

104TH CONGRESS  
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# S. 1989

To authorize the construction and operation of the Fort Peck Reservation Rural Water System in the State of Montana, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 25, 1996

Mr. BURNS (for himself and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To authorize the construction and operation of the Fort Peck Reservation Rural Water System in the State of Montana, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fort Peck Reservation  
5 Rural Water System Act of 1996”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) there are insufficient water supplies avail-  
9 able to residents of the Fort Peck Indian Reserva-

1       tion in Montana, and the water systems that are  
 2       available do not meet minimum health and safety  
 3       standards, posing a threat to public health and safe-  
 4       ty;

5               (2) the United States has a trust responsibility  
 6       to ensure that adequate and safe water supplies are  
 7       available to meet the economic, environmental, water  
 8       supply, and public health needs of the Fort Peck In-  
 9       dian Reservation; and

10              (3) the best available, reliable, and safe rural  
 11       and municipal water supply to serve the needs of the  
 12       Fort Peck Indian Reservation is the Missouri River.

13       (b) PURPOSE.—The purpose of this Act is to ensure  
 14       a safe and adequate municipal, rural, and industrial water  
 15       supply for the residents of the Fort Peck Indian Reserva-  
 16       tion in Montana.

17       **SEC. 3. DEFINITIONS.**

18       In this Act:

19              (1) FORT PECK TRIBE.—The term “Fort Peck  
 20       tribe” means the Assiniboine Indian Tribe and the  
 21       Sioux Indian Tribe within the Fort Peck Indian  
 22       Reservation.

23              (2) PICK-SLOAN.—The term “Pick-Sloan”  
 24       means the Pick-Sloan Missouri Basin Program au-  
 25       thorized by section 9 of the Act of December 22,

1 1944 (58 Stat. 891, chapter 665) (commonly known  
2 as the “Flood Control Act of 1944”).

3 (3) SECRETARY.—The term “Secretary” means  
4 the Secretary of the Interior.

5 (4) WATER SYSTEM.—The term “Water Sys-  
6 tem” means the Fort Peck Reservation Rural Water  
7 System authorized by section 4.

8 **SEC. 4. FORT PECK RESERVATION RURAL WATER SYSTEM.**

9 (a) AUTHORIZATION.—The Secretary shall plan, de-  
10 sign, construct (including replacement of structures and  
11 equipment in existence on the date of enactment of this  
12 Act, as necessary), operate, and maintain a municipal,  
13 rural, and industrial water system, to be known as the  
14 “Fort Peck Reservation Rural Water System”, as gen-  
15 erally depicted in the report entitled “Technical Report  
16 for the Fort Peck Reservation Rural Water System” and  
17 dated July 1995.

18 (b) COMPONENTS.—The Water System shall consist  
19 of—

20 (1) pumping and treatment facilities located  
21 along the Missouri River near Poplar, Montana;

22 (2) pipelines extending from the Missouri River  
23 near Poplar, Montana, throughout the Fort Peck In-  
24 dian Reservation;

1           (3) facilities to allow for future interconnections  
2           to areas outside the Fort Peck Indian Reservation,  
3           including the communities of Plentywood, Scobey,  
4           Flaxville, and Culbertson, Montana;

5           (4) distribution and treatment facilities to serve  
6           the needs of the Fort Peck Indian Reservation, in-  
7           cluding the purchase, improvement, and repair of  
8           water systems in existence on the date of enactment  
9           of this Act, including systems owned by individual  
10          tribal members and other residents of the Fort Peck  
11          Indian Reservation;

12          (5) appurtenant buildings and access roads;

13          (6) all property and property rights associated  
14          with the facilities described in paragraphs (1)  
15          through (5);

16          (7) electrical power transmission and distribu-  
17          tion facilities necessary for services to Water System  
18          facilities; and

19          (8) such other pipelines, pumping plants, and  
20          facilities as the Secretary considers necessary or ap-  
21          propriate to meet the water supply, economic, public  
22          health, and environmental needs of the reservation,  
23          including water storage tanks, water lines, and other  
24          facilities for the Fort Peck tribes and reservation vil-  
25          lages, towns, and municipalities.

1 (c) AGREEMENT.—

2 (1) IN GENERAL.—In carrying out subsection  
3 (b), the Secretary shall enter into a cooperative  
4 agreement with the Fort Peck Tribal Executive  
5 Board for planning, designing, constructing (includ-  
6 ing necessary replacement), operating, and maintain-  
7 ing the Water System.

8 (2) MANDATORY PROVISIONS.—The cooperative  
9 agreement under paragraph (1) shall describe, in a  
10 manner that is acceptable to the Secretary and the  
11 Fort Peck Tribal Executive Board—

12 (A) the responsibilities of the parties for—

13 (i) needs assessment, feasibility, and  
14 environmental studies;

15 (ii) engineering and design;

16 (iii) construction;

17 (iv) water conservation measures; and

18 (v) administration of contracts relat-  
19 ing to performance of the activities de-  
20 scribed in clauses (i) through (iv);

21 (B) the procedures and requirements for  
22 approval and acceptance of the design and con-  
23 struction; and

24 (C) the rights, responsibilities, and liabil-  
25 ities of each party to the agreement.

1           (3) OPTIONAL PROVISIONS.—The cooperative  
2 agreement under paragraph (1) may include provi-  
3 sions relating to the purchase, improvement, and re-  
4 pair of water systems in existence on the date of en-  
5 actment of this Act, including systems owned by in-  
6 dividual tribal members and other residents of the  
7 Fort Peck Indian Reservation.

8           (4) TERMINATION.—The Secretary may termi-  
9 nate a cooperative agreement under paragraph (1) if  
10 the Secretary determines that—

11                   (A) the quality of construction does not  
12 meet all standards established for similar facili-  
13 ties constructed by the Secretary; or

14                   (B) the operation and maintenance of the  
15 Water System does not meet conditions accept-  
16 able to the Secretary that are adequate to fulfill  
17 the obligations of the United States to the Fort  
18 Peck tribes.

19           (5) TRANSFER.—On execution of a cooperative  
20 agreement under paragraph (1), in accordance with  
21 the terms of the cooperative agreement, the Sec-  
22 retary may transfer to the Fort Peck tribes, on a  
23 nonreimbursable basis, funds appropriated for the  
24 Water System under section 8.

1 (d) SERVICE AREA.—The service area of the Water  
2 System shall be the area within the boundaries of the Fort  
3 Peck Indian Reservation.

4 (e) CONSTRUCTION REQUIREMENTS.—The pumping  
5 plants, pipelines, treatment facilities, and other appur-  
6 tenant facilities for the Water System shall be planned  
7 and constructed to a size sufficient to meet the municipal,  
8 rural, and industrial water supply requirements of the  
9 Fort Peck Indian Reservation and the rural areas north  
10 of the reservation, taking into account the effects of the  
11 water conservation plan under section 5.

12 (f) TITLE TO WATER SYSTEM.—Title to the Water  
13 System shall be held in trust by the United States for the  
14 Fort Peck tribes and shall not be transferred unless a  
15 transfer is authorized by an Act of Congress enacted after  
16 the date of enactment of this Act.

17 (g) LIMITATION ON AVAILABILITY OF CONSTRU-  
18 CTION FUNDS.—The Secretary shall not obligate funds for  
19 the construction of the Water System until—

20 (1) the requirements of the National Environ-  
21 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
22 have been met with respect to the Water System;

23 (2) a final engineering report for the Water  
24 System has been approved by the Secretary; and

1           (3) the Secretary publishes a written finding  
2           that the water conservation plan under section 5 in-  
3           cludes prudent and responsible water conservation  
4           measures for the operation of the Water System that  
5           have been shown to be economically and financially  
6           feasible.

7           (h) TECHNICAL ASSISTANCE.—The Secretary shall  
8           provide such technical assistance as may be necessary to  
9           enable the Fort Peck tribes to plan, develop, construct (in-  
10          cluding necessary replacement), operate, and maintain the  
11          Water System, including operation and management  
12          training.

13          (i) APPLICATION OF INDIAN SELF-DETERMINATION  
14          ACT.—Planning, design, construction (including necessary  
15          replacement), and operation of the Water System shall be  
16          subject to the Indian Self-Determination Act (25 U.S.C.  
17          450f et seq.).

18          **SEC. 5. WATER CONSERVATION PLAN.**

19          (a) IN GENERAL.—The Fort Peck tribes shall de-  
20          velop a water conservation plan containing definite goals,  
21          appropriate water conservation measures, and a time  
22          schedule for meeting the water conservation objectives.

23          (b) PURPOSE.—The water conservation plan under  
24          subsection (a) shall be designed to ensure that users of

1 water from the Water System will use the best practicable  
2 technology and management techniques to conserve water.

3 (c) APPLICATION OF THE RECLAMATION REFORM  
4 ACT OF 1982.—Section 210(c) of the Reclamation Reform  
5 Act of 1982 (43 U.S.C. 390jj(c)) shall apply to the Water  
6 System.

7 **SEC. 6. USE OF PICK-SLOAN POWER.**

8 (a) POWER.—The Water System shall use power  
9 from Pick-Sloan for operation. The use of the power shall  
10 be considered to be a project use pumping requirement  
11 of Pick-Sloan.

12 (b) POWER TO BE USED.—Power identified for fu-  
13 ture project use pumping shall be reserved for and made  
14 available for the purpose authorized by subsection (a).

15 (c) RATE.—The rate for project use power made  
16 available under subsection (b) shall be the wholesale firm  
17 power rate for Pick-Sloan (Eastern Division) in effect at  
18 the time at which the power is sold.

19 (d) ADDITIONAL POWER.—

20 (1) IN GENERAL.—If power in addition to that  
21 made available under subsection (b) is required to  
22 meet the pumping requirements of the Water Sys-  
23 tem, the Administrator of the Western Area Power  
24 Administration may purchase the necessary addi-

1 tional power under such terms and conditions as the  
2 Administrator considers appropriate.

3 (2) RECOVERY OF EXPENSES.—Expenses asso-  
4 ciated with power purchases under paragraph (1)  
5 shall be recovered through a separate power charge,  
6 sufficient to recover the expenses, applied to the  
7 Water System.

8 **SEC. 7. WATER RIGHTS.**

9 This Act does not—

10 (1) impair the validity of or preempt any provi-  
11 sion of State water law, or of any interstate compact  
12 governing water;

13 (2) alter the rights of any State to any appro-  
14 priated share of the waters of any body or surface  
15 or ground water, whether determined by past or fu-  
16 ture interstate compacts, or by past or future legis-  
17 lative or final judicial allocations;

18 (3) preempt or modify any Federal or State law  
19 or interstate compact dealing with water quality or  
20 disposal;

21 (4) confer on any non-Federal entity the ability  
22 to exercise any Federal right to the waters of any  
23 stream or to any groundwater resources;

24 (5) affect any water rights of the Fort Peck  
25 tribes, located within or without the external bound-

aries of the Fort Peck Indian Reservation, based on a treaty, compact, executive order, agreement, Act of Congress, aboriginal title, the decision in *Winters v. United States*, 207 U.S. 564 (1908) (commonly known as the “Winters Doctrine”), or otherwise; or

(6) validate or invalidate any assertion of the existence, nonexistence, or extinguishment of any water rights held by the Fort Peck tribes or any other Indian Tribe or individual Indian under Federal or State law.

**SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

(a) PLANNING, DESIGN, AND CONSTRUCTION.—

(1) IN GENERAL.—There is authorized to be appropriated, over a period of 5 fiscal years, \$114,734,300 for the planning, design, and construction of the Water System.

(2) ADJUSTMENT.—The funds authorized to be appropriated by paragraph (1), less any amounts previously obligated for the Water System, are increased or decreased by such amounts as are justified by reason of ordinary fluctuations in development costs incurred after January 1, 1996, as indicated by engineering cost indices applicable for the type of construction involved.

1           (b) OPERATION AND MAINTENANCE.—There are au-  
2 thORIZED to be appropriated such sums as are necessary  
3 for the operation and maintenance of the Water System.

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