cost as proposed in Congresswoman Musgrave's H.R. 186 and Congressman Salazar's H.R. 317 conduit legislation.

Conduit participants are prepared to discuss the terms of such cost-sharing arrangements with the committee. The committee should also be aware of the strong support the conduit has from the State of Colorado, whose water conservation board has recently approved a $60 million loan pending passage of this important legislation.

In closing, Madam Chair, I respectfully request that a hearing on the conduit legislation be scheduled before Congress takes its Independence Day break, and with that, I'd once again like to thank you and the committee members for the opportunity to testify today and offer to answer questions at the appropriate time.

[The prepared statement of Mr. Long follows:]

Statement of Bill Long, President,
Southeastern Colorado Water Conservancy District

Madame Chair: My name is Bill Long, president of the Southeastern Colorado Water Conservancy District ("Southeastern"), and I am testifying today on "The Fryingpan-Arkansas Project at 45: Sustainable Water for the 21st Century." For nearly a half century, Southeastern's Board of Directors has grappled with the challenge to manage, develop, and protect water and related resources in an environmentally and economically sound manner.

During the drought of 2002, the Denver Post captured water's importance in Colorado in a story line: "In Colorado, water is everything." It's true, without water, our economy could not flourish and the state, and important to those who live here, the southeastern region of the state, could not sustain its population.

What that simple statement from the Denver Post overlooks is the same point that Lt. Zebulon Pike overlooked when he judged eastern Colorado a desert that would never sustain a civilized society. Pike did not foresee that mountain water could be captured to provide growth for the plains. After using the readily-available river and well water, the early settlers in eastern Colorado learned that water storage was needed. The Fryingpan-Arkansas Project ("Fry-Ark Project" or "Project") is one of these projects that fuels the possibility of communities here in the "Great American Desert."

The Fry-Ark Project is the result of the vision of the Arkansas Valley's early water leaders, who combined vision with common-sense solutions fostered by a desire to make a better tomorrow for the people of southeastern Colorado and the state of Colorado as a whole. These leaders of the past leave a legacy that is both humbling and challenging. The challenge for this generation of southeastern Colorado leaders is not only to steward the project we have inherited, but to enhance and increase these assets for the future generation.

Southeastern is a statutory water conservancy district (see C.R.S. § 37-45-101, et seq.), which was formed on April 29, 1958, by the District Court for Pueblo County, Colorado. Southeastern's district boundaries extend along the Arkansas River from Buena Vista to Lamar, and along Fountain Creek from Colorado Springs to Pueblo, Colorado. Southeastern administers, holds all water rights for, and repays reimburs-

able costs for the Fry-Ark Project, a $550 million multi-purpose reclamation project authorized by Congress and built by the U.S. Bureau of Reclamation ("Reclamation"). The Project diverts water underneath the Continental Divide, from the Fryingpan and Roaring Fork River drainages, into the Arkansas River drainage, where Project water is stored in Pueblo Reservoir and other reservoirs. Southeastern provides Project water and return flows to supplement the decreed water rights of water users within Southeastern's boundaries. Southeastern repays a large part of the Project's construction costs (estimated at $127 million over a minimum 40-year period), as well as annual operation and maintenance costs, in accordance with its repayment contract with the United States. Payments are made from property tax revenues available to Southeastern, supplemented by revenue from Project water sales.

I. Development of the Fryingpan-Arkansas Project

Shortly after World War II, the nation was in flux. The country optimistically was gearing up for industrial growth. The ripples of the post-war economy washed over into the Arkansas Valley as well. The community leaders of the era saw a major stumbling block to overcome in any quest for growth—water. So they began pushing heavily for a project to bring water from the western slope of Colorado—with its abundant snowfall and sparse population—to the Arkansas River Basin, where irrigated agriculture and city water systems depended on a river that often was only a trickle by the time it reached the border with Kansas.

A. Congressional Authorization of the Fryingpan-Arkansas Project

The Project originally envisioned diversions from the Gunnison River and other tributaries of the Colorado River and was known as the Gunnison-Arkansas Project. As it progressed over the years, the scope of the entire project became limited to the first phase of the Gunnison-Arkansas Project, with construction of a reservoir on the Fryingpan River near Aspen, Colorado, transporting water through the Continental Divide via tunnel and moving it into the Arkansas River Basin for storage in mountain lakes and a new reservoir near Pueblo, Colorado. While the original Gunnison-Arkansas Project envisioned 357,000 acre-feet of imports each year, the eventual Fryingpan-Arkansas Project would be limited to an average of just 69,100 acre-feet.

The name took on even more significance when backers of the Project began peddling golden frying pans up and down the Arkansas valley to raise money for the lobbying effort that was soon to come. The sale of golden frying pans in the valley were brisk. Burros were used to carry the frying pans to towns up and down the Arkansas Valley. During January of 1955, groups were able to buy small frying pans for $5 and large ones for $100 or more.

The Colorado Congressional delegation continued to work with local interests to develop consensus for how the Fry-Ark Project, once authorized, would operate. On June 16, 1950, the Policy and Review Committee, authorized by the Colorado Water Conservation Board to study the development of the Fry-Ark Project, issued the first set of proposed Operating Principles for the Project, which were approved by the Colorado Water Conservation Board.

The Project, along with its Operating Principles, was opposed by the western slope of Colorado, led by Congressman Wayne Aspinall. Many west slope water users, including the City of Aspen, remained concerned about the Roaring Fork River. In response to these concerns, Congressional supporters of the Project modified the proposal to enlarge the west slope collection system (adding the Hunter Creek collection system). One of the many benefits of the expansion of the west slope collection system is that it allowed the Operating Principles to provide for minimum flows in the Roaring Fork for the protection fish and wildlife in the Project area.

In 1958, the Colorado Water Conservation Board, now led by Felix Sparks from Delta, Colorado, began to try to resolve the East-West divide over the Project. Mr. Sparks established a second Policy and Review Committee to revise the Operating Principles for the Project. The major change was to replace the proposed Aspen Reservoir with a larger reservoir near Ruedi. The Operating Principles, as amended December 9, 1960, were adopted by the State of Colorado and signed by the Colorado Water Conservation Board, Southeastern, Colorado River Water Conservation District, and Southwestern Water Conservation District. After development of the 1960 Operating Principles, Colorado's Congressional delegation was united in seeking authorization for the Fry-Ark Project.

On June 13, 1962, the House passed legislation authorizing the Fry-Ark Project. The Senate approved the Project on August 6th. On August 16, 1962, John F. Kennedy flew to Pueblo, Colorado to officially and proudly proclaim the authorization

of the Project, and the start of construction. The Project could not have been authorized without the diligent work of those within the Arkansas Valley to unify state interests and broker compromises to ensure that the final Project satisfied as many needs as possible.

B. The Fryingpan-Arkansas Project was Authorized for Multiple Purposes.

The Fry-Ark Project was authorized for numerous purposes including: (1) developing the regional and national economy through irrigation of arid lands of the Arkansas Valley; (2) developing power and energy surplus to Project needs; (3) supplying domestic, municipal, and industrial water; (4) providing flood control on the Arkansas River; (5) providing for the preservation, propagation, and enhancement of fish and wildlife; (6) improving water quality; and (7) developing recreation facilities.

The Authorizing Act, Public Law 87-590, makes it clear that certain purposes take precedence over others. Section 1(a) of the Authorizing Act acknowledges that the Project is authorized for the purposes of "supplying water for irrigation, municipal, domestic, and industrial uses, generating and transmitting hydroelectric power and energy, and controlling floods, and for other useful and beneficial purposes incidental thereto." Incidental or secondary purposes include recreational uses, development of fisheries, and conservation of wildlife habitat. As evidenced by the programs discussed herein, Southeastern and its constituents use Project water for many purposes, and Southeastern's Board of Directors has attempted to maximize the use of all transmountain diversions, while recognizing the supplemental nature of Project water and acknowledging that there is insufficient water to satisfy all demands.

C. Project Features

Construction of the Fry-Ark Project began with Ruedi Dam and Reservoir in 1964, and continued without interruption until September 28, 1990 when the Project was declared completed with the dedication of the Fish Hatchery at Pueblo Reservoir. Construction is completed on all the water supply-related features that were expected to be initially developed. The North Side Collection System may be expanded to Last Chance and Lime Creeks, tributaries of the Fryingpan River. However, plans to pursue this expansion have been deferred. Plans to construct the Arkansas Valley Conduit to serve towns and cities east of Pueblo with treated Project water are currently in process.

There are two distinct areas of the Project: the western slope, located in the Hunter Creek and Fryingpan River watersheds, and the eastern slope in the Arkansas River Valley. These areas are separated by the Continental Divide, which, in many places, exceeds an elevation of 14,000 feet. The Project consists of diversion, conveyance, and storage facilities designed primarily to divert water from Colorado River tributaries on the western slope for use in the water-short areas in the Arkansas River on the eastern slope. The North and South Side Collection Systems and Ruedi Dam and Reservoir are located on the western slope in the Fryingpan River basin. Sugar Loaf Dam and Turquoise Lake, Mt. Elbert Conduit, Halfmoon Diversion Dam, Mt. Elbert Forebay Dam and Reservoir, Twin Lakes Dam and Reservoir, and Pueblo Dam and Reservoir are all located on the eastern slope in the Arkansas River Basin.

The Project provides water for uses on the west slope in response to the requirements of the Water Conservancy Act, which directs water conservancy districts removing water from the Colorado River basin to operate their projects so that existing appropriations and prospective uses of water on the western slope will not be impaired nor increased in cost to the western slope water users. This compensatory storage is provided by Ruedi Reservoir, which provides storage for replacement and regulation of water for the western slope users. This water is used for irrigation, municipal, industrial, recreation, and fish and wildlife purposes.

The North and South Side Collection Systems on the western slope collect the high mountain runoff and convey the diverted waters into the inlet portal of the Charles H. Boustead Tunnel. Sixteen diversion structures on the western slope are used to divert water into the Project collection system. The system includes eight tunnels with a combined length of 21.5 miles. The five-mile long Boustead Tunnel conveys the water from the North and South Collection Systems under the Continental Divide to Turquoise Lake. Boustead Tunnel may only divert at 900 c.f.s. from the Fryingpan River (not including water from the Hunter Creek system) unless the Colorado River Water Conservation District agrees that Ruedi Reservoir will fill that season, at which point Boustead may divert at 945 c.f.s.

For water to be diverted through the Boustead Tunnel from the Fryingpan River, the Fryingpan must meet minimum flows as measured at the Thomasville Gage, just upstream from Ruedi Reservoir. From January through March, those flows are

30 c.f.s. As a practical matter, however, for this period of time, the snowpack is not melting and the diversion structures are generally inaccessible due to snow, so diversions during this season are unlikely. Diversions will generally not begin until the spring runoff begins in late April or May. Minimum flows for the Thomasville Gage are 100 c.f.s. in April, 150 c.f.s. for May and 200 c.f.s. for June. By the end of June, the runoff has generally peaked. Nonetheless, the Project may continue to divert so long as it is in priority and there is adequate water to meet minimum streamflow of 100 c.f.s. in July, 75 c.f.s. in August, and 65 c.f.s. for September. Due to colder weather and increased snowfall, diversions are less likely in the late fall through early winter, but may occur. The Fryingpan River must measure at least 30 c.fs. at Thomasville Gage between October 1 and December 31 for such diversions to occur.

Turquoise Lake and Sugar Loaf Dam are located just east of the Continental Divide, approximately five miles west of Leadville, Colorado. The Lake provides storage capacity for the regulation of Project water delivered from the Boustead Tunnel, as well as non-Project water.

The Mt. Elbert Conduit, a 10.7 mile, 90 inch diameter pipe, conveys water from Turquoise Lake to Mt. Elbert Forebay. The Halfmoon Diversion Dam diverts available flows to Halfmoon Creek into the Mt. Elbert Conduit. Water delivered to the forebay is used to generate power at the Mt. Elbert Pumped-Storage Powerplant.

The Mt. Elbert Pumped-Storage Powerplant is located approximately 13 miles southwest of Leadville, Colorado, at the northwest corner of the lower lake of Twin Lakes. The powerplant has two pump-generator units, each with a nameplate capacity of 100 megawatts. After use at the powerplant, Project water flows into Twin Lakes. From Twin Lakes, Project water is released to Lake Creek and the Arkansas River for delivery to water users upstream of Pueblo Dam and Reservoir or for storage in Pueblo Reservoir. The distance from the confluence of Lake Creek and the Arkansas River to Pueblo Dam is approximately 143 river miles.

Project water is released from Pueblo Reservoir to the Arkansas River for irrigation and municipal use; to the Fountain Valley Conduit for municipal use by the members of the Fountain Valley Authority; and to the Bessemer Ditch for irrigation use. Pueblo Reservoir is the terminal storage feature for the Project, and both Project and non-Project water are conveyed to Pueblo and Pueblo West through the municipal outlet works in Pueblo Dam.

El Paso County, Colorado is located to the north of the main channel of the Arkansas River. With the growth of the Colorado Springs metropolitan area, it became clear that this area would be interested in acquiring supplemental municipal water from the Project. Accordingly, representatives from El Paso County were active in the development of the Project, and portions of the county were included within Southeastern's boundaries. Nonetheless, it was clear that the Arkansas River could not be used as a delivery mechanism for such water. Several municipal entities including Colorado Springs Utilities, the City of Fountain, Widefield Water District, Security Water District and Stratmoor Hills Water District formed the Fountain Valley Authority which would sell bonds to construct a delivery pipeline and treatment plant. Revenue from the utility departments would then be used to fund a statutory authority which would, in turn, pay Southeastern and the United States for costs of construction of the delivery pipeline and water treatment plant. The Authority signed a 40-year contract with the United States and Southeastern to secure the repayment obligation. As with the remainder of the Project, title to the Fountain Valley Pipeline remains with the United States, even though Southeastern is responsible for operation and maintenance costs of all facilities.

II. Challenges for Today

While development of the Fry-Ark Project has greatly benefited the Arkansas Valley, operation of the Project is not without challenges. Demand for water in the Arkansas Valley has increased, particularly in drought years. The State has increased regulation of well pumping due to the Kansas v. Colorado decision. These factors and others have highlighted the need for leadership in developing conservation programs to ensure a sustainable water supply in the Arkansas Valley.

A. Increased Demand for Project Water

The Arkansas River is an over-appropriated system with a continuous call on the river. There is usually a constant demand for water. Reclamation conducted land classification investigations prior to Fry-Ark Project authorization in 1962. The total irrigable area within the District was estimated to be approximately 280,600 acres. This includes 12,538 acres above Pueblo Reservoir, 12,805 acres along Fountain Creek, and 255,254 acres below Pueblo Reservoir.

In 1979, Southeastern approved a set of Allocation Principles that described the percentage allocations to municipal and agricultural uses. The Allocation Principles were approved by the District Court for Pueblo County, Colorado that same year. The municipal demand for Project water is associated with the Arkansas Valley cities, towns, and entities lying east and west of Pueblo, Pueblo, and the Fountain Valley Authority. The Allocation Principles require allocation of "a minimum of 51 percent of the annual Project water supply to municipal and domestic use." This allocation is distributed, as requested, to Arkansas Valley cities, towns and entities lying east of Pueblo (12%), west of Pueblo (4%), Pueblo (10%), and the Fountain Valley Authority participants (25%). In the event the municipalities do not request the full 51% available to them, any excess water is made available for agricultural uses. Finally, after all other municipal and agricultural have been met, Pueblo West Metropolitan District is given notice that it can make a request. No municipal water user is required to take a minimum amount of Project water in a given year.

Project water for use by irrigation ditches is allocated based upon an acre-foot per irrigated acre basis. Therefore, when demand exceeds supply, each ditch receives a proportionate share of available Project water. This allocation is made only after the municipal requests are met up to at least 51% of the annual Project yield.

Southeastern also promulgated a "Water Allocation Policy," last amended in April 2006. The Water Allocation Policy is the direction of the Board of Directors as to how to implement the Allocation Principles. The Water Allocation Policy is not approved by the Pueblo County District Court and can be amended by majority vote of Southeastern's Board of Directors at any time.

In March of each year, appropriate letters and forms are mailed to eligible entities offering them the opportunity to apply for an allocation of Project water. About May 1st of each year, Reclamation notifies Southeastern as to the amount of water available that year. The Allocation Committee then meets to review the applications submitted by constituent entities, and prepares recommendations concerning the applications received as related to the amount of water available. All recommendations of the Allocation Committee must be approved by Southeastern's Board of Directors. Recommendations from the Allocation Committee are considered at the next meeting of the Board of Directors, and appropriate allocations are made. Applicants are afforded the opportunity to appear before the Board in support of their allocation requests.

Many of the ditches serving irrigable areas located within the District have very senior decreed water rights and generally have not requested supplemental water from the District. Also, a portion of the District's irrigable acres have been taken out of production, or are not eligible to receive a Project water allocation, because of sales and changes of use of their decreed water rights. As recognized in the Allocation Policy, it is Southeastern's policy "not to replace with Project Water decreed water sold by persons or entities." This results in a reduction of the total irrigable acreage that are eligible to receive Project water.

The Allocation Principles state that "any increase in municipal and domestic allocations shall only occur if agricultural irrigated acreage, on which Project water has been used, is removed from irrigation, at which time the amount of Project water previously allocated to such acreage shall be allocated to other non-irrigation uses." Allocation Principle] G. In accordance with the Allocation Principles, Southeastern recently approved a reallocation of 3.59% of the Project water supply from agriculture to non-agricultural uses, due to removal of formerly irrigated lands from agriculture. The goal of the Allocation Principles, the Allocation Policy and the procedures followed by the Board each year is to facilitate an equitable allocation of water and to ensure efficient use of Project water.

B. Impact of the Kansas v. Colorado Decision on the Use of Water in the Arkansas River Basin

In 1949, after three years of negotiations, Kansas and Colorado approved, and Congress ratified, the Arkansas River Compact. The Arkansas River Compact's primary purposes are to "[s]ettle existing disputes and remove causes of future controversy...concerning the waters of the Arkansas River" and to "[e]quitably divide and apportion" the waters of the Arkansas River, "as well as the benefits arising from the construction, operation and maintenance by the United States of John Martin Reservoir."

In the 1950s and 60s, there was a surge in well development along the Arkansas River due to improvement in pump technology and to the availability of inexpensive electrical power. Since the 1950s, water users in the Arkansas River Basin have increasingly relied on groundwater for irrigation and other uses.

In December 1985, Kansas brought an original action in the United States Supreme Court against the State of Colorado to resolve disputes arising under the

Arkansas River Compact. Kansas submitted that Colorado's increased reliance on new and existing irrigation wells materially depleted the water otherwise available for use by Kansas. The Special Master and the United States Supreme Court agreed that such additional pumping, absent appropriate offsets in surface diversions, increases the consumptive use of water, and ultimately decreases the surface flows of the Arkansas River. Colorado generally did not require sufficient reduction of surface water use to fully offset these impacts.

Colorado's State Engineer promulgated the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin ("Use Rules") in September of 1995. The Use Rules require that all diversions of groundwater from the valley-fill and surficial aquifers along the Arkansas River from Pueblo to the Stateline, be discontinued unless depletions caused by such pumping are replaced pursuant to a replacement plan approved by the Colorado State Engineer's Office. The Use Rules establish certain presumptive stream depletions which are used to determine depletions to the Arkansas River caused by well pumping. The presumptive stream depletions are reviewed annually, and revised if necessary to prevent material injury to senior surface rights in Colorado, and depletions to usable Stateline flows. If replacement water is not available in sufficient quantities, pumping must be curtailed. Since the Use Rules became effective, the Arkansas River has seen more water rights, including Project water and return flows therefrom, being used for augmentation purposes. This is because wells can provide a more reliable, often better quality water supply than most surface water rights. The Fry-Ark Project is an important source of water that helps sustain agriculture in the Lower Arkansas Valley while complying with Colorado's Arkansas River Compact obligations.

C. Sale of Project Water and Return Flows

While Southeastern allocates Project water, Reclamation is responsible for accounting for the delivery of Project water. Southeastern provides Reclamation and the State Division 2 Engineer's Office with the listing of the annual allocation of Project water. Deliveries are then coordinated by Reclamation in communication with the Division 2 Engineer's Office as requests are made by ditch companies and municipalities.

The price for Project water is determined by Reclamation as directed by Reclamation policy and the Project repayment contract. Rates are subject to adjustment depending upon the "Ability to Pay Study" and "Repayment Analysis," which are conducted by Reclamation every four years. These studies first determine the irrigators' ability to pay for Project water by assessing the economic condition of the average farm operation within the District. Next, Reclamation, in consultation with Southeastern, projects the repayment status of the Project given projected revenues and expenses.

To encourage the efficient use of domestic water, municipal water users are not required to take a minimum amount of Project water in a given year. In adopting the Allocation Principles, the Board acknowledged that it was unlikely that any municipal entity receiving Project water would require its maximum allocation for a number of years. Southeastern recognized that over time, demands will gradually increase. Even if full demand would not be asserted for many years, the Allocation Principles make it clear that failure to request full allocation of water will not constitute an abandonment of the municipal allocation. Water not needed by the area or entity to which it is allocated may be allocated first to municipal and domestic users, thereafter offered to any other user on such basis as the Board of Directors determines.

The first time that municipalities requested their full 51% of Project Water was in 2002 due to the drought. This hurt agricultural water users, who had previously been able to use the unallocated municipal water. This is an indication that water use within the Arkansas Basin may be changing more toward municipal than agricultural uses.

Pursuant to its repayment contract with the United States, Southeastern retains dominion and control over Project water return flows. Southeastern has made return flows from the use of Project water available for use by eligible entities within its boundaries, primarily for augmentation purposes, since the first deliveries of Project water occurred. Southeastern, by resolution, created the Southeastern Colorado Water Activity Enterprise to administer the sale of Project water return flows. On February 15, 1996 the Enterprise approved a policy governing the sale of return flows. This policy has been amended and the current version is as of April 15, 2004. Sale of return flows promotes multiple uses of Project water.

D. Conservation of Project Water

Southeastern encourages municipal water users to develop and implement Water Conservation and Drought Management Plans. The Board of Water Works of Pueblo, Colorado Springs Utilities, and the cities of La Junta, Salida and Cañon City have provided summaries of their Water Conservation and Drought Management practices to Southeastern.

Southeastern has also participated in numerous projects that encourage efficient use of Project water including the Winter Water Storage Program, various flow management programs, and programs to control non-native phreatophytes.

1. Winter Water Storage Program

During the early planning stages of the Project, individuals and entities envisioned what has become known as the Winter Water Storage Program ("WWSP"). Prior to construction of Pueblo Dam, the various irrigation entities would divert the flow of the Arkansas River when in priority outside of the normal irrigation season to maintain soil moisture levels in the fields where crops would be grown during the following season. Problems associated with winter operation of canal and lateral systems, labor, and related items were frequently experienced.

As a result, the concept of a WWSP evolved with the objective of storing waters that otherwise would have been diverted to the fields downstream of Pueblo Reservoir if the reservoirs of those entities whose diversions to storage were located upstream of John Martin Reservoir. These stored waters would then be released during the following irrigation season. Allocation of this winter stored water is based upon the ratio of foregone winter direct flow diversion based on the average of a historic period. These ratios were negotiated among the parties through extensive negotiations. In 1974, Southeastern, with the cooperation of various entities in the basin, promoted and operated a voluntary WWSP each year from 1975-76 through 1986-87, except 1977-78. With the experience and data gained each year, refinements and adjustments were made to the program with the goal of arriving at an equitable means of apportioning the stored water among the program participants and avoiding injury to nonparticipants. In 1984, the participants agreed to file a water court application seeking to permanently decree a change of water rights that allow winter storage. Following intensive negotiations, the Water Court entered a final decree on November 10, 1990.

The WWSP includes all ditches (except Otero and Rocky Ford) on the main stem of the Arkansas River between Pueblo Reservoir and John Martin Reservoir which have historically diverted for beneficial use or storage during the winter period. The WWSP Decree changed various decreed water rights of Southeastern, Amity Mutual Irrigation Company, Bessemer Irrigating Ditch Company, Catlin Canal Company, Colorado Canal Company, Fort Lyon Canal Company, High Line Canal Company, Holbrook Mutual Irrigating Company, Lake Henry Reservoir Company, Lake Meredith Reservoir Company, Las Animas Consolidated Canal Company, Oxford Farmers Ditch Company, Riverside Dairy Ditch, and West Pueblo Ditch to storage for the November 15 to March 15 period with a shared priority of 1910. Many of these ditches have decrees that, so long as they are taking water for direct flow irrigation, are senior water rights on the Arkansas River. The WWSP Decree changed these water rights to a more junior shared priority from November 15 to March 15, that is typically the calling water right on the Arkansas River throughout those four months.

Operation of the WWSP promotes more efficient use of water among agricultural irrigators. While irrigators were previously compelled to use water as it became available, using winter water primarily for increasing the soil moisture, they now have the flexibility to store water and use it when it is most effective for direct irrigation of crops. Storage of winter water also allows ditch owners to use the winter season for ditch improvements, given that no water will be run during that time, further promoting efficient use of both native and trans-mountain water.

2. Upper Arkansas Voluntary Flow Management Program

It was noted in 1989 that commercial and private boating was increasing, as were the number of fishermen on the Arkansas River above Pueblo Reservoir. To answer the need for better management along the river corridor, the Bureau of Land Management with the Colorado Department of Parks and Outdoor Recreation ("CDPOR") formed a new management organization known as the Arkansas Headwaters Recreation Area ("AHRA").

The AHRA is assisted by a Citizen Task Force. The task force reviews area issues and helps to give direction to the AHRA staff. This task force is made up of volunteer citizen members throughout the basin with representation from anglers, environmental groups, cattlemen, water users, local governments, private boaters, and commercial rafting companies.

Prior to 1989, the rafting companies found that during the latter part of summer, river flows became too low to continue their rafting trips. They also noticed that river flows would increase as water users made their releases to the various entities downstream. Early in 1991, the rafting companies approached AHRA with an idea of a "Volunteer Flow Program."

The Volunteer Flow Program was based in part on Reclamation timing releases of Project water from Twin Lakes Reservoir and Turquoise Reservoir to Pueblo Reservoir to meet the needs of fishermen and rafters. The one problem with such releases was the increased evaporative losses that resulted from storing increased amounts of water in Pueblo Reservoir during the summer, rather than the higher mountain reservoirs. In 1992, the Colorado Department of Natural Resources ("DNR") recommended that CDPOR use funds collected from the commercial rafting companies to pay for replacement of evaporative water losses caused by the summer augmentation. This repayment is only necessary when the flows are released before they are actually needed by Southeastern or Reclamation. The funds to pay for this replacement are obtained from the commercial rafting companies' yearly licensing fees.

For many years, DNR, Southeastern and other interested parties negotiated the terms of the program on an annual basis. In August of 2006, Southeastern, DNR, the Colorado Division of Wildlife ("CDOW"), CDPOR, Chaffee County Board of County Commissioners, the Arkansas River Outfitters Association and Trout Unlimited executed a five-year agreement relating to the operation of the Upper Arkansas River Voluntary Flow Management Program ("VFMP"). As was true in previous years, the parties agreed to operate the VFMP on a year that runs from July 1 of each year through June 30 of the following year ("Plan Year"). For at least five Plan Years following the date of the VFMP Agreement (2007-2011), DNR agreed that it would, after consultation with the VFMP Parties, agreed to request Reclamation to operate the VFMP by agreement with DNR and Southeastern on an annual basis.

The highest priority for the VFMP is to maintain a minimum year-round flow of at least 250 c.f.s. at the Wellsville gage, downstream from Salida, to protect the fishery. To the extent possible, winter incubation flows (mid-November through April) should be maintained from 250 to 400 c.f.s., depending on spawning flows. Between April 1 and May 15 the flow target is within the range of 250-400 c.f.s. to provide conditions favorable to egg hatching and fry emergence. Any flow augmentation for recreational use, or to maintain flows at a target level greater than 250 c.f.s., is limited to the period from July 1 to August 15. Subject to consideration of water and storage availability, flows from July 1 to August 15 should be augmented to maintain flows at 700 c.f.s. through releases of Project water. The 700 c.f.s. level is a target; the primary goal is to maintain predictable, consistent recreation flows throughout the summer. Accordingly, Southeastern, DNR and Reclamation evaluate the water likely to be available for augmentation in a particular year and adjust the target accordingly to ensure that augmentation water is not exhausted prior to the end of the season. CDPOR is responsible for replacing evaporative losses to Project water caused by this summer flow augmentation.

To ensure that the Project is not releasing water that will be consumed by other entities' exchanges, each year, the Parties request Reclamation to include in its annual VFMP Operating Agreement a provision restricting contract exchanges, to the effect that during the time of the annual VFMP Operating Agreement, Reclamation will not execute contract exchanges (non-Project water with Project water) until after the May 1 water supply forecast from the NRCS has been evaluated to assure that such contract exchanges will not interfere with operation of the VFMP, nor impair the ability of the Fremont Sanitation District or Salida Wastewater Treatment Plant to meet their Colorado Discharge Permit System requirements. Reclamation has frequently included such restrictions when granting contracts for storage in Project facilities. The VFMP facilitates use of Project water for multiple purposes by timing its release to support recreation and fisheries while allowing consumptive use below Pueblo Reservoir.

3. Arkansas River Flow Management Program

In partnership with the United States Army Corps of Engineers, the City of Pueblo developed the Arkansas River Corridor Legacy Project ("Legacy Project"). The Legacy Project is intended to restore riparian habitat and provide enhancements to improve recreational opportunities in and along the Arkansas River through Pueblo. To help achieve the Legacy Project goals, Pueblo desired to protect and enhance the flows and the quality of the water in the Arkansas River through Pueblo. In furtherance of the Legacy Project, Pueblo filed an application for a recreational in-channel diversion ("RICD") water right in Case No. 01CW160 (Water Division No. 2.) To resolve many of the disputes related to the RICD water right, several parties including the City of Pueblo, the City of Aurora, Southeastern, the City of Fountain, the

City of Colorado Springs, and the Board of Water Works of Pueblo, Colorado ("BWWP") entered into an intergovernmental agreement to address flow issues related to the Legacy Project.

The six parties agreed to this intergovernmental agreement ("Six-Party IGA") in May 2004. The Six-Party IGA binds the parties to the Arkansas River Flow Management Program ("FMP"). The FMP ensures that exchanges and augmentation plans operate in a manner that preserves minimum flows in the Arkansas River between the outlet of the fishery at the Pueblo Dam and the confluence of the Arkansas River with Fountain Creek. The minimum year-round target flow is 100 c.f.s. Recreation flows between March 16 and November 14 (all times except when Pueblo Reservoir is storing water for the WWSP) vary depending on the water forecast for that year.

To meet the flow requirements of the FMP, the IGA parties, including Southeastern, agreed to limit their exchanges to allow the Arkansas River below Pueblo Dam to maintain certain flow levels. The Parties, however, explicitly stated that they did not intend to abandon any water right used to support the FMP, and accordingly created a program designed to recover foregone water. Colorado Springs, BWWP, Aurora, Fountain and Southeastern agreed to work together to develop recovery of yield storage, that is likely to be located at downstream gravel pit reservoirs.

4. Tamarisk Control Program

Tamarisk is a tenacious, non-native plant that has a deep root system (up to 100 feet) and leaves a salt residue in the soil. These characteristics enable it to quickly displace native cottonwoods and willows as well as adjacent upland plant communities such as bunch grasses, sage and rabbit brush. The resulting Tamarisk thickets crowd out streams and rivers; provide poor habitat for livestock, animals, and birds; increase fire hazards; and limit human use of the waterways. Tamarisk steals water by using more water than the native vegetation that it displaces. This non-beneficial user of the West's limited water resources dries up springs, wetlands, and riparian areas by lowering water tables. It is estimated that the western United States is losing from 2 to 4.5 million acre-feet of water per year over what the native plants would use. This is enough water to supply upwards of 20 million people or to irrigate over 1,000,000 acres of land.

Southeastern's Board of Directors supported the efforts to pass federal legislation providing the financial tools for the implementation of regional projects for the control of tamarisk and other non-native plants impacting western rivers. On October 11, 2006, President Bush signed the Salt Cedar and Russian Olive Control Demonstration Act, H.R. 2720, Public Law 109-320, which authorized $80 million for large-scale demonstrations and associated research over a five-year period.

The Tamarisk Coalition, in which Southeastern participates, is a non-profit alliance working to restore riparian lands. The Tamarisk Coalition is taking the lead in developing a collaborative effort between the western states and is developing partnerships with governmental agencies for control of this non-native invasive tree species. Southeastern is committed to developing innovative programs to eradicate non-native phreatophytes such as tamarisk that hinder agricultural and municipal entities from making efficient use of the limited water resources in the Arkansas River Basin.

III. Challenges for the Future

A. Colorado River Conflicts

With the supplemental supply of water for the communities and individuals who benefit from the Fry-Ark Project coming from the Colorado River, Southeastern, as part of a coalition of Colorado water users, has been involved in three major issues on the Colorado River over the last several years:

1. Negotiations with California and the other upper basin states on California's over use of its apportionment in use of surplus water on the Colorado River. The basin states were successful in negotiating with California on achieving an agreement by California to reduce its use to its basin apportionment. With the Department of Interior's assistance, the other Basin states' success in reaching this agreement was historic for the river.
2. Deliveries of water to Mexico and some issues raised by Mexico and various environmental organizations in the United States to secure additional water for environmental purposes. The coalition has been involved in those issues in the last several years, and this issue will continue to come up over the next several years.
3. Current drought and shortage situation in the Colorado River. For several years, the focus of discussions has been about allocating surplus water, and, all of a sudden, there is no surplus water. Currently, the discussion is cen-

tering on drought and compact calls, which provides a very clear indication of how quickly things can change on the river.

Neither the Boulder Canyon Project Act nor the decree in the Arizona v. California case provides any real guidance to the Secretary on how to develop shortage criteria for how shortages will be allocated in the lower basin. The only guidance is in the authorizing legislation for the Central Arizona Project, which give California the first priority to its basin apportionment of 4.4 million acre-feet. Former Secretary Gale Norton, considering the current conditions of the reservoirs, was interested in moving forward with the development of shortage criteria. She asked the basin states to come to a consensus on that, and to provide that consensus to her.

Recently, after several months of intense negotiations, the seven Colorado River Basin States reached an accord on handling of the drought and shortage situation in the Colorado River. The agreement is specifically designed to comport with the Colorado River Compacts and the "Law of the River" but seeks to find flexibility within the law to further improve reservoir operations. The signing of the proposed agreement is a significant event in the overall water operations on the Colorado River and will remove the threat of litigation between the states over water operations through 2025.

Several circumstances combined to lead to this agreement. Due to the recent drought conditions, the Secretary of the Interior was asked to review current operations of Colorado River reservoirs. As a result, on June 15, 2005, Reclamation published a Federal Register notice beginning the process to develop the lower basin shortage criteria and changes to the coordinated reservoir operations of Lakes Powell and Mead. The deadline for completion of this process is December 31, 2007.

In response to the Bureau's notice, on August 25, 2005 Governor's representatives for the seven Colorado River Basin States wrote a letter to the Secretary of Interior stating the seven Colorado River Basin States had agreed on a three-pronged strategy for improving management and operations of the Colorado River. First, the states, working with Reclamation, would develop lower basin shortage criteria in conjunction with new coordinated operating criteria for Lakes Powell and Mead under low reservoir conditions. Second, the states, working with Reclamation, would look for ways to improve system efficiency and management. Finally, the states would look for ways to augment the water supplies of the Colorado River. Southeastern continues to work with other Colorado River water users to resolve those issues in a manner that promotes sustainable use of the Colorado River.

B. Exportation of Water from the Arkansas Valley

The Fry-Ark Project was designed to provide supplemental water to a valley that is water short. Thus, when municipalities from the South Platte basin have attempted to export some of the Arkansas' limited supply of native water, it has created challenges for water users in the Arkansas Valley as well as the District. Nothing in the Fry-Ark authorizing act, including any documents incorporated by reference in the statute, provides authority for the Secretary to enter contracts for use of Fry-Ark excess capacity space to store native Arkansas River water rights for use out of the Arkansas River Basin in Colorado, with the possible exception of the City of Aurora.

Special protection for the Arkansas Basin beneficiaries of the Fry-Ark Project is built into the repayment contract, Contract No. 5-07-70-W0086, as amended, between Southeastern and the United States, which govern the evacuation of water from Pueblo Reservoir. The spill order became part of the Contract by the Fourth Amendment in 1984 and resulted from negotiations between Southeastern, BWWP and Colorado Springs in connection with the 1984 applications filed in Water Court for the WWSP and Colorado Springs' and BWWP's exchanges. The spill priorities in Article 13, which are unique among Reclamation projects, provide:

(a) Whenever water is evacuated from Pueblo, Twin Lakes, and Turquoise Reservoirs to meet the necessities of Project flood control, power generation purposes, storage of transmountain Project water, storage of native Project water, and Project operational requirements; except as provided in Subarticle 13.(b) below, the water evacuated shall be charged in the following order:

1. Against water stored under contracts for if-and-when available storage space for entities which will use the water outside the District boundaries.

2. Against water stored under contracts for if-and-when available storage space for entities which will use the water within the District boundaries. This evacuation shall be charged pro rata against water stored under all such like contracts at the time of the evacuation.

3. Against any winter storage water in excess of 70,000 acre-feet.

4. Against water stored under contracts with municipal entities within the boundaries of the District, which water is neither Project water nor re-

turn flow from Project water and which water is limited to 163,100 acre-feet less any Project water purchased and stored by municipal users. This evacuation will be charged pro rata against the water stored under all such like contracts at the time of evacuation.

5. Against winter storage water not in excess of 70,000 acre-feet.

6. Against Project water accumulated from the Arkansas River and its tributaries.

(b) Notwithstanding the order of evacuation of water listed in Subarticle 13.(a) above, evacuation of water from storage pursuant to existing firm storage contracts, the Highline storage contract and future storage contracts that may be entered into with the Board of Waterworks of Pueblo, Colorado and Twin Lakes Reservoir and Canal Company to satisfy prior commitments will be made pursuant to the terms of such storage contracts.

First to spill out of the reservoirs is water stored under contracts for if-and-when available storage space for entities which will use the water outside Southeastern's district boundaries.

Commissioner John W. Keys, III, by his letter of April 3, 2003, announced Reclamation's conclusion that it has authority to enter into long-term contracts with Aurora for utilization of Fry-Ark Project facilities. The City of Aurora acquired Rocky Ford Ditch water rights and applied to the Water Court to change the use of those water rights from irrigation use in the Arkansas Basin to use for municipal purposes in Aurora located in the South Platte River Basin. The lands previously irrigated by these water rights were included within Southeastern's district boundaries. The transfer of such water rights out of the basin to municipal uses in Aurora has potentially serious impacts to the Arkansas River Basin. Southeastern executed an intergovernmental agreement with Aurora, as did several other parties in the Arkansas River Basin, to mitigate the damages caused by the exportation of water from the Arkansas Valley.

C. Meeting Increased Demands for Water Within the District.

Southeastern finalized a study in September 1998 that documented the projected future water storage and supply demands of Southeastern's municipal and agricultural constituents. The study also provided alternatives to meet those demands, which included conservation efforts. Southeastern worked with twenty-seven other water users groups throughout the District to collectively assess future storage and supply needs. The Water and Storage Needs Assessment Project envisaged future water demands and listed a set of alternatives to provide for those demands. The Needs Assessment Study reviewed existing water conservation efforts in cooperation with Southeastern and the water users groups. They provided guidance for conservation measures that will help meet future demands. The Needs Assessment Study also reviewed storage alternatives including the expansion of existing facilities and the construction of new storage facilities. The report indicated a need for an additional 173,100 acre-feet of storage in the Arkansas Valley by the year 2040. The challenge for the Arkansas Valley is to locate such storage in an environmentally and economically sound manner.

D. Preferred Storage Options Plan (PSOP)

The "Water and Storage Needs Assessment Report" led Southeastern and the communities in the Arkansas Valley to further study water needs in the Arkansas River Basin. The participants analyzed many different alternatives for providing future water supplies, worked with agricultural and municipal water providers, recreation interests, local environmental groups and state and federal resource agencies, to devise a plan to prepare Southeastern to meet water needs in the basin into the year 2040.

In 2000, the District completed a study that evaluated more than thirty different alternatives to meet the projected demand. The study concluded that efforts should be focused on the use and expansion of existing Fry-Ark Project facilities to meet future demands.

The first objective of PSOP is to better utilize existing capacity in the Fry-Ark Project reservoirs to help meet growing demand for storage. This is Phase I, the goal being to make full use of existing capacity in Project facilities without interfering with the current entitlements to Project water and storage. These new storage contracts will help communities meet their water needs through the year 2015. At that point, new storage capacity will need to be developed. The preferred alternatives for Phase II were to enlarge both Pueblo and Turquoise Reservoirs and to allow the use of existing excess capacity in the Fry-Ark Project (long-term contracts for municipalities within district boundaries to store non-Project water). PSOP proposes to en-

large Pueblo Reservoir by 54,000 acre-feet and Turquoise Reservoir by 19,000 acre-feet in order to help meet the projected 2040 demand.

The reasons for enlarging Fry-Ark storage facilities are to allow for greater municipal storage and storage of agricultural water through the WWSP. An enlarged Pueblo Reservoir would help municipal users meet their future demands and provide permanent storage space for the WWSP. Without additional storage space in Pueblo Reservoir, Winter Water may be threatened with a spill or at least early release, which means that storage of this valuable water is restricted or eliminated entirely. In addition, the enlargement would provide for storage of other supplemental agricultural water and give small towns future opportunities to contract for firm storage space.

E. Arkansas Valley Conduit

Both the 1962 and 1978 Acts contemplated the construction of the Arkansas Valley Conduit ("AVC"), which has yet to be developed, primarily because the constituents do not have the funding to develop it.

The need for the AVC is driven by projected population growth, the economically-disadvantaged nature of the lower Arkansas Valley, and increasingly costly water treatment requirements being experienced by certain water providers in the basin. In addition to population growth pressures, Southeastern'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. As early as 1953, the Secretary of the Interior acknowledged that additional quantity and better quality of domestic and municipal water was critically needed for the Arkansas Valley, and in particular for those towns and cities east of Pueblo. House Document 187, 83d Congress, 1st Session, and the Fryingpan-Arkansas Final Environmental Statement dated April 16, 1975, both of which have been incorporated by reference into the Authorizing Act, recognized that the AVC would be an effective way to address this need. The local water available from the Arkansas River alluvium has historically been high in Total Dissolved Solids (TDS), sulfates, and calcium, and has objectionable concentrations of iron and manganese. Additionally, various water suppliers have recently reported measurable concentrations of radionuclides in their water. This extremely poor groundwater quality, combined with increasingly stringent water quality regulations of the Safe Drinking Water Act, has caused several local water suppliers to invest in expensive water treatment facilities to assure a reliable water supply for their customers.

Generally, all drinking water systems in the Lower Arkansas River Basin, from St. Charles Mesa in eastern Pueblo County to Lamar in Prowers County, are concerned with the poor water quality in this region. Many of the water providers do not satisfy, or only marginally satisfy, current drinking water standards. More than 40 water providers in the Lower Arkansas River Basin could benefit from the AVC, if implemented.

All communities must meet the state and federal primary drinking water standards through treatment or source replacement. Less documented, however, is the potential burden placed upon communities by high raw water concentrations of various unregulated water quality constituents such as iron, manganese and hardness. These constituents can cause accelerated infrastructure decay and loss of tax base and economic impacts associated with factories and businesses locating elsewhere.

To address these issues, representatives of local and county governments, water districts and other interested citizens of the Lower Arkansas River Basin formed a committee in 2000 to consider a feasibility study of the AVC. These interested parties formed the WaterWorks! Committee and, along with Southeastern, began to review the feasibility of developing the AVC. Some of the relevant conclusions reached are as follows:

- The cost of the AVC compares favorably with any "no action alternative," which would still require the communities involved to make substantial financial investments to address current water quality and safe drinking standards.
- The financial capabilities of the participating agencies are estimated to be inadequate to fund the construction of the proposed Arkansas Valley Conduit, under a 100 percent funding requirement, but AVC participants could afford to pay 20 percent cost-share.
- There is an adequate water supply to make the AVC feasible.

As mentioned above, the AVC was included in the original Fry-Ark reports integrated into the Fry-Ark Authorization Act. The AVC was not built because communities in the Lower Arkansas River Basin could not fully fund the AVC project. A study of the Arkansas Valley Conduit was prepared for Southeastern, the Four Corners Regional Commission and the Bureau of Reclamation in 1972. The report's recommendations for construction of a water treatment plant, pumping station and

conduit to serve 16 communities and 25 water associations east of Pueblo were not implemented at that time due to the lack of federal funding. Evaluations on the quantity of water needed to satisfy long-range objectives for water users in the Southeastern district area were prepared in 1998. Additionally, an update of the estimated construction costs presented in the 1972 report was prepared in 1998.

The citizens and communities of the Lower Arkansas River Basin have waited 30 to 50 years for this project that will improve their water quality and supply. The need for the AVC has been well established for more than 50 years. The Lower Arkansas River Basin communities continue to seek federal assistance in moving this much-needed project forward.

IV. Conclusion

Community leaders from throughout the basin worked together in the 1950s and 1960s 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. The challenge for Southeastern Colorado and the rest of the state is to come together again to plan for the future water resources needs by managing, developing, and protecting water and related resources in an environmentally and economically sound manner.

Response to questions submitted for the record by Bill Long, President, Southeastern Colorado Water Conservancy District

Response to Representative Mark Udall's request for a description of the ways that the Fry-Ark diversions from the West Slope are limited.

The Fryingpan-Arkansas Project collects water from the headwaters of the Fryingpan River and Hunter Creek on the west slope of the Continental Divide and diverts this water to Arkansas River on the East Slope via the Boustead Tunnel. This collection and diversion process is accomplished via a network of in-stream diversion structures and underground tunnels.

The amount of water that the project is allowed to divert is limited by several factors. The Operating Principles were adopted by the State of Colorado, April 30, 1959 with subsequent amendments, and are incorporated in the authorizing legislation for the Project. These Operating Principles provide for a ceiling of 2,352,800 acre-feet in any period of 34 consecutive years, with an annual ceiling of 120,000 acre-feet. The 34 year rolling average works out to 69,200 acre-feet per year on average. The design capacity of the diversion system is further limited by the capacity of Boustead Tunnel, which normally cannot divert more than 945 cubic feet per second (c.f.s.).

Additionally, the Project is only allowed to divert water from the Fryingpan River and its tributaries when the Fryingpan River at the Thomasville gauge (a few miles above Ruedi Reservoir) is flowing at or above the rates shown in the following table:

Beginning	Ending	River Flow
October 1	March 31	30 c.f.s.
April 1	April 30	100 c.f.s.
May 1	May 31	150 c.f.s
June 1	June 30	200 c.f.s.
July 1	July 31	100 c.f.s.
August 1	August 31	75 c.f.s
September 1	September 30	65 c.f.s

Additionally, each diversion into the collection system is limited by decree, and there are minimum flows that must bypass the diversion control structures on most streams within the collection system. These minimum flows are shown in the following tables:

Minimum Summer time bypass flows - FryArk Collection System

Carter Diversion	2 cfs
North Fork	1 cfs
Mormon	2 cfs
North Cunningham	1 cfs
Middle Cunningham	1 cfs
South Cunningham	0 cfs
Ivanhoe	2 cfs
Granite	0 cfs
Lily Pad	0 cfs
Chapman	3 cfs
Sawyer	0 cfs
South Fork	6 cfs
Fryingpan	12 cfs
No Name	4 cfs
Midway	5 cfs
Hunter	12 cfs.

South Cunningham, Lily Pad and Granite Creeks have no minimum bypass as long as the minimum flow requirement on the Fryingpan River is met at the Thomasville gauge on the Fryingpan River.

There is also a limitation on the diversions from the Collection System in the Hunter Creek drainage area. These diversion control structures are not allowed to operate when the flows on the Hunter Creek above the Red Mountain Ditch fall below 51 c.f.s.

Finally, the first 3,000 acre-feet diverted from No Name and Midway diversions are used for the Twin Lakes exchange, which provides for the Twin Lakes transmountain diversion system to bypass flows on the Roaring Fork River and its tributaries above Aspen.

Post Hearing Questions from Rep. John Salazar:

Chairman Long, thank you for your leadership at the SouthEast and for pushing for the Arkansas Valley Conduit. The Conduit was an original piece of the Fryingpan-Arkansas Project. Do you get frustrated that the Fryingpan-Arkansas Project is being utilized to move water, through exchanges and storage, out of the Lower Ark and to Aurora decades before it'll serve one of its stated goals—to provide fresh drinking water to the Lower Ark?

Answer:

The Fry-Ark Project was designed to provide supplemental water to a valley that is water short. Thus, when municipalities from the South Platte basin have attempted to export some of the Arkansas' limited supply of native water, it has created challenges for water users in the Arkansas Valley as well as the District. Nothing in the Fry-Ark authorizing act, including any documents incorporated by reference in the statute, provides authority for the Secretary to enter contracts for use of Fry-Ark excess capacity space to store native Arkansas River water rights for use out of the Arkansas River Basin in Colorado, with the possible exception of the City of Aurora. It is not in the overall best interests of the District and its constituents for the Project to be used in unauthorized ways that could potentially hurt to the Project's intended beneficiaries.

Special protection for the Arkansas Basin beneficiaries of the Fry-Ark Project is built into the repayment contract, Contract No. 5-07-70-W0086, as amended, between Southeastern and the United States, which govern the evacuation of water from Pueblo Reservoir. The spill order became part of the Contract by the Fourth Amendment in 1984 and resulted from negotiations between Southeastern, BWWP and Colorado Springs in connection with the 1984 applications filed in Water Court for the WWSP and Colorado Springs' and BWWP's exchanges. The spill priorities in Article 13, which are unique among Reclamation projects, provide:

> (a) Whenever water is evacuated from Pueblo, Twin Lakes, and Turquoise Reservoirs to meet the necessities of Project flood control, power generation purposes, storage of transmountain Project water, storage of native Project water, and Project operational requirements; except as provided in

Subarticle 13.(b) below, the water evacuated shall be charged in the following order:

1. Against water stored under contracts for if-and-when available storage space for entities which will use the water outside the District boundaries.

2. Against water stored under contracts for if-and-when available storage space for entities which will use the water within the District boundaries. This evacuation shall be charged pro rata against water stored under all such like contracts at the time of the evacuation.

3. Against any winter storage water in excess of 70,000 acre-feet.

4. Against water stored under contracts with municipal entities within the boundaries of the District, which water is neither Project water nor return flow from Project water and which water is limited to 163,100 acre-feet less any Project water purchased and stored by municipal users. This evacuation will be charged pro rata against the water stored under all such like contracts at the time of evacuation.

5. Against winter storage water not in excess of 70,000 acre-feet.

6. Against Project water accumulated from the Arkansas River and its tributaries.

(b) Notwithstanding the order of evacuation of water listed in Subarticle 13.(a) above, evacuation of water from storage pursuant to existing firm storage contracts, the Highline storage contract and future storage contracts that may be entered into with the Board of Waterworks of Pueblo, Colorado and Twin Lakes Reservoir and Canal Company to satisfy prior commitments will be made pursuant to the terms of such storage contracts.

First to spill out of the reservoirs is water stored under contracts for if-and-when available storage space for entities which will use the water outside Southeastern's district boundaries.

Commissioner John W. Keys, III, by his letter of April 3, 2003, announced Reclamation's conclusion that it has authority to enter into long-term contracts with Aurora for utilization of Fry-Ark Project facilities. The transfer of such water rights out of the basin to municipal uses in Aurora has potentially serious impacts to the Arkansas River Basin. Southeastern executed an intergovernmental agreement with Aurora, as did several other parties in the Arkansas River Basin, to mitigate the damages caused by the exportation of water from the Arkansas Valley.

Both the 1962 and 1978 Fry-Ark Authorizing Acts contemplated the construction of the Arkansas Valley Conduit ("AVC"), which has yet to be developed, primarily because the constituents do not have the funding to develop it. The citizens and communities of the Lower Arkansas River Basin have waited 30 to 50 years for this project that will improve their water quality and supply. The need for the AVC has been well established for more than 50 years. The Lower Arkansas River Basin communities continue to seek federal assistance in moving this much-needed project forward.

That is why in my testimony I requested that the Water and Power Subcommittee hold a hearing on H.R. 186 and H.R. 317, the Conduit legislation, as soon as possible.

Response to Representative Napolitano's question regarding how the PSOP long-term excess capacity contracts differ from the Aurora long-term excess capacity contract.

The Preferred Storage Options Plan (PSOP) developed by the Southeastern Colorado Water Conservancy District, its Enterprise and Fry-Ark beneficiaries from 1999-2001 has two components to it: 1) Enlargement and 2) Excess Capacity (storage of water). Your question regarding storage contracts relates to the second component, excess capacity.

Historically, there has been an average of approximately 131,700 acre-feet of excess capacity storage space per water year. Temporary excess capacity contracts enable Contractors to more efficiently use their non-project water, by providing temporary storage for use at a later date. Consequently, temporary excess capacity contracts meet Contractor needs by providing valuable water storage and increased water management flexibility. Capacity in east slope Fry-Ark facilities is only available for storage of non-project water when it is not needed to meet other Project purposes. The number and total volume of temporary excess capacity contract requests made to Reclamation for use of Fry-Ark facilities have increased steadily since 2002. To analyze the direct, indirect and cumulative impacts of temporary excess capacity contracts were evaluated in a 2006 Environmental Assessment for contracts to be issued for the years 2006-2010.

The PSOP evaluated scenarios to better utilize this excess capacity through long-term storage contracts. The scenario chosen in PSOP would allow a municipal water

provider with an existing right to carry-over storage space for an allocation of Fry-Ark water to use that space, subject to a myriad of policy, legal and institutional considerations, to store both Fry-Ark and non-project water in carry-over space.

Currently, only the Board of Water Works of Pueblo has a long-term excess capacity contract. That contract is for 25 years, and was entered into prior to the completion of the PSOP. Colorado Springs is currently in the NEPA-process for a long-term excess capacity contract.

Special protection for the Arkansas Basin beneficiaries of the Fry-Ark Project is built into the repayment contract, Contract No. 5-07-70-W0086, as amended, between the Southeastern Colorado Water Conservancy District and the United States, which govern the evacuation of water from Pueblo Reservoir. The spill order became part of the Contract by the Fourth Amendment in 1984 and resulted from negotiations between Southeastern, BWWP and Colorado Springs in connection with the 1984 applications filed in Water Court for the WWSP and Colorado Springs' and BWWP's exchanges. The spill priorities in Article 13, which are unique among Reclamation projects, provide:

> (a) Whenever water is evacuated from Pueblo, Twin Lakes, and Turquoise Reservoirs to meet the necessities of Project flood control, power generation purposes, storage of transmountain Project water, storage of native Project water, and Project operational requirements; except as provided in Subarticle 13.(b) below, the water evacuated shall be charged in the following order:
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> 1. Against water stored under contracts for if-and-when available storage space for entities which will use the water outside the District boundaries.
> 2. Against water stored under contracts for if-and-when available storage space for entities which will use the water within the District boundaries. This evacuation shall be charged pro rata against water stored under all such like contracts at the time of the evacuation.
> 3. Against any winter storage water in excess of 70,000 acre-feet.
> 4. Against water stored under contracts with municipal entities within the boundaries of the District, which water is neither Project water nor return flow from Project water and which water is limited to 163,100 acre-feet less any Project water purchased and stored by municipal users. This evacuation will be charged pro rata against the water stored under all such like contracts at the time of evacuation.
> 5. Against winter storage water not in excess of 70,000 acre-feet.
> 6. Against Project water accumulated from the Arkansas River and its tributaries.
>
> (b) Notwithstanding the order of evacuation of water listed in Subarticle 13.(a) above, evacuation of water from storage pursuant to existing firm storage contracts, the Highline storage contract and future storage contracts that may be entered into with the Board of Waterworks of Pueblo, Colorado and Twin Lakes Reservoir and Canal Company to satisfy prior commitments will be made pursuant to the terms of such storage contracts.

First to spill out of the reservoirs is water stored under contracts for if-and-when available storage space for entities which will use the water outside Southeastern's district boundaries. West Slope project water is not allowed to spill or be used outside the State of Colorado.

Regarding Aurora's proposed contract, Aurora is an out-of-district entity and would be treated as such in all of its contracts with the Bureau of Reclamation regarding Fryingpan-Arkansas Project contracts. Aurora is not currently involved in the District's Preferred Storage Option Plan (PSOP), except to the extent Aurora may have made obligations to individual PSOP participants to pay for costs associated with pursuing approval of the PSOP, such as Otero County.

Response for the record to Rep. Lamborn's question regarding the history of the efforts to reach agreement on the PSOP legislation

After several years of planning, the Storage Study Committee ("SSC"), which included municipal, agricultural, recreational, environmental, and state and federal resource management agencies, developed the PSOP as the best alternative to securing water resources for future demand. To get the plan underway, the PSOP Implementation Committee submitted to the Southeastern Colorado Water Activity Enterprise the PSOP Implementation Committee Report on April 19, 2001, which provides the operational details for the PSOP. Subsequently, in May 2001, Rep. Joel Hefley introduced the first PSOP bill, H.R. 1714, 107th Cong., 1st Sess., which the City of Aurora ("Aurora") opposed.

After the introduction of the first PSOP bill, SECWCD executed stipulations with most of the potential parties to cases involving the enlargement of Pueblo and Turquoise Reservoirs in July 2001.

On October 29, 2001, Aurora and the Board of County Commissioners of Otero County ("Otero County") entered into an Intergovernmental Agreement ("IGA") to resolve issues in dispute between them. In exchange for certain payments made by Aurora to offset the effects of the Rocky Ford transfer cases and an agreement for Aurora to cover certain PSOP costs, Otero County agreed to withdraw opposition to the Rocky Ford cases as well as support PSOP legislation and any amendments thereto that are agreed to by Aurora and SECWCD so long as such revisions do not substantially change the purpose and intent of the PSOP.

By November 2001, roughly twenty communities and water providers in the District executed Memorandums of Agreement with SECWCD to participate in re-operations contract storage and enlargement storage development efforts.

On December 7, 2001, SECWCD and Aurora entered into an IGA ("2001 IGA"), in which the parties agreed to support certain federal legislation. That legislation was ultimately introduced in the 107th Congress as H.R. 3881, discussed below. By the express terms of the 2001 IGA, however, it was to expire in October of the next year.

Also in December 2001, the City of Pueblo ("Pueblo") filed an application for a Recreational In-Channel Diversion ("RICD") water right for 100 c.f.s during the winter storage period (November 15 to March 14) and 500 c.f.s during the remainder of the year. That water right was for a kayak course planned by Pueblo and presented possible conflicts with the PSOP. Also before the end of 2001, SECWCD filed an application in the Division 2 Water Court for additional exchange rights on the Arkansas River.

In January 2002, Colorado Springs and the Board of Water Works of Pueblo executed stipulations with SECWCD involving water rights for the reservoir enlargements, and entered into a memorandum of agreement with SECWCD addressing storage of return flows from Fryingpan-Arkansas Project water.

In March 2002, Rep. Hefley introduced his second PSOP bill, H.R. 3881, 107th Cong., 2d Sess. Hefley's new bill was then discussed in a hearing before the House Resources Committee's Subcommittee on Water and Power before the end of the month. In August of the same year, the Colorado Water Conservation Board ("CWCB") issued recommendations to the water court regarding Pueblo's RICD application.

Then in November 2002, voters in Pueblo, Otero, Crowley, Bent and Prowers counties approved an initiative to form the Lower Arkansas Valley Water Conservancy District ("LAVWCD"). The Board of Directors was appointed that December, and in April of the next year, the LAVWCD hired a full-time general manager.

Also in April 2003, John Keys, Commissioner of the Bureau of Reclamation ("Reclamation"), issued a letter announcing Reclamation's conclusion that it has authority to enter into long-term contracts with Aurora for the use of Fryingpan-Arkansas project facilities.

On October 3, 2003, the SECWCD, the Upper Arkansas Water Conservancy District ("Upper Arkansas"), and Aurora entered into a Reuse Memorandum of Understanding ("MOU") to resolve areas of dispute. In this MOU, the parties agreed to settle various issues in water court cases in which they were involved, and Aurora agreed to undertake certain reuse activities and report those activities to SECWCD and Upper Arkansas. Also on October 3, SECWCD and Aurora executed a new IGA, because the original 2001 IGA had expired and the SECWCD Board voted not to approve an extension. This new IGA principally concerned Aurora's water diversions and storage contracts and stipulated that both parties will request Members of Congress to support federal PSOP legislation.

In November 2003, Upper Arkansas and Aurora entered into their own IGA to resolve issues pending in water court cases and to further cooperation between them, in particular, to participate in and contribute to storage in a replacement pool. Also in November 2003, SECWCD and Upper Arkansas entered into a storage MOU providing certain benefits received by SECWCD in the SECWCD-Aurora IGA to Upper Arkansas.

In February 2004, Pueblo, the City of Colorado Springs ("Colorado Springs"), and the Board of Water Works of Pueblo executed an IGA that created a Flow Management Program related to the Pueblo's original plans for a kayak park and recreational flows. However, in May 2004, Aurora, SECWCD, and the City of Fountain joined Pueblo, Colorado Springs, and the Board of Water Works of Pueblo and all six parties entered into an IGA concerning the Flow Management Program and the development of Regional Water Management Program. Following these agreements, in June 2004, Rep. Hefley introduced H.R. 4691, 108th Cong., 2d Sess.

In September 2004, the River District, Colorado Springs, Aurora, Twin Lakes Reservoir and Canal Company, and the Homestake Project, which is a joint undertaking between Colorado Springs and Aurora, entered in a MOU explaining and clarifying the water and storage rights of the parties in Arkansas River Basin water. Also in September 2004, Reclamation and SECWCD completed work on drafting a MOU defining the District's "First Right of Refusal" included in H.R. 4691 and outlining the procedures for the contracting of excess capacity contracts outside the Arkansas River Basin (this MOU was never executed).

In November 2004, Rep. Bob Beauprez introduced another PSOP bill, H.R. 5373, 108th Cong., 2d Sess., during the lame-duck session of Congress. This bill was similar to Rep. Hefley's bill from earlier in the year. It was during consideration of Beauprez's H.R. 5373 that the LAVWCD began voicing its objections to the PSOP.

It was also during November 2004 that SECWCD executed two other agreements. On November 16, SECWCD and the Colorado River Water Conservancy District ("River District") entered into an agreement to settle various matters in dispute between the parties. The agreement accomplished four main goals: 1) it settled West Slope opposition to SECWCD's water court cases regarding the enlargement of its Boustead Tunnel water rights, 2) it resolved conflicts with SECWCD over West Slope operations of Ruedi Reservoir, 3) it provided for a dispute resolution process to address future issues, and 4) it stipulated that the River District agrees to support the PSOP legislation in a form substantially similar to H.R. 4691, 108th Cong., 2d Sess. Then on November 30, SECWCD, the River District, and Twin Lakes Reservoir and Canal Company entered into a separate agreement regarding the operation of the Twin Lakes Exchange described in the Operating Principles of the Fryingpan-Arkansas Project.

Since early 2005, the PSOP parties have been in negotiations with LAVWCD to address a variety of regional concerns, including PSOP. In May 2005, SECWCD, Aurora and Reclamation entered into a MOU regarding the settlement of Aurora's application in Case No. 99CW170(A) and clarified the applicability of the spill priorities found in Article 13 of the SECWCD Contract (No. 5-07-70-W0086) to Aurora's requested long-term storage and exchange contracts with Reclamation.

Mrs. NAPOLITANO. Thank you so much for your testimony, sir, and we'll take your request into consideration.

Mr. Ryan, the Bureau of Reclamation.

STATEMENT OF MIKE RYAN, REGIONAL DIRECTOR, GREAT PLAINS REGION, U.S. BUREAU OF RECLAMATION, BILLINGS, MONTANA

Mr. RYAN. Good morning, Madam Chair, members of the committee. My name is Mike Ryan. I'm the Great Plains Regional Director for the U.S. Bureau of Reclamation. Early in my career, I spent about four years on the headwaters of the Arkansas, helping to operate and maintain some of the facilities of the Fryingpan-Arkansas Project, and I am pleased to be here today to provide you information on Reclamation's activities and involvement on the Fry-Ark and provide our view on water management challenges we are all facing.

Congress authorized the project in 1962 as a multi-purpose trans-basin diversion project for Colorado. The project annually diverts an average of about 52,000 acre-feet of water from the Fryingpan River and other Colorado River tributaries on the Western Slope to the Arkansas River Basin on the Eastern Slope. Project water provides a supplemental water supply for municipal, industrial, and domestic uses and irrigation in the Arkansas Valley. Additional authorized project purposes include power, flood control, recreation, and conservation and development of fish and wildlife resources. The project has been operated and maintained by Reclamation since its completion in 1975, when the Fry-Ark Project water was first delivered to users in the Arkansas Valley.

The Southeastern Colorado Water Conservancy District represents water users and is responsible for repaying the United States for the cost of the Fry-Ark Project works associated with irrigation and municipal uses. The district also pays a proportionate share of annual operation and maintenance.

It is a challenge to meet the competing water demands of people, farms, cities, and the environment. Consistent with the principles of Reclamation's Water 2025 Initiative, Reclamation is proposing the use of existing facilities to better utilize infrastructure, while not jeopardizing authorized Fry-Ark Project purposes.

Reclamation is involved in several ongoing projects, either as a lead agency or as a source of technical assistance, that will help alleviate water delivery challenges in Colorado. We have helped to prepare a report on Preferred Storage Options Plan, and have provided planning assistance to local stakeholders weighing options for the Southern Delivery System. Reclamation has also responded to frequent requests for information from local sponsors interested in the study of the Arkansas Valley conduit.

We are also working to address water shortfalls through excess capacity contracts, commonly known as "if and when" contracts for communities in Colorado. For instance, temporary "if and when" storage contracts for 10,000 acre-feet of Aurora's water have been executed on an annual basis with Reclamation for the past 22 years. In addition, "if and when" exchange contracts for 10,000 acre-feet have been executed annually. This year in Eastern Colorado, Reclamation entered into 18 temporary storage contracts totaling approximately 45,500 acre-feet, and one exchange contract for 10,000 acre-feet. Contractors included several cities and water districts, the Federal Bureau of Land Management, and the State of Colorado.

The proposed Aurora contract is an example of the multi-purpose use of the Fry-Ark Project consistent with its governing statutes. The proposed contract allows a non-Federal entity to utilize space not being used to store project water. This contract is within both legal and policy parameters. It will cause no significant impact on the environment and does not require Aurora to construct additional facilities to meet their needs. It provides revenues which assist in the repayment of the reimbursable portion of the project. It also allows Aurora to plan for the future without injury to existing beneficiaries within the Arkansas Basin.

Because excess capacity contracts are exercised only when the service can be provided without harm to the project or those receiving water from the project, Reclamation believes making excess capacity available to store non-project water for Aurora, Colorado Springs, and others is an efficient and beneficial use of existing project features.

Reclamation has other proposed "if and when" contracts for the Southern Delivery System and the Preferred Storage Options Plan. These arrangements have been formulated in response to identified needs for additional water-related contracts to meet long-term water supply needs.

Reclamation applauds the forward-thinking and collaborative planning efforts that have gone into the development of these efforts. We will continue to work with local entities to provide water

to small valley cities to enhance existing flows for recreation and to protect the fisheries.

In summary, full utilization of Reclamation's Fryingpan-Arkansas project is necessary to help communities work through water resource challenges. It is the right thing to do, and we are committed to this collaborative, constructive approach.

This concludes my statement and I would be pleased to answer any questions at the appropriate time. Thank you.

[The prepared statement of Mr. Ryan follows:]

Statement of Michael J. Ryan, Great Plains Regional Director, Bureau of Reclamation, U.S. Department of the Interior

Madam Chairwoman and members of the Subcommittee, my name is Michael J. Ryan and I am the Great Plains Regional Director for the Bureau of Reclamation. I am pleased to be here today to provide you information on Reclamation's activities and involvement in the Fryingpan-Arkansas Project, commonly known as the Fry-Ark Project, and provide the Department of the Interior's view on water management challenges we are facing.

Congress authorized the Project in 1962 as a multi-purpose, trans-basin water diversion project for Colorado. The Project annually diverts an average of 52,300 acre-feet of 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. Fry-Ark Project water provides a supplemental water supply for municipal, industrial, and domestic uses, and irrigation in the Arkansas Valley. Additional authorized Project purposes include power, flood control, recreation, and conservation and development of fish and wildlife resources. The Project has been operated and maintained by Reclamation since its completion in 1975 when Fry-Ark Project water was first delivered to users in the Arkansas Valley.

The Southeastern Colorado Water Conservancy District represents water users and is responsible for repaying the United States for the cost of the Fry-Ark Project works associated with the irrigation and municipal uses, plus applicable interest. The District also pays a proportionate share of annual operation and maintenance of the Project.

It is a challenge to meet the competing water demands of people, farms, cities, and the environment. Consistent with the principles of Reclamation's Water 2025 Initiative, Reclamation is proposing the use of existing facilities to better utilize infrastructure, while not jeopardizing existing authorized Fry-Ark Project purposes.

Reclamation has played a role in several ongoing projects that aim to help alleviate water delivery challenges in Colorado. We have provided technical information for reports prepared by the Southeastern Colorado Water Conservancy District on the Preferred Storage Options Plan, a project conceived to provide additional reservoir storage space in the Arkansas River Basin. Reclamation has also provided planning assistance to local stakeholders weighing options for the Southern Delivery System, a project to provide additional water deliveries to the communities of Colorado Springs, Fountain and Security. And Reclamation has also responded to frequent requests for information from local sponsors interested in the study of ways to provide improved water quality to communities in the Arkansas River Valley east of Pueblo Reservoir.

In addition, Reclamation is working to address water shortfalls through excess capacity contracts, also known as "if and when" contracts for communities in Colorado. These contracts allow third parties to store water in Reclamation reservoirs as long as it does not affect the storage and delivery of project water. For instance, temporary "if and when" storage contracts for 10,000 acre-feet of Aurora's water have been executed on an annual basis with Reclamation for the past 22 years. In addition, "if and when" exchange contracts for 10,000 acre-feet have been executed annually for the past 9 years. This year in Eastern Colorado, Reclamation entered into 18 temporary storage contracts, totaling approximately 45,500 acre-feet, and one exchange contract for 10,000 acre-feet. Contractors included several cities and water districts, the Bureau of Land Management and the State of Colorado.

The contract sought by Aurora is an example of the multi-purpose use of the Fry-Ark Project consistent with its governing statutes. The proposed contract allows a non-Federal entity to utilize space not being used to store Project water. This contract is within federal legal and policy parameters. It will cause no significant impact on the environment and does not require Aurora to construct additional facilities to meet their needs. The stored 10,000 acre-feet of water has been purchased

from willing sellers, and will not be contracted as "Project water." It provides revenues which assist in repayment of the reimbursable portion of the project. It also allows Aurora to plan for the future without injury to existing beneficiaries within the Arkansas Basin.

Because excess capacity contracts are exercised only when the service can be provided without harm to the project or those receiving water from the project, Reclamation believes making excess capacity available to store non-project water for Aurora, Colorado Springs, and others is an efficient and beneficial use of existing Project features.

Reclamation has other proposed "if and when" contracts for the Southern Delivery System and the Preferred Storage Options Plan. These arrangements have been formulated in response to identified needs for additional water related contracts to meet long-term water supply needs.

Reclamation applauds the forward thinking and collaborative planning efforts that have gone into the development of these efforts. We will continue to work with local entities to provide water to small valley cities to enhance existing flows for recreation and to protect the fisheries.

In summary, full utilization of Reclamation's Fryingpan-Arkansas Project is necessary to help communities work through water resource management challenges. It is the right thing to do, and we are committed to this collaborative approach.

This concludes my written statement, and I would be pleased to answer any questions.

Response to questions submitted for the record by Michael J. Ryan, Great Plains Regional Director, Bureau of Reclamation, U.S. Department of the Interior

Post Hearing Questions from Chairwoman Grace F. Napolitano:

Question: Can you give us more information on exactly what authority the Bureau of Reclamation has to contract with Aurora and specifically include a copy of the solicitor's opinion on this?

Answer: Reclamation laws encompass numerous statutes relating to specific projects as well as those of general application. Section 14 of the Reclamation Projects Act of 1939 is the general authority for this decision. This Section authorizes the Secretary to enter into contracts for the exchange or substitution of water and water rights. The most relevant language is as follows:

> The Secretary is further authorized, for the purpose of orderly and economical construction or operation and maintenance of any project, to enter into such contracts for exchange or replacement of water, water rights, or electric energy or for the adjustment of water rights, as in his judgment are necessary and in the interests of the United States and the project.

Under this authority, Reclamation has entered into contracts for the exchange or facilitation of an exchange of non-project water. Reclamation believes the 1962 Project Act, as amended, also authorizes this contract.

There is no formal Solicitor's Opinion, but as per Reclamation's normal process for contracting actions, the Solicitor's Office has reviewed and approved the proposed contract for legal sufficiency.

Question: By entering into these contracts with Aurora to store water, the Bureau is facilitating Aurora's effort to purchase water rights on the Arkansas River Valley. Aren't there policy considerations regarding the loss of farmland and the socioeconomic effects of water being removed from agricultural production for use by urban areas? Is this something a Federal Agency like the Bureau of Reclamation should be actively facilitating?

Answer: Reclamation is not facilitating the purchase of water rights. For over 20 years, Aurora has followed state water law in acquiring the water from willing sellers, and the right to transfer the water to Aurora through the Colorado water rights system. All water proposed to be moved through the Fry-Ark Project facilities has been subject to environmental compliance and any additional amounts of water in the project would likewise be subject to further legal and environmental compliance. No significant socioeconomic impacts associated with the proposed contract were identified through Reclamation's National Environmental Policy Act compliance process.

Question: How does the 40-year long-term contract differ from the annual contracts that the Bureau and Aurora have entered into in the past?

Answer: Under the long-term contract, Aurora made additional commitments in the areas of payments for storage and exchange, proportionate responsibility for operation and maintenance and increased environmental safeguards for water quality. The rates under Aurora's current temporary 1-year contract, which include an operation and maintenance component, are $43.76 per ac-ft for 10,000 ac-ft of storage, and $43.76 for exchange. The storage rate under the long term contract starts at $43 per ac-ft and increases annually at a rate of 1.79% providing a final storage rate of $85.90 per ac-ft in 2046. The exchange rate under the long term contract starts at $49 per ac-ft and increases annually at a rate of 1.79% providing a final exchange rate of $97.88 in 2046. Aurora will pay an appropriate separate charge for operation and maintenance.

Question: What is wrong with continuing with the yearly contract with Aurora? Why is a long-term contract needed?

Answer: The adoption of a long-term contract will result in a staff cost savings for both Reclamation and Aurora by ending the recurring cycle of annual contracts. Additionally, Aurora's payment for use of excess capacity of Fry-Ark facilities benefits the project and the United States with an earlier payout of reimbursable project costs. The use of excess capacity within the project provides for an efficient and beneficial use of existing project features. This use of facilities benefits the taxpayers and will not harm project beneficiaries.

Question: Will this 40 year contract with Aurora mean that the Fry-Ark Project will be paid off any sooner?

Answer: Yes, revenues expected from the 40 year contract are estimated to be $30-50 million, which may result in early repayment.

Post Hearing Questions from Rep. John Salazar:

Question: The stated purpose of the Fryingpan-Arkansas project was to bring trans-basin water into the Arkansas Basin. Now, the project is being used to divert water out of basin through exchanges to Aurora. This seems to be in direct opposition to the intent of Congress. How does the Bureau explain their rationale for going against the law of Congress?

Answer: Reclamation's actions come in response to a direct request from a project stakeholder, and are consistent with federal and state laws. Under this proposed excess capacity contract, Aurora can use capacity in the project that is in excess of project needs to facilitate an exchange of their non-project Arkansas River water only when that capacity is not needed for project purposes. The non-project water Aurora intends to move through project facilities was purchased from willing sellers in the 1980's. Colorado state water law allows such a transfer and the Colorado water court approved the transaction. Excess capacity contracts are only entered into if there is no harm to the project or project beneficiaries.

Question: I've never seen the Bureau articulate why they have authority to contract for storage or exchange contracts with Aurora. Can the Bureau, for once, explain how they generated their legal authority?

Answer: Reclamation laws encompass numerous statutes relating to specific projects as well as those of general application. Section 14 of the Reclamation Projects Act of 1939 is the general authority for this decision. This Section authorizes the Secretary to enter into contracts for the exchange or substitution of water and water rights. Under this authority, Reclamation has entered into contracts for the exchange or facilitation of an exchange of non-project water. Reclamation believes the 1962 Project Act, as amended, also authorizes this contract.

Aurora has purchased water rights on the Arkansas River (below Pueblo Reservoir) that are below Aurora's intake works (Otero Pipeline, which comes directly out of Twin Lakes Dam). In order for Aurora to utilize this water, they will have to enter into an exchange against water/water rights upstream of the intake works. Reclamation has the operational flexibility to exchange non-project water.

There are numerous provisions within the proposed contract to ensure that the Project is not adversely affected. Pursuant to state law, Aurora has changed the use and points of diversion of the water rights it has purchased in the Arkansas Valley. The Project has had ample excess capacity to store, convey and ultimately exchange Aurora's water. The contract would maximize the use of project facilities, within legal and policy parameters. There are minimal impacts on the environment in using Reclamation's facilities and this approach does not require Aurora to construct future facilities. The United States receives a benefit from the exchange in that Rec-

lamation is able to retain 10% of the water exchanged that would have been lost to transit from moving the water to the lower reservoirs. The revenues from the contracting arrangement will also repay the Fry-Ark project at a faster rate.

Finally, Reclamation has entered into exchange contracts of this type at other federal projects in Colorado, including the Colorado-Big Thompson Project where we have executed two such exchange contracts of non-project water. One is with the Municipal Subdistrict of Northern Colorado Water Conservancy District for the Windy Gap Project which moves water from the west slope of the Continental Divide to the east slope through project facilities. The other is with the City of Berthoud (a member of Northern Colorado Water Conservancy District). Reclamation is currently in the process of evaluating the possibility of another contract for exchange of non-project water with the Municipal Subdistrict of Northern Colorado Water Conservancy District for the Windy Gap Firming Project.

Mrs. NAPOLITANO. Thank you, gentlemen, and thank you for staying within the time frame. The first question I have is for you, Mr. Ryan, so you might as well keep that mike up there.

One of the issues in reading your testimony there, you talk about the insignificant impact, on page 2, on the environment and doesn't require to construct additional facilities. Can you just briefly tell me how significant you found that?

Mr. RYAN. Chair—is that with the question directed to the Aurora contract?

Mrs. NAPOLITANO. Correct.

Mr. RYAN. Yes, ma'am. In the—in the environmental assessment that was prepared, we take a look at what the no-action alternative is, and the no-action alternative is these water rights are held by the City of Aurora. State law in Colorado allows them to move the water out of the basin up to Aurora. We believe that would happen regardless of whether or not the Fryingpan-Arkansas facility were used to help. So that becomes the baseline. Then the analysis in the environmental document, what the law requires is you take a look at the effects of the proposed action against the no-action alternative. Since the water would move anyway, there is no significant impact.

Mrs. NAPOLITANO. Thank you. And I understand that, but in looking at the map that I've reviewed, it allows for the lower portion to be able to exchange the water rights for water from the upper portion, which is cleaner water and essentially more, how would I say, desirable.

Mr. RYAN. And that's the point that Congressman Salazar made earlier in his remarks. The environmental analysis, which reaches approximately 200 pages, took four years and a million and a half dollars to complete. One of the things they looked at was the impact to water quality. We believe those impacts would be negligible. But hearing from the communities, there is strong concern about the potential for that. We've built into the environmental commitments of the document and into the proposed contract with Aurora what we feel are safeguards, that should water quality become a concern, certain issues should those——

Mrs. NAPOLITANO. Excuse me, sir, but I understand there is a concern now.

Mr. RYAN. There is a concern about impacts that may develop.

Mrs. NAPOLITANO. No, I'm talking about the water quality itself in that area, in the bottom area. My understanding, from reading

various articles and reading some of the testimony, it already is questionable.

Mr. RYAN. Are you speaking, Madam, to the groundwater quality or the surface water?

Mrs. NAPOLITANO. The water quality of—the surface water.

Mr. RYAN. OK. Now my understanding is surface water quality problems do exist in the lower basin. I'm not—I don't understand the point that people make is how would the contract with Aurora exacerbate those. The result of our analysis shows that it would not.

Mrs. NAPOLITANO. Well, it doesn't take much common sense, sir, to understand that if you take more water from the top in exchange for water from the bottom, you're going to have less available to the bottom portion. I talk in general terms, because that's what I am. And if you did that in my area, I would be all over you, sir, because it is not something that we would consider, never mind kosher, ethical.

Let me give you the next question. Can you give us more information on exactly what authority the Bureau of Reclamation has to contract with Aurora and do you have a Solicitor's Opinion and do you have a copy of that opinion from your solicitor?

Mr. RYAN. Reclamation, in working through the documentation for the proposed contract, we worked with the solicitors. I do not have a formal Solicitor's Opinion, but the Solicitor's Office advises us that under the Reclamation Act of 1902, and more specifically Section 14 of the 1939 Act and the Fryingpan-Arkansas authorization of 1962, the Solicitor's Office is confident that we have authority to enter into this contract.

Mrs. NAPOLITANO. Would you mind being able to provide this committee the information that allowed you to be able to make that decision based on what you were informed by your solicitor?

Mr. RYAN. Yes, ma'am, we'll do that.

Mrs. NAPOLITANO. For the record. Thank you.

Mrs. NAPOLITANO. And I'm already over my time. I'd like now to ask Congressman Salazar—I'm sorry, Perlmutter—or Lamborn. I'm sorry.

Mr. LAMBORN. Yeah, thank you, Madam Chairwoman.

Mr. Ryan, one of the elements of the proposed piece of legislation that Congressman Salazar has called for is a state-sponsored water study that would examine social, economic and cultural impacts of water diversions or water use on lower river users. Has the Bureau ever funded such a study like that before?

Mr. RYAN. Not to my knowledge, sir.

Mr. LAMBORN. OK. Thank you.

Could you next explain what the role of the Fountain Creek is in regard to the Fryingpan-Arkansas Project? In other words, is Fountain Creek part of the Fryingpan-Arkansas system?

Mr. RYAN. The City of Colorado Springs is a contractor for Fryingpan-Arkansas Project water. One of the drainages that's involved with return flow is the Fountain Creek area. There has been controversy in the recent past about city operations and wastewater treatment plant operations as well as regional flooding in the area. It is something that Reclamation and the City and others are taking a look at as we prepare the environmental documentation

for the Southern Delivery System, and it's also an issue that Reclamation is involved with and citizens working on the Fountain Creek——

Mr. LAMBORN. OK. Could you explain the role and the extent to which agricultural runoff has contributed to the degradation of water quality in the Arkansas River.

Mr. RYAN. The water quality studies that were done in the environmental documentation for the Aurora contract indicate that there has been some impact. Agricultural practices typically have some effect upon water quality through the introduction of return flows. It becomes a factor of the soil characteristics and the agricultural practices that will relate to both the specificity of the impact and the magnitude of the impact. But one thing is that there are agricultural practices which have some impact on water quality.

Mr. LAMBORN. OK. Thank you. And next, if I could ask a question of Mr. Long, a question or two. As you saw in the film clip a few minutes ago, President Kennedy said that a rising tide lifts all boats, and his whole speech was very inspiring, as I'm sure you would agree. In that context, if Pueblo Reservoir were to be expanded, would that allow for more water for all of the parties in the Arkansas Valley?

Mr. LONG. Under the proper operation, it would have the potential to do that, yes.

Mr. LAMBORN. Thank you very much.

Next I'm going to ask you about the process by which PSOP has come about. Could you just explain how your district has done its negotiation and followed different processes to come up with the proposals that we have in front of us today?

Mr. LONG. I could provide part of an answer. We'll need to provide a written response to the larger part of it. I've only been on the southeast district since 2002. The actual process in looking at the potential for PSOP started many years before I was a board member, but there was a report that was submitted to our board several years ago. It included many different participants' input. Yeah, we still have to reach agreement on how that would move forward, but to really provide the historical detail, I will need to respond to that in writing.

Mr. LAMBORN. But would you agree that there have been long negotiations and a large degree of consensus and deliberation in the whole process that you have followed?

Mr. LONG. I would agree with part of your comment. Yes, there have been many, many years and much time involved in the process—and a great deal of consensus—but obviously not enough to move the project forward, but there is a great deal of consensus. There are many participants up and down the valley who need storage, but there's a concern, I believe, among the dissenters that there's a potential that new storage could be monopolized, and I think that's where we're at right now. So, yes, we've done a lot of work, put a lot of time in on it, we're reaching consensus, but we're not there yet.

Mr. LAMBORN. Thank you.

Mrs. NAPOLITANO. Thank you, Mr. Lamborn.

Mr. Salazar.

Mr. SALAZAR. Thank you, Madam Chair. I appreciate your recognizing me.

Chairman Long, I want to, first of all, thank you for your leadership on trying to move the Arkansas Valley conduit, and I appreciate the question that, Madam Chair, we hope that we can get a hearing and that we can move this project right along. You know, the conduit was one of the original pieces of the Fry-Ark Project. Doesn't it frustrate you that the Fry-Ark Project is now being utilized to move water to exchange storage out of the lower Ark and out of the basin before it even serves one of its primary goals, and that is to deliver clean water to the towns along the lower Arkansas River?

Mr. LONG. Yes, it is somewhat discouraging. I made the statement before that if we do not get the conduit, the project ultimately would be a detriment to the valley rather than a benefit. As agriculture lands are dried up, the project water then goes to municipal interests, so ultimately a large portion of the water could be moved out of the area that was intended to be served and been a beneficiary of the project, yes.

Mr. SALAZAR. Thank you, Chairman. One other quick question for you. In 2001, the Southeast District attorney, Lee Miller, he wrote a legal memo outlining why the district approved the Bureau storage leases to Aurora. Do you believe that the legal arguments outlined in the memo are still valid today?

Mr. LONG. There is no question we have board members who believe that the arguments are still valid. We believe those arguments are very valid, indicating that virtually everyone else outside of the basin. There was a little bit of a gray area concerning Aurora, because their previous contracts with the Bureau created a little bit of unease, and in my previous statements, I acknowledged that we had reached an agreement with Aurora, but it was because of that unease with previous relationships the Bureau had with Aurora. But we absolutely believe that the project is not authorized to be used to assist anyone outside of the Arkansas Valley Basin.

Mr. SALAZAR. Thank you, Mr. Chairman.

Mr. Ryan, you stated in your verbal testimony that the authority the Bureau of Reclamation had to actually contract with the 40-year contract with Aurora was the 1902 Act. Did you mean 1902 or 1920?

Mr. RYAN. In my statement, Congressman, I referred to the 1902 Act, specifically the act of June 17th. Many people commonly refer to that as the Reclamation Act that initiated the reclamation. But more specifically, as we come down through the years, we believe that Section 14 of the 1939 Act, coupled with the Fryingpan-Arkansas provision of 1962, gives the Secretary authority.

Mr. SALAZAR. OK. Mr. Ryan, are you aware of the Sammy decision discussing the use of the Washington project facilities?

Mr. RYAN. Is that for me, sir?

Mr. SALAZAR. In that opinion, the Solicitor General reaffirmed that the principles of the Federal law requires that the Secretary, through the Bureau of Reclamation, to operate its water projects in a manner consistent with the project's legislative authorities and in

a manner consistent with any feasibility reports submitted to Congress at the time of the project authorization.

And the project—the authorization for this project was to provide water within the local—in this map, we show the project's boundary, which basically would have been Colorado Springs and Fountain Creek and along the lower Arkansas River all the way to the Kansas line.

So based on that information, it seems like there was no feasibility study at the time that the legislation was moved forward by Wayne Aspinall, correct?

Mr. RYAN. To get to the first part of your question, am I aware of the citation, the legal citation, my expectation is that the Solicitor's Office takes those into consideration as they advise us on the bounds of the Secretary's legal discretion. In regard to the planning documents developed in the early years of planning and formulation for the Fryingpan-Arkansas, I'm aware that some of the early documents referenced the use of the proposed Federal facilities in conjunction with non-Federal facilities to help people manage water, more specifically a person, when they read through the documents, the one that comes—at least for me, when I read through them, the one that came to most ready reference was the Homestake Project. But there are other non-Federal projects that are in the Arkansas Basin that some of the early planning documents that the Fryingpan-Arkansas discuss.

Mr. SALAZAR. Thank you very much. I yield now. I apologize for taking more time.

Mrs. NAPOLITANO. No problem. Mr. Perlmutter.

Mr. PERLMUTTER. Thanks, Madam Chair.

Mr. Long, I get confused between the Lower Arkansas District and the Southeast Colorado Conservancy District. Which part of the—on this map, what part do you represent?

Mr. LONG. I represent all the area in brown.

Mr. PERLMUTTER. OK. So you're all the way down to the Kansas border.

Mr. LONG. Actually the map is not entirely accurate. We go to the city of Lamar, near Kansas.

Mr. PERLMUTTER. And originally as part of this project, the conduit was contemplated to bring water way downstream, isn't that right?

Mr. LONG. Correct, correct.

Mr. PERLMUTTER. And that is what you're trying to get built now as part of the request by Senator Salazar and you, Representative Salazar? Well, do you have one—you and your brother—they get me confused too. So I'm confused by the districts and I'm confused by the Salazars, but that's a whole other story.

So you have the—the request is a conduit, and the purpose of that is water quality?

Mr. LONG. Correct.

Mr. PERLMUTTER. Now, isn't it true that a lot of the problems with water quality to the very end of the river as you go to Kansas is a result of metals and minerals into the river itself below the Pueblo Reservoir?

Mr. LONG. I would say that's partially true. There are many contributing factors, but yes.

Mr. PERLMUTTER. But a lot of it has to do with the river bed itself, isn't that right?

Mr. LONG. Correct.

Mr. PERLMUTTER. You and I have had this conversation.

Mr. LONG. Yes.

Mr. PERLMUTTER. So I just wanted to be clear for the record. You do have an agreement with Aurora, don't you?

Mr. LONG. Southeast.

Mr. PERLMUTTER. Southeast Conservancy. I mean you as a representative of the district.

Mr. LONG. Yes.

Mr. PERLMUTTER. And that agreement provides a variety of benefits to the district, does it not?

Mr. LONG. It does.

Mr. PERLMUTTER. So the key thing for your organization is that this conduit be built so that fresher water from the reservoir can get downstream; isn't that right?

Mr. LONG. Absolutely.

Mr. PERLMUTTER. Mr. Ryan, I'd like to turn my questions to you, sir.

Mr. RYAN. Yes, sir.

Mr. PERLMUTTER. How does the Homestake Project play with the Fryingpan-Arkansas Project in ten words or less?

Mr. RYAN. The two projects are transbasin diversions. The two projects act in synergy to improve the overall system effectiveness.

Mr. PERLMUTTER. The two projects were put together back in the '60s, were they not, to really be able to build the whole project out as an economy of scale?

Mr. RYAN. Yes, sir.

Mr. PERLMUTTER. So it isn't as if Aurora and its use of the Fryingpan-Arkansas system is a new phenomenon. It's dated back to the beginning of the project?

Mr. RYAN. Yes, sir. The first contract that I'm aware of was dated 1965.

Mr. PERLMUTTER. Now the Chairwoman's questions really concern me in that your study, your four-year study, 200-page study, determined that there was negligible change to the river, to the water quality, based upon use of the water—diversion from the lower part, which would be the reservoir, to up the river into the mountains, isn't that right?

Mr. RYAN. Yes, yes.

Mr. PERLMUTTER. What that means is, as to Mr. Long, the water quality doesn't change based on the lease that's been requested by Aurora, at least in the estimation of the Bureau of Reclamation.

Mr. RYAN. Yes.

Mr. PERLMUTTER. So from your point of view, a 40-year—well, I'll get to the 40-year lease, but the differentiation by going upstream and transferring its water rights down to the reservoir shouldn't hurt Mr. Long or his district.

Mr. RYAN. Yes, sir. But we recognize that concern remains, and so that's why we have included a commitment—and Aurora has agreed—that it requires Aurora to remain involved in the water quality study being organized by the Southeastern Colorado Conservancy District.

Mr. PERLMUTTER. Last question. Is a 40- year lease as Aurora has requested from the Bureau of Reclamation, is that unique?

Mr. RYAN. No, sir.

Mr. PERLMUTTER. Thank you.

No further questions, Madam Chair.

Mrs. NAPOLITANO. Thank you.

Congressman Udall.

Mr. UDALL. Thank you, Madam Chair. As Congressman Perlmutter mentioned, he gets confused by all of the Salazars, Chairwoman, and no doubt all the Udalls confuse her, but you haven't seen nothing yet, because there are lots of Lamborns and Perlmutters as well. But in the end, of course, we are all Coloradans, and we are here today to look back at 45 years of history, but also to look at what the 21st Century might hold for us with this important project.

At the risk of creating some concern on the part of my west slope friends—I know Chris Treese is here—I want to also mention that this project is a west slope project. In addition, we'll hear from Chris Treese and others about the Fryingpan portion of the Fry-Ark Project. Just I want to make note of that.

Director Ryan, thank you for being here. As you know, recently I sent the Bureau of Reclamation a letter asking you all to consider and strongly urging you to do a full EIS on the relationship that we have with Aurora. Could you just for the record let us know why you declined to take that request to heart.

Mr. RYAN. Congressman, we considered your request and others had requested it as well. When we took a look at the information we had in front of us, the analysis that had been done, and we took a look at what the requirements of law were under the National Environmental Policy Act, we came back to the same conclusion, that we believed that the environmental assessment with its finding of no significant impact is appropriate. We think that's the right thing.

Mr. UDALL. I appreciate the fact that you're forthcoming and I know there's a letter in transit to me.

Mr. RYAN. Yes.

Mr. UDALL. I would just for the record mention in part the reason I requested that is that I think we're on track to end up in the courts, and I hope that isn't the case, but I think that may be what the outcome is, and I thought an EIS would further clarify where we are and perhaps help us to avoid litigation. But be that as it may.

Mr. RYAN. Thank you.

Mr. UDALL. If I might, you say that the Reclamation has other proposed "if and when" contracts for the Southern Delivery System and the PSOP pump. Could you provide some more specific details about those possible future contracts. If that's a long answer, I would like to have it for the record, but if you can be concise, I'd appreciate it.

Mr. RYAN. I'll do my best to be concise. In preparing the environmental documents or in conversations with the different groups in the past regarding whether it's the Southern Delivery System or the PSOP, we've had entities come to Reclamation and request if we go forward with this, would Reclamation consider entering into

these "if and when" contracts with us, and we have said yes, we would consider that.

Mr. UDALL. Thank you, and if you want to provide additional information, I appreciate it.

Mr. RYAN. Yes.

Mr. UDALL. Mr. Long, always great to have you here and thank you for your public service. Somebody said to me recently you have to wonder about elected officials. Most normal people don't want a job where they are hated by complete strangers, and I'm not suggesting that Mr. Long is in that category, but maybe some of us sitting at the table are.

You say the project is limited to an average of just 69,100 acre-feet on the west slope annually. What determined the actual amount that's diverted each year?

Mr. LONG. We need to meet certain flow requirements to the rivers on the west slope, and once the flow is at a certain level—and it changes during the course of the year, let's say 100 cubic feet per second, and I'm just using the number, which I can't remember, let's say in April, anything over that, we can divert. So what determines what we bring across is meeting the flows as well as the snowfall.

Mr. UDALL. Thank you for that answer, and that's a very important number, as we all know. On page 11 of your statement, you discuss the Allocation Principles, which are listed of course in capital letters, to determine how project water is used, and you say the principles require allowing a minimum of 51 percent of the annual project of water supply of municipal and domestic use. So is it fair to say that the project is primarily a municipal water supply project and not primarily a project to supply agriculture, and this is at the heart of the hearing today. And I left you 40 seconds to answer, but I know you may want to provide additional thoughts for the record.

Mr. LONG. OK. That is correct. The Allocation Principles provided for 51 percent of the water to go to municipalities, 49 percent agricultural. Historically that has not been the case. As of 2007, 74.56 percent of the water has gone to agriculture. 25.4 percent has gone to municipal interests. In 2002 and since 2002, the municipal interests have requested and received—well, not necessarily received, but they requested the full 51 percent of whatever we brought over.

But as of today, the majority of the water has gone to agriculture. But we believe that we will see a shift and more will ultimately go to municipal interests.

Mr. UDALL. Thank you. Thank you, Madam Chair. I think what you're saying is there's a critical mass here, there is a tipping point that very much concerns those of you in the southeastern part of the state. And thank you, and thank you, Chairwoman Napolitano.

Mrs. NAPOLITANO. Thank you.

I'd rather not do a second round, if you don't mind, Mr. Lamborn, so we can hear the rest of the testimony, unless you have some pertinent questions.

Mr. LAMBORN. [Shakes head.]

Mrs. NAPOLITANO. Thank you. Pardon me. Taking the prerogative of the chair though, I will point out to Mr. Long or ask Mr.

Long, can you explain very quickly the differences between the Preferred Storage Options Plan, PSOP, and the plans for long-term excess capacity contracts with the City of Aurora.

Mr. LONG. Could you repeat the question?

Mrs. NAPOLITANO. Can you please explain the differences between PSOP and the plans for long-term excess capacity contracts with the City of Aurora.

Mr. LONG. I think I'd prefer to respond to that in writing. I mean, that's a lengthy answer.

Mrs. NAPOLITANO. That's fine. And, yes, certainly would love to have it in writing so that we—then they can share it with the panel. And this panel will be asked to submit questions for the record, because we have so many witnesses that we are not in a position to allow a second round. So questions will be entered for the record and we would appreciate if you would supply one, I believe it's a 10-day time frame.

Mr. LONG. That is absolutely no problem.

Mrs. NAPOLITANO. Thank you very much. And thank you both for being here.

Mr. Ryan, may I ask that you might stick around in case we might want to ask other questions later on. Thank you, sir.

Mrs. NAPOLITANO. Gentlemen, please move on to the second panel.

Welcome, Lionel Rivera, Mayor of Colorado Springs, please come up; Terry Scanga, General Manager, Upper Arkansas Water Conservancy District, Salida, Colorado; Mr. Bill Thiebaut, District Attorney, Pueblo, Colorado; Jay Winner, General Manager, Lower Arkansas Conservancy District, Rocky Ford; and Sandy White, attorney of water from La Veta.

Welcome, and as soon as you're ready to go, we'll start off with the honorable mayor, Lionel Rivera.

Mr. Rivera.

STATEMENT OF THE HONORABLE LIONEL RIVERA, MAYOR, COLORADO SPRINGS, COLORADO

Mr. RIVERA. Thank you. Thank you, Madam.

I think I have it now, thank you. Thank you, Madam Chair Napolitano and members of the committee and Members of Congress. Thank you for this opportunity to appear before you today. My name is Lionel Rivera, and I am the mayor of Colorado Springs.

Colorado Springs is known to many of you as being the location of the world-famous Broadmoor Hotel; the United States Olympic Training Center; strategic military installations, including the United States Air Force Academy, Peterson Air Force Base, headquarters for the U.S. Northern Command, NORAD, and Air Force Space Command, and Fort Carson, soon to be headquarters of the United States Army 4th Infantry Division.

However, what may not be as well known to you is all of these entities and a population of over 400,000 people rely on Colorado Springs to deliver their water supply. Today Colorado Springs' water supply comes from a variety of sources and features a water delivery infrastructure that reaches over three river basins and seven counties, and on average 70 percent of our water is delivered

from western Colorado via three delivery pipelines. The Fry-Ark Project plays an integral role in delivering this water.

As you have already heard, the Fry-Ark Project was conceived, planned and constructed as a multipurpose project to serve both the interests of agriculture and municipal entities within the Southeastern District. It has always included a pipeline to deliver project and acquired nonproject water to Colorado Springs, and Colorado Springs has an equal right to expect to receive the potential benefits that the project has to offer such as the other project supporters and beneficiaries do.

From the inception of this project, the City of Colorado Springs has been an active participant and last year alone the people of El Paso County contributed over 72 percent of the total valuations that go into funding the project.

The availability of a dependable and cost-effective water supply has propelled the growth and success of Colorado Springs and proves that in many ways the Fry-Ark Project is working as it was intended. On August 17, 1962, in a speech made right here in Pueblo, Colorado, President John F. Kennedy said the following about the Fry-Ark Project:

"This (project) is an investment in the future of this country, an investment that will repay large dividends. It is an investment in the growth of the West, in the new cities and industries which this project helps make possible."

Looking back almost 45 years now, President Kennedy's words seem almost prophetic. One needs to look no further than Colorado Springs and Pueblo to see how President Kennedy's vision for the growth of the West has come to fruition. As we have grown, we have done so responsibly with the full recognition that we would continually try to meet water quantity and quality challenges.

We are meeting the water quantity challenge through an extensive release program and through a program that has resulted in one of the lowest per capita water consumption rates in the West. We have answered the water quality challenge by investing $85 million in completed and planned capital improvements to our wastewater system and by creating a stormwater enterprise that will collect over $14 million a year to fund capital improvements in our stormwater management system.

For all of the rhetoric and misinformation that has been and will be spread about our city, the truth is that Colorado Springs has historically sought to avoid relying on the transfer of agricultural water rights to provide a water supply to the city. Far from seeking the demise of the Arkansas Valley agricultural economy, Colorado Springs is working hard to develop a fallowing and leasing program that allows for the development of multiple use of the valley's water supply, multiple uses that will allow farmers to financially benefit from their water rights, while protecting and enhancing the agricultural economy of the valley. And we are jointly leading the efforts to study water quality issues on the Arkansas River and Fountain Creek through a funded commitment and proposed agreement with the Lower Arkansas Valley Water Conservancy District.

At every turn the City of Colorado Springs has complied with the applicable laws of the United States and the State of Colorado when it comes to acquiring these water supplies. Each of our

sources of supply is a subject of decrees, and we are in compliance with the terms and conditions of those water right decrees. The water problems of this valley and of this state will never be solved by looking backward and trying to rewrite legal transactions between agricultural and municipal communities. True leadership on water issues requires us to identify the problems of the future and seek to solve those problems in order to better the conditions of all of our citizens. Colorado Springs is committed to that concept, and our resources must be spent planning for that better future.

In closing, let me say the Fry-Ark Project was developed to benefit all of the citizens within the Southeastern Colorado Water Conservancy District. It was developed to benefit not only the agricultural lands within the district, but also municipal and industrial users as well. As the public body representing two-thirds of the citizens within the Southeastern Colorado Conservancy District, Colorado Springs is proud to have fulfilled President Kennedy's vision and support his concept that municipal interests must be considered at the same time as all of the other project beneficiaries.

Increasing the usefulness of the Fry-Ark Project for all of the citizens of the Southeast District is a shared goal. The politics of demonization have no place in these discussions. We should be seeking win-win solutions and we trust the Congress of the United States is also interested in solutions that benefit all of the citizens of the district. We look forward to working with our neighbors in good will in solving the issues we face in the future and ensuring the project continues to excel.

Again, I thank you for your invitation, your invitation and for taking such a keen interest in this project.

Mrs. NAPOLITANO. Thank you, Mayor.

[The prepared statement of Mr. Rivera follows:]

Statement of The Honorable Lionel Rivera, Mayor, City of Colorado Springs

Madam Chairman Napolitano, Members of the Committee and Members of Congress:

Thank you for the opportunity to appear before you today to discuss the Fryingpan-Arkansas Project. My name is Lionel Rivera, and I am the Mayor of the City of Colorado Springs. Colorado Springs is the second largest city in Colorado, and is the County Seat of El Paso County which recently passed the City and County of Denver as the State's most populous county.

Nestled at the foot of Pikes Peak, Colorado Springs is probably known to many of you as being the location of the world-famous Broadmoor Hotel, the United States Olympic Training Center, and for being the home of some our nations most important military installations including the United States Air Force Academy; Peterson Air Force Base, headquarters for the U.S. Northern Command; and Fort Carson, headquarters of the U.S. Army's 4th Infantry Division. However, what may not be as well known to you is that all of these entities and a population of over 400,000 people rely upon the City of Colorado Springs to deliver their water supply.

Colorado Springs first developed the available water supplies on, and in the vicinity of, Pikes Peak. When those supplies proved insufficient for the needs of the City, Colorado Springs undertook the construction of a pipeline from the headwaters of the Blue River, in Summit County, Colorado. Thereafter Colorado Springs, in partnership with the City of Aurora, developed additional water supplies out of the Eagle River headwaters through a project called The Homestake Project. At the same time Colorado Springs participated in the development of the Fryingpan-Arkansas Project for additional water supplies and acquired interests in the Twin Lakes Company system which gets its water from the headwaters of the Roaring Fork River. Finally, after undertaking all of these developments, Colorado Springs was approached by a water broker and ultimately purchased a significant package of water that had formerly been used to irrigate lands under the Colorado Canal.

Today, Colorado Springs' water supply comes from a variety of sources, and features a water delivery infrastructure that reaches over three river basins and seven counties, and, on average, 70% of our water supply is delivered from western Colorado via three delivery pipelines. The Fry-Ark Project plays an integral role in delivering this water.

As you have already heard from Mr. Long, President of the Southeastern Colorado Water Conservancy District and Mr. Ryan of the Bureau of Reclamation, the Fry-Ark Project was conceived, planned and constructed as a multi-purpose project to serve both the interests of agriculture and municipal entities within the Southeastern District. From the inception of this Project, the City of Colorado Springs has been an active participant in the development of the project which has always included a pipeline to deliver both project and acquired non-project water from the Arkansas River to the City of Colorado Springs.

The costs of the Fry-Ark Project to El Paso County and Colorado Springs are significant. From 1959 through 2006, El Paso County has contributed $65,317,360 to the administration and repayment of the Fry-Ark Project, an amount that is more than double the contributions of all other project participants combined. Last year alone, El Paso County contributed over 72% of the total valuations that go into funding the Project. The second largest contributor was Pueblo County which came in at 15%. As Colorado Springs and El Paso County continue to grow, our financial contributions to the Project will grow as well. I would like to submit to the record the accompanying document which details Southeastern Water Conservancy District's tax valuations. [Attachment A].

The return on El Paso County's investment in the project is significant as well. Of the project water that is stored in Pueblo Reservoir, 25% is released to the Fountain Valley Conduit for municipal use in El Paso County by the members of the Fountain Valley Authority; The City of Colorado Springs; The City of Fountain; The Security Water District; The Stratmoor Hills Water District; and Widefield Water District. The conduit became fully operational in 1985 and reached full conveyance in 2006 and is an important supply and delivery system for all of those communities.

The Fry-Ark Project is not today and never has been an irrigation-only project. It has always been a multiple-purpose project and Colorado Springs has an equal right to expect to receive all of the potential benefits that the project has to offer just as the other project supporters and beneficiaries do.

Though we have been very fortunate with the growth and prosperity of our community, we fully recognize how scarce water is in our arid climate. As a part of this recognition, Colorado Springs is one of the most aggressive and responsible cities in the entire Western United States when it comes to water conservation, and Colorado Springs has actually witnessed a gradual decline in single-family residential water consumption over the last 25 years.

Using the same methodology employed by Western Resource Advocates in a 2003 survey entitled "The Smart Water Report," Colorado Springs found that in 2001 its citizens used less gallons of water per day than residents in other areas in the intermountain West, besting cities like El Paso, Albuquerque, Boulder, Phoenix, Denver, Tempe, and Las Vegas. Since 2001, our per-capita use has continued to decline and last year our residential per-capita consumption was below 100 gallons per day.

This success is not an accident. It is the result of aggressive and innovative policies adopted by Colorado Springs that include citizen education; low-income conservation support; seasonal rates that discourage excessive outdoor watering during summer months; financial incentives for upgrading to more efficient appliances; and even adopting city codes that which require water-efficient landscaping on all new commercial, industrial and residential construction.

In addition to conservation, Colorado Springs is a leader in non-potable water reuse, whereby raw surface water and tertiary-treated effluent water is piped through an independent system to avoid using new freshwater supplies for irrigation. Colorado Springs boasts of one of the oldest non-potable systems in the West, which delivers on aggregate, more than 12,000 acre feet a year, accounting for 13% Colorado Spring's total water deliveries. Our non-potable system waters city parks, municipal cemeteries and golf courses, our power plant cooling towers, and outdoor areas at Fort Carson and the United States Air Force Academy. In fact, next year when the PGA U.S. Senior Open is played at the world-famous Broadmoor golf course, it will be played on grass that has been irrigated by the Colorado Springs non-potable system. We are currently implementing plans to extend this valuable service to more and more regions or our city.

Yet, even as our per-capita water use declines, we are still seeing growth and this is putting pressure on our ability to deliver water. Part of the response to this pressure will be to squeeze even more out of our existing conservation plans and to im-

plement new additional conservation methods. But conservation alone will still leave Colorado Springs well short of the water it needs to provide for the residents that will call Colorado Springs "home," over the next 40 years.

To meet our future demand we will once again be looking to our water in the Fry-Ark system, and are right now in the process of implementing a new water delivery pipeline known as the Southern Delivery System or SDS. Though we are still exploring the options of connecting a new pipeline from Pueblo Reservoir, like we currently have with the existing Fountain Valley Authority pipeline, or by building a pipeline further up the river in Fremont County, we expect to begin construction on the project by 2009.

The availability of a dependable and cost-effective water supply has propelled the growth and success of Colorado Springs and proves that, in many ways the Fry-Ark Project is working as it was intended. On August 17, 1962, in a speech made right here in Pueblo, Colorado, President John F. Kennedy said the following about the Fry-Ark project:

> **"This (project) is an investment in the future of this country, an investment that will repay large dividends. It is an investment in the growth of the West, in the new cities and industries which this project helps make possible."**

Looking back almost 40 years now, President's Kennedy's words seem almost prophetic. The dividends of the investment in the Fry-Ark project are real. One needs look no further than Colorado Springs to see how President Kennedy's vision for the growth of the West has come to fruition.

Unfortunately, while many aspects of the Fry-Ark project are working as they were intended, some unintended consequences have resulted from the success our cities and farms have realized over the past 40 years. As our cities have grown, tremendous strains have been placed on our water infrastructures. In Colorado Springs for example, we have in years past seen catastrophic weather events, and even vandalism plague our wastewater system, resulting in sewer overflows into Fountain Creek. While these disruptions were neither willful nor negligent, we as City have responded by investing over $60 million in capital programs in upgrading our system and have built a new state-of the art treatment plant which comes on line this year and have a new, even more advanced regional plant on the drawing boards to accommodate future growth. Again in 2007 we estimate investing an additional $25 million on capital projects in the wastewater collection system.

In spite of the having a better disruption record than most other wastewater utilities for a system of our size in the entire nation, we are constantly looking for innovative ways to prevent unintended spills from causing significant damage to our watersheds. I am proud to announce that next week, we will be inaugurating one of those innovations in the form of our Fountain Creek Recovery Project, a novel system whereby in the event of a wastewater spill, we will have the ability to capture the flow of the Fountain Creek, divert it to a holding pond, pump the water from the pond to one of our wastewater treatment facilities, while simultaneously releasing fresh water back into the creek.

Yet while municipal sewer systems receive more publicity, when it comes to the overall threats to water quality in a stream, non-point source discharges should be of a much greater concern. Non-point discharges from cities come in the form of urban stormwater runoff, which occurs when rainwater washes pollutants and sediments from impervious surfaces into storm drains. To better manage the impacts urban runoff has on Fountain Creek, Colorado Springs this past year adopted a stormwater enterprise where by approximately $14.3 million a year will be collected from fees imposed on property owners to fund much needed capital improvements in our stormwater collection and management system.

However, urban stormwater runoff is only part of the story, and significant water quality issues surround runoff from agricultural development in the Arkansas basin. The U.S. Army Corps of Engineers report on environmental baseline on the Fountain Creek cites the following finding from the U.S. EPA on agricultural impacts on water quality:

> **"The most recent National Water Quality Inventory reports that on a national scale, agricultural NPS pollution is the leading source of water quality impacts to surveyed rivers and lakes...and also a major contributor to ground water contamination and wetlands degradation...."**

The Army Corps report goes on to identify Fountain Creek to be the most heavily impacted stream segment in El Paso and Pueblo Counties in terms of agriculture non-point source pollution.

In some ways, it is much easier for a large municipality like Colorado Springs to address its impacts on water quality than it is for an individual farmer or rancher.

That is why we are hopeful as this subcommittee, the full Committee on Natural Resources, or any other Committee of the House or Senate examines how to manage the impacts growth has on both the quantity and quality of our water supplies, that it will pay special attention to helping the agricultural community mitigate its impacts on our rivers and streams.

It would be wrong to interpret this plain statement of the facts as an affront to the agricultural community or a dismissal of the plight of our farmers. Not only are we aware of the difficulties that global competition poses on our farmers, we are all too familiar our selves. Already this year, we have seen high tech manufacturers in Colorado Springs leave our city for foreign shores because the realities of global commerce mean their products can be made more cheaply abroad.

Instead of merely paying lip-service to the problems our farmer's face, we are instead forging new ground in Colorado and finding innovative ideas for farm and city to work together in meeting our mutual water needs. For our part, Colorado Springs is exploring a water leasing program with Arkansas Valley farmers, whereby irrigators would lease their water to cities during dry and less productive years. This would provide a much needed income source to the farmer, and a much needed water supply for a thirsty city when supplies are tight. The benefit is that the right to the water stays with the farmer and that right is loaned out when it serves the mutual benefit of both parties.

For all of the rhetoric and misinformation that has been spread about our City, the truth is that Colorado Springs has historically sought to avoid relying on the transfer of agricultural water rights to provide a water supply for the City. Far from seeking the demise of the Arkansas Valley agricultural economy, Colorado Springs is working hard to see a fallowing and leasing program developed which allows for the development of multiple-use of the Valley's water supplies.

At every turn the City of Colorado Springs has complied with the applicable laws of the United States and of the State of Colorado when it came to acquiring these water supplies. Each of our sources of supply is the subject of decrees and we are in compliance with the terms and conditions of those water rights decrees. Those decrees represent property interests of the citizens of the City of Colorado Springs and serve as the foundation of the City's health, safety and welfare. The problems of this Valley, this State and this Nation will never be solved by looking backward and conducting "what if" investigation of matters that are long past. True leadership requires us to identify the problems of the future and seek to solve those problems in order to better the condition of all citizens. Our resources must be spent planning for the future, not attempting to relive or reinvent the past.

In closing, let me say that the Fryingpan-Arkansas Project was developed to benefit all of the citizens within the Southeastern Colorado Water Conservancy District. It was not developed to benefit only the agricultural lands within the District, but to benefit municipal and industrial users as well. As the public body representing two-thirds of the citizens within the Southeastern Colorado Water Conservancy District, Colorado Springs is not embarrassed to suggest that its interests must be considered at the same time as all of the other Project beneficiaries and if consideration of enlargement of Pueblo Reservoir or other project facilities will benefit other entities then it should benefit Colorado Springs as well.

Increasing the usefulness of the Fryingpan-Arkansas Project for all of the citizens of the Southeast District should be considered a good thing, not a bad one. In the arid west we only succeed in serving the interests of our citizens when we work together to solve water resource problems. The politics of demonization have no place in these discussions. We should be seeking win-win solutions and we trust the Congress of the United States is also interested in solutions that benefit all of the citizens instead of a few. So as one of the initial project beneficiaries and as an entity that has been involved in the planning, development, construction and operation of the Fryingpan-Arkansas Project since its inception, we are proud of our role and look forward to working with our neighbors of good will in solving the issues we face in the future.

President Kennedy lauded the mutual effort and cooperation that went into building the Fry-Ark project as the stuff that makes America great. It took the joint effort of Colorado's municipal and agricultural interests to make the Fry-Ark a reality. It will take the joint effort of Colorado's municipal and agricultural interest to ensure the project continues to excel.

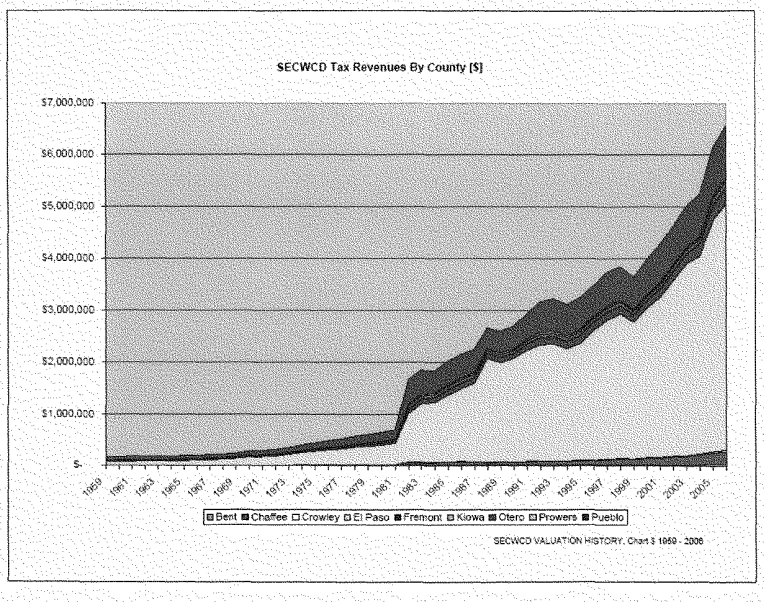
Again, I thank you for your invitation, and for taking such a keen interest in this project.

Attachment A
Southeastern Colorado Water Conservancy District Tax Revenues

	Bent	Chaffee	Crowley	El Paso	Fremont	Kiowa	Otero	Prowers	Pueblo	Total
1959	$ 4,354	$ 4,785	$ 2,105	$ 64,079	$ 9,297	$ 421	$ 13,866	$ 1,384	$ 61,523	$ 161,814
1960	$ 4,475	$ 4,868	$ 2,232	$ 69,038	$ 10,123	$ 436	$ 14,222	$ 1,728	$ 65,808	$ 172,930
1961	$ 4,392	$ 5,210	$ 2,188	$ 74,700	$ 10,332	$ 459	$ 14,245	$ 1,811	$ 67,755	$ 181,092
1962	$ 4,360	$ 5,046	$ 2,221	$ 78,131	$ 10,432	$ 445	$ 14,698	$ 1,569	$ 70,585	$ 187,487
1963	$ 4,348	$ 5,008	$ 2,122	$ 79,990	$ 10,301	$ 464	$ 14,917	$ 1,826	$ 67,986	$ 186,962
1964	$ 4,330	$ 5,157	$ 2,119	$ 85,054	$ 11,092	$ 478	$ 15,290	$ 1,570	$ 67,258	$ 192,348
1965	$ 4,345	$ 4,711	$ 2,142	$ 91,603	$ 10,544	$ 453	$ 15,458	$ 1,317	$ 68,183	$ 198,756
1966	$ 4,405	$ 5,018	$ 2,127	$ 97,108	$ 10,619	$ 455	$ 15,485	$ 1,562	$ 69,296	$ 206,095
1967	$ 4,269	$ 5,235	$ 2,069	$ 106,940	$ 10,853	$ 453	$ 15,771	$ 1,653	$ 69,439	$ 216,702
1968	$ 4,327	$ 5,333	$ 2,039	$ 115,202	$ 11,547	$ 443	$ 15,797	$ 1,612	$ 70,232	$ 226,532
1969	$ 4,368	$ 6,753	$ 2,274	$ 127,757	$ 12,073	$ 440	$ 15,805	$ 1,609	$ 71,345	$ 242,424
1970	$ 4,623	$ 7,641	$ 2,362	$ 150,288	$ 13,262	$ 459	$ 16,629	$ 5,897	$ 80,745	$ 281,906
1971	$ 4,764	$ 7,623	$ 2,281	$ 162,783	$ 13,461	$ 446	$ 16,560	$ 6,232	$ 81,618	$ 295,768
1972	$ 4,591	$ 8,515	$ 2,302	$ 175,450	$ 13,866	$ 456	$ 16,674	$ 6,198	$ 86,160	$ 314,212
1973	$ 4,804	$ 7,800	$ 2,440	$ 209,980	$ 13,595	$ 470	$ 16,880	$ 6,780	$ 89,000	$ 351,749
1974	$ 4,841	$ 9,472	$ 3,071	$ 237,522	$ 16,547	$ 490	$ 18,249	$ 6,650	$ 102,975	$ 399,817
1975	$ 5,506	$ 10,335	$ 2,855	$ 266,380	$ 20,387	$ 495	$ 19,115	$ 6,941	$ 111,965	$ 443,979
1976	$ 5,609	$ 11,922	$ 3,259	$ 287,425	$ 24,410	$ 515	$ 19,865	$ 7,255	$ 121,590	$ 481,850
1977	$ 5,651	$ 14,241	$ 3,487	$ 302,364	$ 25,882	$ 548	$ 20,466	$ 9,035	$ 142,892	$ 524,566
1978	$ 6,148	$ 17,186	$ 3,627	$ 331,371	$ 29,144	$ 594	$ 24,183	$ 9,767	$ 152,921	$ 574,941
1979	$ 6,905	$ 17,969	$ 3,645	$ 352,271	$ 30,912	$ 592	$ 25,708	$ 10,351	$ 159,368	$ 607,721
1980	$ 7,266	$ 18,599	$ 3,754	$ 373,936	$ 31,783	$ 609	$ 26,474	$ 10,437	$ 176,994	$ 649,852
1981	$ 7,717	$ 19,210	$ 3,678	$ 410,084	$ 33,473	$ 614	$ 27,378	$ 11,139	$ 185,118	$ 698,411
1982	$ 19,026	$ 47,820	$ 8,715	$ 933,347	$ 83,322	$ 1,503	$ 67,190	$ 39,646	$ 464,865	$ 1,665,434
1983	$ 18,732	$ 49,269	$ 8,582	$ 1,122,456	$ 84,448	$ 1,543	$ 68,964	$ 29,252	$ 462,394	$ 1,845,640
1984	$ 19,253	$ 50,137	$ 8,290	$ 1,154,323	$ 86,051	$ 1,788	$ 58,978	$ 29,643	$ 418,233	$ 1,826,696
1985	$ 20,960	$ 55,478	$ 9,283	$ 1,280,381	$ 99,922	$ 1,892	$ 63,539	$ 30,651	$ 452,226	$ 2,014,332
1986	$ 22,741	$ 56,119	$ 9,092	$ 1,401,696	$ 102,385	$ 1,917	$ 67,650	$ 32,339	$ 456,925	$ 2,150,864
1987	$ 21,797	$ 55,577	$ 9,258	$ 1,511,232	$ 100,911	$ 1,911	$ 65,691	$ 31,786	$ 450,251	$ 2,248,414
1988	$ 17,811	$ 49,422	$ 8,193	$ 2,004,296	$ 98,313	$ 1,566	$ 53,155	$ 28,575	$ 402,284	$ 2,663,615
1989	$ 18,502	$ 52,969	$ 8,500	$ 1,910,882	$ 104,764	$ 1,636	$ 55,068	$ 31,239	$ 410,034	$ 2,593,594
1990	$ 17,920	$ 52,433	$ 8,478	$ 2,006,991	$ 83,975	$ 1,541	$ 55,108	$ 31,304	$ 443,609	$ 2,701,359
1991	$ 19,421	$ 58,709	$ 9,561	$ 2,146,288	$ 118,850	$ 1,672	$ 60,014	$ 33,302	$ 479,422	$ 2,927,239
1992	$ 22,945	$ 68,683	$ 12,238	$ 2,232,347	$ 137,682	$ 1,867	$ 69,661	$ 38,876	$ 584,682	$ 3,168,981
1993	$ 22,958	$ 70,451	$ 11,734	$ 2,252,519	$ 138,535	$ 1,980	$ 66,316	$ 38,056	$ 624,978	$ 3,227,527
1994	$ 23,441	$ 69,631	$ 10,998	$ 2,157,223	$ 139,504	$ 1,831	$ 71,899	$ 37,057	$ 597,521	$ 3,109,105
1995	$ 23,805	$ 73,947	$ 11,595	$ 2,258,571	$ 146,576	$ 1,790	$ 73,997	$ 37,778	$ 620,036	$ 3,248,095
1996	$ 22,654	$ 87,694	$ 11,112	$ 2,497,718	$ 149,795	$ 1,590	$ 70,034	$ 35,405	$ 602,565	$ 3,478,567

1

Attachment A
Southeastern Colorado Water Conservancy District Tax Revenues



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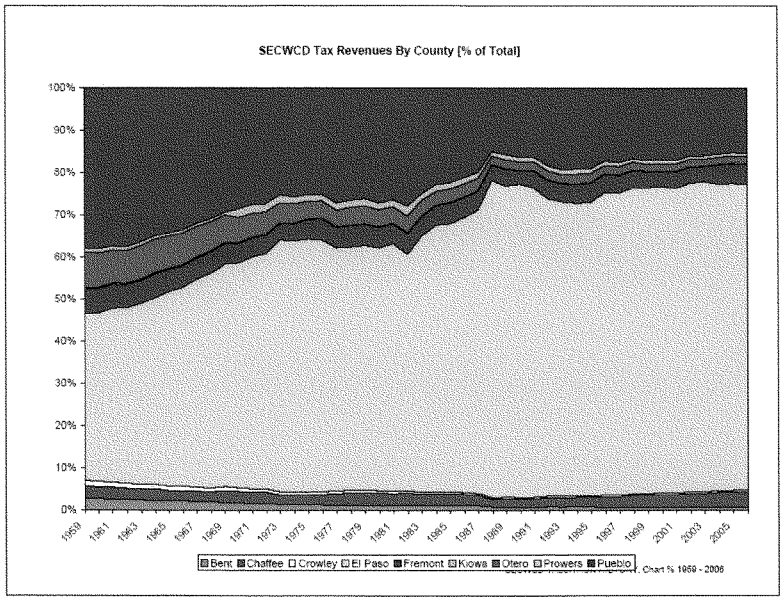
Attachment A
Southeastern Colorado Water Conservancy District Tax Revenues

	Bent	Chaffee	Crowley	El Paso	Fremont	Kiowa	Otero	Prowers	Pueblo	Total
1959	3%	3%	1%	40%	6%	0%	9%	1%	38%	100%
1960	3%	3%	1%	40%	6%	0%	8%	1%	38%	100%
1961	2%	3%	1%	41%	6%	0%	8%	1%	37%	100%
1962	2%	3%	1%	42%	6%	0%	8%	1%	38%	100%
1963	2%	3%	1%	43%	6%	0%	8%	1%	36%	100%
1964	2%	3%	1%	44%	6%	0%	8%	1%	35%	100%
1965	2%	2%	1%	46%	5%	0%	8%	1%	34%	100%
1966	2%	2%	1%	47%	5%	0%	8%	1%	34%	100%
1967	2%	2%	1%	49%	5%	0%	7%	1%	32%	100%
1968	2%	2%	1%	51%	5%	0%	7%	1%	31%	100%
1969	2%	3%	1%	53%	5%	0%	7%	1%	29%	100%
1970	2%	3%	1%	53%	5%	0%	6%	2%	29%	100%
1971	2%	3%	1%	55%	5%	0%	6%	2%	28%	100%
1972	1%	3%	1%	56%	4%	0%	5%	2%	27%	100%
1973	1%	2%	1%	60%	4%	0%	5%	2%	25%	100%
1974	1%	2%	1%	59%	4%	0%	5%	2%	26%	100%
1975	1%	2%	1%	60%	5%	0%	4%	2%	25%	100%
1976	1%	2%	1%	60%	5%	0%	4%	2%	25%	100%
1977	1%	3%	1%	58%	5%	0%	4%	2%	27%	100%
1978	1%	3%	1%	58%	5%	0%	4%	2%	27%	100%
1979	1%	3%	1%	58%	5%	0%	4%	2%	26%	100%
1980	1%	3%	1%	58%	5%	0%	4%	2%	27%	100%
1981	1%	3%	1%	59%	5%	0%	4%	2%	27%	100%
1982	1%	3%	1%	56%	5%	0%	4%	2%	28%	100%
1983	1%	3%	0%	61%	5%	0%	4%	2%	25%	100%
1984	1%	3%	0%	63%	5%	0%	3%	2%	23%	100%
1985	1%	3%	0%	64%	5%	0%	3%	2%	22%	100%
1986	1%	3%	0%	65%	5%	0%	3%	2%	21%	100%
1987	1%	2%	0%	67%	4%	0%	3%	1%	20%	100%
1988	1%	2%	0%	75%	4%	0%	2%	1%	15%	100%
1989	1%	2%	0%	74%	4%	0%	2%	1%	16%	100%
1990	1%	2%	0%	74%	3%	0%	2%	1%	16%	100%
1991	1%	2%	0%	73%	4%	0%	2%	1%	16%	100%
1992	1%	2%	0%	70%	4%	0%	2%	1%	18%	100%
1993	1%	2%	0%	70%	4%	0%	2%	1%	19%	100%
1994	1%	2%	0%	69%	4%	0%	2%	1%	19%	100%
1995	1%	2%	0%	70%	5%	0%	2%	1%	19%	100%
1996	1%	3%	0%	72%	4%	0%	2%	1%	17%	100%

3

Attachment A
Southeastern Colorado Water Conservancy District Tax Revenues



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[The response to questions submitted for the record by Mr. Rivera follows:]

July 9, 2007

The Honorable Grace F. Napolitano
Chairwoman
Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives
1610 Longworth Bldg
Washington, DC 20515

Re: The Fryingpan-Arkansas Project at 45: Sustainable Water for the 21st Century

Dear Chairwoman Napolitano:

In response to your letter of June 12, 2007 and in furtherance of my testimony presented to your committee in Pueblo, Colorado, on June 1, 2007, I would like to offer the following comments. If I may, I would like to address the questions which you presented to me in your letter of June 12, 2007 first.

Post-Hearing Questions from Chairwoman Grace F. Napolitano

1. What water conservation programs does the City of Colorado Springs participate in now?

Response: The City of Colorado Springs has been a leader in the recapture, reuse and retreatment of its municipal water supplies for the past 45 years. Beginning in the early 1960s Colorado Springs began operation of a tertiary treatment facility in order to capture and reuse water for non-potable purposes within the City. During intervening years, Colorado Springs has expanded that capacity on several occasions, including an upgrade to its Las Vegas Street Waste Water Treatment Plant. Most recently Colorado Springs undertook the construction of a new 12 million gallon per day tertiary treatment facility capable of treating and delivering reusable water for non-potable reuse purposes within the City. This also includes a 3-5 million gallon per day reuse capability to the Martin Drake Power Plant for cooling water purposes.

In addition to the physical treatment and reuse programs, conservation has been an integral part of water resource planning for over 60 years. Colorado Springs has six categories that make up its water conservation portfolio. They include education, low-income support, partnerships, rates, incentives and regulations.

Education—Customer education provides the foundation for all of Springs Utilities' water conservation programs. Conservation messages appear in the customer newsletter, on the web site and in the media. The school program began in the 1990s and features curriculum that is developed in partnership with local educators. Colorado Springs Utilities has a Xeriscape Demonstration Garden and offers free classes and tours on a range of topics for homeowners, civic and business groups.

Low-Income Support—The Home Efficiency Assistance Program (HEAP) provides financial assistance to low-income customers for the adoption of water-efficient fixtures. Free water audits are provided in partnership with the Energy Resource Center for qualified, low-income residential customers. If necessary, water leaks are repaired and inefficient showerheads, toilets and water heaters are replaced.

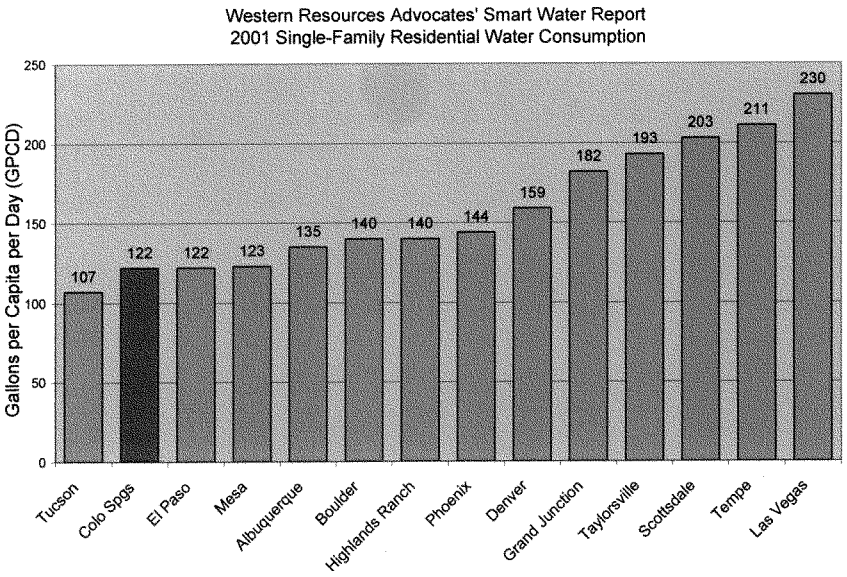
Partnerships—Colorado Springs recognizes the value of partnerships in promoting water conservation and works with entities throughout the region to further the water conservation message. In February, a landscape symposium is held in which hundreds of homeowners and professionals gather to learn about water-wise landscape design, installation and maintenance.

Rates—Seasonal rates are designed to encourage efficiency during the irrigation months, when the greatest demands are placed on the water system. All commercial, industrial and multi-family customers are on the seasonal rate, in effect from May 1 through October 31. The residential block rate structure provides an affordable rate for essential indoor use and sends a strong price signal for discretionary outdoor use.

Incentives—Financial incentives are used to encourage customers to upgrade their appliances and equipment to more water-efficient models. Springs Utilities began to market water-efficient rebates in 2002, during the first year of water restrictions. Since that time, rebates have been offered for ultra-low flush and dual-flush toilets, high-efficiency clothes washers, and efficient irrigation systems, including rain shut-off devices and irrigation equipment.

Regulations—Water consumption may be reduced by local, state and federal regulations. Since 1998, Colorado Springs has required water-efficient landscaping for all newly developed commercial, industrial and multi-family sites.

In 2003, Western Resource Advocates released a report entitled the Smart Water Report. Although Springs Utilities did not participate in the study, the same methodology was used to calculate single-family residential water consumption. Colorado Springs compares very favorably to other cities as indicated in the chart below.



2. What incentives are there for water conservation?

Pricing and purchasing incentives help encourage water conservation in the Colorado Springs community. All residential customers are on an inclining block rate which provides an affordable rate for essential indoor use, a moderate rate for typical outdoor use and an aggressive rate for excess use. The moderate and aggressive rates are 1.7 and 2.6 times the affordable rate, respectively. In addition, all commercial, industrial and multi-family customers are on a seasonal rate. The seasonal rate is 1.8 times higher during the summer months, when the greatest demands are placed on the water system.

In addition to pricing incentives, Colorado Springs Utilities offers purchasing incentives for water-efficient appliances and equipment. Currently, rebates are available for ENERGY STAR-qualified clothes washers, high-efficiency toilets, and irrigation equipment. The irrigation equipment rebates are particularly important since outdoor water use constitutes half of the water used annually. Irrigation equipment rebates are available for the purchase of qualified rain shut-off devices, irrigation controllers, spray heads with check valves, and rotating multi-stream nozzles—all technologies proven to increase outdoor water efficiency.

Post-Hearing Questions from John Salazar

1. Is Aurora an agricultural or municipal entity within the District?

Response: The City of Aurora is not physically located within the Southeastern Colorado Water Conservancy District. It is my understanding that at the time the Fryingpan-Arkansas Project was developed, the City of Aurora agreed to permit the use of certain water storage facilities in exchange for contract rights to use certain project facilities. The decision whether or not to enter into contracts for the use of Fryingpan-Arkansas facilities does not rest with the City of Colorado Springs, but with the Bureau of Reclamation.

2. How can you sit here today saying you need more water when back in 2005 Colorado Springs felt like it needed to encourage its residents to use additional water?

Response: The statewide drought offered many learning opportunities, as well as burdens for most water providers in Colorado. Water restrictions are considered emergency measures used for short-term system failures or drought situations, and are not the long-term commitment to sustainable community conservation. To mitigate the impacts of the drought we increased public education and imposed water restrictions. The result was that our community reduced water consumption by approximately twenty percent and reservoirs were replenished to "near normal" levels. Restrictions were lifted in late 2005 due to improved water supply conditions, not to encourage more water use and revenue.

It is a real challenge for all public utilities in the nation to balance the need to raise sufficient revenues to meet the fixed and ongoing operating costs and cost of water acquisition with the desire to control water rates and water usage. I would like to emphasize that the comment purported to be attributed to Colorado Springs Utilities CEO, by Mr. Tollefson, represented the need to address a short-term cash flow crunch in the operation of our utilities does not imply a lack of need for long-term water supply planning, nor for the need to construct the facilities required to ensure the preservation of the public health, safety and welfare of the citizens of Colorado Springs. Your question suggests that a comment related to a short-term financing issue somehow obviates the City's needs and obligations to plan for a provision of water supply for its residents into the future. In my mind the two are not directly related.

I would also like to point out that despite the article you quote Colorado Springs continues to have one the of lowest per capita water use of any community within Colorado, evidence that the water conservation ethic in our community remains strong. So the point of your question seems to be moot given the fact that Colorado Springs programs encouraging water conservation and the attitude of its citizens continued to result in a very conservative per capita water use despite relaxation of water restrictions.

Responses to Comments Made During the Hearing

1. Concerns about the nature and quantity of releases experienced in the Colorado Springs Utilities system.

Response: Colorado Springs operates the largest unified wastewater collection and treatment system in the State of Colorado, which includes over 1500 miles of collector system as wells as 2 wastewater treatment plants. During a disastrous flood event in 1999, several sections of Colorado Springs' collection system were destroyed by the raging floodwaters. Colorado Springs immediately reported the condition to the responsible state officials at the Colorado Department of Public Health and Environment and worked night and day to make repairs to the system and prevent further discharges. As the result of this event, Colorado Springs undertook an extensive program of rehabilitation for its entire wastewater system with an eye toward preventing such events in the future. The vast majority of releases Colorado Springs has experienced since 1999 can be broadly categorized in four ways. a.) Releases resulting from vandalism or the actions of third-parties such as utility contractors cutting into sewer lines. b.) Normal blockages, experienced by utilities throughout the nation and the world operating collection systems, caused by customers depositing inappropriate material, such as grease, rags or other matter into sewers. In addition, the problem caused by tree roots intruding into the sewers in search of moisture in this arid climate is common to all wastewater utilities. c.) Releases associated with the City's efforts to rehabilitate its collection system when contractors fail to adequately control the bypass operations necessary when sewers are being rehabilitated or re-lined. d.) Releases from the portion of the tertiary treatment/reuse system transporting fully treated water from the treatment plants to the point of irrigation reuse. These "releases" are only an issue because the water in the reuse system is well chlorinated to ensure that the public health is fully protected.

Finally, a separate but limited category includes additional breaks associated with extreme weather events of which there were only 8 in the eight year period since 1999. With regard to the events under category a, there were 12; category b there were 53; category c there were 9; and category d there were 23. Over time, Colorado Springs has worked hard to reduce the number of releases each year to a minimum, and has succeeded in reducing the total volume of releases significantly. Colorado Springs is confident that through its commitment of over $100 million in additional

collection system expenditures, the number of releases of any size will continue to decline.

All of these releases have been reported to the appropriate state officials and appropriate enforcement action has been taken and sanctions imposed. The City of Colorado Springs is in full compliance with those enforcement orders, has paid all of the fines that have been assessed and is ahead of all compliance schedules ordered by the State Health Department.

2. How old is the Colorado Springs wastewater treatment plant?

Response: The Las Vegas Street wastewater treatment plan was first put into operation in 1935. Over the intervening years numerous upgrades, expansions and improvements to the facility have been planned and completed. The most recent upgrade and expansion occurred in the mid 1990s, which increased the plant's capacity to 65 million gallons per day and upgraded the treatment technology. It is currently one of the most modern advanced wastewater treatment plants in the state with a rated capacity of 65/75 million gallons per day. The current inflow to the plant is 42 million gallons per day. Colorado Springs is, and continues to be, in compliance with all of the permit limits contained in the plant's NPDES permit related to the discharges from the facility. Colorado Springs is justifiably proud of the performance of this plant and its ability to deliver extremely high quality water to the Fountain Creek.

3. Will the addition of the Phillips Water Treatment and Reclamation Plant decrease the City of Colorado Springs water use from the Fryingpan-Arkansas Project?

Response: No, it will not in the long term. As the entity responsible for approximately two-thirds of all the citizens served by the Fryingpan-Arkansas Project, and who pay over 70% of the repayments costs associated with the Project, Colorado Springs' use of Project water supplies will not decrease as a result of the completion of the Phillips plant. However, Colorado Springs' ability to fully use water supplies within the City will increase as a result of the completion of the Phillips plant. Colorado Springs would like to emphasize that although the municipal participants in the Fryingpan-Arkansas Project, including the City of Pueblo, the City of Colorado Springs and a number of other smaller communities within the Arkansas Basin and within the Southeastern District are entitled to use 51% of the total water supplies from the Fryingpan-Arkansas Project, these communities collectively have historically only used approximately 25%, or half of their entitlement. The remainder has been utilized by agriculture. Although, in the future, municipalities, including Colorado Springs will want to secure a greater share of the project, as they are legally entitled to do, they certainly will not do so until it becomes necessary. The following summary chart further illustrates historical use of Fryingpan-Arkansas Project waters:

Summary

TYPE OF USE	1972-92	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	1972-02
TOTAL MUNICIPAL	204,237	12,104	13,810	16,417	14,518	15,729	2,342	7,568	18,007	16,429	5,602	326,763
TOTAL IRRIGATION	511,174	56,105	37,887	59,240	77,916	60,489	89,850	21,927	158,081	60,532	5,262	1,138,463
TOTAL OTHER	1,297	1	0	1	0	0	0	0	0	0	0	1,299
GRAND TOTAL	**716,708**	**68,210**	**51,697**	**75,658**	**92,434**	**76,218**	**92,192**	**29,495**	**176,088**	**76,961**	**10,864**	**1,466,525**

I hope that the foregoing responses to your written questions as well as several that were asked of us during the hearing will be helpful to you. I have also included an updated attachment to my original testimony on Colorado Springs' contribution to the Fryingpan-Arkansas Project. I want to thank you again for permitting me to participate in the hearing and to respond to your further inquiries.

Very truly yours,

Lionel Rivera
Mayor
City of Colorado Springs

Mrs. NAPOLITANO. And we will go to Terry Scanga, General Manager, Upper Arkansas Water Conservancy District.

STATEMENT OF TERRY SCANGA, GENERAL MANAGER, UPPER ARKANSAS WATER CONSERVANCY DISTRICT, SALIDA, COLORADO

Mr. SCANGA. Thank you, Madam Chair. Before I start, I'd like to give a little background about myself.

Mrs. NAPOLITANO. You have the whole 5 minutes, sir.

Mr. SCANGA. Thank you.

As well as being the manager of the district—I've been in that capacity for about six years—before that I served for twelve years as a director on the Upper Arkansas Water Conservancy District Board. I own a business in Chaffee County in the upper Arkansas Basin. I'm also an agricultural water right owner, and my family has been involved in agriculture in the upper Arkansas Valley since my grandfather immigrated there in 1877. So I think I understand agricultural water use and water use in the basin.

The Upper Arkansas Water Conservancy District was formed in 1979, after the project was created. It was designed as the State of Colorado's Water Conservancy Act designs, to protect and develop water resources for beneficial use within our area.

We operate several reservoirs and a blanket plan of augmentation, which is a landmark type of planning for domestic, agricultural use of water, and also for industrial uses. We use Fryingpan-Arkansas Project water as well to supplement our native water supplies and other transmountain water that we utilize within our plan.

My father was a supporter of the Fryingpan-Arkansas Project. I can remember being a seven-year-old child and seeing in 1955 my father purchase a frying pan. And I asked him what the project was like. It was really interesting to see what the vision of the project was back then. There were going to be hydroelectric plants and dams all the way throughout the Arkansas Basin into the lower valley to produce hydroelectric power, as well as water for irrigation and for domestic use. There was even a vision that there would be a canal, a large pipeline that would deliver it, instead of the river delivering it as we see it today.

I think the Fryingpan-Arkansas Project as we see it is really a story of change, a history of change within our valley if you look at it. Back then when the Fryingpan Project was started in the 1960s, primarily agricultural and mining were the main industries in the valley. Those industries used and that's where the demand for water went. Water follows demand and the needs of a community.

And that's what we see today happening. We see a large change. We see the—there were two dramatic changes that have taken place. In 1969 the State of Colorado passed the Administration and Adjudication Act. It recognized the tributary groundwater extracted by wells, which were junior to senior surface water rights, were injuring those rights, and therefore it integrated those two, making it necessary for augmentation plans, specific plans of augmentation that would replace water into the rivers to prevent injury to those senior diverters.

The lower Arkansas Valley had a lot of irrigation wells prior to this. And with the Colorado-Kansas lawsuit in 1994, it triggered a curtailment of the use of those wells and forced well owners to uti-

lize in fact Fryingpan-Arkansas water to well associations to be able to put together plans of augmentation to be able to continue to pump and use that water.

The second I think very dramatic thing that's happened in our state and probably throughout the entire west is that we have seen a shift from agricultural demands, because of competition from large corporate farms and competition from overseas with produce, with our local industries, we have seen a change and a shift of water being used, the demand of water, from agricultural to municipal uses.

We have watched in the upper Arkansas Valley our towns grow from rural-type areas to suburban- and urban-type areas, where people are building subdivisions in the mountains and they're utilizing water for domestic uses. So we're beginning to see a shift, a large shift. In the upper Arkansas Valley, the projection is that the population will double.

Another use today that we see in Fryingpan water is recreational use in the whitewater industry and in fishing. In that regard, the folks in the upper Arkansas Valley, the Arkansas River Outfitters, in cooperation with the Department of Parks, the Department of Natural Resources of the State of Colorado and the Bureau of Reclamation put together a Voluntary Flow Management Program. It's 10,000 acre-feet of water are delivered from project facilities. Because we have facilities of the project that were built in the upper basin and also lately we have in the lower basin with two vessels in between, we are able to put together a program that manages the delivery of water, of Fryingpan water, and the evaporation, the transit losses are made up by the whitewater industry.

Mrs. NAPOLITANO. Sir, would you wrap up here?

Mr. SCANGA. Yes. Well, thank you very much.

For the future what I see is the Preferred Storage Options Plan is extremely important to the entities in the upper Arkansas Basin. You have letters in my testimony from about a half-dozen different cities and municipalities participate within PSOP, and this is very important for storage of nonproject water that this move forward. And we'd like to see this feasibility study move forward. Thank you very much, ma'am.

Mrs. NAPOLITANO. Thank you, sir.

[The prepared statement of Mr. Scanga follows:]

Statement of Ralph L. "Terry" Scanga, Jr., General Manager, Upper Arkansas Water Conservancy District

Background: The Upper Arkansas Water Conservancy District "UAWCD" was formed in 1979 pursuant to the Colorado Water Conservancy Act, 37-45-102 C.R.S. to protect and develop water resources for beneficial use in the Upper Arkansas Region. The District includes Chaffee County, Custer County, the Western Half of Fremont County and that part of Saguache County that lies within the Upper Arkansas Basin. The District provides storage on key tributaries and water pursuant to its decreed plans for augmentation to the citizens and municipalities within its boundaries. The "UAWCD" is active in the protection of water rights within the basin from exportation to other areas and collaborates with other basin entities in the management of water resources for mutual benefit. The UAWCD owns a collection of native water rights and utilizes allocations of Fryingpan-Arkansas water within its augmentation plans as well as Fryingpan facilities through excess capacity contracts for the benefit of its constituents. In addition UAWCD has contracted with the Southeastern Colorado Water Conservancy District for participation in the Pre-

ferred Storage Option Plan for enlarged space and excess capacity space for storage of its non-project water.

The Upper Arkansas basin is a less developed area of Eastern Colorado but in recent years is experiencing a greater rate of growth. In order to provide water for this growth and to protect the senior water rights from out-of-priority uses, the UAWCD has acquired various decrees for augmentation of various types of diversion structures to supply domestic and irrigation supplies to its citizenry. UAWCD is now embarking on the development of integrated water planning and management with several of the smaller municipalities within the Upper Arkansas basin to more efficiently manage and plan for growth impacts. Recently, in cooperation with the State of Colorado the UAWCD has agreed to become the Arkansas River Water Bank Operator. The Water Bank is designed to facilitate the distribution of stored water from sellers to buyers in need of water on a short-term or annual basis.

Project Water: Vital to the Upper Arkansas Basin is the annual allocation of Fryingpan-Arkansas project water "Project Water". Although used to supplement existing native water supplies, and other trans-mountain water sources, such as Twin Lakes Canal Company shares, Project Water is integral to providing water for irrigation, domestic, municipal, industrial, and other beneficial uses in the Upper Arkansas Basin. The cities and towns, some of which did not exist in 1962 when the Project was authorized, depend upon annual allocations of this essential commodity. Created in 1979, the Upper Arkansas Water Conservancy District provides augmentation water supplies pursuant to landmark blanket augmentation plans that cover large portions of two counties in the Upper Arkansas Basin and provides replacement supplies for domestic, industrial and irrigation use. The Upper Arkansas Basin is typically defined as the lands upstream from the inlet to Pueblo Reservoir. These communities from Buena Vista in Northern Chaffee County to Florence in Eastern Fremont County rely on and have benefited from the Fryingpan-Arkansas Project and integrated this supply source with their native supplies and other trans-mountain water sources.

Recreational Use: The Whitewater Industry and Fishing have developed into a thriving and important segment of the economy of the Upper Arkansas Basin. With storage at the top of the watershed, located in Turquoise, Twin Lakes and Clear Creek Reservoirs, and at the lower end of the Upper Basin, in Pueblo Reservoir, fine tuning of water management became possible. First, municipalities utilized this unique feature of the system and elaborately timed exchanges were conducted to correspond to demand. To protect water quality, municipal water entities agreed to refrain from exercising exchanges when native river flows fell below a water quality threshold. As river recreation progressed beyond infancy the need to consider flow levels for recreation began to loom. The practice of municipalities exercising large exchanges during the Whitewater season had the effect of lowering flows at times of recreational need and the releasing of large flows in the spring and fall were detrimental to the longevity of the fishery. Management of the timing of exchanges and releases became a point of contention between the domestic users and the recreational users. Since the Project had developed the infrastructure for Fryingpan-Arkansas, the ability to manage flows between reservoirs made support of the fledgling recreation industry a matter of water delivery. In 1988, the founding of the Arkansas Headwater Recreation Area, a Division of Colorado State Parks, in the Upper Basin, created the interface wherein the Upper Basin's Arkansas River Outfitters Association, The Colorado Division of Natural Resources, and The Bureau of Reclamation, could interact to manage flows for the mutual benefit of municipalities, agriculture and recreation. Without the Fryingpan-Arkansas Project the Voluntary Flow Management Program could not have been created and from that the likelihood the fledgling Whitewater Industry might well have never developed to maturity. Of major significance is the inclusion of the flow program concepts in exchange and change cases that have occurred since the inception of the Voluntary Flow Program.

PSOP: As growth places pressure on these communities the need for storage becomes paramount for future water management. Extremely important to these Upper Basin communities is the need to develop storage for their native water supplies. Nearly 10 years ago water managers from these communities worked with the Southeastern Colorado Water Conservancy District to develop storage options. The result was the "Preferred Storage Options Plan (PSOP)". PSOP would utilize the existing infrastructure to provide increased firm storage and capture water during years of abundance. This was the same concept of the original Fryingpan-Arkansas Project: bring water from the area of Colorado where precipitation is more abundant and water demand is lower to the area of the State where there is meager precipitation but a greater demand. Since the run-off from the West Slope snow pack occurs in a two month period, storage would be needed to reserve this water for the time

of need. Thus, Turquoise and Pueblo Reservoirs were developed. In many ways the storage developed by the Project is as important as the water diverted from the Western Slope.

The Preferred Storage Options Plan was conceived to provide needed storage for native water supplies for domestic, municipal and augmentation uses. Most communities in the Upper Arkansas Basin have signed agreements to participate in this important project. As growth in the Upper Basin takes place at an increasing pace, the need to provide for storage of native supplies during times of abundance begins to take on a sense of urgency. Faced with the need to provide augmentation for agricultural and domestic ground water use, due to the 1969 State law that integrated tributary ground water with surface water and the results of the Colorado v. Kansas law suit, storage becomes the most essential mechanism to provide for the increased water demands.

For nearly a decade the federal authorization to conduct a feasibility study has been stalled due to local conflicts. Many communities are losing patience with the tedious process and are faced with an immediate need. Some are beginning to divert their energies from PSOP and are exploring other alternatives.

Some Upper Basin entities have expressed a desire to begin the feasibility study in tandem with other studies on extensive water quality impacts in order that a determination can be made as to the probability of PSOP. If a determination is made that the project is not feasible then these municipal entities can explore other avenues to meet future demands.

Water Conflicts: Although typically overstated, disagreements over water management and use have often resulted in mitigation agreements or crafted management planning that would not have taken place in the absence of change. Disagreements over filings of water exchanges from the Lower Basin to Upper Basin facilities by large municipal entities have the potential effect of de-watering the Upper Basin River. Some of the potential side-effects are reductions in flows and diminished water quality. Municipalities dependent upon certain stream flow levels to provide the required amount of dilution of sewage discharges were faced with increased treatment costs that could be caused from poor timing of exchanges or use of exchanges during low river flows. To avoid this occurrence, entities such as Colorado Springs entered into stipulations to curtail exchanges if the exchange would result in a reduction in flows below specified levels as a part of their exchange decrees. This type of stipulation has become the standard for all exchanges that involve the Upper Basin. Likewise, the Voluntary Flow Management Program has become institutionalized to the same degree to protect recreational flows a noted above. The manner of the utilization of Fryingpan-Arkansas facilities has been a major factor in the ability of basin entities to cooperate in these types of beneficial water management programs.

More recently, Colorado Springs Utilities is planning a pipeline to deliver water to their city. This delivery system is referred to as the Southern Delivery System "SDS" and would pump water from the Arkansas through a diversion at Pueblo Reservoir.

Although the Upper Arkansas Water Conservancy District has not taken an official position on this plan, it does not support any more imports of water out of the Upper Basin, such as those that occur at the Otero Pipeline. Although the Otero Pipeline was originally constructed to deliver water from the "Home Stake Project" to Colorado Springs from the Western Slope of Colorado, it has been used to remove native water by successive exchanges from the confluence of Fountain Creek and the Arkansas River at Pueblo. This practice has the effect of reducing river flows through the Upper Basin. By contrast, providing additional water to Colorado Springs, an Arkansas Basin entity, via a pipeline option that would not include the Otero Pipeline or a similar Upper Basin diversion, is preferred by the Upper Arkansas Water Conservancy District.

Water quality issues still exist between the Lower Arkansas Valley and Colorado Springs in regard to Fountain Creek. These issues need to be resolved between these two entities and these issues should be resolved independent of the feasibility study of PSOP. Today this dispute is holding the Upper Basin entities "hostage"!

Summary: My first memory of this great project was of my father purchasing a golden frying pan at his butcher shop. I was seven years old. Two gentlemen dressed in suits and ties described the vision of the Frying-Pan Project. They claimed that the Fryingpan-Arkansas Project would bring water to the Arkansas Valley for irrigation and domestic uses. They described a large conduit with many reservoirs built at various intervals in the river that would produce hydro-electric power. For the most part, the dream has come true.

The reservoirs have been developed in the Upper Basin. Pueblo Reservoir was built and water flows from the West Slope into our Arkansas River. Cities, towns

and farms can rely on this precious supplement to their native and trans-mountain supplies. Because of the unique infrastructure mitigation management plans can lessen the strain of growth and recreation can flourish. At 45, Fryingpan-Arkansas has delivered.

As we look to the future, the Preferred Storage Option Plan looms. All the water managers know we will need reliable storage for the future, but some issues still need to be resolved. The spirit of cooperation with good communication and an effort to understand each other's challenges is how the Fryingpan-Arkansas Project was accomplished. As we face today's challenges it is the hope of the Upper Arkansas Water Conservancy District that this same spirit leads us in providing needed water storage for the basin in the future.

Mrs. NAPOLITANO. Mr. Bill Thiebaut, District Attorney for Pueblo

STATEMENT OF BILL THIEBAUT, DISTRICT ATTORNEY, PUEBLO COUNTY, COLORADO

Mr. THIEBAULT. Thank you, Madam Chair, members of the committee, and guest members.

John Wesley Powell in 1877 said that "In the whole region (the West), mere land is not of value. What is really valuable is the water privilege."

I'd like to share some thoughts about water quality, which is our new challenge. Water quality and water quantity can no longer be treated as separate issues. Water quality is rapidly evolving to become a matter of equal importance in water transfers and water quantity. Water quality can change as fast as its use. Just as Coloradans want water available in sufficient quantity and location, they also want and need to be assured that water is the right quality for its intended use. This past legislative session a bill was enacted into Colorado law to address the effects of a water right adjudication on water quality. The Fryingpan-Arkansas Project needs to be managed in a manner that recognizes this growing concern with water quality and assists, but does not hammer, this need.

Surface water laws were written into the Colorado Constitution at the time of statehood in 1876 and became known as the "Doctrine of Prior Appropriation." Water is considered a separate water right in Colorado—rights can be sold or inherited, and prices may fluctuate according to supply and demand. The increasing demand for water by urban areas has prompted many sales, as you know, of agricultural water to cities.

Lake Pueblo is one of the components of the Fryingpan-Arkansas Project, a project which moved water, as you know, from one side of the Rocky Mountains to the other. It is a multipurpose project which built the Pueblo Dam and the system of pipelines dedicated to bringing Western Slope water to the southeast corner of Colorado. But foremost on the minds of farmers and ranchers at the time the project was conceived was winter storage and flood protection. In other words, the legislation was designed to provide supplemental water to the Arkansas River Basin. It was not designed to export that transmountain water or native water, out of the basin.

Apparently there were no references in the legislation to Arkansas Valley quality; however, as we've heard today, water quality is clearly implied in the act. As an example by implication is one component of the project which has not been implemented,

and that is the delivery of quality drinking water to the lower Arkansas Valley.

The Arkansas Valley Conduit would take from behind the dam water and via pipeline deliver it to communities and rural water providers east of Pueblo. In fact, an outlet exists on the dam specifically for the conduit. Today there are competing bills in Congress—of course we have discussed that today—attempting to discuss this conduit issue, as well as addressing the Preferred Storage Options Plan, that is, an enlargement of the dam and increased storage.

The Colorado Water Quality Control Commission is the body responsible for establishing surface water quality policy in the state. The Water Quality Control Division is the state agency charged with protecting the quality of the state's water. Despite the perceived fact that many water right holders may see a threat from water quality regulations, the protection of good quality waters benefits all users. Thus, good quality waters need protection from degradation.

Generally, effluent is the liquid that flows out of a waste treatment plant. For wastewater, the Federal Clean Water Act, Federal legislation that regulates surface water quality, and the Colorado Water Quality Control Act prohibit the discharge of pollutants from a point source to surface waters without a permit.

On October 12, 2005, I filed a lawsuit against the City of Colorado Springs, a Fry-Ark participant, for the unlawful discharges of raw materials, raw sewage, non-potable water, and chlorine from the City's collection and treatment system into the Fountain Creek and its tributaries. The plaintiffs are downstream victims of the pollution. Instead of being an amenity for downstream communities, Fountain Creek is more like an open sewer running through Pueblo.

Return flow is another issue that was mentioned earlier. In essence what's going on there is that basically the so-called Southern Delivery System, which is advocated for by Colorado Springs, would take additional high quality water through a pipeline out of Lake Pueblo in exchange for effluent or at least contaminated urban flows running back down the Fountain Creek. In other words, exchanging good water for bad.

In summary, we must recognize the value of preserving high-quality waters, stop gutting the power of water quality administrators and provide adequate funding and teeth for enforcement. The Fryingpan-Arkansas Project must be managed and evolved to support these goals, not to defeat them. Thank you.

Mrs. NAPOLITANO. Thank you, sir.

[The prepared statement of Mr. Thiebaut follows:]

Statement of Bill Thiebaut, District Attorney,
Office of the District Attorney, Tenth Judicial District, Colorado

Water Quality: Our New Challenge

"In the whole region (the West), mere land is not of value. What is really valuable is the water privilege."—John Wesley Powell, 1877.

Water quality and water quantity can no longer be treated as separate issues. Water quality is rapidly evolving to become a matter of equal importance in water transfers as water quantity. Water quality can change as fast as its use. Just as Coloradans want water available in sufficient quantity and location, they also want and need to be assured that water is the right quality for its intended use. This

past legislative session a bill was enacted into Colorado law to address the effects of a water right adjudication on water quality. The Fryingpan-Arkansas Project needs to be managed in a manner that recognizes this growing concern with water quality and assists, but does not hamper, this need.

Colorado Surface Water

Surface water laws were written into the Colorado Constitution at the time of statehood in 1876 and became known as the "Doctrine of Prior Appropriation." Water is considered a separate property right in Colorado—rights can be sold or inherited, and prices may fluctuate according to supply and demand. The increasing demand for water by urban areas has prompted many sales of agricultural water to cities. Notably, the Lower Arkansas Valley Water Conservancy District was formed to "keep every drop of water in

the Arkansas Valley." A water right is based on putting the water to a beneficial use. The Colorado Constitution recognizes a preference of water uses in the following order: domestic, agricultural, and industrial.

The Pueblo Dam

Lake Pueblo is one of the components of the Fryingpan-Arkansas Project—a project which moved water from one side of the Rocky Mountains to the other. It is a multipurpose project which built the Pueblo Dam and the system of pipelines dedicated to bringing Western Slope water to the southeast corner of Colorado. But foremost on the minds of farmers and ranchers at the time the Project was conceived was winter water storage and flood protection. In other words, the legislation was designed to provide supplemental water to the Arkansas River Basin. It was not designed to export that transmountain water, nor native water, out of the Basin. Apparently, there were no references in the legislation to Arkansas Valley water quality. However, water quality is clearly implied in the act. As an example of that implication, one component of the Project, which has not yet been implemented, is to deliver quality drinking water to the lower Arkansas Valley. The Arkansas Valley Conduit would take water from behind the Dam and via pipeline deliver it to communities and rural water providers east of Pueblo (an outlet exists on the Dam specifically for the conduit). Today there are competing bills in Congress attempting to address this conduit issue as well as addressing a "Preferred Storage Options Plan"—that is, an enlargement of the Dam and increased storage.

Colorado Water Quality

Regulation

The Colorado Water Quality Control Commission is the body responsible for establishing surface water quality policy in the state. For example, the Commission has the authority to maintain and enhance the quality of the state's waters for public water supplies, for protection and propagation of wildlife and aquatic life, and for domestic, agricultural and recreational and other beneficial uses. The Water Quality Control Division is the state agency charged with protecting the quality of the state's water by implementing federal and state water quality control and regulatory programs.

Despite the fact that water rights holders may perceive a threat from water quality regulations, the protection of good quality waters benefits all users. Thus, good quality waters need protection from degradation.

Effluent

Generally, effluent is the liquid that flows out of a waste treatment plant. For wastewater, the federal Clean Water Act, federal legislation that regulates surface water quality, and the Colorado Water Quality Control Act prohibit the discharge of pollutants from a point source (a discrete source of discharge of a contaminant) to surface waters without a permit. The U.S. Environmental Protection Agency has delegated authority to the Division to issue discharge permits to municipalities and industries. The permits specify the levels of contaminants, such as bacteria, metals, and chemicals that can be discharge by the permitted entity.

On October 12, 2005, I filed a lawsuit against the city of Colorado Springs, a Fryingpan-Arkansas Project participant, for the unlawful discharges of raw sewage, non-potable water, and chlorine from that city's sewage collection and treatment system into Fountain Creek and its tributaries. The Plaintiffs are downstream victims of this pollution. Instead of being an amenity for downstream communities, Fountain Creek is more like an open sewer running through Pueblo.

Return Flow

Return flow is unconsumed water that returns to its source or surface after use. Generally, the wastewater and return flow water at the new point of discharge should not exceed pollution limits established at the original place.

Use of existing or enlarged Pueblo Dam storage capacity by development hungry cities creates the probability of more Fountain Creek downstream victims. For example, the so-called Southern Delivery System, advocated for by Colorado Springs, would take additional high-quality water through a pipeline out of Lake Pueblo in exchange for effluent, or at least contaminated urban flows, running back down the Fountain Creek—in other words, exchanging good water for bad. Some have suggested that any diversion be piped below the confluence of Fountain Creek and the Arkansas River to assure that Colorado Springs has an incentive to send quality water downstream.

Summary

We must recognize the value of preserving high-quality waters, stop gutting the power of water quality administrators and provide adequate funding and teeth for enforcement. The Fryingpan-Arkansas Project must be managed and evolved to support these goals not work to defeat them.

[The response to questions submitted for the record by Mr. Thiebaut follows:]

On June 1, 2007, my written and oral testimony stated, in part:

"On October 12, 2005, I filed a lawsuit against the city of Colorado Springs, a Fryingpan-Arkansas Project participant, for the unlawful discharges of raw sewage, non-potable water, and chlorine from that city's sewage collection and treatment system into Fountain Creek and its tributaries. The Plaintiffs are downstream victims of this pollution. Instead of being an amenity for downstream communities, Fountain Creek is more like an open sewer running through Pueblo."

Question by Representative John Salazar, Guest Member of the Committee

What are the numbers of spills since the lawsuit was filed?

Response

Sewage Spills

Since October 12, 2005, there have been 20 sewage spills. This number includes only spills that reached receiving waters. Colorado Springs has had many additional sewage spills from their system that did not reach receiving waters.

Non-potable Water Spills

Since October 12, 2005, there have been 6 non-potable water spills. This number includes only spills that have reached receiving waters. Colorado Springs has had many additional non-potable water spills that did not reach receiving waters.

Chlorine Violations

Since October 12, 2005, there have been 4 chlorine violations at the treatment plant discharge point.

Mrs. NAPOLITANO. Next we have Mr. Jay Winner, General Manager of Lower Arkansas Water Conservancy District.

STATEMENT OF JAY WINNER, GENERAL MANAGER, LOWER ARKANSAS WATER CONSERVANCY DISTRICT, ROCKY FORD, COLORADO

Mr. WINNER. Madam Chair, members of the Subcommittee, thank you.

The Fryingpan-Arkansas Project promised a golden future for the Arkansas Valley in the sweltering years of the 1950s. Already ravaged by the drought of the 1930s, the valley's residents embraced the prospect of additional water with unprecedented enthusiasm. Now there would be a new supply of water and insurance against the droughts of the future.

Now 45 years after the inception of the Fryingpan-Arkansas Project, the golden future has turned into a last stand for the communities east of Pueblo, the apparent losers so far in a race to develop increasingly scarce water resources in the Arkansas Valley.

Has the project met its purposes? For the major population centers of the valley, Colorado Springs and Pueblo, the project has done an admirable job. It has provided the storage that allows these cities to continue to grow.

The Western Slope has benefited as well, with compensatory storage that has allowed for stable flows to aid the environment and a new source of water for its people.

For the farms east of Pueblo, it has provided a temporary source of water that merely replaced other more difficult to maintain sources of water. In fact, the conversion of Twin Lakes from an agricultural buffer to a municipal reservoir was hastened by the promise of Fry-Ark water.

But farms have not prospered as intended by the 1962 Fryingpan-Arkansas authorization. Irrigated acreage has decreased since the project began. Despite its significant imports, transfers have permanently removed 65,000 acres of farmland irrigation since 1955. Canals continue to be short in supply and the ditches are the target of unceasing raids on the water supply for municipal and industrial use.

Approximately 121,000 acre-feet were sold for use outside the main stem of the Arkansas River through 2002. This is one-fifth of the historic average native Arkansas River flow.

For the communities east of Pueblo, the Fry-Ark Project has so far been a disaster. An economy once bolstered by thriving farms and the demand for goods and services by rural families has become a string of economically depressed communities struggling to survive. In 1976, Rocky Ford had a graduating class of 129. In 2006, a graduating class of 40. Lake County in 1973 had a graduating class of 131, and in 2006, a graduating class of 61.

The poor water quality of the valley was recognized in the earliest Congressional testimony on the Fryingpan-Arkansas Project. The remedy was to develop water resources as a primary supply for cities like Rocky Ford, La Junta, Las Animas and Lamar.

Today the Arkansas Valley Conduit remains only a dream for those cities, while the Federal government is taking steps toward projects that will only worsen the water quality in incremental, but deadly, steps. Those communities have been through a series of last stands: The decline of the family farm, the collapse of the regional sugar beet industry and the endless water raids.

In contrast, the city of Colorado Springs has thrived beyond all expectations of the hopeful people who were forming the Southeastern Colorado Water Conservancy District 50 years ago. At that time, Pueblo was larger than Colorado Springs, a quaint mountain city seemingly in the league with its partners in the Arkansas Valley.

Through its partnership with Colorado Springs, Aurora has bullied its way into the Arkansas Valley. Without the Homestake Project, Aurora never would have gained a toehold in the Arkansas Valley and developed an absurd premise of moving one-third of its annual water supply 300 miles from what were once productive

farms. The Bureau of Reclamation has compounded that technical and moral error through its annual contracts with Aurora. In just three days, the Bureau of Reclamation is planning to finalize a contract that will tie up part of the Fryingpan-Arkansas Project for the next 40 years.

One issue of significance is exchanges. Aurora and others trade pristine mountain water for poor quality water from the lower Arkansas Valley through exchanges, exchanges made possible by the reservoirs of the Fry-Ark Project.

Here is a good example of an exchange. This is what is purchased. This is what people get.

Mrs. NAPOLITANO. Will you hold it up, please.

Mr. WINNER. This water has a purchased cost right around $1,700 per share. The water that they get, if they were to purchase it, is about $25,000 per share.

When we talk about water quality, I believe this is a very good example of what has happened in the Arkansas Basin. In the Arkansas Basin, we currently have two RO plans, one in La Junta and one in Las Animas. I have asked over and over and over to municipal providers, why don't you take what you purchased? The answer is always the same. Jay, it's too expensive for us to clean it up. It's the burden of that cleanup that falls on the people of the Arkansas Valley. Thank you.

[The prepared statement of Mr. Winner follows:]

Statement of Jay Winner, General Manager,
Lower Arkansas Valley Water Conservancy District

Madame Chairwoman, members of the Subcommittee, I am Jay Winner, the General Manager of the Lower Arkansas Valley Water Conservancy District

Thank you for being here in the Lower Arkansas Valley today, and your invitation to testify.

The Fryingpan-Arkansas Project promised a golden future for the Arkansas Valley in the sweltering years of the 1950s. Already ravaged by the drought of the 1930s, the valley's residents embraced the prospect of additional water with unprecedented enthusiasm. Now, there would be a new supply of water and insurance against the droughts of the future.

Now, 45 years after the inception of the Fryingpan-Arkansas Project, that golden future has turned into a last stand for the communities east of Pueblo, the apparent losers so far in a race to develop increasingly scarce water resources in the Arkansas Valley.

Has the project met its purpose? For the major population centers of the valley, Colorado Springs and Pueblo, the project has done an admirable job. It has provided the storage that allows these cities to continue to grow.

The Western Slope has benefited as well, with compensatory storage that has allowed for stable flows to aid the environment and a new source of water for its people.

For the farms east of Pueblo, it has provided a temporary source of water that merely replaced other, more difficult-to-maintain sources of water. In fact, the conversion of Twin Lakes from an agricultural buffer to a municipal reservoir was hastened by the promise of Fry-Ark water.

But farms have not prospered as intended by the 1962 Fryingpan-Arkansas authorizing legislation. Irrigated acreage has decreased since the project began, Despite significant imports, transfers have permanently removed 65,000 acres of farmland from irrigation since 1955. canals continue to be short in supply and the ditches are the targets of unceasing raids on their water supply for municipal and industrial uses. Approximately 121,520 acre-feet were sold for use outside the main

stem of the Arkansas River through 2002.[1] This is one-fifth of historic average native Arkansas River flows.[2]

For the communities east of Pueblo, the Fry-Ark Project has so far been a disaster. An economy once bolstered by thriving farms, and the demand for goods and services by rural families, has become a string of economically depressed communities struggling to survive. (Rocky Ford Year book)

The poor water quality of the valley was recognized in the earliest congressional testimony on the Fryingpan-Arkansas Project. The remedy was to develop water resources as a primary supply for cities like Rocky Ford, La Junta, Las Animas and Lamar. Today, the Arkansas Valley Conduit remains only a dream for those cities, while the federal government is taking steps toward projects that will only worsen water quality in incremental, but deadly, steps.

Those communities have been through a series of last stands: the decline of the family farm, the collapse of the regional sugar beet industry and the endless water raids.

In contrast, the City of Colorado Springs has thrived beyond all expectations of the hopeful people who formed the Southeastern Colorado Water Conservancy District 50 years ago. At that time, Pueblo was larger than Colorado Springs, a quaint mountain city seemingly in league with its partners in the Arkansas Valley

Through its partnership with Colorado Springs, Aurora has bullied its way into the Arkansas Valley. Without the Homestake Project, Aurora never would have gained a toehold in the Arkansas Valley and developed the absurd premise of moving one-third of its annual water supply 100 miles from what were once productive farms. The Bureau of Reclamation has compounded that technical and moral error through its annual contracts with Aurora. In just three days, the Bureau of Reclamation is planning to finalize a contract that will tie up part of the Fryingpan-Arkansas Project for the next 40 years.

One issue of particular significance is exchanges. Aurora and others trade pristine mountain water for poor quality water from the Lower Arkansas Valley through exchanges—exchanges made possible by the reservoirs of the Fry-Ark Project.

The poor quality of water for downstream users was well documented more than 50 years ago. Instead of the making that water better—the real golden promise of the Fryingpan Arkansas Project—the federal government has established the means to adopt policies that will actually make the water worse.

Aurora would like to increase such exchanges. Aurora should never have been allowed into the Arkansas Basin through a federal project before all of the needs of the Basin were satisfied. Within the Southeastern District, there are communities whose water needs have never been met by the project. This past year, the district struggled mightily for more than nine months, to come up with a way to accommodate Pueblo West and Manitou Springs.

The LAVWCD, among many others, firmly believes that nothing in the Fry-Ark authorizing act and amendments,[3] including documents incorporated by reference in the statute, provides authority for Reclamation to enter into long-term excess capacity contracts with Aurora. In particular, the proposed exchange contract is so far outside established law that Reclamation's authority to enter into such a contract is speculative, at best. Yet Reclamation would promote Aurora to the head of the class in its proposed contract when it comes to water exchanges.

Reclamation's authority to contract for non-project use of the Fry-Ark Project is not a new issue. It has been the subject of a lively and at times heated debate for over 20 years.[4] But the issue is approaching a critical juncture since Reclamation appears poised to issue excess capacity storage and exchange contracts with Aurora.

It seems to the LAVWCD that there are only two ways to resolve this issue: Congressional legislation or federal litigation.

The LAVWCD continues to believe that it is preferable to solve this issue—and others involving the Fry-Ark Project—through negotiations leading to an agreement that the parties could jointly recommend to Congress. To that end, the LAVWCD remains ready, willing and able to negotiate its concerns with Aurora, although, frankly, not everyone at Aurora has been similarly committed to engaging in good faith discussions. Perhaps—whether or not Reclamation heeds Senator Salazar's re-

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[1] Charles H. Howe, "The Regional Economic Impacts of Transfers of Water from Irrigated Agriculture in the Arkansas Valley of Colorado to In-Basin and Out-of-Basin Non-Agricultural Uses," at 6 (2002).

[2] Colo. Div. of Water Resources, "Annual Report," at 17 (1995).

[3] Pub. L. No. 87-590 (76 Stat. 389, Aug. 16, 1962), amended by P.L. No. 95-386 (92 Stat. 2493, Nov. 3, 1978).

[4] Letter dated July 13 (?), 1985 from Raymond H. Wilms, Fry-Ark Project Manager, to Tom Griswold, Aurora Manager of Planning and Resources.

quest (which the LAVWCD supports) to defer action on the proposed contracts pending the completion of negotiations—Aurora will find a way to engage in constructive negotiations to address issues of concern to the Lower Valley.

The alternative to legislation is litigation. The LAVWCD hopes that the issue of Aurora's contracts will not lead to court. However, the District is investigating and, if necessary, will pursue all available legal avenues to protect the future of the Lower Arkansas Valley.

In Lake County, where two of the project's major lakes are located, officials complain about rough treatment at the hands of Reclamation. At the other end of the valley, residents in Kiowa County have not received one drop of water through the project.

Yet Aurora is promoted to the head of the class when it comes to water exchanges in its pending contract with the Bureau of Reclamation.

It's no wonder that in 2002, the voters in the five counties in the Lower Arkansas Valley—Bent, Crowley, Otero, Prowers and Pueblo—voted overwhelmingly to form the Lower Arkansas Valley Water Conservancy District. Embroiled in yet another drought, the residents of the five counties formed the district as a defensive measure to protect themselves from even more losses. In a way, it was yet another "last stand."

The Lower Valley simply cannot afford any additional permanent transfers of agricultural water that would further undermine its economic future. That is why the LAVWCD has been investing time and money to develop a viable alternative to permanent agricultural transfers that will both strengthen irrigated agriculture and address the water needs of municipal and other users.

Success will require some fundamental changes in the relationships between the interests involved, primarily in the form of new partnerships and cooperation. The LAVWCD has, accordingly, been working for over two years on a nine-party intergovernmental agreement. The draft IGA envisions a water future that addresses everyone's future social and economic well being.

The Lower Arkansas Valley has a high proportion of Hispanic and low-income residents. In fact, Hispanic residents constitute over a third of the population of the LAVWCD.[5] In addition, residents living below the poverty level ranged from 14.9 to 19.5 percent in the five counties that comprise the LAVWCD in 2000.[6]

President Clinton recognized that minority and low-income populations often bear disproportionately high and adverse human health or environmental effects of governmental programs.[7] The possibility exists that minority and low-income populations could bear adversely high negative effects of future changes in the administration of the Fry-Ark Project. For example, Reclamation has proposed entering into long-term excess capacity contracts for the use of Fry-Ark facilities with Aurora, where the Hispanic population is roughly half that of Pueblo County.[8] Similarly, the poverty rate in Aurora is between a third and a half of that found in the LAVWCD.[9]

In short, the proposed excess capacity contracts with Aurora run counter to fundamental concepts of justice and the new partnerships and cooperation that the LAVWCD and others are trying to foster.

As pressures on Colorado water by outside municipal users grow in coming years, what does the future hold for the Arkansas River? Do we continue to let the Fryingpan-Arkansas Project be used as a siphon that will continue to degrade water quality in the basin? Or do we complete the golden promise of the project for the communities, particularly those east of Pueblo?

The ultimate question for water users in the Lower Arkansas Valley is: "How many more last stands can we survive?"

Thank you for your attention. I will be happy to try to answer any questions

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Mrs. NAPOLITANO. Thank you, and next is Sandy White, the water attorney from La Veta.

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[5] U.S. Bureau of the Census, "State and County Quickfacts," available at http://quickfacts.census.gov/qfd/states/08/08011.html.

[6] Id.

[7] Executive Order 12898 (Feb. 11, 1994).

[8] U.S. Bureau of Census, "Factfinder, Aurora City, Colorado," available at http://factfinder.census.gov/servlet/SAFFFacts?

[9] Id.

STATEMENT OF SANDY WHITE, WATER LAWYER, LA VETA, COLORADO

Mr. WHITE. Thank you, Madam Chairman—or Chairwoman.

Mrs. NAPOLITANO. May I interrupt just to start time over again, please. I am going to have to step aside and I will turn it over to Ranking Member, Mr. Lamborn. I'll be right back.

Mr. LAMBORN. Thank you, Madam Chairwoman. And Mr. White, can you please continue and give us your testimony.

Mr. WHITE. Thank you very much, Madam Chair and members of the Subcommittee. I'm Sandy White. I have represented clients. I'm a water lawyer. I've represented clients in the Arkansas Valley since 1971. I currently appear before you on behalf of Pueblo Chieftain and the Arkansas Native L.L.C., which is a water right owner and is determined to protect the Arkansas Valley and the Fry-Ark Project.

Now there's a lot of material in my written testimony, but I'd like to try to respond in the few minutes I have to some questions that have come up and are within my testimony. One of the questions the Chairwoman had was what were the purposes of this project, and we've heard that it's a large multipurpose project. Just about everything including the kitchen sink can be found in the preamble to the authorizing act of 1962.

The real question is what is this project meant to do? And that same language appears in maybe a couple of dozen other project authorizing acts. What is the Fry-Ark Project meant to do? And there are two purposes that have developed and were initially intended. One, as President Kennedy said in the film clip we watched, is to import water into the Arkansas Valley. The second is to enhance the base flows that are already in the Arkansas Valley, and that's been done by creation of some Eastern Slope storage that captures flood flows, for example. So you have two purposes: To bring in transmountain water, or imported water, and to enhance the base flow.

Into this situation came Aurora. It bought water rights to the base flow, far downstream from Pueblo, down where the water looks like what was on your right when Jay held things up. It is now proposing, or the Bureau is proposing, to enter into a contract with them that would swap that water for the clear water that's found in Twin Lakes and Turquoise Lake reservoirs. Only by using the project facilities through a process of storage and exchange is Aurora able to move the water upstream and out of the basin.

So the thrust of my testimony is that based on the purposes of the project, the Bureau is not authorized to enter into that contract with Aurora.

Now we've heard two things discussed in the way of authorization. One was Section 14 of the Reclamation Act. That's codified at 43 USC 369. And you read that, and yes, indeed, it is possible for the Secretary of Interior to enter into these kinds of contracts. But he must make a finding that the contract is necessary and that it is in the interests of the project.

Neither of those findings has been made. And so when you get the material from the Solicitor's Office that was volunteered by the Bureau, look for where did the Secretary make those findings? He

hasn't made those findings. The Bureau is essentially on an adventure of its own.

We also heard about the Homestake Project and the connection between the Homestake Project and the Fry-Ark Project. The 1965 contract that was mentioned was entitled "Contract for the Transportation of Water From the Homestake Project." Now there is a Section 10B in that contract that talks about the storage of water in east slope facilities. But what it says is that the Bureau grants Aurora an option to negotiate for such a contract. So the argument must be that by granting Aurora an option to negotiate, the Bureau also created its own authority to enter into that contract.

It is an absurd argument. The Bureau adopted it early on, over 15 years ago, and has now dropped it. And I know of no one who seriously carries it forth. So there is no authority. There has been no finding by the Secretary, and more importantly perhaps, under Section 390, according to USC 390, there has been no Congressional approval as required by that section.

Mr. LAMBORN. Mr. White, thank you for your testimony.

Mr. WHITE. Thank you.

[The prepared statement of Mr. White follows:]

Statement of Sandy White, Pueblo Chieftain and Arkansas Native, LLC

Chairwoman Napolitano and Members of the Subcommittee:

I am Sandy White, a local water lawyer from La Veta, Colorado, and a partner in the Denver firm of White & Jankowski, LLP. I have represented clients on the Arkansas River since 1971. Today, I appear on behalf of the Pueblo Chieftain and Arkansas Native, LLC, a water right owner determined to protect the Arkansas River Basin and the Fryingpan-Arkansas Project. Thank you for inviting me to testify concerning the Project. As noted in the subject of this hearing, the larger issue is "sustainable water." In this basin whose native water has long been over-appropriated, the Fry-Ark Project's purposes of regulating base flows and importation of water to supplement the base flow are essential to a sustainable water supply, a sustainable economy.

Background and Introduction

Almost forty-five years ago, on August 16, 1962, President John F. Kennedy signed PL 87-590, authorizing the Fry-Ark Project. Two days later, he flew to Pueblo where he spoke at the then Pueblo Public Schools Stadium, about 6 blocks from here. After acknowledging the worthies on the podium, the President began: "I don't think there is any more valuable lesson for a President or for a member of the House and Senate to fly as we have flown today over some of the bleakest land in the United States and then to come to a river and see what grows next to it—to know how vitally important water is." Noting that federally funded Reclamation projects were started some sixty years before under President Theodore Roosevelt's administration, President Kennedy went on. "We are finally on our way to bringing water through the Continental Divide into the Arkansas River Basin."

Other witnesses have and will describe to you the vast benefits brought by the Project to the valley. I testify, however, in opposition to a planned future development: the Bureau's proposed 40-year "excess storage contract" with the City of Aurora.

Under that contract, Aurora will use Project facilities to facilitate its export of water out of the Arkansas Basin for municipal use in Aurora. Located some 115 miles from here, Aurora is a large and powerful city. It has many good qualities, but it is not in the Arkansas Basin. The proposed contract will increase Aurora's average annual exports by over 20,000 a.f..

We must ask: If President Kennedy thought he signed project authorization to bring water into the Arkansas Basin, how is it that the project facilities will now be used to help Aurora or anyone else take water out of the basin?

Summary

The Bureau of Reclamation is without authority to enter into the proposed Aurora contract:

1. Original Project purposes are diametrically opposed to current contract purposes.

- The original purposes of the Project were two-fold: (1) to make more efficient use of Arkansas base or native flows by providing storage facilities on the Arkansas, and (2) to add new water to the Arkansas by importing supplemental supplies from the Colorado River Basin into the Arkansas.
- Under the Aurora contract, however, instead of using Project facilities to enhance the Arkansas base flows or to import supplemental water, the Bureau proposes to lend Project facilities to facilitate Aurora's taking water from the Arkansas Basin.

2. For the Bureau to be authorized to enter the Aurora contract, two things must happen.

- The Secretary of the Interior must find, inter alia, that the contract is "necessary" and "in the interests of the project," 43 USC § 389, and
- Since the Aurora contract "seriously affects" project purposes and involves "major operation changes," Congress must give its approval. 43 USC § 390(d)

3. For the Bureau to comply with Colorado law in the Project's "control, appropriation, use, and distribution of water," P.L. 87-590, § 5(e), under the Aurora contract:

- The Project's west-slope water must be used solely in the Arkansas basin, based on Project water right decrees.
- There may be no "re-coloring" of imported water as native water. Thornton v. Bijou.
- Each contract exchange must either be approved by water court decree or be administered by the State Engineer, Empire Lodge v. Moyer, not by the Bureau's Regional Director, who is given "exclusive authority" over the exchanges by the Aurora contract.
- Contract exchanges should operate only when Aurora's decreed exchanges could operate, thereby complying with the terms and conditions imposed by state law.
- Since the Aurora contract's Environmental Assessment expressly avoided consideration of water right injury, only court adjudication or State Engineer administration of those exchanges will protect other water rights.

Aurora's Problem Water

How did this situation arise? First, Aurora purchased some Arkansas water which is diverted some 25-90 miles downstream from here. At that point, Aurora faced a geographic problem. The city had no feasible way to move the water directly from its original head-gate to Aurora's terminal storage and water treatment facilities. A 115 mile pipeline is mighty expensive. In addition, the water quality diverted in that reach of the Arkansas is not attractive for municipal use, particularly in comparison with water much farther upstream near the headwaters.

As a result, Aurora started to work its water upstream—towards the point where the distance is shorter, where the headwaters of the Arkansas and South Platte River basins back up to one another. First, Aurora got temporary annual contracts with the Bureau to store its water in Pueblo Reservoir. That was followed by state water court decrees allowing that storage. Then Aurora got decrees allowing it to exchange the water from Pueblo Reservoir to its Otero Pump Station, some 115 miles upstream. At Otero, Aurora has existing facilities which can pump water into the South Platte River basin. However, Aurora's decrees imposed strict terms and conditions on the storage and exchanges, limiting Aurora's ability to exchange water to the Otero Pump Station.

The Aurora Contract

Even though Aurora is in a different river basin and will not use its water in the Arkansas basin, the Bureau of Reclamation agreed to assist Aurora. A deal was struck in the form of Contract No. 07XX6C0010. Comments on the final draft contract are due on or before June 4th, next Monday.

Under the contract, Aurora could continue to store its water in Pueblo Reservoir; not for just one year, but for 40 years. Once the water was stored in Pueblo Reservoir, the Bureau would help Aurora again. Finding it difficult to comply with the terms and conditions of its decrees, Aurora needed a way to circumvent them. Again the Bureau was there to help. When Aurora could not operate under its decrees, the Bureau itself would move the water upstream. It would do so by "accounting." In what came to be called "contract exchanges" the Bureau would trade Aurora the same amount of Project water upstream as native water Aurora stored downstream in Pueblo Reservoir. Consequently, Fry-Ark Project water stored in project facilities, Twin Lakes or Turquoise Lake reservoirs which are 125 and 150 miles upstream, will become Aurora's water by computer keystroke. From those reservoirs, Project

water is then released back to the Arkansas River. It flows 26 and 11 miles downstream, respectively, before it is diverted by Aurora at the Otero Pump Station. Once diverted the water flows through a tunnel to the South Platte River. See Map of Project Area, Attachment # 1, as well as Map of District Boundaries, Attachment #2, and Exchange Schematic, Attachment #3, to this testimony.Project Purposes

The Project's Authorizing Act, PL 87-590, simply describes a multi-purpose reclamation project. The legislative history and documents which the act incorporated, however, tell a more specific story. See the Project's engineering plans (House Doc. No. 187, 83rd Cong., as modified), and the Project operating principles (House Doc. No. 130, 87th Cong). The Project's original purpose was to provide supplement municipal and irrigation water by: (1) making more efficient use of the Arkansas base or native flows by providing eastern slope storage facilities, and (2) to add new water to the Arkansas by importing water from the Colorado River Basin (Fryingpan River) into the Arkansas.

Enhancing the base flows

As Secretary Udall wrote to the respective committee chairs in the House and Senate, "The Project contemplates [inter alia] the construction of storage on the eastern slope—for eastern slope floodwaters and winter flows averaging 50,000 and 93,000 acre-feet per annum, respectively." Senate Report No. 1742, Senator Carrol's Report of Accompany Fry-Ark Bill (July 1962). The Report itself described "regulation of winter flows" and "conservation of floodflows" in the respective annual amounts of 88,600 a.f. and 19,100 a.f.

Importation of supplemental water

According to the then Chairman of the House Interior Committee, Colorado's Wayne Aspinall, speaking on the floor of the House, "The purpose of the Project is to take water out of the Fryingpan tributaries and send it across the mountains—and drop it into the Arkansas Valley and send it down to the users—in the Arkansas Valley. Congressional Record—House, June 12, 1962, p. 9404.

The authorizing act itself incorporates and directs the Bureau "to comply with—operating principles" contained in House Document Numbered 130, hereinafter "HD-130." PL 87-590, §§5(e), 3(a). Those principles define the Project as one "planned and designed—for the transmountain diversion of water—to the basin of the Arkansas River." The operating principles also provide that the SECWCD shall "acquire title to the water required by the project for diversion to the Arkansas Valley." HD 130, §§1(a), 18.

The Bureau itself has recognized that the purpose of the Project facilities is to bring water to the Arkansas basin. In the Aurora contract's Environmental Assessment, for example, the project is described as a "multipurpose transbasin project that delivers water from the West Slope of Colorado to the upper Arkansas River basin" EA, §1.1, p. 1, emphasis added.

The incontrovertible purpose of Fry-Ark Project facilities is to import water into the Arkansas River basin. Nevertheless, under the Aurora Contract, those works will be used to facilitate the export of water from the Arkansas basin.

The Bureau is Not Authorized to enter the Aurora Contract

Perhaps the most important issue to address by way of oversight is: Whether the Bureau is authorized to enter into the proposed Aurora Contract. The proposed Aurora Contract would be authorized only under two circumstances: (1) if the Secretary of Interior were to find that the changes in Project operations required by the Contract are in the "interests of the Project," and (2) if Congress were to approve of the changes wrought by the contract which "seriously affect" operations. Let's take these requirements one at a time.

Secretarial Finding

The Reclamation Act, §14, codified at 43 USC §389, authorizes the Secretary of Interior, "for the purpose of orderly and economical construction or operation and maintenance" of a project to enter into "such contracts for exchange or replacement of water—as in his judgment are necessary and in the interests of the United States and the project." (emphasis added) Accordingly, at pp. 1-2, the Aurora Contract repeats in full the requirements of §14, above.

Nevertheless, the contract nowhere reflects that the Secretary or his appropriate designee has made such a judgment or finding that the Aurora Contract is "necessary and in the interests of the United States and the project." Informally, the Bureau points to the April 3, 2003, letter from Reclamation Commissioner John W. Keys, III, to James Broderick of the Southeastern District. The letter is Attachment #4 to this testimony. Attachment #5 is Regional Director Bach's letter of August 20,

2003. She cautions, "The request for any such contracts, however, will be reviewed for authority and evaluated on a case-by-case basis...."

In his letter the Commissioner neither makes nor reports any finding as required by § 14. Instead, he simply says, "we have concluded that such authority exists" to issue a long-term contract to Aurora. Without providing any support for his conclusion, the Commissioner continued, "The arrangements with the City of Aurora will not adversely affect Reclamation's contract" with the Southeastern District. The Keyes letter could be considered an appropriate finding only if non-interference with Reclamation's contract with the district means the same as being "necessary and in the interests of the...project." It does not.

Should the Secretary make such a determination, it would be an abuse of discretion on two related counts. First, since the purpose of the Fry-Ark Project is to enhance the base supply of the Arkansas River, it cannot be in the interest of the Project to facilitate removal of a portion of that base supply. Second, since the purpose of the Project is also to import water into the Arkansas basin, it cannot be in the best interest of the Project to use its facilities to enable the export of water from the basin. It strains credulity to assume that the discretion of a rational public servant could be properly exercised to decide that black is white, that up is down or, in this instance, that in is out, i.e. that import means export.

Congressional Approval

Another provision of the Reclamation Act, 43 USC § 390(d), provides that any project modifications—which would seriously affect the purposes for which the project was authorized—or which would involve major—operational changes shall be made only upon the approval of Congress."

The Fry-Ark Project was authorized to enhance the base supply of the Arkansas River and to import water into the Arkansas basin as a supplemental supply to the existing base supply. The Aurora Contract, however, is designed to diminish the base flows and to export Project water from the basin.

Although the amounts involved are relatively small, compliance with the proposed Aurora contract will reverse Project purposes. Instead of enhancing base flows, they will be diminished. Instead of importing supplemental water, it will be exported. The reversal of purposes involves "major operational changes" which would "seriously affect the purposes for which the project was authorized." Congress must approve these operational changes. It has not.

Intergovernmental Agreement

Even after Commissioner Keys' letter of April 3, 2003, Aurora and the SECWCD continued to seek "the enactment of federal legislation expressly authorizing Reclamation to enter into contracts—with Aurora for use of Fryingpan-Arkansas Project facilities." Intergovernmental Agreement Between the Southeastern Colorado Water Conservancy District and the City of Aurora (Oct. 2003) (hereinafter "2003 IGA"), p. 2.

Indeed one of the purposes of the IGA was to cooperate "in efforts to pass federal legislation that provides specific authorization—for Aurora's contracting for "if-and-when" available storage and exchange use of excess capacity in current Fryingpan-Arkansas facilities," 2003 IGA, § II. A, B, and to "request Members of Congress to introduce and support federal legislation" to the same effect. Id.,§ III.B.1.iii.

Prior to its IGA with Aurora, the SECWCD adamantly opposed any proposed Bureau contract with Aurora. In 2001, counsel for the District prepared a lengthy (23 pp) memorandum regarding the authority of the Secretary of Interior to contract with Aurora for use of Fry-Ark Project "excess capacity space to store native Arkansas River water right for use out of the Fry-Ark service area and the Arkansas River Basin." He concluded that there was no authority except, perhaps, the 1920 Miscellaneous Purposes Act which requires several conditions for such a contract, including that no other practicable water supply source is available. In a portent of things to come, perhaps, the District's counsel concluded, "At a minimum, Southeastern contends that no contract could be entered with Aurora pursuant to the 1920 Miscellaneous Purposes Act without Southeastern's approval." Memorandum, Lee E. Miller to Brian Person, March 9. 2001, re: Authority to contract with Aurora for use of Fry-Ark excess capacity space to store and transport native Arkansas River water rights out of the Arkansas River Basin.

To induce SECWCD approval, Aurora committed itself to payments totaling some $19,000,000. 2003 IGA,§ III.E. Most of those payments are due only after "execution by Aurora and Reclamation of a long-term contract for use of Fryingpan-Arkansas facilities." § III.E.1.a, b, III.E.3. In the meantime, the District is to be on its best behavior: "Until Aurora obtains a forty year contract with Reclamation, South-

eastern will not oppose Aurora's request for annual 'if-and-when' agreements for storage and exchange purposes."

Is it surprising that Aurora continues to feel that the Bureau needs express legislative authority before entering into the Aurora Contract? Probably not, considering what the current statutes say, as discussed above. What is surprising is that the District allowed itself to be co-opted. If the custodian of the Fry-Ark Project itself can be bought off, the only chance for water users in the Arkansas Valley who are the intended beneficiaries of the Project is that Congress will see fit unconditionally to close the door on the type of adventurism being displayed by Aurora and the Bureau.

Parenthetically, it should be noted that Aurora has entered IGAs with innumerable other entities in the Arkansas Basin, often providing substantial consideration for their cooperation. In addition, under the proposed contract, Aurora is also paying the Bureau well over $60 million. All-in-all, a good bargain in light of the alternative, a much costlier pipeline and water treatment facility.

The First (1986) Aurora Contract

The Bureau's first excess storage contract with Aurora was executed in 1986. Like those that followed, the contract was limited to one year. The Southeastern District (SECWCD) challenged the Bureau's authority to enter the contract. Relying on the incidental purposes provision in the authorizing legislation ("other useful and beneficial purposes incidental thereto"), the Bureau brushed aside the District. The Bureau went on to rely on § 10(b) of the "Homestake Contract" for authority. Raymond Williams' April 30, 1986, letter to Raymond Nixon (emphasis added).

Executed in 1965 between the Bureau and the cities of Colorado Springs and Aurora, the Homestake Contract provides for the transportation of Homestake water. The one possible exception is § 10(b). It "grants an option to the Cities to negotiate for additional storage service in the Eastern Slope project works" of the Fry-Ark Project. The type of water to be stored is not specified, but from the context and the title of the contract, the most likely interpretation is that it is Homestake water. Agreement between the United States and the Cities of Colorado Springs, and Aurora, Colorado for the Transportation of Water from the Homestake Project, Contract No. 14-06-700-6019, December 14, 1965.

The history of Aurora's first contract has little of value by way of providing authority for today's proposed contract. The incidental purposes provision is a weak reed. Relying on it to support diminishing the Arkansas River base supply or the exporting of Project water from the river, would transform incidental purposes into super-purposes, those which conflict with and override primary purposes.

Similarly, § 10(b) of the Homestake Contract, simply grants an "option to negotiate," nothing more than permission to apply. It certainly doesn't give the Bureau the authority to enter into such a contract. If it did, then the Bureau would have never-ending opportunities to expand its authority, with regard to any project, simply by executing contract after contract granting options to negotiate for other contracts which were theretofore unauthorized.

Finally, as pointed out by the Williams letter, the 1986 Aurora contract "specifically excludes exchanges involving Project water." That Project water is "involved" in the proposed contract is undeniable. According to Williams, the 1986 Aurora contract "requires both storage of water and any exchange with nonproject water to be approved by the State of Colorado Division of Water Resources." No such state administration is contained in the proposed contract. As pointed out below, it must be.

Compliance with Colorado Law

The authorizing act also requires Project operation to "comply with the laws of the State of Colorado relating to the control, appropriation, use, and distribution of water therein." PL 87-590, § 5(e), emphasis added.

Filings and Decrees

The filings and decree for the Fry-Ark Project's western-slope water leave little doubt about where it was intended to be used.

To create prima facie evidence of the appropriation of water rights for the Fry-Ark Project, pursuant to 1953 CRS 147-4-1 et seq. and 1963 CRS 148-4-1 et seq., the SECWCD and its predecessor filed maps with the Office of the Colorado State Engineer. Those maps recited that the Fry-Ark Project works "are to be constructed for (a) Supplying water to the lands of the Arkansas Valley in Southeastern Colorado; (b) Domestic water supply in the area served; (c) The regulation and flood control of waters in the Arkansas River and its tributaries; (d) Power, recreational, and industrial purposes; [and] (e) Other beneficial consumptive and nonconsumptive uses in the area served." Filings in the Office of the Colorado State Engineer num-

bered 20997 and 20997A, accepted February 1, 1957, and November 25, 1968, emphasis added.

After filing the maps, the SECWCD began to adjudicate its state water rights for the Fry-Ark Project. On the western-slope, for example, the decree provided that Project Water "will be used for irrigation, manufacturing, domestic, municipal, power, and other beneficial purposes. Various cities and towns in the Arkansas Valley in Colorado will use such water for all municipal purposes". The various ditch companies and farmers of the Arkansas Valley will use such water for all farming purposes...." Decree, Supplemental Adjudication, Water District 38, In the District Court in and for Garfield County, Colorado, CA 4613, entered July 21, 1959, Art. VIII, pp 25-26 (emphasis added).

Consequently, the intent of the Fry-Ark Project appropriations and the provisions of the decree which made them enforceable was to provide water for beneficial use only in the Arkansas River basin. By the proposed Aurora Contract, the Bureau now intends to allow project water to be exported from the Arkansas Basin for beneficial use elsewhere. To do so lawfully, an application must be made to and a decree obtained from the Colorado Water Court authorizing the change of place of use. The appropriate venue for such an application is the Division 2 Water Court, Pueblo. People v. Ogburn, 194 Colo. 60, 570 P.2d 4 (1977)

Re-coloring

The Bureau may seek to avoid the prohibition on export of Project water by simply presuming that Project Water may be re-colored or relabeled as reusable native Arkansas water which may be diverted out of the Arkansas basin.

The Colorado Supreme Court has rejected the practice of re-coloring Project water in an exchange. It determined that project water cannot be relabeled as reusable native water. In Thornton v. Bijou, 926 P.2d 1 (Colo. 1996), involving the Bureau of Reclamation's Colorado-Big Thompson Project, the court was faced with a similar municipal attempt to exchange Non-Project Water for Project Water, then export the Project Water outside of the Northern Colorado Water Conservancy District. As the Bureau does here, Thornton asserted that the "character of exchange rule" provides that water diverted by exchange takes on the character of the substitute supply, i.e. if Project Water is diverted in exchange for Non-Project Water, the Project Water becomes Non-Project Water available for diversion out of the district. Noting that the trial court labeled the rule as a "legal fiction," Thornton, 926 P.2d 1, 70, the Supreme Court "affirm[ed] the trial court's denial of Thornton proposed application of CBT water for replacement and exchange purposes creating benefits for Thornton outside the boundaries of the NCWCD." Thornton, 926 P.2d 1, 77.

Consequently, any Project Water in Twin Lakes or Turquoise reservoirs which is the subject of Aurora's contract exchange is still Project Water which cannot lawfully be exported to the South Platte River basin.

State Engineer supervision

Under the proposed contract, "The [Regional Director] shall have exclusive authority to determine if and when an exchange may occur," and he "shall execute the exchanges herein contemplated through reservoir water accounting procedures." Aurora Contract,]] 5.b.(2),(3). These provisions presumably apply only to the "contract exchanges" authorized by the Aurora Contract. Those exchanges, however, would only "occur when the exchange potential in the Arkansas River is insufficient to move water stored in Pueblo Reservoir upstream." EA, § 2.3.1, p. 12. More specifically, Aurora's current decrees do not cover the contract exchanges. EA, § 2.2, p. 10. Simply put, the contract exchanges ignore Colorado water law.

The Bureau's slightly cock-eyed rationale for this approach is found in the Bureau's Draft Hydrologic Model Documentation, p 4-24: "Contract exchanges are not decreed by the water court, because the exchange occurs between two willing parties who have legally diverted water, which is under their control, and when doing so would not injure other water rights holders."

The Bureau's understanding is only partially correct. It is correct that exchanges must be administered so that they do not cause injury. In addition, exchanges, including contract exchanges, do not require decrees. City of Florence v. Board of Waterworks of Pueblo, 793 P.2d 148, 155-56 (Colo. 1990) (Erickson, J., concurring). Nevertheless, all exchanges, including contract exchanges, are subject to regulation by the State Engineer. Id. at 156. All exchanges must be regulated to ensure there is no injury to other water rights. They may be adjudicated if the party operating the exchange wishes to receive a priority date for the exchange. Justice Erickson's characterization of exchanges was adopted by the majority opinion of the Colorado Supreme Court eleven years later. Empire Lodge Homeowners' Ass'n v. Moyer, 39 P.3d 1139, 1155 (Colo. 2001) ("an exchange is a water management practice the

State Engineer administers between decreed points of diversion...The State Engineer may allow an exchange in absence of a decree confirming it. If the exchange is adjudicated, it receives the priority date of its appropriation."). See also, Colorado Water Conservation Board v. City of Central, 125 P.3d 424, 436-37 (Colo. 2005) ("A water right exchange is a trade of water between structures or users administered by the state engineer."). See also CRS § 37-83-104 (exchanges to be charged deductions for stream loss "to be determined by the state engineer");

The water court or the State Engineer, not the Bureau's Regional Director, is responsible for ensuring exchanges do not injure senior water rights. As such, exchanges must subject themselves to his authority and administration before the exchange is operated. The primary concern is to ensure that water will be available to satisfy senior rights when needed. See, e.g., City and County of Denver v. City of Englewood, 826 P.2d 1266, 1272-73 (Colo. 1992) (disallowing Denver's "owe-the-river" accounting system for its exchange where the division engineer was not informed of the exchange until after the water had been diverted; "[p]rior notification of the exchange allows the engineers to ensure that water is available to be released to meet the needs of downstream senior appropriators.").

The water that the Bureau books over to Aurora upstream in Twin Lakes and Turquoise reservoirs will not be sent downstream to project beneficiaries, as it otherwise would be. That water is destined for the Otero pump station and the South Platte basin instead, forever unavailable to downstream rights along the exchange reach. The Bureau's own analysis demonstrates the impact of the contract exchanges on the flow of the Arkansas. Attachment # 6, hereto, demonstrates that the cumulative effects of the Aurora Contract will reduce the flow of the Arkansas River in the exchange reach at the Wellsville Gage by up to approximately 5% during a "mean dry year."

Consequently, in order to comply with Colorado water law, the Aurora Contract must be amended to reflect that the Colorado State Engineer, not the Bureau's Regional Director, has sole authorization to determine when contract exchanges may operate without injury to others and how much water may be exchanged. In addition, as described below, the Aurora contract must also incorporate the restrictions in Aurora's exchange decrees.

Compliance with Aurora's Exchange Decrees

Aurora holds several decrees allowing the exchange of its water in Pueblo Reservoir, including those issued in cases 87CW63, and 99CW170(A), as well as a consolidated decree for cases 84CW62 and 84CW63, 84CW64, all in the water court for Water Division No. 2. To protect other water rights, those decrees impose on Aurora's exchanges a variety of terms and conditions, including priorities among competing exchanges, and requirements for a live stream in the exchange reach, Division Engineer determination of non-injury, volumetric limitation, daily accounting, the satisfaction of all intervening senior rights which are calling for water, seasonal limitations (e.g. no exchanges November 15 through March 15th; reduced exchanges, July 1st through August 15th), flow limitations, volumetric limitation, protection of minimum stream flows, matching of exchange diversions to reservoir releases, limitations on simultaneous exchanges, protection of water quality, maximum diversion rates based on gage readings, protection of the Upper Arkansas River Voluntary Flow Management Program, and subject to the terms of over 30 stipulations incorporated by reference, subject to IGAs incorporated by reference, compliance with its own exchange priorities, making all the exchanges absolute, notice to the Division Engineer prior to exchange operation, and the court's retained jurisdiction.

These decrees aggregate over 70 pages and are the result of thousands of hours of effort by expert witnesses, lawyers, and judges. Aurora now wants to circumvent the results by doing an end run around the decrees using the contract and with the Bureau running interference. If Aurora and the Bureau truly wish to comply with Colorado law, the exchanges contemplated by the contract should be subject to all the terms. conditions, and limitations contained in those decrees.

Summary

The proposed Bureau contract with Aurora is unlawful and unauthorized. It is unlawful since, contrary to the Project Authorizing Act, the contract is an unvarnished an attempt to circumvent Colorado water law. The Aurora Contract is unauthorized (1) since the Secretary has not found that the contract operations are in the interest of the project, and (2) since Congress has not authorized such changes which would "seriously affect" Project purposes.

Supporters of the contract will ask, "What is the big deal? We've had temporary annual contracts for years in the past. Why not save us the trouble of renewal and

make the contract good for forty years?" The answer is two-fold: First, 40 years is a long time, a professional life-time, practically permanent from the view point of a resident of the Arkansas Valley. Second, after forty years, when Aurora has become dependent on Arkansas River water, contract renewal will be politically mandatory.

Once again, thank you for inviting me to testify. I am available to answer any questions you may have.

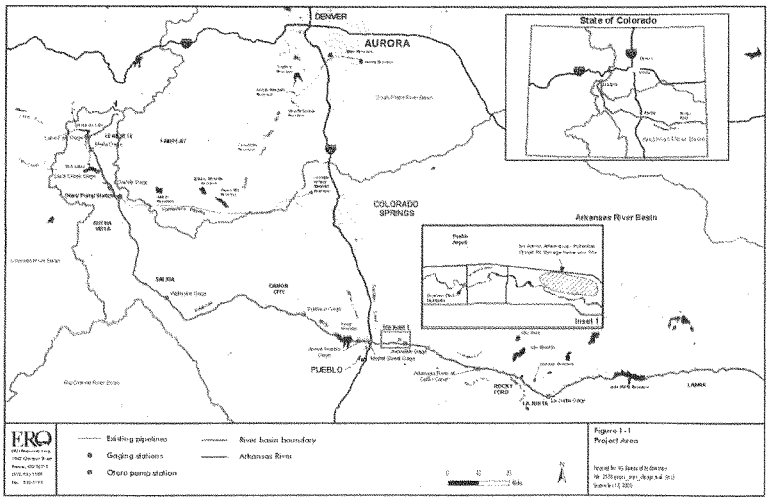
List of Attachments

1. Map of Project Area
2. Map of District Boundaries
3. Exchange Schematic
4. Reclamation Commissioner John W. Keys III April 3, 2003, letter to James Broderick of the Southeastern District
5. Regional Director Bach August 20, 2003, letter to James Broderick of the Southeastern District
6. Cumulative Effects of contract exchanges on stream flow

FINAL ENVIRONMENTAL ASSESSMENT EC-1300-06-09
AURORA EXCESS CAPACITY CONTRACTS

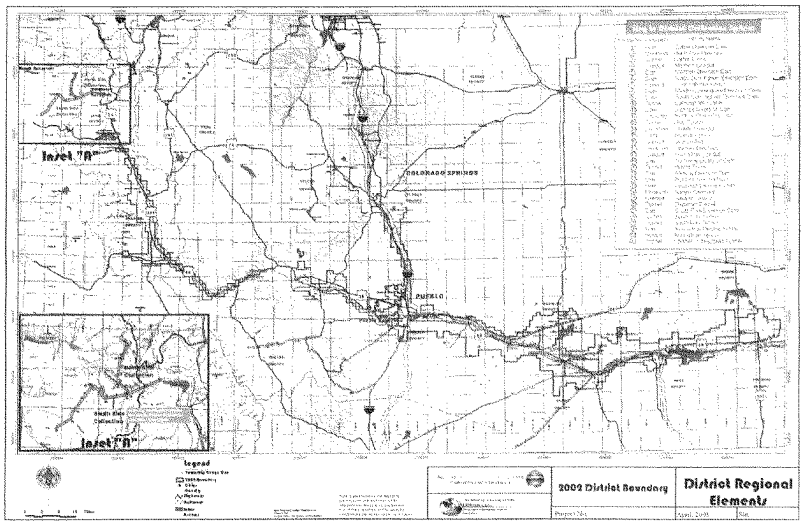
CHAPTER 1
PURPOSE AND NEED FOR ACTION

Figure 1-1. Project Area.

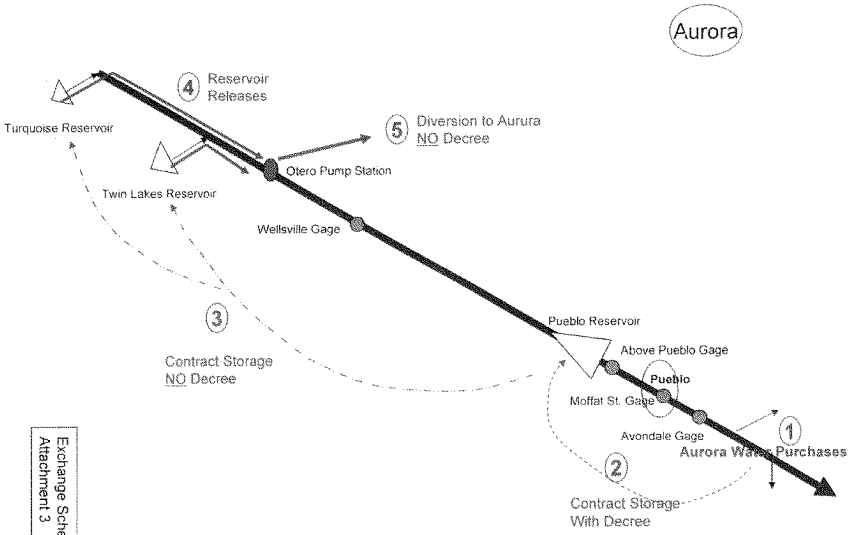


Attachment #2

2



Attachment #2
District Boundaries



Exchange Schematic
Attachment 3

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, D.C. 20240

IN REPLY REFER TO:

APR 13 2008

W 6335
WTR 1 10

Mr. James Broderick
Project Manager
Southeastern Colorado Water Conservancy District
31 W United Avenue
Pueblo, CO 81001

Dear Mr. Broderick:

As you are aware, the Bureau of Reclamation has been reviewing the authority to issue a long-term contract to the City of Aurora, Colorado for the utilization of Fryingpan-Arkansas Project facilities. Our review is complete and we have concluded that such authority exists. The arrangements with the City of Aurora will not adversely affect Reclamation's contract with the Southeastern Colorado Water Conservancy District.

Last year we worked diligently with the District, the city and others on an amendment in the nature of a substitution, to HR 3881 introduced last year. While we did collaborate on substitute language, we all understand that there are still some issues with the substitute language which require resolution. Even with clarification on the authority to enter into a long-term contract with the City of Aurora, legislation is desirable for a number of reasons, including to meet the projected increase of water storage needs, and to clarify disposition of revenues. The alternatives derived from the substitute language will offer lower cost and more environmentally friendly solutions to water users than building new facilities. I believe the proponents of the legislation will be able to resolve the remaining differences and stand ready to work to bring an agreed upon solution back to the Congress.

By this letter I am requesting Ms. Maryanne Bach, Regional Director, Great Plains Region to take the necessary steps to initiate contract negotiations with the City of Aurora. She will be contacting you regarding this matter. If you have questions, please contact her at 406-247-7600.

Sincerely,

John W. Keys, III

John W. Keys, III
Commissioner

Identical Letter Sent To:
Mr. Peter D. Binney, P.E.
Director of Utilities
City of Aurora
1470 South Havana Street
Aurora, CO 80012

cc: See attached list

Attachment #4

Post-it® Fax Note 7671	Date	# of pages ▶ 1
To Margie Wood	From Alan Hamel	
Co./Dept. Chieftain	Co. RCWCD	
Phone #	Phone # 584-0231	
Fax # 544-5897	Fax # 584-0232	

United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Region
P.O. Box 36900
Billings, Montana 59107-6900

IN REPLY REFER TO:

GP-3100
WTR 1.10

AUG 20 2003

RECEIVED
AUG 2 2003
Southeastern Colorado Water Conservancy District

Mr. James Broderick
General Manager
Southeastern Colorado Water Conservancy District
31717 United Avenue
Pueblo, CO 81001

Subject: *Response to Your Letter Regarding the Review of the Authority to Issue Long-Term Contracts for the Storage, Conveyance and/or Exchange of Non-project Water to Entities Within the Fryingpan-Arkansas Project (Fry-Ark) Service Area, Colorado*

Dear Mr. Broderick:

Commissioner John Keys has asked that I respond to your recent questions concerning the Bureau of Reclamation's review of the authority to issue long-term "Reoperations" contracts. Our April 3, 2003, letter to you confirmed our authority to issue long-term contracts with the City of Aurora, Colorado. Subsequently, your letter of April 10, 2003, restated your question of Reclamation's authority to issue "Reoperations" contracts.

The term "Reoperations" has been used by the Southeastern Colorado Water Conservancy District (SECWCD) to represent a series of actions contemplated in the SECWCD's Preferred Storage Options Plan (PSOP). Your use of the term "Reoperations" would include the storage, conveyance, and/or exchange of non-project water in Fry-Ark facilities. We advise it is more appropriate to use the term "excess capacity". We are concerned that the term "Reoperations" is a term used to refer to the operation of a facility or the entire Fry-Ark Project. The legal distinction is significant. This letter is intended to clarify Reclamation's authority to issue long-term storage, conveyance and/or exchange contracts, i.e. "excess capacity" contracts, and should not be interpreted to address the other aspects of Reoperations described in the PSOP, or aspects of the overall operations of the Fry-Ark Project.

Our review concludes that existing Reclamation law provides the general authority to issue long-term storage, conveyance and/or exchange contracts to entities within the Fry-Ark Project service area. The request for any such contracts, however, will be reviewed for authority and evaluated on a case-by-case basis as we discussed in your April 30, 2003, meeting with the Commissioner. The contracting process must be in accordance with all applicable law and requirements, including open public negotiations.

Attachment #5

Last year we worked diligently with SECWCD, the City of Aurora, and others on an amendment, in the nature of a substitute to HR 3881 as introduced last Congress. We understand that the SECWCD has been working on a further redraft of the legislation. We remain hopeful that all interested parties, will be able to resolve the remaining differences, as the Commissioner stands ready to support a proposal if it represents the consensus of all involved.

If you have any questions, please contact me at 406-247-7600.

Sincerely,

Maryanne C. Bach
Regional Director

AVERAGE EFFECTS OF PROPOSED ACTION
On streamflows (cfs) at indicated gages
From Environmental Assessment: Aurora Quartery-Monthly Model
Entry data

Gage	Table from EA, App A	Period	Direct Effects												Cumulative Effects								
			Overall Mean*				Mean Wet*				Mean Dry*				Overall Mean*			Mean Wet*			Mean Dry*		
			Existing cfs	Proposed Action cfs	Change	% Change	Existing cfs	Proposed Action cfs	Change	% Change	Existing cfs	Proposed Action cfs	Change	% Change	Proposed Action cfs	Change	% Change	Proposed Action cfs	Change	% Change	Proposed Action cfs	Change	% Change
Wellsville	**A-5**	Ave	724	721	-3	-0.41%	915	912	-3	-0.33%	548	544	-4	-0.73%	725	1	**0.14%**	920	5	**0.55%**	543	-5	-0.91%
		May	1002	997	-5	-0.50%	1176	1171	-5	-0.43%	839	839	0	**0.00%**	1119	117	**11.68%**	1314	138	**11.73%**	914	75	**8.94%**
Arkansas River		Jun	2197	2199	2	**0.09%**	3040	3040	0	**0.00%**	1349	1356	7	0.52%	2159	-38	-1.73%	3011	-29	-0.95%	1284	-65	-4.82%
Below Salida		July	1386	1389	3	**0.22%**	2166	2173	7	**0.32%**	772	769	-3	-0.39%	1379	-7	-0.51%	2167	1	**0.05%**	757	-15	-1.94%
		Aug	754	756	2	**0.27%**	1059	1055	-4	-0.38%	546	546	0	**0.00%**	752	-2	**-0.27%**	1047	-12	**-1.13%**	543	-3	-0.55%
Above Pueblo	**A-7**	Ave	622	621	-1	-0.16%	794	789	-5	-0.63%	421	424	3	**0.71%**	605	-17	-2.73%	764	-30	-3.78%	403	-18	-4.28%
		May	1056	1051	-5	-0.47%	1059	1049	-10	-0.94%	481	482	1	**0.21%**	1096	40	**3.79%**	1138	79	**7.46%**	510	29	**6.03%**
Arkansas River		Jun	2221	2221	0	**0.00%**	3034	3022	-12	-0.40%	1204	1215	11	**0.91%**	2145	-76	-3.42%	2963	-71	-2.34%	1085	-119	-9.88%
Below Pueblo Reservoir		July	1289	1289	0	**0.00%**	2064	2066	2	**0.10%**	939	943	4	**0.43%**	1244	-45	-3.48%	2007	-57	-2.76%	864	-75	-7.99%
Above City of Pueblo		Aug	645	645	0	**0.00%**	900	897	-3	-0.33%	574	587	13	**2.26%**	626	-19	-2.96%	884	-16	-1.78%	543	-31	-5.40%
Moffat Street	**A-8**	Ave	612	611	-1	-0.16%	785	780	-5	-0.64%	411	414	3	**0.73%**	595	-17	-2.78%	755	-30	-3.82%	392	-19	-4.82%
		May	1043	1038	-5	-0.48%	1048	1037	-11	-1.05%	467	468	1	**0.21%**	1083	40	**3.84%**	1127	79	**7.54%**	496	29	**6.21%**
Arkansas River		Jun	2207	2206	-1	-0.05%	3020	3008	-12	-0.40%	1190	1201	11	**0.92%**	2132	-75	-3.40%	2955	-65	-2.15%	1071	-119	-10.00%
Mid-City of Pueblo		July	1281	1287	6	**0.47%**	2070	2071	1	**0.05%**	927	929	2	**0.22%**	1234	-47	-3.67%	2009	-61	-2.95%	850	-77	-8.31%
I-25 Crossing		Aug	636	630	-6	-0.94%	889	886	-3	-0.34%	566	580	14	**2.47%**	615	-21	-3.30%	871	-18	-2.02%	534	-32	-5.85%
Avondale	**A-9**	Ave	935	934	-1	-0.11%	1137	1132	-5	-0.44%	637	640	3	**0.47%**	955	20	**2.14%**	1138	1	**0.09%**	663	26	**4.08%**
		May	1599	1593	-6	-0.38%	1553	1542	-11	-0.71%	711	710	-1	-0.14%	1680	81	**5.07%**	1669	116	**7.47%**	790	79	**11.11%**
Arkansas River		Jun	2632	2633	1	**0.04%**	3647	3638	-9	-0.25%	1392	1405	13	**0.93%**	2602	-30	-1.14%	3616	-31	-0.85%	1322	-70	-5.03%
Below Pueblo		July	1583	1589	6	**0.38%**	2469	2472	3	**0.12%**	1095	1097	2	**0.18%**	1583	0	**0.00%**	2437	-32	-1.30%	1094	-1	-0.09%
		Aug	991	987	-4	-0.40%	1369	1365	-4	-0.29%	769	780	11	**1.43%**	1007	16	**1.61%**	1366	-3	-0.22%	793	24	**3.12%**

Definitions:
EA, § 3.1.2, p. 37

Estimated changes in streamflow and reservoir storage for representative locations in the study area are described below. The figures show the effects for overall mean years only. The following is a description of the hydrologic classification used to classify the years in the study period:
- **Overall Mean** : Mean of all years in the 1982-2002 study period
- **Mean Dry** : Mean of the driest 30 percent of years in the study period (1988-1990, 1992, 2000, 2002).
- **Mean Wet** : Mean of the wettest 30 percent of years in the study period (1982, 1984, 1986,and 1995-1997)

Cumulative Effects, per EA § 2.5.1, pp. 20-21, would include increased municipal use, BWWP storage in Pueblo Res increasing from 3K to 15K af, Colorado Springs Utilities decreasing Pueble Res storage from 10K to 1K af, increasing OW pumping and pueblo re-use, and constructing 25Kaf reservoir on Fountain Creek. ROY participants continue to participate.

Attachment # 6
Effects on Stream Flow

Mr. LAMBORN. The Chairwoman will have her questions as soon as she gets back. I'll go ahead with the next questions for myself and then we will continue on down the line.

Mr. Thiebaut, I enjoyed the years that you and I spent in the legislature, but I've got to ask you these questions though. Given that pollution spills have occurred in your own counties, but you have not filed suit against those responsible, while you have sued the City of Colorado Springs for the same thing, wouldn't you agree that there's a double standard at work?

Mr. THIEBAULT. Well, first of all, it's a thrill to see all of my former colleagues in the legislature one more time. That's not such a thrilling question, but——

[Laughter.]

Mr. THIEBAULT.—let me assure you, Representative Lamborn and members of the committee and guest members and this entire community and this state, that if I believed that there were violations of the law and any community within the boundaries of the 10th Judicial District, the area that I represent, was affecting anyone's safety, health, or welfare, I would take action.

It's a little difficult to discuss pending litigation in Federal courts right now. I don't think it would be fair, but I do want to assure you that because of the chronic nature of those discharges, nearly 73 million gallons from 1998 to the point of the lawsuit, over 100 spills, during a very short period of time in the last few years, I was duty bound to bring an action.

If any other entity within my jurisdictional powers brings forth such demonstrative conduct that creates a danger to the health and safety of a community, I'll take action.

Mr. LAMBORN. OK, thank you.

Mr. Rivera, how much money has Colorado Springs Utilities spent on recent improvements of water quality flowing into Fountain Creek and what are the plans for the future?

Mr. RIVERA. Thank you for that question, Representative Lamborn. Today we have spent over $65 million reinforcing our wastewater collection system. This year we will spend an additional $20 million to further improve it. Next week we will open a $10.5 million Fountain Creek recovery system, where we will be able to use a diversion dam, if we have any future spills, to divert it into two holding ponds, treat the water, clean it, and send it back down Fountain Creek.

In the future over the next 15 years, we anticipate to spend close to $200 million, and again, reinforcing our wastewater collection system. I think we've been good stewards. We rely on the Colorado Department of Public Health and Environment to enforce the Clean Water Act. They are doing that. We are in compliance with all of their requirements, and frankly, I think that's where the enforcement should lie, and they are doing a good job of enforcing EPA standards.

Mr. LAMBORN. OK. Thank you, Mr. Mayor. And Mr. Winner, if I could ask you a question. You focused a great deal in your testimony on water quality problems in the lower valley, and you seem to associate these problems with Colorado Springs's participation in the Fry-Ark Project; however, I was under the impression that the lower district and Colorado Springs have a conceptual agreement in place that addresses most of the concerns you raised in your testimony, including comprehensive plans for water quality studies and a comprehensive approach for managing Fountain Creek. Isn't there such a conceptual plan?

Mr. WINNER. That is correct. And I did not mean to point any fingers at Colorado Springs. I was not aware that I did that. What I was attempting to do was clarify an exchange.

Mr. LAMBORN. So is the Lower Ark Conservancy District ready to sign such an agreement with Colorado Springs?

Mr. WINNER. At this time, two of the nine parties have come to an agreement. I believe it's not nine parties. I believe it's 12 parties. We have conceptually come to an agreement with Colorado

Springs. There's still a long way to go. It took us two and a half years to get this far.

Mr. LAMBORN. And when you say "a long way to go," what do you mean by that? Because I thought you said a second ago that there was.

Mr. WINNER. Nine more entities have to agree to what we have agreed to with Colorado Springs.

Mr. LAMBORN. And the last question for you, Mayor Rivera. Is the City of Colorado Springs only asking to have water delivered to it that it already has the rights to?

Mr. RIVERA. That's correct, Congressman Lamborn. These are water rights that were acquired in the mid to late '80s, and what we are looking for with our Southern Delivery System basically is what all of us want for the Arkansas Valley conduit. We want a project that will be built and to deliver clean drinking water to members of the Fry-Ark Project.

I think the Arkansas Valley conduit is something that Congress should step up to the plate, enact legislation, and help us get that funded as soon as possible, because then members of the lower Arkansas Valley community can have clean drinking water that they deserve.

Mr. LAMBORN. Thank you all for your answers, and this time I'll turn the gavel back over to Chairwoman Napolitano.

Mrs. NAPOLITANO. Thank you, Congressman. And thank you for taking over. Thank you, and now I will turn over to Mr. Perlmutter for questions.

Mr. PERLMUTTER. OK.

Mrs. NAPOLITANO. Thank you.

Mr. PERLMUTTER. Yes, Madam Chair.

Senator Thiebaut, a question for you. You talked about water rights being property rights. And if I understand the water law that I learned from Mr. White at the end of the table there, those water rights can be sold to and from anybody, isn't that true?

Mr. THIEBAULT. That is my understanding, yes.

Mr. PERLMUTTER. And that they are not necessarily attached to the land. They are severed from the land.

Mr. THIEBAULT. Yes.

Mr. PERLMUTTER. Mr. Winner, about five years ago—no, longer than that, six years ago, we had a hearing here in Pueblo, and this was just an experience that occurred at that time. There were two gentlemen from St. Charles Mesa, which used to be a truck farming area, as I understand it. One guy announced that he sold his water rights I think to the City of Pueblo. I'm not sure who he sold it to. But his next-door neighbor said what are you doing that for? You're going to, you know, dry up this land and it's going to be for development.

Do you object to the farmers that have had water down along this—along the Arkansas, do you object to them selling their water rights?

Mr. WINNER. Water is a property right. If a farmer wants to sell his water, he has every right to sell his water.

Mr. PERLMUTTER. And he can sell it to anybody he wants to?

Mr. WINNER. He can sell it to anybody he wants. Where my problem lies when it comes to the purchase of water, this is what you

buy, this is what you take. There's a big difference between what you purchase and what you actually take. I have no problem if somebody buys water, let's say they buy it for life. Go ahead, put your pipeline in, clean up the water. The cost of that is over a billion dollars. It's quite simpler for people who want to buy water to exchange it up high to get this, and then leave this for the small communities that cannot afford to clean it up.

Mr. PERLMUTTER. Let me stop you for a second. Isn't it true that the water rights that we're talking about are all water rights that come from the west slope? And the transmountain diversion of Homestake?

Mr. WINNER. No.

Mr. PERLMUTTER. Homestake is the transmountain diversion?

Mr. WINNER. Homestake is a transmountain diversion.

Mr. PERLMUTTER. All right. And Fryingpan-Arkansas is a diversion.

Mr. WINNER. Absolutely.

Mr. PERLMUTTER. All right. And are you saying that the water rights that are purchased down on the lower Arkansas are of the muddy quality and not the clean quality? Is that your point?

Mr. WINNER. That is correct. Such as the Rocky Ford high, the Rocky Ford ditch is native water that starts on the east slope. It——

Mr. PERLMUTTER. So do you disagree then—you obviously disagree with the Bureau's conclusion after four years and 200 pages, that there's a negligible difference between having the water up high and taking it from the Pueblo Reservoir.

Mr. WINNER. Absolutely.

Mr. PERLMUTTER. OK. Would the water quality improve if there were a conduit that directed water down to the Southeast Water Conservancy District? I'm not sure exactly which counties you represent.

Mr. WINNER. If there is a conduit built, it would improve the water quality a hundredfold to the small communities east of Pueblo.

Mr. PERLMUTTER. You mentioned in your testimony that even at the outset of the Fryingpan-Arkansas, that the farming in that area along the Arkansas has actually decreased, not—it isn't just a recent phenomenon.

Mr. WINNER. Since 1955, 65,000 acres have been taken out of production, with 121,000 acre-feet transferred off the main stem of the Arkansas. I believe the water raids started right around that time.

Mr. PERLMUTTER. And even so, today it's still, as I heard somebody testify, 74 percent of the water from the Fryingpan-Arkansas is still used for farming, even though cities are entitled to 51 percent.

Mr. WINNER. That is correct. Realizing that the amount of water that the Fryingpan-Arkansas Project brings over is minuscule compared to what is diverted for Arkansas.

Mr. PERLMUTTER. One last question for Mr. White. You represent cities as part of your water law practice, do you not?

Mr. WHITE. Yes, and I represent a lot of other kinds of people too.

Mr. PERLMUTTER. And as part of that, you've been involved with transfers from farmers—water rights from farmers to city clients that you represent.

Mr. WHITE. That's correct.

Mr. PERLMUTTER. OK. Thanks, Madam Chair.

Mrs. NAPOLITANO. Now Mr. Salazar?

Mr. SALAZAR. Thank you. Mr. Mayor, it's good to see you here again. I totally agree with your statement. It starts out by the following: "The Fry-Ark Project was conceived, planned and constructed as a multipurpose project to serve both the interests of agriculture and the municipal entities within the Southeast District."

Let me just read to you what the original legislation said. This was testimony by Wayne Aspinall. It talks about the water quality, and it talks about the quality of water utilized by some of the cities that are extremely short on water. Water quality is a (inaudible). The needs of the principal cities in the area that can be supplied with water by the project are shown in the following tables. The following table provides for 17,000 acre-feet of water for Colorado Springs, Pueblo, Manzanola, Crowley, Rocky Ford, La Junta, Las Animas, (inaudible), and Lamar. These are all within the project boundaries. OK? And it would also supply—which has never happened, 184,000 acre-feet for irrigation purposes and the 17,000 for municipal uses. Are you aware of any congressional act that basically enlarged the boundaries of the project?

Mr. RIVERA. No comment.

Mr. SALAZAR. You are within the boundary, correct?

Mr. RIVERA. Yes, sir.

Mr. SALAZAR. Thank you very much. And can you tell me, you know, there's been several reports in the paper on several spills that have come from Colorado Springs because of malfunctions of your wastewater facilities; is that correct? Can you tell me how many of those happened over the last two years?

Mr. RIVERA. No, sir, I cannot, but I can provide you written documentation to give you that information. Some of those are due to vandalism, some—the majority of the spillage that the D.A. referenced was because of a 1999 flood that inundated the entire valley, and that's really an act of God that no utility, whether it's Colorado Springs or Pueblo, has a way of preventing.

Mr. SALAZAR. Well, I sit on the Water and Infrastructure Subcommittee and Transportation Committee, and we are happy to work on wastewater facilities and other projects in Congress. I would be happy to try to help Colorado Springs try to lessen some of the problems that they have with some of their wastewater treatment facilities, so I offer you that sort of service, if I can be of any help.

Mr. Scanga, you and I are lifelong ranchers and farmers. We have a long history back in Colorado. My family settled in 1860 in the San Luis Valley. We're seven generations on the same farm. Are you aware that last year, the United States became a net importer of specialty crops?

Mr. SCANGA. Yes, since I'm in the meat business, I'm very aware of that.

Mr. SALAZAR. Does it worry you that much of our water that is purposefully supposed to go to agricultural is moving to urban use?

Mr. SCANGA. Yes, it does. I'm not sure that economically speaking that water moving to other uses is necessarily the cause of why we have become a net importer. I think we've become a net importer because our cost of production is higher than foreign costs of production. I'm not sure how that relates to water. I believe in terms of water, drip irrigation, new types of water systems that conserve water, drip irrigation in particular, would help in the lower Arkansas Valley by actually cleaning up the river. Irrigation creates—the return flows from irrigation, the lower Arkansas Valley in particular, create a lot of contaminants, like sedimentation of the lower Arkansas River. I'm aware of that. There's a lot of USGS studies that confirm that, so——

Mr. SALAZAR. Thank you, Mr. Scanga.

Mr. Winner, do you believe that in all of the water transfers that have happened out of the lower Arkansas there has been proper mitigation that's happened to make sure that the effect of the socioeconomic impacts of the water transfers out of the basin has been addressed?

Mr. WINNER. I do not believe proper mitigation is in place. I believe what needs to happen is that we need to have a socioeconomic study to study the past so that we do not lose the future. As I said before, some mitigation for Aurora's school system was $1.5 million to the high school. $1.5 million does not make up for a graduation class to lose 100 students over 30 years.

Mr. SALAZAR. Thank you.

Mr. White, are you aware of any legislation in Congress that actually authorizes the project boundaries to be enlarged from this current map?

Mr. WHITE. I am not.

Mr. SALAZAR. So do you believe that the Bureau of Reclamation has the authority to enter into a 40-year contract to move water out of the basin using the project?

Mr. WHITE. I do not.

Mr. SALAZAR. Thank you, sir.

Mr. Thiebaut, since you've filed a lawsuit against Colorado Springs, how many spills have you counted within the last two years? Do you have any idea or recollect?

Mr. THIEBAULT. Congressman Salazar, my gut reaction is that there's been several. I don't have the exact count. When I answered Representative Lamborn, I know there's been since 2000 or 2001, over 100 spills, and there's a significant number over the last few years, and I can sure provide that correct information to you at a later date.

Mr. SALAZAR. Madam Chair, could you give me one additional question, please?

Mrs. NAPOLITANO. No.

[Laughter.]

Mrs. NAPOLITANO. Go ahead. I'll give you part of my time. So——

Mr. SALAZAR. I do appreciate that.

Mrs. NAPOLITANO. I'll yield some of my time to you.

Mr. SALAZAR. Mr. Mayor, as you know, there's two bills. One is being proposed by Congressman Lamborn and one is being proposed by me. My bill basically deals with making a socioeconomic study that can be an independent study conducted by the state.

The bill would actually include a requirement that the State of Colorado study the cumulative effects, socioeconomic and environment impact of water transfers out of the Arkansas and Colorado basins prior to Federal dollars being spent on enlargement potential for Lake Pueblo. Could you support something like that?

Mr. RIVERA. Congressman Salazar, I think it's important to note that we currently have intergovernmental agreements that have been signed by the City of Pueblo, the Pueblo Board of Water Works, the Southeast Water Conservancy District, the City of Fountain, that we would support legislation similar to what Congressman Lamborn has already introduced. So we are already on record and have intergovernmental agreements that would unwind if we were to change that.

Mr. SALAZAR. So basically you would not support a comprehensive study that would actually study the cumulative effects, the socioeconomic and environmental impact on the basin when water is moved out of the basin, and I'm asking you, would you or would you not support that?

Mr. RIVERA. I would restate what I just said. We are on record with intergovernmental agreements with our partners, that we would support legislation similar to what Congressman Lamborn has already introduced, and I guess I personally would have concerns at looking back at history at the transfers of water rights that were done between the agricultural community and the municipalities that at that time following Colorado water law, were completely imbedded, and I don't think it would be appropriate to go back and try to unwind those.

I think the better solution is what we are trying to work out with the Lower Arkansas Conservancy District, and that is a lease and fallowing program, where we allow farmers to benefit from their water rights while protecting the agricultural community and making it stronger.

Mr. SALAZAR. And does the fallowing program actually put the fertilizer dealer back in place, does it put the tractor dealer back in place?

Mr. RIVERA. I'm sorry. Could you repeat that question?

Mr. SALAZAR. Does the fallowing program that—your mitigation project in the lower Arkansas Basin, do they actually put the grocery store owner back in place or the equipment, fertilizer dealer back in place? Does it put the tractor dealer back in place? So we are not really addressing the full effects of what happens when water is transferred out of the basin, correct?

Mr. RIVERA. Well, sir, our goal is not to do that. Our goal is to keep the water in the valley and basically the farmers benefit and at the same time the municipalities can also benefit.

Mr. SALAZAR. Thank you.

Mrs. NAPOLITANO. Thank you, Congressman Salazar.

Congressman Udall.

Mr. UDALL. Thank you, Madam Chair. Before I start my questioning, I want to note that there are a lot of brave people here today, and I would include Senator Thiebaut in that list. He is appearing with his old and tired colleagues.

I think I see Commissioner Richards here in the audience. I see Mayor Ed Tauer here from Aurora. We're going to give Ed a chance to give his point of view.

Mayor Rivera, thank you for being here. But I think the most courageous person is the Chairwoman, given she's a Californian.

Grace, we could turn on you and then there wouldn't be anything left of you. We want to thank you for again holding the hearing and for being here in the spirit of more broadly we are all Americans.

Mrs. NAPOLITANO. Just try it.

Mr. UDALL. She's something, isn't she?

If I could, Mayor, I'll turn to you briefly. You mention the money that the Springs contributes to the administrative and I think the O&M aspects of the project, and the amount that you put forth is more than double of all of the other participants combined. What determines how much the Springs pays and why is your city's commitment so large?

Mr. RIVERA. It's basically based on the ad valorem property tax value and the mill levy set for the Southeast Water Conservancy District and because Colorado Springs has had tremendous success in growing as a community, the value of our property is what determines what we contribute.

Mr. UDALL. If I could, Mr. White—and I noticed Mr. White's graduated West Point, served in our Army. Thank you for your service, particularly at this time in our history.

Let me turn to I think what really is a very important question that you posed. Am I right in understanding that any water exchanges by Aurora have to be done under Colorado state water law? I think that is a yes or no answer, I hope.

Mr. WHITE. It is not.

Mr. UDALL. All right. Take a shot at it and give me a chance to ask you a follow-up question.

Mr. WHITE. I'll use about 20 words. The contract exchanges are not under the contract with the Bureau. Aurora has exchange decrees, but those aren't involved. In fact, those are so cumbersome in that they're being replaced by the contract exchanges.

Mr. UDALL. The follow-up question I have then, is this about the legality of the exchanges, or about the legality of the actions of Bureau of Reclamation that it may take in connection with the exchanges? Do you care to expound on that?

Mr. WHITE. If I understand the question, I believe that it is about the legality of the exchanges, because the exchanges are by the authorizing legislation to be conducted in accordance with Colorado law. The decreed exchanges that exist for Aurora have dozens of pages of terms and conditions that Aurora must comply with.

By going through the contract exchange, however, they avoid that. And how the Bureau is able to help Aurora escape the provisions of Colorado law and still comply with the authorizing legislation is beyond my understanding.

Mr. UDALL. Thank you for sharing and furthering your point of view on that.

Senator Thiebaut, I apologize for adding another syllable to your name when I first mentioned you earlier in this round. At the end

of your statement, you say we must stop gutting the power of water quality administrators and provide adequate funding and teeth for enforcement. Would you talk a little bit about what gutting and enforcement is taking place right now?

Mr. THIEBAULT. Thank you, Representative Udall, and I've been called a lot of things, so please don't worry about that.

What I'm experiencing in the situation that I took up for our community is that our state regulators are in essence sitting down with the perceived polluters and working out arrangements to try to fix the issue that we're involved in, and that's just basically wastewater, human feces, denigrated water that's coming down the Fountain Creek.

And it's just odd for me to see that there is no public engagement prior to any decisions being made with regard to that, and that only after the fact, after a deal is cut, so to speak, that people are then asked to comment on what has been accomplished, and it's sort of a backward process. And I think it demonstrates that at least on the state level, there is not enough resources to have public hearings, or gain adequate input into resolving what is a regional problem.

And I think how it relates to the Federal government is that the Federal government has given our local and state regulators the power to work on these issues, and so if there's more help from Congress, I think there would be more help at the state level and more help at the local level, and it would all translate into more open discussions about how to solve the problem in the first instance, rather than having the polluter and the regulator sit in a room and work out solutions that are not satisfactory, frankly, to downstream communities.

Mr. UDALL. I presume your conversations with Governor Ritter and his administration in that regard, and I would imagine that all of us here on the panel could add some help to need to have better oversight of our water quality.

Mr. THIEBAULT. Representative Udall, I would appreciate anything that any one of you could do to nudge our state elected officials and regulators. It is something that's going to continue until many years to come unless we sit down and do something different than we're doing now.

Mrs. NAPOLITANO. Thank you, sir.

I have a lot of questions and follow-up. Some of them will be posed to you in writing, because there's not going to be enough time. But Mayor Rivera, how many sewage treatment plants do you have, roughly? One, two, three?

Mr. RIVERA. We have one major wastewater treatment facility and we're about to open a second in a matter of weeks.

Mrs. NAPOLITANO. And I've dealt with the sanitation district in my area, so I'm a little cognizant of the issue. How old is your treatment plant and what capacity does it have?

Mr. RIVERA. Those are technical questions. I can get you those answers, but I don't have it for you now.

Mrs. NAPOLITANO. Thank you, for the record, because I know that in some areas that I've known, the age of a—and the size precludes them from actually being able to treat the increased sewage from the new developments, from the growth that has emanated

from the area. And so it's a great challenge for the communities to stay on top of it; however, it's one of those areas that should not be overlooked, because that could lead to lawsuits based on people getting sick from that sewage-contaminated water. Do you follow?

Mr. RIVERA. I do, ma'am, but we follow Colorado law, and when it comes to planning and building a new wastewater facility, when we reach 85 percent of a capacity of an existing facility, we need to begin to find a property. Like I mentioned, we will be opening a new facility, and we have spent millions of dollars improving and enhancing our facility.

Mrs. NAPOLITANO. I've read that, sir, but if you are having spills, what are they due to?

Mr. RIVERA. Primarily, they are due to the fact that we have about 1500 miles of wastewater lines. A lot of them run along creek beds. And when we have very strong storms, the tributaries of Fountain Creek turn into raging rivers. And we are in the process, as I mentioned before, of spending $85 million reinforcing all of those collection lines in our creek beds, and I think we've done a good job of making sure those kinds of spills don't happen again.

Mrs. NAPOLITANO. I would hope not, sir, because that is a health hazard for all concerned. The other issue, we were discussing which—let's see. I'm—do you have any water-recycling projects serving Colorado Springs, and if not, why not?

Mr. RIVERA. Well, we probably are one of the best reusers of treated water. We have 12,000 acre-feet per year, about 13 percent of our water supply, that is used throughout our community, whether it's watering golf courses, cooling our power plants——

Mrs. NAPOLITANO. Excuse me. How many acre-feet, do you have?

Mr. RIVERA. 12,000 acre-feet per year. It's about 13 percent of our water supply that we use.

Mrs. NAPOLITANO. Do you plan to increase that recycling capability?

Mr. RIVERA. Our new wastewater treatment plant that will be opening in a few weeks will have the capability to deliver tertiary-treated water that we can use throughout the community for non-potable uses, yes.

Mrs. NAPOLITANO. Is that going to be able to assist you in reducing the take of water from the project?

Mr. RIVERA. Well, I think we've done a good job of that over the years. One of the——

Mrs. NAPOLITANO. No, I'm asking do you think that is going to help reduce the take that you now have?

Mr. RIVERA. Umm——

Mrs. NAPOLITANO. Putting more recycled water into use, for whether it's commercial, industrial, ag use—California does it all the time now—but is that something that you've looked into and are you considering it?

Mr. RIVERA. The answer to that is yes, ma'am. We retrofitted our power plant to use 2 million gallons of water per day of treated effluent instead of fresh water. So we are doing that throughout our community. So the answer is yes.

Mrs. NAPOLITANO. Thank you, sir.

Mr. Scanga, If the storage that Aurora is seeking for their water is the first to spill, how could the use of this unused space affect anyone else in the Arkansas Valley's water rights?

Mr. SCANGA. The use of which unused space? I'm not clear.

Mrs. NAPOLITANO. The space in the Pueblo Reservoir.

Mr. SCANGA. In Pueblo Reservoir? Unused space?

Mrs. NAPOLITANO. Excess water.

Mr. SCANGA. Oh, you mean excess capacity contracted.

Mrs. NAPOLITANO. I'm sorry.

Mr. SCANGA. Now, madam, if you wouldn't mind repeating that question now that I understand what you mean by excess capacity. I don't quite understand your question.

Mrs. NAPOLITANO. Well, in essence, you have Aurora water stored, and if that's the first to spill, what is that—how does that affect everybody else?

Mr. SCANGA. If it's the first to spill, that means that the in-basin entities have the higher priority, storage priority. So that would give more space available in a situation where we end up in a spill situation to an in-basin entity. It wouldn't bump their water, in other words.

Mrs. NAPOLITANO. OK. And then your district Web site says that one of the primary roles of the district is to preserve and protect water by legislative and judicial means. Does that mean you expect a legal challenge if the long-term contract with Aurora will be filed?

Mr. SCANGA. No. Sometimes there's legislation that could be detrimental to water right owners and to our system in particular, the Arkansas River. So we are active in lobbying activities to make sure that adverse legislation is not passed and also legislation that could be beneficial, such as water-banking legislation, that that type of thing is passed.

For example, water banking legislation was first introduced in the State of Colorado. It allowed water to be moved through a water bank outside the basins. We fought against that, and eventually we were able to get that language amended and therefore water banking cannot be used to move water out of the basin.

Mrs. NAPOLITANO. Thank you. And to any of you very quickly, with a yes or no answer simply, Congressman Salazar and Lamborn both have legislation proposed, and Congressman Salazar is requesting a study. How do you feel about the study's ability to influence what you're facing now? And the reason I ask that is because the Bureau of Reclamation needs to answer how long would it take them should that bill pass to come up with a study? Given that I've waited 11 years for a study to come out on Los Angeles water needs since 1996 and just recently was finally given it. It was early this year.

Mr. SCANGA. I think the study—ma'am, if I understand the question, I think the study of the socioeconomic impacts of building the first storage option plan, I think that should take place. It should take place in a feasibility analysis that is necessary were the project to go forward. At this time, I would like to see at least a feasibility study be done to see if it's even feasible to do the Preferred Storage Options Plan first.

Mrs. NAPOLITANO. Gentlemen?

Mr. THIEBAULT. I think that Representative Salazar's bill would be helpful.

Mr. WINNER. Like I said before, we must learn from the past so we don't lose the future, so I support Representative Salazar's bill.

Mr. WHITE. Me too.

Mrs. NAPOLITANO. Mayor?

Mr. RIVERA. I would agree with Terry Scanga. I think we need to do the feasibility study patterned after Lamborn's bill and then we would discuss socioeconomic needs after that feasibility study.

Mrs. NAPOLITANO. Thank you very much. This will conclude the second panel, gentlemen. Thank you for your testimony. It is appreciated and you will have additional questions sent to you. We appreciate your reply within ten days if at all possible. And again, for those in the audience who have questions, you may submit them for the record and on behalf of this committee, and I will call for a five-minute break. Five minutes. I think some people have been waiting patiently. Five minutes from now.

[recess.]

Mr. LAMBORN. OK. The third panel will now resume. We have The Honorable Ed Tauer, Mayor of Aurora. We have Drew Peternell from Trout Unlimited; Chris Treese from the Colorado River Conservancy District—Conservation District, excuse me; and Wally Stealey of Pueblo.

OK, Mr. Tauer, Mr. Mayor, you are the first one on the third panel. If you could present your testimony, please.

STATEMENT OF THE HONORABLE EDWARD J. TAUER, MAYOR, AURORA, COLORADO

Mr. TAUER. OK. Thank you.

Madam Chairperson, thank you very much for having us this afternoon—this morning. We appreciate you coming and hope you have time to enjoy Colorado for a little bit while you're here.

My name is Ed Tauer, and I'm the mayor of the City of Aurora. It's a city on the eastern side of the Denver metro area, and our current population is about 310,000 people.

You know, I was listening to some of the testimony earlier, and if somebody isn't from Colorado, they may not understand, in Colorado, water is life. It's so important that we actually have about half of the water lawyers in the country practicing in our state. We're one of the few states that have actual water court, special courts to decide water issues.

It's a very emotional issue. First, last, and always, it's important to the people of Colorado. And we've heard what water can do in the valley, but I wanted to point out quickly some of the things that it's doing in the city of Aurora. It's allowing us to bring in great jobs for the people of Colorado, like with employers like Raytheon and Northrop-Grumman. It's allowing the extension of Buckley Air Force and projects like the redevelopment of the former Fitzsimons Army Hospital that Congressman Salazar has been so helpful with.

This is a time for us to look at the issues of water with cool heads and do the best for all of the people of Colorado.

We've been involved with the Fry-Ark Project since its early days. You know, the Fry-Ark Project is very simply a series of

pipes, pumps, and buckets that allow the movement of water from one basin to another. And during the early development of the project, something very unique happened at the Bureau of Reclamation. The people working at the Bureau saw that there was another project nearby that had a similar purpose and they saw that by working together, those two projects could be better for everybody. That's a very unique thing to have happen in government. I think it's something that should be encouraged. And it was allowed because the original concept of the Fry-Ark Project was to be a multi-purpose project.

So early on in the construction phase, before any of the construction was even begun on the Eastern Slope, the Bureau of Reclamation entered into discussions with Colorado Springs and Aurora about how to expand the use of the project. In fact, I believe the first contract was entered into in 1965. The intent and the rationale for this was reconfirmed by the Bureau in the '80s.

I've heard somebody say that it wasn't part of the original intent, and that may be in a very, very narrow sense true, but I believe that it's the legacy of Congress and of the Bureau of Reclamation to maximize the investments of the taxpayers of the United States. And that's exactly what the Bureau has done through these agreements. For when you do that, it's important that you do it in a way that doesn't injure the original intent of the project, and it goes to your point earlier, Madam Chairperson, in one of your questions.

The Bureau of Reclamation has managed the project so that Aurora has what's called an "if and when" contract. What that means is that we can store water in project facilities when, and only when, there's space available. Whenever an in-basin user needs space, if our water is in there, there isn't room for them as well, our water does spill out of the project.

It does not change Colorado water law. We're still only allowed to move water per Colorado water law. And because we're an out-of-basin user, quite appropriately, we have to pay more for the usage of those facilities. And as a result we are the third-largest payer for the repayment back to the Federal government for this project.

We believe that we have responsibility to be a good neighbor, and that's why we've entered into six different agreements with in-basin parties, most recent of which is the 2004 agreement which is sometimes called the 6-Party Agreement. Under that agreement, we agreed to work with our partners to protect some of the flows in the river, some of which were already mentioned by Mr. Scanga, to participate financially in future storage, but also to limit the amount of water that Aurora can take out of the valley.

We have to use water responsibly in Aurora. That's why we have some very innovative conservation programs and why we are leading the state in the reuse and recapture of water. I'd like to point out that the 40-year agreement that's under study and we hope to enter into soon with the Bureau does not change any of this. It's not a new agreement. It's a reconfirming of the year-to-year agreements that we've had. It doesn't change any of the conditions, the "if and when" aspects, the limits or any obligations that we have. And it also doesn't change Colorado water law.

We hope that in the future, we're on the edge of something different in Colorado, that we're not talking about one basin against another. We think it's time for us to change that conversation and talk about how do we work together, people in cities and farms, people in one basin and another. There's a new process in Colorado, the 1177 Process, that aims to do just that.

Especially in a year where Congress has so little money that's discretionary and available, it's time for us to maximize the investments of America's taxpayers, and cooperative uses like our involvement in the Fry-Ark Project are one way to do that. Thank you very much.

[The prepared statement of Mr. Tauer follows:]

Statement of The Honorable Edward J. Tauer,
Mayor, City of Aurora

I. Background

The City of Aurora is the third largest municipal water provider in the State of Colorado and serves the needs of 300,000 people and businesses within its service area. The City operates a complex and integrated water system to reliably serve its customers with a safe drinking water supply. As a part of that water system, the City of Aurora derives about one quarter of its source water from the Arkansas River basin and has had a long-standing and productive relationship with the Fryingpan-Arkansas Project since its very inception in the 1960's. All water sources have been developed under the State's water laws and operating agreements with the federal government and local agencies.

Aurora is the third largest financial contributor to Fryingpan- Arkansas Project repayment, subsidizing the repayment obligations of local agricultural and municipal users while helping to retire the public debt at an earlier time. Aurora trails only El Paso County and Pueblo County, who contribute to project repayment obligations through the payment of ad valorem taxes on property within the Southeastern Colorado Water Conservancy District.

Aurora History in the Fryingpan—Arkansas Project

In the early 1960's, Aurora joined with Colorado Springs in the purchase and development of the Homestake Project. The Homestake Project imports water from the Eagle River, a tributary to the Colorado River and delivers water to the South Platte River basin through the Homestake Reservoir outlet and tunnel to Turquoise Lake and Twin Lakes which are both Fry-Ark facilities. Water is piped and pumped from Twin Lakes through the Otero Pump Station to Spinney Mountain Reservoir and then by gravity to the City of Aurora.

The Fryingpan-Arkansas Project was proposed as a source of supplemental water for agricultural and municipal entities within the Arkansas basin. However, recognizing the economies of scale that could be realized where two projects, i.e., Homestake and Fry-Ark which were simultaneously in the planning and development stages, the Bureau of Reclamation entered into discussions with Colorado Springs and Aurora in an attempt to coordinate efforts and thereby minimize costs and maximize efficiencies. In 1965, prior to the construction of the East Slope components of the Fry-Ark Project, both Aurora and Colorado Springs executed a contract with the Bureau of Reclamation. That contract acknowledged that "it will be economically feasible to transport all or part of the Homestake Project water through the Fryingpan-Arkansas Project facilities for delivery to the cities." The contract was designed to "provide...for the coordinated operation of the two Projects, and to provide a method of payment for the use of the Fryingpan-Arkansas Project facilities."

In particular, the contract identified how Fry-Ark facilities would "provide carriage of Homestake water...and storage for Homestake water...," and contained flow rate limits as well as a storage of 30,000 acre-feet cap for Homestake water to be stored in East Slope Fry-Ark Project facilities. The 1965 contract went on to state:

> *10(b) The United States hereby grants an option to the cities to negotiate for additional storage service in the eastern slope project works over and above the 30,000 acre-feet contemplated by this agreement, if and when there may be capacity in the system unused by the Project or uncommitted by prior agreements.*

See attached.

The storage space option referenced in the above paragraph was specifically not limited to Homestake water and could include native Arkansas Valley waters that were legally developed by Aurora for municipal purposes.

In response to subsequent questions concerning the Bureau's ability to contract with an out-of-basin entity, such as Aurora, for the use of excess capacity in Fry-Ark facilities, the Bureau has, on two separate occasions, concluded that such authority indeed exists. These statements were issued in 1986 and in 2003. See correspondence of Ray Whelms and John W. Keys attached hereto. However, reference to such participation by Aurora was previously made as early as 1964 in the Bureau's memorandum on the proposed water service contract for the Fry-Ark Project and subsequently in the operating principles for the Project.

II. Aurora's Water Acquisitions in the Arkansas Valley

Beginning in the late 1970's, Aurora received numerous sale offers from Arkansas Valley farmers who wanted to sell their decreed agricultural water rights. Aurora has since acquired and subsequently received State decrees for approximately 26,000 acre-feet of water from a number of farmers, ranchers and ditch shareholders. The City of Aurora has completed the necessary Colorado water court adjudications required to change the water rights to municipal use, ensuring "no injury" to other water rights and agreeing to a number of decree terms and conditions as related to the individual adjudications. These have included yield limitations and revegetation requirements. The City has operated an office in the lower Arkansas Valley near Rocky Ford and maintained an ongoing community presence that addresses water administration, revegetation, local watershed protection issues and other Arkansas Valley water management matters.

III. Intergovernmental Agreements

In order to implement the various operating agreements and work cooperatively within the Arkansas basin, Aurora has executed a number of Intergovernmental Agreements (IGAs) with entities within the area served by the Fryingpan-Arkansas Project, as well as entities within the Upper Arkansas basin. The provisions of these agreements extend far beyond the requirements of state law in preventing injury and providing mitigation for water transfers. These include the following:

- 2004 Regional (6-Party) IGA
- 2003 Southeastern Colorado Water Conservancy District IGA
- 1994, 2001 and 2005 Otero County IGA's
- 2005 Rocky Ford School District IGA
- 2003 Upper Arkansas Water Conservancy District IGA

A summary sheet for each of the above referenced IGAs is attached hereto. Of particular note, in those documents Aurora voluntarily agreed to the following:

- To support Preferred Storage Options Plan (PSOP) legislation in a form as referenced in the 2004 Regional IGA.
- To refrain from the additional purchase and permanent transfer of agricultural water rights from the basin for 40 years, with specific agricultural fallowing and leasing opportunities during drought recovery periods.
- To make multi year, multi-million dollar payments for the use of unused and available space in Fry-Ark facilities.
- To curtail water diversions and exchanges in support of a flow program and for the aquatic and recreational benefit of the river reach below Pueblo Reservoir.
- To make payment in lieu of taxes (PILT payments) and other tax loss payments (due to differential land and property tax assessments) to Otero County.
- To compensate the Rocky Ford School District in the sum of $1.5 million dollars as mitigation for perceived losses resulting from changes in their tax base—Aurora will complete payments over a five year period rather than the negotiated 99 year payout to provide the School District with substantial and effective cash payments in the near future.
- To provide an Upper Basin replacement or softening pool of water.

IV. Additional Cooperative Activities

Aurora has also extended its comprehensive local community programs through a variety of additional cooperative activities in the Arkansas Valley. These include:

- Investment in a "continued-farming, drip irrigation" project (approximately $2 million) whereby Aurora assists local farmers with $1,400.00 per-acre for the installation of drip irrigation systems, $50.00 per planted acre for ten years, and 1/2 acre-foot per acre of augmentation water annually.
- Creation of a partnership with Lake County including the formation of the Lake County Open Space Initiative (LACOSI) designed to enhance recreation, historic preservation and wildlife activities along the upper Arkansas River riparian corridor.

- Conduct of a fen (wetland) research project to investigate, in cooperation with others, tools for wetland mitigation for this endangered high-altitude flora environment

To date, under the various Bureau contracts, IGAs, and other governing documents, Aurora has spent almost $35 million dollars on its operations in the Arkansas Valley and estimates that it will potentially spend, in the next 40 years, an additional $150 million dollars. See attached expenditure summary. Aurora is fully vested in ensuring a successful relationship with the Fryingpan-Arkansas Project and the people of the Lower Arkansas Valley.

V. Leasing and Sustainable Water Use

In the recent severe drought of the last five years, Aurora's water storage fell to unacceptably low levels. As a part of an integrated program to recover the reservoirs, Aurora developed and implemented a highly effective short-term leasing program for fallowed agricultural water supplies within the Arkansas Valley. Aurora entered into a contractual leasing/fallowing relationship with the Rocky Ford Highline Canal Company whereby 37% of ditch acres were temporarily fallowed and, in exchange, almost $11 million dollars was placed into the local economy at a time when drought conditions already precluded an adequate water supply for crop production. Aurora's financial arrangement with the farmers, which also included soil stabilization, weed control and canal structural improvements, was overwhelmingly embraced by local shareholders and Aurora was only able to subscribe about one-half of all the water offered to the program.

Aurora believes that the temporary leasing/fallowing concept, which it has supported legislatively, is a valuable and viable option to the "buy and dry" practices of the past. Though it is a complicated undertaking which is not easily implemented, with the ditch companies input and cooperation, in coordination with the use of storage facilities such as those of the Fry-Ark Project, it is a mechanism that can be employed to the benefit of both municipal and agricultural entities in the Valley.

Aurora has been a statewide leader in both water conservation and reclamation. The City's comprehensive water conservation policies and continuing mandatory watering restrictions have greatly reduced per capita consumption. In addition, it is ensuring the maximum utilization of previously developed water supplies, having embarked on the $750 million dollar Prairie Waters Project. This Project is designed to make successive reuse of its fully consumable return flows in the South Platte River. Those project facilities include a series of alluvial wells downstream from the City that will divert water to a 34 mile pipeline and a state-of-the-art water treatment plant. Indeed, Aurora is mindful of its responsibility to avoid waste, thereby minimizing and delaying its need for additional agricultural supplies and transbasin imports.

VI. Forty-year Contract Request

Since 1986, Aurora has executed a series of year-to-year contracts with the Bureau of Reclamation for the storage and exchange of water within the Fry-Ark system. These annual operating contracts have always been the subject of NEPA reviews. Most recently, consistent with the provisions of the aforementioned IGAs and Bureau policy, Aurora has requested a forty-year contract from the Bureau in lieu of the year-to-year arrangement. This long-term contract will provide additional water supply certainty to the City.

Aurora has spent approximately four years and over $1.5 million dollars working with the Bureau in the conduct of an environmental analysis (EA) which examined the environmental and socio-economic impacts associated with this long term extension of the existing practice. This effort, which included extensive modeling of potential hydrologic and water quality impacts and numerous opportunities for public comment, concluded that there would be no significant impact from the proposed action. A FONSI was recently issued by the Bureau. The final contract terms are now being circulated for further public comment, though the contract was the subject of public negotiation sessions.

The following facts ensure that there can be no harm to the Fry-Ark Project or its beneficiaries as a result of the long-term contract.

- Aurora will receive, and has received in the past, no Project water under the Bureau contracts.
- If there is insufficient storage capacity i.e. Aurora water cannot be stored at the same time as Project water or Project beneficiary water, Aurora is the "first to spill". No Project water is displaced by the City's use of empty and excess space in the facilities.
- Aurora's contract exchange opportunities under the contract are subordinate to all present and future exchange requests of in-district entities.

In addition to the above "constraints" on Aurora's use of excess capacity, the Project will realize significant "economic benefits." These include anticipated payments from Aurora to the Project of greater than $45 million dollars and, in the case of contract exchanges, additional water yield. If Aurora is able to exchange water with the Bureau located high in the basin for water Aurora has stored lower in the basin, e.g. at Pueblo Reservoir, the Fryingpan-Arkansas Project can deliver that water to downstream beneficiaries without incurring the approximately 10% river shrink or loss that would otherwise occur as the water is moved down stream. The federal government and project participants benefit by receiving that greater amount of water for their use.

VII. Conclusion

The City of Aurora appreciates the opportunity to present this testimony on its longstanding involvement with the Fryingpan-Arkansas Project. Aurora takes very seriously its obligation to the Project and Project beneficiaries while it operates its Water System in compliance with State water decrees and the multiple IGAs with local agencies. Aurora will continue to cooperate with all involved entities to promote the Bureau's goals of maximum utilization of existing infrastructure. Aurora will work with responsible parties to minimize conflicts and mitigate adverse water development impacts. In fact, as we move into a new era of water supply management, the Fry-Ark Project can be a shining example of cooperative efforts designed to ensure sustainable and balanced water management approaches.

Contract No. 14-06-700-6019

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Fryingpan-Arkansas Project, Colorado

AGREEMENT BETWEEN THE UNITED STATES AND THE CITIES OF COLORADO SPRINGS, AND AURORA, COLORADO FOR THE TRANSPORTATION OF WATER FROM THE HOMESTAKE PROJECT

THIS AGREEMENT, Made this 14th day of December, 1965, in pursuance generally of the Act of June 17, 1902 (32 Stat. 338), and Acts amendatory thereof and supplementary thereto, particularly the Act of August 16, 1962 (76 Stat. 389), all collectively hereinafter referred to as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as The United States, and the Cities of Colorado Springs, and Aurora, municipalities organized and existing under the laws of the State of Colorado, hereinafter referred to as "the Cities."

WITNESSETH THAT:

EXPLANATORY RECITALS

WHEREAS, the following statements are made in explanation:

(a) The United States, acting through the Secretary of the Interior, in constructing the Fryingpan-Arkansas Project as authorized by the Act of Congress approved August 16, 1962 (76 Stat. 389) for the purpose of supplying water for irrigation, municipal, domestic, and industrial uses, generating and transmitting hydroelectric power and energy, controlling floods and for other useful and beneficial purposes.

(b) The project works to be constructed are as set forth in House Document 187, Eighty-third Congress, modified as proposed in the September 1959 report of the Bureau of Reclamation entitled "Ruedi Dam

(b) Should the United States for any cause not construct those Eastern Slope carriage works known as the Elbert Power Canal, Otero Power Canal, or Snowden Diversion Canal (as presently planned or as they may be modified or substituted for) and, therefore, the United States is unable to comply with the provisions of subarticle 2(b), this agreement and the payment schedules of Article 5 will be amended to conform with the resulting reduced service to the Homestake Project.

CONSTRUCTION OF HOMESTAKE WORKS

9. The Cities will advance funds, or make suitable arrangements with the United States, to finance construction of the bifurcation works on the Otero Power Canal which will serve the Homestake delivery conduit, and will do likewise with respect to any other feature appurtenant to the Eastern Slope project works, which is not required by the Fryingpan-Arkansas Project, but which the Cities may request for the better coordination and operation of the projects. The extent and cost of such works shall be agreed upon by both parties prior to the award of any contract for their construction.

INTERIM OR OTHER AGREEMENTS

10. (a) The United States will provide interim storage service, if requested by the Cities between completion of construction of Turquoise Lake and completion of construction of Twin Lakes Reservoir and Twin Lakes Otero Canal, provided the available storage capacity in Turquoise Reservoir is not required for project operation. Such interim service shall be rendered under a separate agreement on terms mutually satisfactory to the parties hereto, but any charges collected under any interim contracts shall not be credited to any payments due under this agreement.

(b) The United States hereby grants an option to the Cities to negotiate for additional storage service in the Eastern Slope project works

over and above the 3[illegible],000 acre-feet contemplated by this agreement, if and when there may be capacity in the system unused by the project or uncommitted by prior agreements.

UNITED STATES NOT LIABLE; POLLUTION CONTROL

11. (a) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water which may be furnished at the points of delivery established by the Cities; nor for claim of damage of any nature whatsoever, including, but not limited to, property damage, personal injury, or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of the Cities' water beyond such delivery points.

(b) The Cities agree that they will comply fully with all applicable Federal laws, orders, and regulations, and the laws of the State of Colorado as administered by appropriate authority with respect to the pollution of streams, reservoirs, or water courses by the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, or other pollutants.

PENALTY FOR DELINQUENT PAYMENTS

12. Every installment or charge required to be paid to the United States under this agreement and which shall remain unpaid after it shall have become due and payable, shall be subject to a penalty of one-half of one percent per month from the date of delinquency; and no water shall be delivered to a City via the Otero Power Canal or from Homestake water stored under the terms of this contract in the Last Slope storage system during any period in which that City may be in arrears in the advance payment of charges accruing under this contract. During any period when only one City may be in arrears, water delivery to the nondelinquent City shall not be affected.

United States Department of the Interior
BUREAU OF RECLAMATION
EASTERN COLORADO PROJECTS OFFICE
P.O. BOX 449
LOVELAND, COLORADO 80539-0449

IN REPLY REFER TO: E-100

APR 30 1986

Mr. Raymond D. Nixon
President Southeastern Colorado
Water Conservancy District
P.O. Box 440
Pueblo, CO 81002

Dear Mr. Nixon:

I have made the decision to execute a temporary storage contract with the City of Aurora. Our plan is to have the contract fully executed by May 12, 1986. The proposed contract has been revised to incorporate some of the comments included in Mr. Kevin Pratt's letter of March 25, 1986. Enclosed is a copy of the revised proposed contract. We will consider additional comments on the revisions to the contract if received in this office by May 5, 1986. As a matter of information, it is our intent to use the terms of this contract in future temporary storage contracts subject to the appropriate adjustment to the price and spill priority for entities within the District.

Our decision to proceed with the contract has been made after having given the District more than ample opportunity to present their comments and arguments through letters, telephone conversations, and face-to-face meetings. Regional Director, Bill Martin will be in Pueblo on Friday May 2 should you desire to hear firsthand the basis of our decision.

Mr. Pratt's letters of January 21 and March 6, 1986, raised questions concerning our authority to contract with the City of Aurora. After a careful review of Mr. Pratt's letters, the applicable statutes, and other pertinent documents, we have concluded that the United States does have the authority to contract with the City of Aurora for storage service in the Fryingpan-Arkansas Project reservoirs.

Mr. Pratt asked what is the authority to store water for the City of Aurora in east slope Fryingpan-Arkansas Project (Project) reservoirs. He then divided his question into two parts. First, what is the authority to contract for storage of water for a municipality? The irrigation storage authority he cited (43 U.S.C. 523), Act of February 21, 1911, is referred to as the Warren Act which

authorized the sale of water or storage excess to the needs of a project. We have not used the Warren Act as authority for contracting for storage space.

Second, what is the authority to contract for storage in project reservoirs with an entity outside the Arkansas Valley? The Act of August 16, 1962 (43 U.S.C. 616), Project Authorizing Act, authorizes the Secretary of the Interior to construct, operate, and maintain the project and lists the primary project purposes which includes, "other useful and beneficial purposes incidental thereto,..." and that the project shall be operated "in substantial accordance with the engineering plans set forth in House Document Numbered 187, 83d Congress,...." House Document 187 on page 29 discusses sale of additional nonproject water storage space to the Colorado Fuel and Iron Corporation (CF&I) (10,000 acre-feet), owner of Sugar Loaf Reservoir (Turquoise Lake), and the Twin Lakes Reservoir and Canal Company (54,000 acre-feet). On pages 65 and 67 these two company storage reservoirs are again incorporated in the project plan and they are agreeable so long as "Their rights are not impaired." The legislative history acknowledges these companies private water use of project facilities and additional storage space for beneficial purposes. Thus, the project facilities can be used for storage of nonproject water and the specific legislative reference is "other useful and beneficial purposes incidental thereto, ..." Provision of the additional storage space in Sugar Loaf Reservoir is included in the 1965 contract with CF&I for acquisition of Sugar Loaf Reservoir. There is no provision for the District to have control or approval authority over project operations which have no impact on the District's benefits from the project. However, all payments by contractors for storage of nonproject water shall be applied as a credit toward the District's repayment obligation.

Title IX, P.L. 95-586, amending the Project Authorizing Act amends section 1 to state that the Secretary of the Interior is authorized to construct, operate, and maintain the Fryingpan-Arkansas Project "as further modified and described in the Final Environmental Statement (FES) for said project, dated April 16, 1975." The project operation, as it had been conducted, is discussed in detail in the FES. The Homestake Project is discussed in the FES, page II-138. FES pages II-146 through II-150 discussed interrelations with other projects and proposals for water development. It discusses interrelationships of eastern Colorado water developments which includes water developments in all of Colorado east of the continental divide. Also discussed are the use of imported west slope water, ground water, and eastern Colorado surface water to meet the demands of urban population growth. This legislation recognizes past use of project water storage space for storage of nonproject water and approves such past practices as well as anticipated future operating practices.

The Water Supply Act of 1958 authorizes construction of water storage capacity for future use without a firm contractual commitment. Ruedi Reservoir space for storage of water for use of west slope Colorado entities was constructed under the authority of the Water Supply Act of 1958. The area of use is not within any particular district committed to repay the cost of the regulatory space in Ruedi Reservoir. Where Reclamation law refers to water sale, the sale of storage and water has been used interchangeably.

Contract No. 6-07-70-W0090 (Homestake contract) with Colorado Springs and Aurora, Colorado, was executed on December 14, 1965, pursuant to

Reclamation law, particularly the Act of August 16, 1962, for storage and carriage of nonproject municipal water from the non-Federal Homestake Project owned jointly by the two cities. The City of Aurora and its place of use for such stored water is outside the Arkansas Valley and outside the District. The Homestake contract approval memorandum dated November 8, 1965, by the Acting Commissioner of Reclamation and approved on November 24, 1965, by the Secretary of the Interior, in discussing the proposed contract states that article 10(b) "also assures the cities that storage service, in addition to the 30,000 acre-feet guaranteed under this contract, can be obtained by separate agreement ...." The Homestake contract became operational on January 1, 1982. As authorized by the memorandum dated June 7, 1971, from the Commissioner of Reclamation to the Secretary of the Interior, discussing temporary storage contracts for the project and approved by the Secretary of the Interior on June 10, 1971, and under provision of article 10a of the Homestake contract, water was stored for Aurora commencing in 1973 pursuant to the terms of a temporary storage contract with annual renewal contracts until 1982.

Article 10(b) makes no statement limiting the additional storage service to only Homestake Project water. Other sections of the contract clearly limit the 30,000 acre-feet of storage service to only Homestake Project water. The 30,000 acre-feet of storage was determined to be fully adequate for regulation of Homestake Project water (66,000 acre-feet annually) with the 45,000 acre-feet Homestake Reservoir as discussed in the November 8, 1965, memorandum approved by the Acting Commissioner of Reclamation.

Nonproject water storage service has been provided in project east slope reservoirs to municipal contractors including Aurora, Pueblo, Pueblo West Metropolitan District, Colorado Springs, and the Twin Lakes Reservoir and Canal Company, mainly owned by these municipal users, since 1972 by temporary contracts and by the contract for storage executed with Aurora and Colorado Springs in 1965. The revenues from this storage service are applied to the District's repayment obligation reducing the District's ultimate repayments to the United States.

Mr. Pratt's comments on the recent court ruling on the San Juan-Chama Project concerned a municipality attempting to use its project water supply as recreation water and leave it in reservoir storage which was determined to be an unauthorized change of use of project water.

We believe the facts in the Aurora contract are more analogous to those in Carson-Truckee Irrigation District v. Clark, 537 F. Supp 106 at 112, 745 F2d 257 at 260 (1985). In Carson-Truckee, the court determined that Congressional authorization of "other beneficial purposes" could include municipal and industrial (M&I) uses despite the face that M&I use was not mentioned in the project authorization or legislative history. The District Court noted that, at the time of authorization, there was no need for M&I uses, but in the intervening years M&I water became needed.

The Act of February 25, 1920, Sale of Water for Miscellaneous Purposes (43 U.S.C. 521) grants authority to sell project water to a municipality when

the project irrigated lands had been acquired by the municipality and retired from irrigation. The storage contract with Aurora is unrelated to project water or water rights.

Executing a new contract for additional storage service with Aurora would not be a major operational change, but would be a continuation of procedures in effect since the project was authorized. All storage contracts contain language requiring the contractor, in cooperation with the State, to make determination of the right to store water under Colorado law, regardless of the source of the water. A contract with Aurora would be junior in priority to all project purposes and would not impact project operation.

The proposed contract permits water storage by Aurora only after all the storage needs of the Project, including winter water and storage needs of entities within the Southeastern Colorado Water Conservancy District, are met. These provisions fully protect the authorized purposes of the Project, the District's contracted water service, and the availability of the facilities for use by entities within the District. The proposed contract is in accord with both the letter and the spirit of Amendment No. 4 of Contract No. 5-07-70-W0086 between the United States and the District.

The proposed contract provides for a storage rate of $32 per acre-foot, a rate eight times larger than that charged to entities within the District. The City of Aurora is being charged the higher rate because they do not pay ad valorem taxes toward the repayment of the Project. The $32 per acre-foot rate will not be used as a precedent for future storage contracts with entities outside the District.

The proposed contract specifically excludes exchanges involving Project water. The proposed contract requires both storage of water and any exchange with nonproject water to be approved by the State of Colorado Division of Water Resources. These provisions clearly place the responsibility for administration of water rights with the State of Colorado.

The proposed contract will continue the current practice of using a composite evaporation rate. This method has worked well in the past and, in our judgment, is equitable.

The proposed contract includes the Bureau's standard assignment clause. This clause applies to the assignment of the contract, not the assignment of the water. The only requirements that the proposed contract puts on use of water is the acreage limitation and the requirements of Reclamation law if the water is used for agricultural purposes. We do not control the use of nonproject water since the use of nonproject water is a State Water Rights matter.

We feel that the issue of moving Arkansas River water out of the basin is a matter to be settled by the State of Colorado. We consider it inappropriate for the United States to attempt to influence the outcome of this resource allocation by denying a contract that we could otherwise grant. While it is true that the transfer of the water out of the basin may reduce the tax base of the District, the impacts will not be of such magnitude as to jeopardize the financial integrity of the Fryingpan-Arkansas Project. It is our policy to avoid unnecessary intrusions into state and local affairs.

It should be kept in mind that the proposed contract is a temporary storage contract that will expire on December 31, 1986. The proposed contract contains no provisions for renewal. Should a situation materialize which has a direct negative impact on the Fryingpan-Arkansas Project, we will be at liberty to revise the terms or, if necessary, decline to issue a new contract in 1987.

Thank you for expressing your thoughts concerning our temporary storage contract with the City of Aurora.

Sincerely yours,

Raymond Willms
Project Manager

cc: Mr. Kevin B. Pratt
Fairfield and Woods
1600 Colorado National Building
950 Seventeenth Street
Denver, CO 80202

Mr. John Dingess
Special Counsel to the
City of Aurora
Suite 820
Aurora, CO 80013-4090

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, D.C. 20240

IN REPLY REFER TO:

APR 3 2003

W-6335
WTR 1.10

Mr. Peter D. Binney, P.E.
Director of Utilities
City of Aurora
1470 South Havana Street
Aurora, CO 80012

Dear Mr. Binney:

As you are aware, the Bureau of Reclamation has been reviewing the authority to issue a long-term contract to the City of Aurora, Colorado for the utilization of Fryingpan-Arkansas Project facilities. Our review is complete and we have concluded that such authority exists. The arrangements with the City of Aurora will not adversely affect Reclamation's contract with the Southeastern Colorado Water Conservancy District.

Last year we worked diligently with the District, the city and others on an amendment in the nature of a substitution, to HR 3881 introduced last year. While we did collaborate on substitute language, we all understand that there are still some issues with the substitute language which require resolution. Even with clarification on the authority to enter into a long-term contract with the City of Aurora, legislation is desirable for a number of reasons, including to meet the projected increase of water storage needs, and to clarify disposition of revenues. The alternatives derived from the substitute language will offer lower cost and more environmentally friendly solutions to water users than building new facilities. I believe the proponents of the legislation will be able to resolve the remaining differences and stand ready to work to bring an agreed upon solution back to the Congress.

By this letter I am requesting Ms. Maryanne Bach, Regional Director, Great Plains Region to take the necessary steps to initiate contract negotiations with the City of Aurora. She will be contacting you regarding this matter. If you have questions, please contact her at 406-247-7600.

Sincerely,

John W. Keys, III

John W. Keys, III
Commissioner

Identical Letter Sent To:
Mr. James Broderick
Project Manager
Southeastern Colorado Water Conservancy District
31717 United Avenue
Pueblo, CO 81001

cc: See attached list

[The response to questions submitted for the record by Mr. Tauer follows:]

June 28, 2007

The Honorable Grace Napolitano
Chair, U.S. House Subcommittee on Water and Power
Committee on Natural Resources
1522 Longworth House Office Building
Washington, DC 20515

The Honorable John Salazar
U. S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

Dear Chairwoman Napolitano and Representative Salazar,

This letter is in response to your follow-up questions at the June 1, 2007 Water and Power Subcommittee hearing in Pueblo, Colorado.

Question asked by Chairwoman Napolitano:

"How do you balance asking your customers to save water through conservation with the need to maintain revenues to keep your balance sheet in good condition?"

The City of Aurora has adopted a revenue neutrality approach to budget management during periods of significant and sustained water restriction programs. A surcharge was added to the user fee to account for projected lower revenues so the Utility's Debt Service Coverages were maintained and operating funds were available. During the recent drought, the annual revenues were within five percent of projected revenues and this has allowed the Utility to maintain its high credit rating which is essential given the City's major investment in new water source development in the South Platte River basin. That program to develop the City's new water sources exceeds $750,000,000 in capital cost and will be completed in 2010.

This responsible approach to maintaining revenues during extended drought periods was not adopted by Metropolitan Water District of Southern California, which saw an accumulated deficit in revenues during that same time period.

Question asked by Representative Salazar:

"Your statement seems to indicate that since Aurora has a larger tax base that you have the right to take water from the Lower Arkansas Basin and leave communities depressed. Do you believe that water policy should be based on only serving the needs of the wealthy?"

Aurora does not get to set water policy to serve a singular or its own interest—the setting of state water policy is reserved to the State of Colorado's legislature and is promulgated under Rules and Regulations and the State's Constitution. Colorado administers the use of water as a public property right under the Appropriation Doctrine—that doctrine respects a "first in time, first in right" allocation of beneficially used waters. It is a Doctrine that recognizes the scarcity of water resources and includes numerous mechanisms for the change of beneficial use (for example from agricultural to municipal use), location of use by exchange, transfer or direct delivery. All of Aurora's decreed water rights, including those in the Arkansas Valley, are established through Water Court proceedings.

For the record, Aurora is not alone in seeking to transfer agricultural rights to municipal or industrial use as a part of free market transactions. As of this time, other transfers the City of Aurora is aware of include:

Agency	Acreage Transferred (acres)	Average Yield(Acre-feet)
Pueblo Board of Water Works	2,028	13,484
Colorado Springs	29,381	19,970
Public Service of Colorado	5,826	12,513
Highline Ditch	1,900	10,000
Aurora	22,961	23,041

Further, the State of Colorado Department of Agriculture has estimated that, on average, 140,000 acres per year of agricultural land are transferred to alternative land uses including conservation easements, dry-land farming and urbanization. Ap-

proximately 28,800 acres (about 20% of total) of irrigated acreage per year are transferred to urban uses, primarily in Boulder, Larimer and Weld Counties. There are numerous reasons for individual farmers choosing to sell their ranches, farms and water rights. These range from individual decisions based on family dynamics, economics, federal farm pricing policies, federal farm subsidies, social issues etc. These changes in farming are not confined just to Colorado. As noted in U.S. News and World Report, June 11, 2007:

> *The fertile soil of Iowa has made its agricultural exports second only to California...Between 1974 and 2002, the number of people operating farms in the state declined from about 102,000 to about 62,000; agriculture now makes up less than 5 percent of the State's gross domestic product.*

A similar change is occurring in Colorado where urban-centric economies now dominate the State's economic well-being and agriculture produces less than 2 % of the Gross State Product. These are all trends that are blind to Aurora's legal acquisitions of water resources to reliably serve the needs of the 306,000 people in the City and the numerous cornerstones, including the Fitzsimons/ VA Medical Complex, Buckley Air Force Base and other additions, that contribute to Colorado's future.

The responsible development of water resources to meet the needs of the State of Colorado and its many users is complex and recognized by the State legislature as well as municipalities. While Aurora represents less than 15% of the anticipated population growth in the Denver metropolitan area in the next 25 years, the City has embarked on a responsible program to develop reliable water supplies for its citizens. This investment includes a $754 million program to recapture city water rights north of the metropolitan area and to treat and deliver those flows to our customers.

This maximization of sustainable use of previously developed water resources is acclaimed at all levels of government and the environmental community as an example of Smart Water Project Planning. At the same time, we will protect our previously developed water resources, including those in the Arkansas Basin, that are controlled by water decrees, intergovernmental agreements, operating agreements and contracts.

We would be pleased to share further information on how Aurora's foresight in water supply planning is leading Colorado in meeting the water demands that we are all facing.

Sincerely,

Edward J. Tauer
Mayor

Mr. LAMBORN. Thank you, Mr. Mayor, for your testimony.

Mr. Peternell.

STATEMENT OF DREW PETERNELL, DIRECTOR, COLORADO WATER PROJECT, TROUT UNLIMITED, BOULDER, COLORADO

Mr. PETERNELL. Thank you, Mr. Chair. My name is Drew Peternell. I'm an attorney for Trout Unlimited and the director of Trout Unlimited's Colorado Water Project.

TU is a national nonprofit fisheries conservation organization, and the Colorado Water Project works specifically to maintain stream flows for the benefit of fish. We have an interest in the rivers and streams that are impacted by the Fry-Ark Project. Trout Unlimited is not opposed to water resources development. We understand that water resources development is important for our state, our economy, our agriculture, open spaces, our growing population.

As we outlined, however, in our 2005 report entitled "Facing Our Future," which I have a copy of if the panel is interested, as we outlined in that report, our support for new water development projects depends on the project being smart, and principles of smart water supply from our perspective include making full and efficient use of existing supplies before increasing transbasin diver-

sions, integrating conservation, efficiency, reuse, nonstructural approaches into water resources planning, rehabilitating existing facilities before building new ones, and probably bottom line, adopting water supply solutions that minimize harm to or create benefits for the environment, the economy, and the local communities.

As the panel knows, there are currently a number of water development proposals on the books or on the table that would involve Fry-Ark Project facilities, and TU's position on those projects depends on the degree to which they are developed in a smart manner. And it seems to us there are two things that the Federal government can help to assure that water development in the Fry-Ark area is smart. One would be to study the feasibility of a variety of means of meeting water supply, and the other is to study the impacts of water supply arrangements.

On the first point, both Representative Salazar's H.R. 1833 and Representative Lamborn's H.R. 2277 would authorize the Department of Interior to conduct a study of the most feasible method of meeting water supply demands in the Fry-Ark Project service area. TU is supportive of having the Bureau conduct such a study, but to ensure that the study is fully informed and actually results in smart water supply choices, we think it's important that the study look at a variety of options or combinations of options for meeting demand.

Looking at storage only we think is too narrow and is inadequate. What we have in mind is looking at these nonstructural approaches, like efficiency, water-sharing arrangements, conservation, either nonstructural approaches which can be less environmentally damaging and less expensive to build.

In addition to addressing a variety of needs of meeting demands, the other way the Federal government can help to assure smart water supply in the Fry-Ark area is to conduct a study of the impacts of various supply arrangements. Assessing the impacts of water development is the cornerstone of smart water supply. Therefore, Trout Unlimited is supportive of the provision of Representative Salazar's bill that directs the State of Colorado to conduct an impact evaluation.

One of the sets of impacts of the Fry-Ark Project results from the diversion of water from the Colorado Basin to the Arkansas Basin that are felt in the Colorado Basin. And as it's currently written in H.R. 1833, it is a little bit unclear as to whether those impacts would be addressed in the evaluation. We think that it's important they be addressed and we suggest that the legislation make that point clear, that you're going to be addressing the impacts felt in the Colorado Basin of diversions to the Arkansas Basin.

H.R. 1833 also must provide the impact study, which again would be conducted by the State of Colorado. The impact study is not a replacement for need for compliance. Before the Department of Interior and the Bureau of Reclamation takes action on any proposals related to the Fry-Ark Project, it must comply with NEPA, and in fact, given all of the changes to the Fry-Ark Project since it was authorized in 1962 and given all of the proposals for future changes to the Fry-Ark Project, we think that now might be an appropriate time for the Bureau of Reclamation to perform a programmatic environmental impact statement on Fry-Ark in general.

This would be something in addition to the state analysis called for in H.R. 1833.

With that, thank you again for the invitation. I appreciate the chance to be here, and Trout Unlimited is anxious to participate in future conversations regarding H.R. 1833 and any other similar legislation.

Mr. LAMBORN. Thank you, Mr. Peternell.

[The prepared statement of Mr. Peternell follows:]

May 29, 2007

United States House of Representatives
Committee on Natural Resources
Subcommittee on Water and Power
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Fryingpan-Arkansas Project Field Hearing

Dear Representatives:

Please accept this letter as my written testimony in connection with the June 1, 2007 House Natural Resources Committee, Subcommittee on Water and Power field hearing regarding the Bureau of Reclamation's ("Reclamation's") Fryingpan-Arkansas ("Fry-Ark") Project.

Trout Unlimited ("TU") is a national, non-profit fisheries conservation organization with approximately 160,000 members nationwide and approximately 10,000 in Colorado. TU's mission is to conserve, protect and restore coldwater fisheries and their habitats. TU's Colorado Water Project works to maintain and restore stream flows for healthy coldwater fisheries and to increase meaningful public participation in decisions regarding water allocation. The Colorado Water Project and TU's Colorado membership are interested in the conservation and protection of the rivers and streams affected by the Fry-Ark Project.

The Fry-Ark Project is a Reclamation project that diverts water from the Fryingpan River and Hunter Creek in the Colorado River basin for delivery to the Arkansas River basin. The project consists of a series of dams, reservoirs, diversion structures, pumps, pipelines and other infrastructure. Water is delivered initially to Turquoise Lake, near the top of the Arkansas River basin, and the terminal reservoir in the Fry-Ark system is Pueblo Reservoir, near the City of Pueblo. The project came on-line in 1975 and since that time has delivered an average of 55,000 acre-feet of water annually from the Colorado River basin to the Arkansas River basin for agricultural and municipal use.

TU is not opposed to water resources development. We recognize that water development is necessary to sustain Colorado's agricultural heritage and growing population. As outlined, however, in our 2005 report, Facing our Future: A Balanced Water Solution for Colorado, our support for new water development projects is contingent on the project being "smart." Principles that undergird smart water supply include: making full, efficient use of existing supplies before increasing transbasin diversions; integrating conservation, reuse, water sharing arrangements and demand management into water supply planning; rehabilitating or enhancing existing infrastructure before building new projects; and adopting water supply solutions that minimize harm to, or create benefits for, the environment, the economy and local communities.

Water providers on Colorado's Front Range and eastern slope currently are planning for or recently have undertaken four new water development projects that rely on Reclamation's Fry-Ark Project facilities. The four projects are:

- Reclamation recently issued a record of decision approving a 40-year contract with the City of Aurora for exchange and storage of non-project water using Fry-Ark facilities. This contract facilitates the delivery of Aurora's Arkansas River water rights to Aurora's service area in the South Platte River basin. Many of Aurora's Arkansas River water rights were obtained through retirement of irrigated lands in the lower Arkansas Valley.
- Colorado Springs is pursuing a project, known as the Southern Delivery System ("SDS"), that would transport water through a pipeline from Pueblo Reservoir to Colorado Springs. The project could enable additional diversions of water from the Colorado basin to the Arkansas basin and could deplete the Arkansas River between the outlet of Pueblo Reservoir and the confluence with Fountain Creek—a reach the City of Pueblo and the U.S. Army Corps of Engineers recently spent millions of dollars to restore. Colorado Springs would exchange

SDS wastewater effluent down Fountain Creek, potentially exacerbating the water quality and flooding problems on the Fountain which already are the subject of a lawsuit between Pueblo and Colorado Springs.

- Working with the Southeastern Colorado Water Conservancy District ("SCWCD"), communities in the lower Arkansas Valley are pursuing the Arkansas Valley Conduit project. The conduit would deliver water from Pueblo Reservoir through a pipeline to cities and towns downstream in the Arkansas Valley.

The SCWCD is promoting a plan, known as the Preferred Storage Options Plan ("PSOP"), to enlarge Pueblo and Turquoise Reservoirs for the benefit of a number of eastern Colorado water providers. Depending on the operational details, PSOP could dramatically alter the environment in both the Colorado and Arkansas River basins.

TU's position on these and other water supply projects depends on the degree to which they are developed in a manner that is smart.

As a precursor to expanding Fry-Ark facilities as contemplated in PSOP, two separate bills pending before the House Committee on Natural Resources—Representative Salazar's H.R. 1833 and Representative Lamborn's H.R. 2277—would authorize the Secretary of Interior to conduct a study of "the most feasible method of meeting the present and future water supply and related storage requirements within the area served by the Fryingpan-Arkansas Project..." An analysis such as this is a first-step towards planning for smart water supply. To ensure that the analysis results in smart water supply choices, however, the legislation should require that the study consider a variety of methods or combinations of methods of addressing water demand, specifically including water conservation, efficiency improvements, water sharing agreements and other non-structural approaches to supplying water and lessening water demand. The implementation of non-structural approaches could reduce or eliminate the need for new or renovated water diversion or storage facilities, which often are expensive, environmentally-damaging and culturally-disruptive. Any legislation authorizing a study of the feasibility of methods of meeting demands also should direct that the analysis account for demands for stream flows for environmental and recreational purposes and should require that Reclamation perform the study according to a process that allows for public involvement.

Smart water resources planning depends not only on evaluating the feasibility of a variety of methods of satisfying demands, but also on assessing the impacts of various water supply arrangements. Individually, PSOP and the other water supply projects being pursued could impact fishery and ecological resources. Collectively, the raft of projects could have broad impacts on the environment, especially when considered in light of other alterations to natural flow regimes in the Colorado and Arkansas River basins, including on-going Fry-Ark operations. Projects that transfer water from one location or use to another also can have significant economic, social and cultural impacts. Assessing these impacts and implementing measures to avoid them is a cornerstone of smart water supply. Together with the feasibility study called for in Representative Salazar's and Representative Lamborn's legislation, an analysis of the impacts of Fry-Ark operations would serve as the basis for smart water resources planning in the Arkansas basin.

Pursuant to NEPA, Reclamation prepared an environmental assessment to address the impacts of the excess capacity contract with Aurora. Reclamation also is in the process of preparing a NEPA environmental impact statement on Colorado Springs' Southern Delivery System. But, neither Reclamation nor anyone else has prepared an in-depth analysis of the cumulative environmental, recreational, economic, social and cultural impacts of current and future Fry-Ark Project operations. Before agreeing to any of the pending water supply proposals that would rely on Fry-Ark Project facilities, and before committing federal dollars to expanding Fry-Ark facilities, it is important that the cumulative impacts of Fry-Ark operations be evaluated. Section 3 of Representative Salazar's bill calls for the State of Colorado to conduct such an impact evaluation. Because Representative Lamborn's bill does not include a similar provision, TU supports H.R. 1833 over H.R. 2277.

One set of impacts of the Fry-Ark Project results from the diversion of water from the Colorado basin to the Arkansas basin. As currently written, H.R. 1833 creates some confusion as to whether the analysis contemplated in Section 3 would address these impacts. Section 3(a) of H.R. 1833 provides that the impact study is to evaluate the effects of water transfers from the Arkansas and Colorado basins to communities outside of those two basins. Section 3(b) is broader than Section 3(a), calling for evaluation of certain activities, such as exchanges and expansion of Fry-Ark facilities, that do not necessarily involve the transfer of water to areas outside the Colorado and Arkansas basins. The language of Section 3(a) should be expanded to

be more consistent with Section 3(b) and to specify that the study is to address impacts in the Colorado basin of diversions to the Arkansas basin.

H.R. 1833 should also require that the State of Colorado conduct the Section 3 impacts study using a public participation process modeled after NEPA. In particular, TU is concerned that the public process include an opportunity to comment on the scope of the impacts study and on draft and final versions of the study document. Further, while the legislation should require that the state conduct the impacts analysis with the benefit of public involvement, H.R. 1833 should provide that the Section 3 impacts study is not intended to satisfy the requirements of NEPA as applied to any individual federal action related to the Fry-Ark Project. In fact, depending on the timing of the various proposed federal actions relative to the timing of the Section 3 impacts analysis, and depending on the scope of the Section 3 analysis, it may be necessary for the Bureau of Reclamation to supplement the H.R. 1833 impacts analysis with a NEPA programmatic environmental impact statement addressing Fry-Ark Project effects on the Colorado and Arkansas River basins.

Thank you for the invitation to provide this testimony. I look forward to the dialogue at the field hearing on June 1. Trout Unlimited also is anxious to participate in more detailed discussions regarding PSOP, H.R. 1833 or any other similar legislation.

Sincerely,

Drew Peternell
Director and Counsel
Colorado Water Project
Trout Unlimited

Mr. LAMBORN. Mr. Treese.

STATEMENT OF CHRIS TREESE, MANAGER, EXTERNAL AFFAIRS, COLORADO RIVER WATER CONSERVATION DISTRICT, GLENWOOD SPRINGS, COLORADO

Mr. TREESE. Thank you, Mr. Chairman. My special thanks to the Chairwoman for not only this hearing, but your commitment to personal travels throughout the West to visit firsthand and hear from water users and water interests on the challenges of sustainability. Appreciate it very much.

I am the only Western Slope representative before you today, and I appreciate Mr. Udall's recognition that western Colorado is in fact a part of the Fryingpan-Arkansas Project, with corrections to President Kennedy, that is not just the source of water for the Fryingpan-Arkansas Project. And that was made clear in the authorizing legislation, western Colorado is part of the project.

In fact, western Colorado, from the headwaters of the Roaring Fork River above Aspen, including the Fryingpan tributary, all the way down to the Colorado River at Grand Junction, is specifically listed as part of the service area to the project. We do supply water. We also receive water and benefits from the project.

As a result of Colorado water law and Congressional leadership back in the 1950 and '60s, Ruedi Reservoir was constructed in western Colorado for the express purpose of addressing project impacts and ensuring that project benefits would accrue to western Colorado. Additionally through the Congressional authorization process, specific operating principles were adopted and incorporated by reference into Federal statute. I'd like to read into the record and for everyone's understanding the opening paragraph of these principles.

It says that, quote, the project contemplates, A, the maximum conservation and use of water; B, the protection of western

Colorado water uses, both existing and potential, in accordance with the declared policy of the State of Colorado; and C, the preservation of recreational values. The Colorado River District calls for nothing more than a rededication to these original and guiding principles of the Fryingpan-Arkansas Project.

A couple other elements of those operating principles which I would like to call note to, one is the protection of stream flows on the Roaring Fork River above Aspen. Authorized in the original project was a second west slope reservoir; however, none was found feasible and none was ever constructed. The impacts to stream flows, however, continue to occur without any mitigation from such a reservoir.

To further protect the upper Roaring Fork River, minimum stream flows were included in the principles. These are not being met consistently with attendant impacts on stream health and local recreational opportunities, and they deserve attention.

Finally, I'd like to raise a looming issue of concern regarding repayment of Ruedi Reservoir. Ruedi Reservoir is a separately allocated feature of the Fryingpan-Arkansas Project for repayment purposes. There is no sponsoring entity like the Southeastern District for Ruedi Reservoir. At the time of authorization, Ruedi repayment was anticipated to come principally from a burgeoning oil shale industry and water service contracts to that industry.

That industry has not materialized, in fact, has not materialized after two booms and busts in the energy cycles. There are numerous critical water contracts from Ruedi presently; however, they are much smaller contracts, bringing in less than the annual revenues required for repayment to the Federal government. The result is a negative amortization on the project. And the combination of an increasing repayment cost, in fact, the original cost of the repayment cost of the project was about 17 million, is now well over $30 million, and we have less time in which to repay it. Repayment is due no later than 2019. The result is the cost of water, annual service cost of water, is increasing geometrically and will soon become cost-prohibitive well in advance of 2019.

I anticipate discussing this issue with the committee, Secretary of Interior and others who can help address this issue. It should also be noted that Ruedi, in addition to providing critical waters to west slope farms, cities and municipalities, is also a critical water source for water for the recovery of four endangered fish species listed under the endangered species act residing in the Colorado River.

The Colorado River District, my district, looks forward to working with this committee, the Congress, and all project interests to ensure sustainable water in the future. We need to honor first and then fulfill the past commitments, and then we can move forward toward the admirable and necessary goal of a sustainable water future.

Mr. LAMBORN. OK. Thank you, Mr. Treese.

[The prepared statement of Mr. Treese follows:]

Statement of Christopher J. Treese, Manager, External Affairs, Colorado River Water Conservation District, Glenwood Springs, Colorado

I want to thank Chairwoman Napolitano for this opportunity to share the Colorado River Water Conservation District's concerns and recommendations re-

garding the Fryingpan-Arkansas Project and the important goal of a sustainable water future. I also want to extend my District's gratitude to the Chairwoman for her commitment to the subcommittee's field hearings and her personal travels throughout the West to see and hear first-hand the issues facing Western water users.

The Colorado River Water Conservation District is the principal policy body for the Colorado River within Colorado. We are an independent, political subdivision of the State of Colorado 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 Colorado River District includes all or part of 15 counties in western Colorado, including the Fryingpan and Roaring Fork Rivers which serve as the source waters for the Fryingpan-Arkansas Project. We offer the following testimony in a spirit of cooperation and partnership to ensure that adequate and safe water supplies are developed and maintained in a manner that is both timely and compatible with the competing values for water in the arid West.

I would like to further commend the chairwoman for the topic of today's hearing. The Fryingpan-Arkansas Project, or "Fry-Ark," is a fitting lens through which to view the challenges and opportunities inherent in the goal of sustainable water supplies. The Fry-Ark project, like so many throughout the arid West, faces competition for its water supplies. Competing values place stresses on the source waters, delivered waters, water quality, and management of the project's facilities. Agricultural beneficiaries struggle to maintain viable business operations in the face of lower commodity prices and increasing municipal demand for agriculture's water supplies. Other competing interests seek higher reservoir lake levels for recreation, while downstream interests compete for different water release schedules. White water enthusiasts favor higher flows during rafting season, while anglers seek more consistent flows that optimize trout habitat and are safe for wading. Accordingly, the Fry-Ark project, like other Western water projects, faces on-going challenges to sustainable and acceptable operations.

Ruedi Reservoir

As a federal transmountain water diversion project with a Colorado water conservancy district sponsor, the Fry-Ark project is subject to unique conditions of Colorado water law. The Colorado River basin, as the basin-of-origin for the project's water supply, enjoys certain protections in law not required of non-conservancy district water projects. Colorado law requires the conservancy district to ensure that present and future water uses in the Colorado River basin are not "impaired nor increased in cost at the expense of the water users within the natural basin." (Colorado Revised Statutes 37-45-118(b)(II)) To fulfill this provision of state law, a central feature of the Fry-Ark project is Ruedi Reservoir. Congressional authorization for the Fry-Ark, in fact, specified that Ruedi Reservoir be the first project feature constructed.

The Colorado River basin is not just the source water for the Fry-Ark project. Congressional authorizing legislation and related documents clearly establish Western Colorado as part of the project's service area. Today, Ruedi Reservoir provides supplemental water supplies to cities, towns, commercial interests and individual water users in Western Colorado. As a direct result of Ruedi's operations, Colorado's longest stretch of Gold Medal trout fishing extends from Ruedi dam to the Fryingpan River's confluence with the Roaring Fork River and onto its confluence with the Colorado River at Glenwood Springs.

Western Colorado will continue to advocate for fair and equitable treatment of the Fry-Ark project's western service area in existing operations and any future changes to operations or expansions.

Operating Principles

Like many of today's water projects, the Fry-Ark was originally envisioned as a much larger water project. The original "Gunn-Ark Project" proposed nearly 500,000 acre-feet per year of diversions. Local opposition, however, resulted in project changes and assured operating conditions that ensured a viable project that provided a sustainable water supply without decimating the basin-of-origin. These conditions and the related operating principles were officially incorporated into the Fry-Ark's Congressional authorization in House Document 130. (Operating Principles Fryingpan-Arkansas Project, 87th Congress, First Session. March 15, 1961.) Interpretation and fulfillment of some of these permit conditions and project compromises, however, remain an area of contention.

The Operating Principals of the Fry-Ark Project were incorporated as §3 of the authorizing legislation. (P.L. 87-590, 87th Congress, H.R. 2206. August 16, 1962.) The opening paragraph of these Principles states:

"The project contemplates—

(a) The maximum conservation and use of water;

(b) The protection on Western Colorado water uses, both existing and potential, in accordance with the declared policy of the State of Colorado; and

(c) The preservation of recreational values."

(Operating Principles, Fryingpan-Arkansas Project. Page 1.)

The Colorado River District calls for a rededication of the U.S. Bureau of Reclamation ("Reclamation"), along with the project's East Slope and West Slope beneficiaries, to these guiding principles.

To address the additional transmountain diversion of water by the private Twin Lakes Reservoir and Canal Company, the Operating Principles state, "in order to offset adverse streamflow (sic) conditions of the Roaring Fork River above the town of Aspen which might occur as a result of the project enlargement of the Twin Lake Reservoir, the Ashcroft Reservoir on Castle Creek, or some reservoir in lieu thereof, shall be constructed on the Roaring Fork drainage above Aspen...." (Operating Principles, Fryingpan-Arkansas Project. §2; Page 2.) The Principles go on to acknowledge that any such mitigation reservoir for the upper Roaring Fork River had to first be found feasible by the Secretary of the Interior. No feasible project was, in fact, found, and the communities in the upper Roaring Fork basin continue to be concerned about project impacts to stream health and water quality.

Moreover, the Operating Principles include minimum monthly average in-stream flow thresholds for the Upper Roaring Fork River above the City of Aspen that were established by the U.S. Fish and Wildlife Service in cooperation with the (then) Colorado Department of Game and Fish. There are also "hard minimums" below which stream flows are not ever to be reduced by diversions. Both these recommended average and "hard" minimum flows are consistently not met. Proposed further development of East Slope water employing Fry-Ark facilities threatens to further aggravate this situation.

The Fry-Ark Operating Principles also provide for a 3,000 acre-foot exchange between the Twin Lakes Company and the Project as an obligation of the Project. The current agreement implementing this exchange expires in 2014. The Project yield from diversions on the Hunter Creek are dependent on a long-term or permanent Twin Lakes Exchange agreement, as does the health of the upper Roaring Fork River. Reclamation is a necessary party to a future extension of this agreement and must provide leadership to ensure the requirements of the Operating Principles are carried out for the long term benefit of both the East and West Slope portions of the project's service area.

Project Repayment

Ruedi Reservoir is a separately allocated feature of the Fry-Ark project for repayment purposes. Ruedi's repayment was anticipated to come from West Slope water service contracts. There is no sponsoring water conservancy district with repayment responsibilities for Ruedi Reservoir. At the time of project authorization, Ruedi's repayment was projected to predominantly derive from water service contracts with the then-anticipated oil shale industry. Since the anticipated oil shale industry and its attendant industrial water demands did not materialize, scheduled annual payments to the federal government have been delinquent. However, there is no sponsoring local agency responsible for these payments. As a consequence, negative amortization of the project is occurring. Congressional authorization requires that the project's costs, including the original $17.5 million reimbursable portion of Ruedi Reservoir's construction costs, be repaid to the federal government by 2019. With negative amortization, this price is currently over $30 million and growing geometrically. The result is an increasing project cost and a further reduction in water demand because of the resulting increased price for Ruedi water. While a new round of interest in oil shale development is present today, changing technologies and newly proposed project locations outside the Colorado mainstem largely preclude oil shale as Ruedi's repayment solution. The Colorado River District anticipates discussing this matter with this committee and the Secretary of the Interior in the next few years to address these repayment conditions and to ensure the perpetual benefits to Western Colorado of Ruedi Reservoir as an integral feature of the Fry-Ark Project.

Finally, it should be noted that Ruedi Reservoir today is a key source of water for the cooperative Recovery Program for the Four Endangered Fishes of the Upper Colorado River ("Recovery Program"). Over 21,000 acre-feet of water in Ruedi is

dedicated to the preservation and recovery of four local fish species listed as endangered under the Endangered Species Act. Only half of that 21,000 acre-feet, however, is permanently dedicated to the Recovery Program. The long-term use of Ruedi water and the attendant repayment implications are uncertain but must be addressed.

Conclusion

Western Colorado is an often overlooked project beneficiary of the Fryingpan-Arkansas Project. Ruedi Reservoir is an integral element of the project. In addition to fulfilling the mitigation requirements of Colorado water law, Ruedi provides vital water supplies to West Slope municipalities, industry and agriculture. Lingering issues of compliance with the project's Operating Principles and emerging issues of repayment and future water allocations must be addressed to the mutual satisfaction of all project beneficiaries and the U.S. Bureau of Reclamation.

Mr. LAMBORN. And Mr. Stealey is our next witness.

Mr. Stealey, I notice that you have not submitted a written statement prior to your statement, like everyone else has and which the rules of the committee call for. Will you be able to do that after your testimony?

Mr. STEALEY. After 28 years in government, I have never written anything down, and I'm not starting today.

Mrs. NAPOLITANO. Mr. Lamborn, the Chair agrees that it's always preferable to have written testimony and to have that testimony submitted at least 48 hours before the hearing, and many times that is not done, and we still admit it into the record. The Chair submits that Rule 4B provides clear discretion for the Chair to allow the witness to speak without a written statement and will allow Mr. Stealey to testify, and I welcome his participation and his appearance.

Mr. LAMBORN. Please continue.

STATEMENT OF WALLY STEALEY, ARKANSAS VALLEY RANCHER, PUEBLO, COLORADO

Mr. STEALEY. Well, Committee, Madam Chairman, we are glad you're here. Welcome to the world of Colorado water buffalos. If you spend a lot of time with them, you will learn very rapidly that the most important thing you can remember is this statement, the difference between the sin of omission and the sin of commission. They will never lie to you, and they'll never tell you the whole truth unless your question is extremely specific as to what they know. I truly enjoy them. Many of them are my friends. I lobbied in the water area in Colorado many, many years.

My first physical job as a young man was working on a transmountain diversion ditch, the (inaudible) ditch in Ouray County with an elevation of 11,000 feet, moving water from the west fork of the Cimarron River into the Cow Creek, and thus the Uncompahgre River and back down into the Gunnison. That ditch was dug in the late 1800's, the early 1900's, by one (inaudible). My family's been here all too long.

Most of the people in the room either know me or heard of me. You heard everything there is to hear, so I'm just going to try to summarize this from just—I guess the best way to describe myself is the cowboy who happened to go to college.

The biggest danger we've got—and I drafted a piece of legislation when I was Chairman of the District, the biggest danger we've got is diminishing the taxpayers' role in the Fryingpan-Arkansas

Project by allowing PSOP participants to diminish our stock, just like in the business world. If I buy stock in your corporation and you add more stock and don't give me more, you have diminished my holding in the company.

That is extremely dangerous. PSOP participants claim they have 11 or 12 members, but let me tell you how that's really going to work. It's created for the big three: Pueblo, Aurora, Colorado Springs. And when it comes time to pony up the water for the dam, the smaller communities are going to have to say, "We probably don't have it." And Aurora has already said to one of those communities, "Well, we'll put your money in for you."

This is a very dangerous project. If you want this to be still a public project, like a municipal golf course, please do not let them put a country club on top of our municipal golf course. It would be very bad for this valley.

The exchange issue is most fascinating. It is not really covered in Colorado law, but we allow it. It took us years to get legislation through that would allow a water judge in Colorado to consider water quality. They don't have to deliver it. They can now consider it. We consider that a big step. We don't do anything with exchanges.

We've got a little office out there in Crowley County with a nice young man—older man now—controlling and watching all of the exchanges. He knows where they go, Pueblo knows where they go, Aurora knows where they go, Colorado Springs knows where they go. And when I asked the state engineer to give me a list of all of the exchanges for a six-month period, he said, "I don't have a clue what the hell they're doing." That's the water engineer for the State of Colorado.

This has got to be stopped. Exchanges need to be controlled, because they can do their studies until hell freezes over, and when you take all of the good water out of the top of the river, it's going to get worse at the bottom of the river. And as soon as we put this package together, I'll bet every one of you that Kansas comes walking in the door and says, "You're not going to do that." They have a stake in this too. And they should.

We have watched one of our counties, Crowley County, totally destroyed by the purchase of their water. Let me address the water concept of property rights. Justice Douglas wrote in his famous decision, allowing for cities to control for aesthetic purposes planning and zoning was declared a property in the United States was not a right like the right of free speech or the right to a lawyer, but in fact it's a privilege to be used in conjunction with the benefit of the community. And it is not up to the United States government or the State of Colorado to provide farmers with a market for their water.

They've got to join in there just like the rest of them. God, I love them. I'm a water right holder in the Bessemer ditch. I have water in Fremont County on my ranch, and I cry every time I hear of a ranch going under. But let me tell you one thing they won't admit to. Whenever there's a ranch or a farm for lease, somebody gobbles it up immediately. So it must not be all that bad out there in terms of making a living. They can lease that land immediately.

Mr. LAMBORN. Mr. Stealey, thank you for your testimony. And you can——

Mrs. NAPOLITANO. I will give him some of my time.

Mr. STEALEY. I would only ask one privilege. I could go on forever, but I would like to recognize two people that have not been recognized. They both preceded me as Chairman of the Southeast District, and both of these gentlemen have spent many, many years working on this project. I was only on the board five years, and they both go over 20 years, and that's Glen Everett and Alan Hammill, and with the Chairman's permission, I'd like to have them stand and be recognized.

[Applause.]

Mr. LAMBORN. OK. Thank you.

Mr. STEALEY. Thank you very much, Mr. Chair.

Mr. LAMBORN. OK. At this point we'll have questions. I'll start out, and then we will go down the line here and finish up with Chairwoman Napolitano.

Mr. Peternell, by calling for the kind of study that is explained in Representative Salazar's bill, not just feasibility, but things like economic, social, and cultural factors, do you understand that this is an unprecedented kind of study for a project like this?

Mr. PETERNELL. It may be unprecedented. I don't know that myself, but it may be. I'll accept that representation from you. Nevertheless, we think that studying the impacts of water development is the cornerstone of making smart choices and choosing water supply arrangements that have the least impact on the environment and on the communities.

Mr. LAMBORN. OK. Thank you.

For Mr. Treese. PSOP wouldn't result in any more transmountain diversion from the Western Slope or for that matter from the Pacific watershed, would it, compared to what's happening right now?

Mr. TREESE. It does not specifically authorize it, and it does have mitigation provisions if additional transmountain diversions do occur, so I think additional transmountain diversions are in fact anticipated in the language of the legislation. Not required, excuse me, but anticipated that they are possible.

Mr. LAMBORN. OK. For Mr. Tauer. Mr. Mayor, what assurances are you able to give anyone in the Arkansas Valley that water quality will be dealt with by the City of Aurora as things would go forward?

Mr. TAUER. In the future or up to—now?

Mr. LAMBORN. In the future. Should PSOP take effect, then what—and you've heard some concerns about water quality. What is your response? What is the City of Aurora going to do about that?

Mr. TAUER. Well, I think maybe we can make a couple of points. The first one is that remember water quality was mentioned in some of the original legislation. So it's a concern that goes back decades. And so it's not something that necessarily popped up recently. For example, the conduit was part of some of the original legislation. So some of those water quality issues have been around for decades, and they're not a direct result always of how water is transferred. So there's a lot of things that feed into that.

One of the things that we did was last year we supported a water quality bill in the State of Colorado that says that the state engineer has the ability to control the movement of water when it goes below a certain level. And so we would support that kind of legislation and those kinds of rules.

Mr. LAMBORN. OK. Thank you. My last question is for Mr. Peternell. Isn't it true that Colorado Springs and the City of Pueblo and others have an agreement that protects flows of water through Pueblo and that improves these flows above and beyond what otherwise would have been?

Mr. PETERNELL. It's true that there's an agreement in place between various entities, including Pueblo and Colorado Springs and Aurora, which protects some minimum flows under certain conditions. Not under all conditions, under certain conditions. Whether that agreement improves flows I can't speak to. I don't think that's in fact true. I don't think that's true.

Mr. LAMBORN. OK. Thank you. At this point I'll turn over questioning to Representative Udall.

Mr. UDALL. Thank you, Congressman Lamborn.

I wanted to direct my first and it may be my last question, but I think there's a lot to be further heard from Wally Stealey. We've heard Mr. Stealey's description of the problem. What's the solution? Where do we go from here? What advice would you have for the delegation sitting up here as we move forward? I really look forward to your comments.

Mr. STEALEY. Congressman Udall, you can't unring the bell. We all know that. So I think what we're really urging the committee and the full committee when you get back to the House, is the next time the bell tolls, you've got to get it right. And one of the things you can't do and get it right is to walk into a community like Rocky Ford and buy the ditch and say, "We've left all of this money on the table." When it comes right down to it, it's not a tip for a damn good waitress.

They ain't leaving any money. They've destroyed the school district. They've basically destroyed the town. The Rocky Ford cantaloupe industry is gone. But we left $250,000 on the table. You don't have a right to destroy us.

I hear that Aurora's got a plan for their future. I hear Colorado Springs has got a plan for your future, but let me submit this into the equation. If the mayor of Aurora says water is life, my question to you, Mr. Mayor, is why do you insist on killing us? That's not right. And I don't think under the Colorado constitution you have a proper right to do that.

I would further submit to you that our constitution could be read in terms of your right is only for the use of that water, not to transfer that water. I taught constitutional law for 25 years. And I said to a lawyer one day, didn't you learn anything when you read the constitution? We have a major problem, gentlemen.

Water releases, let me address that, Mark, for just a brief second. We have water leases that are perfectly legitimate on both sides of the contract, but when the growth gets to the point and the water lease period runs out and the judge is required to make a decision, he's not going to tear Alice, Mary, and Molly, that he's taken water out of their house merely because there's a bunch of

water buffalos who drew up a lease that expires next week. That ain't going to happen, folks. So I warn you that a water lease is a sale with continued revenue. I don't think you'll ever get it back. So you have to be very, very careful.

I'm going to let the Bureau off with just a slight slap. I totally agree they don't have the authority. I thought they were going to be playing poker with us with deuces in the hole ever since I've been on the board out there. But I do wish they would represent all of us and quit becoming the Bureau of Urban Development. That's not their role.

Some of us are very angry at them, because it appears—I'm not saying that it is, but you get political perceptions. A perception of the Bureau is that it is being run out of Arapahoe County, and that's not right. I think I'll quit, Mark.

Mr. UDALL. Mr. Stealey, if you could wave a wand, what would the solution look like to you?

Mr. STEALEY. Number one, nobody in Pueblo County that I know of has said that Colorado Springs Utilities and Colorado Springs does not have a right to the water they already have in the Arkansas and they certainly have a right to move it up there. And I'm very aware of the fact they pay more money in now that they didn't in the beginning. We need to stop the transfer of water where it is now—according to the IGA that Mr. Rivera was bragging about, it says that Aurora will not take any more water.

There's supposed to be fences there, but Aurora in fact yesterday, trying to change the IGA from a three-out-of-ten-year deal to a five-out-of-ten-year deal. And if you go to the (inaudible) down in the valley and you take that water for five years off, you're going to find out you've got to keep the water for five years on before you can grow a decent crop again. You've in effect taken the water off the land period. Because then you've got to irrigate it for five years to get ready to grow a crop, and not going to lease it for five years. It's gone. It's just gone.

So we need to stop. We need to take them at their word. Peter Banning said, "We don't want any more water." Peter is a good friend of mine. We don't agree on anything, but he's a good friend of mine. He's from New Zealand, you know. He's not a Coloradan.

Mr. UDALL. Mr. Stealey, on that point, I see my time is expired. I do know the Chairwoman has informed we're going to have a second round of two minutes each, so we'll come back around. But what I hear you saying, that there's a sweet spot here we've got to keep as we sit at the table, and that's the only way we are going to resolve this. Thank you.

Mr. LAMBORN. OK. Representative Salazar.

Mr. SALAZAR. Thank you, Mr. Chair. My first question, of course, is to Mayor Tauer. Mayor Tauer, I have friends in both Colorado Springs and Aurora. As a matter of fact, you have a new constituent in Aurora, my son, Jesus, who just moved there from Dallas, Texas.

You know, there was a (inaudible) poll that was done in 2006 that showed that even most urban and suburban Coloradans are opposed to their community expending of water if it comes from farms. So far you've been utilizing agricultural water mainly because it's the cheapest source of water, or the most inexpensive

source of water, I would say. But this goes against your constituents' expressed wishes. Could you address that?

Mr. TAUER. I'm not familiar with the poll, Senator—or Congressman. A little early for that maybe, calling you Senator. But I think that that's one of the reasons why the 6-Party Agreement that I know you're familiar with, that we've limited the amount of water that Aurora will take out of the basin. And I was just informed that, you know, in most years it's limited to 24,000 acre-feet, and this glass of water does count against that allotment as I understand it, and we were willing to accept that.

Mr. SALAZAR. Just make sure you use the bathroom in Pueblo. [Laughter.]

Mr. SALAZAR. Thank you, Mayor. I do appreciate it. I want you to know that this hearing is not specifically targeted at Aurora. I mean, we have to find a perfect solution here so that we don't destroy farms and ranches in order to make other greenery in the urban areas. You know, we have the ability, I think, and the technology available for urban areas to continue to reuse water. Water, as long as you do not waste it, can be used to infinity over and over again, which basically does not limit your growth. I think it's critical though that we continue to protect our urban water supply.

Mr. Treese, I have a question for you. You're familiar with the Warren Act, correct?

Mr. TREESE. [Nods head.]

Mr. SALAZAR. The Warren Act is the early 1920's amendment to the Reclamation Act. It governs much of the BOR's operations. It's relevant to the proposed 40-year lease. It limits the Bureau into entering long-term excess capacity leases to only agricultural purposes. Does the Bureau's intent of entering the 40-year contract to provide water for urban use go against Federal legislation?

Mr. TREESE. Congressman, thank you. I'm not—I am not qualified to provide a legal opinion, but I think the PSOP legislation, one of the reasons western Colorado, the Colorado River District is supporting the PSOP legislation is that it addresses the Warren Act on a project-specific basis, without either ignoring it nor trying to make any blanket west-wide changes to the Warren Act. It addresses the issue as it pertains to the Fryingpan-Arkansas Project.

Mr. SALAZAR. So the Bureau entering into this agreement then would specifically not go against the Warren Act.

Do I get additional time now to speak?

Mrs. NAPOLITANO. Yes.

Mr. SALAZAR. Thank you.

Mayor Tauer, as you know, my bill versus Doug Lamborn's bill, of course basically his is PSOP bill and mine is basically a bill that would actually conduct a study concerning the impacts of water on the basin when water comes in and out of the basin. What's your reasoning for opposing a cumulative impact study for when water moves out of basin?

Mr. TAUER. Well, I think probably the biggest issue is that it looks to address things that were acknowledged to be done legally in the past and kind of try and reset the clock back 45 years. And I think to look at things that are moving forward, that's one thing. To go back and say we want to restudy things that have been done

in the past that have openly been acknowledged to be done legally, I think that's——

Mr. SALAZAR. Don't you agree that by looking at the past, we have reasonable data to show what the impacts have been? We're not calling for mitigation for past action. We're just basically calling for an understanding of what happens when water is moved out of a basin.

Mr. TAUER. We think there are some open-ended questions in doing it that way, and that's why we think that the original PSOP legislation that so many of the people in the valley have agreed to support has some advantages in that area.

Mr. SALAZAR. Mr. Treese, a quick question. You are aware of H.R. 1833, which is my bill, and H.R. 2277 that is Mr. Lamborn's bill?

Mr. TREESE. Yes.

Mr. SALAZAR. There's Western Slope protections in my bill which basically does not allow any further movement of water from the Western Slope. Are you aware that Mr. Lamborn's bill does not address that?

Mr. TREESE. Yes.

Mr. SALAZAR. Thank you.

Mr. Stealey.

Mr. STEALEY. Yes, sir.

Mr. SALAZAR. Could you respond to Mr. Tauer's comment on the study on impacts in the basin when water is moved out of the basin? Why is it that cities are so afraid to actually look at the relevance and the true impacts of water when it is moved out of a basin? Could you address that, please?

Mr. STEALEY. Well, let me quote an old state representative from down in Prowers and Baca counties. He told me when I first went to the legislature when Dick Lamm got elected Governor and I was his legislative aide that I needed to learn up front and fast that there were only two kinds of water thieves in the State of Colorado. There were Republican thieves and Democratic thieves. I'm a Democrat, and I want to keep the water at home and he's a Republican thief and he wants to take it to his home. That's never going to change. Water in Colorado is not really a partisan issue; it's a geographic issue. And it's going to continue to be a geographic issue. But there is a finite supply of water. And we have to begin to recognize former Senator, now Congressman Ed Perlmutter, which he understood much better when he was leading the anti-growth fight in the Senate than he is now—got ya, daddy. At any rate, there's a big danger in this equation. It's the 51/49 agriculture/municipal. Unless that is cleared up in the law so that it isn't used as an incentive to buy a farm, to take it out of production, and increase the number of gallons that relates to the term 51 percent, they can use that formula legally to dry up the entire damn state.

Mr. SALAZAR. Thank you. I appreciate that.

Mr. LAMBORN. OK. Representative Perlmutter. You get a chance to protect your reputation here.

Mr. PERLMUTTER. Thank you. And——

Mrs. NAPOLITANO. Don't waste your time.

Mr. PERLMUTTER. I'm not going to waste my time. Mr. Stealey, you should all know, was my advisor and friend until today. No, I'm kidding.

I would like to start with Mayor Tauer. One of the things that the Chairwoman brought up at the very outset was a concern on her part about conservation and conservation techniques.

Can you describe for us a number of the steps that Aurora has taken when it comes to conservation and efficient water use.

Mr. TAUER. Sure. Thank you, Congressman.

Let me start with the things that we do at home. We have a wide range of programs to cut down indoor use, where we can help reimburse part of the cost for existing homes when they put in low-flow fixtures. We also have very strict requirements for low-flow fixtures in any kind of new homes. We limit the amount of lawn that you're allowed to put on any kind of new home. For example, Congressman Salazar's son is moving into a new area of Aurora. We would limit the kind of lawn that he would be allowed to put in on his property to something typically around 40 to 45 percent of the landscapable area.

But aside from that, we have two very large projects. The first one is that we take some of the wastewater and use that to irrigate any public areas on the north half of the City of Aurora. And we just sited a new reservoir, which should be on line in about four years, to double that capacity. But in addition to that, we have an $800 million project to reuse some of the water that after it's used by the city of Aurora, would go into the South Platte.

We have a project that brings that back, as Congressman Salazar was alluding to, and lets us reuse a part of that water. And that's the biggest project of its kind in the State of Colorado and in the long run will allow us to yield something on the order of 10 to 15,000 acre-feet from water rights we already own.

Mr. PERLMUTTER. Can you explain the sort of lease in allowing a part of a farm to go fallow? That part of your water purchase or water lease approach?

Mr. TAUER. Well, we believe, as we were talking about earlier, that the future is not in a confrontation between agricultural and municipal users. It's in finding ways to cooperate. And one of the ways that we hope to be able to do that is through different kinds of fallowing programs. And the local farming community has to say how that program works best for them, but the basic idea would be that a part of the water that they might typically use to farm would be leased to a city, that area of the farm would lay fallow, and that would be rotated through a number of years. And I believe in Colorado law, it is now limited to a quarter of their farm that can be fallowed and have that water transferred to a city.

Mr. PERLMUTTER. Isn't it true, sir, that—and with respect to Mr. Stealey, I think, was using a little rhetorical license when he talked about killing a town or taking away a way of life. Did you—Aurora—are you aware of any coercion or threat or other type of means when you purchased or leased water rights from anybody down here in this basin?

Mr. TAUER. No, Congressman. In fact, most of the time people come to us. In just the last month, I've had a couple of different people in the Arkansas Valley call my office and say, "Would you

be interested in purchasing or leasing our water?" So when we go down, it's always a willing seller, and most of the time, it's people coming to us, not the other way around.

Mr. PERLMUTTER. Because they found farming isn't for them at that point?

Mr. TAUER. Either farming isn't for them or they can't make a profit doing it. And so there's a variety of reasons why they might do that. But it's not something where we can come and take the water. It has to be somebody that wants to sell the water to us. And the same would be true of Colorado Springs or Pueblo or anywhere else.

Mr. PERLMUTTER. A couple more questions. First is has the city reached—or who has the city worked with—in trying to reach compromises and cooperative agreements in connection with the Fryingpan-Arkansas Homestake Project?

Mr. TAUER. Pueblo, Pueblo Board of Water Works, Southeast Conservancy District, Upper District, Colorado Springs, Fountain, Colorado Springs Utilities, and we've also had discussions with the lower basin as well.

Mr. PERLMUTTER. Last question, Mr. Treese, this is for you. You know, it seems to me there's a deal in here that really is beneficial to all parties concerned, and Mr. Stealey, I know that that's really what you wanted to say, that if good minds are coming together, we can work something out that really will benefit the area—Aurora, Colorado Springs, and the west slope. I was concerned about your comments about not being able to pay back the debt on the Ruedi Reservoir. If there's something—you know, you were looking for a sponsoring agency, I would just facetiously, but also in truth, suggest you take a look at Aurora, Colorado Springs, or Pueblo.

Thank you, Madam Chair.

Mr. LAMBORN. OK. Chairwoman Napolitano.

Mrs. NAPOLITANO. Thank you. You might find it odd that my colleague has been chairing the last portion of the meeting. That's the way I run my meetings and I enjoy having him run them.

Mr. Ryan, would you kindly come up and take the mike? I have a question for you, sir.

Mr. RYAN. Yes, ma'am.

Mrs. NAPOLITANO. On the Bureau's side, does the proposed 40-year contract violate the Warren Act?

Mr. RYAN. No, ma'am.

Mrs. NAPOLITANO. And has the solicitor's office considered this and is it in writing?

Mr. RYAN. If it's in writing, I have not seen it, but I have had conversations with our legal counsel. And as Congressman Salazar, I believe correctly noted, the Warren Act involves moving non-project water through project facilities for irrigation purposes. I'm aware of only one other project in reclamation that has authority similar to the Warren Act, but for municipal purposes, that's in California, the Central Valley Project, through the Central Valley Improvement Act.

Mrs. NAPOLITANO. Would you kindly ask your solicitor to put it in writing at my request?

Mr. RYAN. Yes, ma'am.

Mrs. NAPOLITANO. Thank you, sir. Appreciate your answer.

For Mayor Tauer, are you familiar with what happened in California in the Owens Valley, and it took place quite a while ago where Los Angeles started buying water rights, turned into a bit of a dust bowl, and it took decades and millions upon millions of dollars to restore it. How will this be prevented in southeastern Colorado, or has the loss of the farmland already caused adverse effects on the communities?

Mr. TAUER. Well, I'm certainly not an expert in what happened in California. I can tell you that the City of Aurora has two things that we have to do. The first one is that anytime that we would, let's say, hypothetically purchase a farm and transfer its water, we are required to revegetate that farm back to its natural condition, OK, to its pre-farm condition. And we do that. We will do that.

We've offered many times if someone finds a property that we revegetated that has a problem with it, come see us, we'll fix it. So that's first.

Second, with the 6-party intergovernmental agreement, we're capped with where we are roughly now on our ability to move water out of the farm right now to the valley. So we really can't move a lot more farm water out of the valley to Aurora under these intergovernmental agreements.

Mrs. NAPOLITANO. That may be so, but I am looking at some news article where they're showing a dust bowl again. Is that part of what the water rights that you have picked up?

Mr. TAUER. Ma'am, the areas where we've purchased water rights off of a farm have been revegetated or are in the process of being revegetated back to their native condition. And again, anybody who sees an issue with one of those is welcome to call my office, and we'd come down and take a look at it and make sure it's done directly.

Mrs. NAPOLITANO. I appreciate that, sir.

For Mr. Peternell. Was the environmental assessment that the Bureau completed on the proposed excess capacity contract with the City of Aurora sufficient, or do you think that a formal environmental impact statement, or the EIS, should be prepared?

Mr. PETERNELL. I have to make an admission that I'm embarrassed to make, but I haven't had a chance to read the environmental assessment yet.

Mrs. NAPOLITANO. Your opinion?

Mr. PETERNELL. I haven't read it, so I can't make an opinion.

Mrs. NAPOLITANO. Thank you. I'll take that. Are there potential environmental concerns connected with the PSOP, the Arkansas Valley Conduit, the Southern Delivery System, or the long-term Bureau contracts with the City of Aurora?

Mr. PETERNELL. There are potential concerns related to all of those projects. The point I was trying to make in my testimony earlier was that before those projects go forward, it's smart and important to assess what those impacts might be by way of an impact statement such as the one called for in H.R. 1833, Representative Salazar's bill.

Mrs. NAPOLITANO. Thank you. Mr. Tauer, the City of Aurora certainly has adopted some aggressive water conservation measures

utilizing water recycling, and I noted you use wastewater. Is it tertiary treated?

Mr. TAUER. Yes.

Mrs. NAPOLITANO. Yet in the past the city has threatened to fine at least one individual for using gray water on their lawn, while other cities have encouraged the use of gray water. Is the use of gray water as a water conservation measure something that the city is in favor of or has looked into?

Mr. TAUER. Under Colorado water law, there are limitations on what somebody individually can do with gray water, because of a lot of the treatment issues, it has to go through a licensed agency to do that. So most individuals can't do that. So there are times when for health and safety reasons we'll go to somebody and say, "Hey, you have to obey Colorado water law."

For large-scale things like some of our public facilities, we're the ones doing it, so it's easy for us to control that, because we have the licenses in place for us to do that on a large scale for those kinds of projects. And that's much more efficient than trying to get a lot of individuals to do it in their home when they may not do it properly and it could create some health issues.

Mrs. NAPOLITANO. Thank you. And I know my time has expired, Mr. Chair, but there was one statement that you made that you do conservation—or you have several programs that you utilize with your residents. Do you have projects that go into conservation for the whole area to be able to conserve the water that you have? And also have you looked at additional possibility of underground water storage in aquifers?

Mr. TAUER. Let me take the first part first, if that's all right. You mean in other parts of the Denver metro area have we been working on conservation or just in our area?

Mrs. NAPOLITANO. Aurora.

Mr. TAUER. We recently led an effort in the metro area, including Aurora, to have where even this year, where many of our reservoirs are full, to continue with our water management programs. That's why this year, even though technically we wouldn't need to, we're still limiting the amount of water that our citizens can use on their lawns.

We also have a tiered rate structure, so that the more you use, the more expensive it gets, and really drives people to use less water. So those are going to continue even when we have very wet years, because that's something that we need to do as being part of Colorado.

Mr. LAMBORN. OK. In the last minutes of our time, and we do have to give up this room, I believe, at 12:30 or so, each representative will have two minutes for either a closing statement or any final questions.

I'll go ahead and start, and first I want to thank you, the audience, for coming today. You've been very attentive.

[Applause.]

Mr. LAMBORN. And we need to bring this kind of cooperation to these important and critical issues, so thank you for coming and being here today. And Chairwoman Napolitano, thank you for holding this hearing. It's been informative and helpful to all of us, so thank you.

Mrs. NAPOLITANO. You're welcome.

Mr. LAMBORN. Mr. Treese, a final question for you. Which version of PSOP does your district support and do you have agreements in place stating your support for the bill of the type that I have already introduced this session?

Mr. TREESE. Thank you. The river district has not—my board has not had an opportunity to review Mr. Salazar's bill. We do have agreements in place and would support your bill as it is consistent with the bill that was introduced three Congresses ago, which we also supported, consistent with the agreements that we have reached.

Mr. LAMBORN. OK. Thank you. And in conclusion, I just want to say that we've had a good discussion here today. We have aired our views and our concerns. We are marching ever so slowly, but we are marching forward to a resolution, and I hope today was a step in that direction.

I look forward to working with my colleagues here on the panel and for everyone else here today who can help us find a resolution to these important issues.

Next we will go to Representative Perlmutter.

Mr. PERLMUTTER. Thank you, Mr. Lamborn. Just a couple of statements and then I have a question.

Again, I think that this really is an issue of property rights. It's an issue of the future. It's an issue of cooperation. I think the best way to have started this hearing was to watch President Kennedy and his ability to look to the future and to deal—he said, you know, what we're worried about here in 1962 is 300 million people that are going to be in the United States, and we're right at about that point. And it's our job to look into the future, to look—you know, Mr. Scanga talked about the changes that are occurring in the farming communities, municipalities, and recreational use on this river and vice versa. This is the time when communities really do have, again, just as they did in 1962 and states got together, but this is a time when people have to get together, put their intelligence to use, and work out the appropriate arrangements for the next 50 years.

We've been 45 years since this thing started. There is talent in this room that can take care of it from this point forward.

Mr. Mayor, last question, why do you need a 40-year lease?

Mr. TAUER. I think—the primary thing is that it lets all of the parties come to a limitation. It's part of an agreement that we had in 2004, and it was a negotiated agreement where everybody gave some things, everybody got some things. And what it does is it puts the ability to use this out of being a year-to-year argument and says, it's here, it's here for 40 years, and lets us go on past that.

I think the most—I think the most important thing that it does is it lets us move from talking about how to use these facilities to how do we really cooperate going forward? And I think that that's the most important thing we need to move to, and in my mind, that's the most important thing we can do next.

Mr. PERLMUTTER. Thank you, Madam Chair.

Mr. LAMBORN. Representative Salazar.

Mr. SALAZAR. Thank you, Mr. Chairman. Mr. Ryan, I believe that you just reaffirmed my theory on the violation that the Bureau of

Reclamation is actually committing, because we talked about the Bureau of Reclamation having the authority to enter into a 40-year contract for excess capacities for irrigation uses. You are entering into a 40-year contract for excess capacity for urban uses, so I believe this is in direct violation of the Warren Act. And so I would really appreciate, you know, a brief on that, if you would.

You know, several years ago, I used to watch our ditch meetings basically at the headgates of almost every ditch in the San Luis Valley when I served on the Rio Grande Water Conservation District.

Many of our discussions were settled with shovels and rocks and angry words. I really appreciate the opportunity to be able to sit here and hear both sides of the issue. I think we can resolve the issue, but I think it's extremely critical that people in this state begin to understand what happens to a basin when you take water out of a basin. What happens to its environment, what happens to its economy, and what happens to the people that are left behind.

The farmer that reaches an agreement with Aurora and takes $250,000 or whatever the price is agreed to, that's fine. He leaves and he's got money in his pocket. But the community that stays behind is the one that suffers. So I would appreciate the mayor of Aurora, the mayor of Colorado Springs, the mayor of Pueblo, and all of the other mayors to start looking at studying the impacts, the socioeconomic and environmental impacts of a basin when water leaves a basin. Thank you very much.

[Applause.]

Mr. LAMBORN. Representative Udall.

Mr. UDALL. Thank you, Mr. Lamborn. If I might, I'd like to direct a request of Mr. Treese and then a question and then conclude with a very short statement.

You talked about the payback of Ruedi, and Congressman Perlmutter brought it up. And if you would submit for the record any thoughts you have about changing the theoretical plan for repayment, so we can look at that, because that did call my attention as well.

Mr. TREESE. Thank you. I'd be happy to.

Mr. UDALL. On page 3 and 4, you talk about the way the operating principles for the Fry-Ark Project relate to concerns about additional diversions from the Roaring Fork River and the Arkansas Basin, and you go on to say Reclamation must provide leadership to ensure the requirements of the operating principles are carried out for the long-term benefit of both the east and west slope portions of the project's service area.

Would you elaborate on what you mean and what kind of leadership you think Reclamation should demonstrate?

Mr. TREESE. Reclamation is the operator of the project. The operating principles are the requirements established by the State of Colorado, the proponents of the original project, and incorporated in Federal statute. Simply I think others have said before, that we need to ensure that we're learning from the lessons and providing for the best possible project now before we proceed into the future. I think a good start would be a rededication to those operating principles and some of the specifics of the operating principles that I mentioned.

Mr. UDALL. Thanks for that response, and I will refamiliarize myself with those principles so that I can also be an advocate in that regard, because there were some things that you talked about concerning minimum, maximum, hard and soft flow rates and so on that I think we ought to pay attention to.

Let me just conclude by saying just a few days ago, I stood high on the planks of Culebra Peak. I've had a long-time goal to climb all the Fourteeners in the state, and had one left, and I stood up there—and by the way, I'll tell you, when you have one left, it's more interesting than when you've climbed them all. You're just run of the mill once you've climbed them all, but you wonder why you haven't climbed the one that's left. But what I want to say, as I stood up there, I didn't see the East Slope. I didn't see the West Slope. I didn't see the valley off to the northwest or the San Juans to the far west. I just saw Colorado. And I think that's the spirit in which we have to continue to engage in this discussion.

And I know all of us here are working to achieve consensus, but I want to say in doing so, I will never forgot the need to carefully consider the impacts on all concerned including those in the area for which water is proposed for diversion. So thank you, Madam Chair, for coming all the way from California. We look forward to your presence and your future visits here to the great State of Colorado. Thank you.

[Applause.]

Mr. LAMBORN. Now Chairwoman Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair. And this is not my first visit to Colorado. This is about my third or fourth. My son was stationed in Colorado Springs many, many years ago.

What I hear here reminds me of California's north and south water wars, very simply—whiskey is for drinking, water is for fighting—is very true as well in California. And I hesitate because if you'll remember Colorado, and somebody was pointing some fingers, you water hogs in California, we were taking 5.2 million acre-feet out of the Colorado River because California grew so exponentially. It's only the world's sixth largest economy, and we were mandated by the Department of the Interior to reduce the take to 4.4 million acre-feet per year several years ago. And this is a request of all the states, that they felt they needed their fair share of the water, because you were growing. Fine. That's absolutely correct.

California through conservation, recycling, storage, desalination, reached the 4.4 mark almost two years ago. So it can be done, ladies and gentlemen, if you work together. The CalFed program in California, is for the overall health and wealth of California. And you're right, you need to work together. Congressman Udall is very correct. Together you can do a lot of things. Separately, not only will you fail, but the only ones that benefit, I'm sorry, are the attorneys. Fact or not.

And in closing, I just want to say to the Coloradans, you've been great. Your colleagues, your representation is wonderful. They are very concerned. They care about what happens, and that's the reason I'm here. And I want to thank Mr. Lamborn for taking over the last part of the segment. He jumps right in. And so I thank you for hosting us. I thank the community college, Mr. Salazar for

helping me get here, for my staff, and I want to remember—never forget actually my Republican colleague staff.

So with that, I thank you very much for your patience and I am truly amazed that many of you have remained and stuck with us. God bless.

Mr. LAMBORN. This hearing is adjourned.

[Whereupon, at 12:19 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A letter submitted for the record by Steve Golnar, City Administrator, City of Salida, Colorado, follows:]

May 29, 2007

US House of Representatives
Subcommittee on Water and Power
Mrs. Grace F. Napollitano, Chairwoman
Washington, DC 20515

RE: The Frying Pan –Arkansas Project at 45; Sustainable Water for the 21st Century

Dear Chairwoman Napollitano and Honorable Committee Members:

I am writing to convey to the Committee the importance of the Frying Pan Project to the City of Salida and how the Preferred Storage Option Plan "PSOP" and the utilization of Excess Capacity for storage of non-project water will benefit our community and that PSOP is part of our future water planning. The City of Salida has been participating in the PSOP process for several years.

The City of Salida's current plan for augmentation generates excess credits during the summer months which are currently stored in a temporary "if and when" account in the FRY-Ark Project. A source of long-term storage is a future limiting factor to Salida. The long-term storage is where Salida can store excess augmentation credits during average and wet years as reserve supplies for use in drought years. Planning efforts by the City have identified PSOP as a priority area to store existing excess credits and for future use.

There are two parts to the PSOP program which include:
1. Re-operations storage which creates storage without building any additional storage through revision of its management practices, the Bureau is asking to store non project water in addition to project water. This is a very attractive to the alternative of building new storage. Also under this plan there will be less carryover storage which the City of Salida currently uses, so it is important for the City to secure PSOP operations storage to support our augmentation plan.

2. Enlargement storage is the second phase of PSOP and is the most cost effective alternative for the City of Salida to secure its water storage needs for well into the future.

Storage in Turquoise, Twin Lakes and Pueblo Reservoirs provide maximum flexibility in securing the City of Salida's water storage needs.

Additionally, helping the multiple cooperating agencies maintaining in-stream flows and water quality is essential to the local economy (including rafting and fishing) and the

Fry-Ark Project assists in allowing this to happen. The City of Salida sees the PSOP program as vital our economy and to meeting our future water needs.

Sincerely,

Steve Golnar

City Administrator
City of Salida
P.O. Box 417
Salida, CO 81201
Phone: 719-539-4555
Fax: 719-539-5271
e-mail: administrator@cityofsalida.com

[A letter submitted for the record by The Honorable William F. Jackson, Mayor, City of Cañon City, Colorado, follows:]

City of Cañon City

P.O. Box 1460 • 128 Main Street • Cañon City, CO 81215-1460
(719) 269-9011 • Fax: (719) 269-9017

Office of the Mayor

May 29, 2007

U.S. House of Representatives
Subcommittee on Water and Power
Mrs. Grace F. Napolltano, Chairwoman
Washington, DC 20515

Dear Mrs. Napolltano:

I am submitting this letter to evidence the City of Cañon City's strong support of the Frying Pan Project and the Preferred Storage Option Plan (PSOP).

I can personally recall the beginning of negotiations for the Frying Pan – Arkansas Project, both locally and on the federal level. At the beginning, the project seemed impossible; however, persistence on all levels finally was fruitful. The funding was a fairly long-term endeavor with an ongoing sale of gold-colored frying pans supplying the local share. At the time I worked for the Southern Colorado Power Company, and our company was interested in seeing their plant water supply being sustained. The project has had this effect.

As the Mayor of Cañon City, I can attest to the City's dependence upon the Arkansas River flow for its municipal water supply. The continued flow sustainability is of equal importance. The Frying Plan Project has been successful in providing piece of mind to this municipality that our water resources will continue to be available in order that we may serve our community for years to come.

The City also continues its support of the PSOP project if flow sustainability and added storage capacity for the Arkansas Valley Basin is its intent. With additional upstream storage capacity, the recreational season can be extended and multiple-use made more viable. Our community relies heavily on the tourism market. River rafting plays a large role in this industry and the financial benefits to our community are widespread. Keeping sustainable flow is, therefore, not only important to our providing drinking water to our citizens, but to providing financial security to our businesses that benefit from a strong tourism industry.

The future of Cañon City relies heavily upon the ability to use and recreate on the Arkansas River, and we strongly support any endeavor that provides support for that future.

Sincerely,

William F. Jackson
Mayor

[A letter submitted for the record by Thomas H. Piltingsrud, City Manager, City of Florence, Colorado, follows:]

May 24, 2007

Terry Skanga
Upper Arkansas Water
Conservancy District
339 East Highway 50
Salida, CO 81201

Re: Testimony

Dear Mr. Skanga:

The City of Florence was an inaugural member of the Arkansas-Frying Pan Project. We view the "Fry-Ark" Project as an important water resource, as well as an economic driver for the entire Arkansas River valley.

The City of Florence routinely purchases project water, and it is an important piece of our water resume. The economic aspect of recreation on the Arkansas River provides Florence some economic benefit from visitors and tourists to our city.

Florence was also an inaugural member of PSOP, and participates in both the "Excess Capacity" and "Enlargement" options of PSOP. We have paid our pro rata share of costs for both programs these many years, and are concerned at the lack of meaningful progress of PSOP.

The constant political football of PSOP has delayed federal legislation for the feasibility study, as well as caused Florence frustration with the continued political wrangling over what should seem to be a benefit for all entities in the valley, increased storage for all.

Florence recently had the Corps of Engineers conduct a feasibility study for a flood control and storage dam called the Oak Creek Reservoir near Florence, a project in the works for over ten years. This feasibility study determined that the geology of the proposed site was poor, and the resulting estimate of costs for a reinforced structure made this project economically impossible to afford.

The idea of studying the socio-economic aspects of water transfers is a valid concept. However placing a proviso of this study being required to be completed first--before a feasibility study can be conducted--will cause even more delay for the feasibility study. We would propose that both the socio-economic study as well as the feasibility study be conducted jointly. Only after the feasibility study will we know if such reservoir enlargements are technically and economically feasible. Our history with the Oak Creek Reservoir has taught us to be cautious about assuming outcomes of feasibility studies.

Florence has sufficient storage currently to meet our immediate needs. However in a few years that storage capacity may require augmentation. We would ask that all municipalities, special districts, ditch companies and the three conservancy districts in the Arkansas Valley join together, put aside their differences, and support these studies.

Sincerely Yours,

Thomas H. Piltingsrud
City Manager
719-784-4848 ext. 222
pilt@florencecolorado.org

[A letter submitted for the record by The Honorable Mark F. Thonhoff, Mayor, Town of Poncha Springs, Colorado, follows:]

May 29, 2007

U.S. House of Representatives
Subcommittee on Water and Power
Mrs. Grace F. Napolitano, Chairwoman
Washington, D.C. 20515

Re: The Fryingpan-Arkansas Project at 45; Sustainable Water for the 21st Century

Dear Mrs. Napolitano:

I am writing this letter in conjunction with the above-referenced hearing. The Town of Poncha Springs is a small rural town in Colorado. The current population is around 600, but we have recently annexed a 150-lot subdivision on the east, and are in the process of annexing a 550-lot subdivision on the west. This will bring the population of Poncha Springs to 2,500 in the next few years.

Water is a scarce and valuable commodity. The Town has been a participant in the Preferred Storage Option Plan since its inception, and we truly need the expanded storage that project will provide for us. Pueblo reservoir storage releases allow the Town to augment its wells and assure that the senior water rights holders downstream from Pueblo are not harmed.

We encourage your committee to support this project.

Sincerely,

Mark F. Thonhoff
Mayor

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