

105TH CONGRESS  
1ST SESSION

# S. 1341

To provide for mitigation of terrestrial wildlife habitat lost as a result of the construction and operation of the Pick-Sloan Missouri River Basin program in the State of South Dakota, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 1997

Mr. DASCHLE (for himself and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To provide for mitigation of terrestrial wildlife habitat lost as a result of the construction and operation of the Pick-Sloan Missouri River Basin program in the State of South Dakota, 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 “Cheyenne River Sioux  
5 Tribe, Lower Brule Sioux Tribe, and State of South Da-  
6 kota Terrestrial Wildlife Habitat Mitigation Act of 1997”.

7 **SEC. 2. FINDINGS; PURPOSES.**

8 (a) FINDINGS.—Congress finds that—

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1           (1) under the Act of December 22, 1944 (com-  
2           monly known as the “Flood Control Act of 1944”)  
3           (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et  
4           seq.), Congress approved the Pick-Sloan Missouri  
5           River Basin program—

6                   (A) to promote the general economic devel-  
7                   opment of the United States;

8                   (B) to provide for irrigation above Sioux  
9                   City, Iowa;

10                  (C) to protect urban and rural areas from  
11                  devastating floods of the Missouri River; and

12                  (D) for other purposes;

13           (2) the Big Bend and Oahe projects are major  
14           components of the Pick-Sloan Missouri River Basin  
15           program that contribute to the national economy by  
16           generating a substantial amount of hydropower and  
17           impounding a substantial quantity of water to pro-  
18           vide flood control and other benefits for all States  
19           and tribes in the Missouri River Basin;

20           (3) to carry out the Pick-Sloan Missouri River  
21           Basin program, the Secretary of the Army acquired  
22           approximately 500,000 acres of land from the State  
23           of South Dakota, 4 Indian tribes, and private indi-  
24           viduals;

1           (4) as of the date of enactment of this Act, of  
2           the acreage referred to in paragraph (3), approxi-  
3           mately 200,000 acres remain at an elevation above  
4           that of the top of the exclusive flood pool of the  
5           projects of the program;

6           (5) of the approximately 200,000 acres of dry  
7           land referred to in paragraph (4), approximately  
8           80,000 acres are located within the exterior bound-  
9           aries of the Cheyenne River Reservation, Crow  
10          Creek Reservation, Lower Brule Reservation, and  
11          Standing Rock Reservation;

12          (6) as a result of the inundation from the con-  
13          struction of the Big Bend and Oahe projects, the  
14          State of South Dakota and the 4 Indian reservations  
15          referred to in paragraph (5) lost approximately  
16          250,000 acres of fertile, wooded bottom land along  
17          the Missouri River;

18          (7) the lost acreage constituted some of the  
19          most productive, unique, and irreplaceable acres of  
20          wildlife habitat in the State of South Dakota, includ-  
21          ing habitat for game and nongame species (including  
22          species that are listed as endangered or threatened  
23          species under Federal or State law);

24          (8) the Federal Government has never applied  
25          the Fish and Wildlife Coordination Act (16 U.S.C.

1 661 et seq.) in such a manner as to adequately miti-  
2 gate the loss of habitat in the State of South Dakota  
3 and on affected Indian reservations within the State;

4 (9) an insufficient quantity of Federal land  
5 within the boundaries of projects of the Pick-Sloan  
6 Missouri River Basin program is available in the  
7 State of South Dakota to provide adequate mitiga-  
8 tion of the loss of habitat;

9 (10) because of complicated land ownership pat-  
10 terns along the Missouri River, there have been  
11 many jurisdictional disputes over the control of the  
12 land along the river, including disputes concerning—

13 (A) the jurisdiction of tribal or State  
14 courts over hunting and fishing activities—

15 (i) on land of the Pick-Sloan Missouri  
16 River Basin program projects located with-  
17 in an Indian reservation; or

18 (ii) on the Missouri River;

19 (B) the establishment and enforcement of  
20 hunting and fishing seasons and limits; and

21 (C) hunting and fishing license require-  
22 ments;

23 (11) the jurisdictional disputes referred to in  
24 paragraph (10)—

1 (A) have been, and continue to be, adju-  
2 dicated in Federal courts; and

3 (B) have resulted in great costs to the  
4 Federal Government, the State of South Da-  
5 kota, and the Indian tribes;

6 (12) as of the date of enactment of this Act,  
7 policies of the Army Corps of Engineers encourage  
8 the leasing of public recreation facilities to, and the  
9 management of certain land by, State and local  
10 sponsors, if feasible;

11 (13) the State of South Dakota has dem-  
12 onstrated its ability to manage public recreation  
13 areas and wildlife resources along the Missouri  
14 River;

15 (14) the Indian tribes have demonstrated an  
16 ability to manage wildlife resources on land located  
17 within the respective reservations of those Indian  
18 tribes;

19 (15) the transfer of administrative jurisdiction  
20 over certain land acquired for the purposes of the  
21 Pick-Sloan Missouri River Basin program from the  
22 Secretary of the Army to the Secretary of the Inte-  
23 rior is in the best interest of the United States, the  
24 State of South Dakota, and the Indian tribes; and

1           (16) the Federal Government has a trust rela-  
2           tionship and a fiduciary responsibility to Indian  
3           tribes.

4           (b) PURPOSES.—The purposes of this Act are—

5           (1) to mitigate the loss of terrestrial wildlife  
6           habitat that occurred as a result of construction  
7           projects carried out under the Pick-Sloan Missouri  
8           River Basin program;

9           (2) to settle longstanding jurisdictional disputes  
10          over land and water within the Pick-Sloan Missouri  
11          River Basin program projects;

12          (3) to protect, and provide public access to, the  
13          remaining wildlife habitat in the State of South Da-  
14          kota; and

15          (4) to transfer to the Department of the Inte-  
16          rior to be held in trust for the Indian tribes of South  
17          Dakota land acquired for the Pick-Sloan Missouri  
18          River Basin program within existing exterior res-  
19          ervation boundaries, without altering any boundary  
20          of a reservation of an Indian tribe established by a  
21          treaty with the United States.

22 **SEC. 3. DEFINITIONS.**

23          In this Act:

24          (1) INDIAN TRIBE.—The term “Indian tribe”  
25          means—

- 1 (A) the Cheyenne River Sioux Tribe; and  
2 (B) the Lower Brule Sioux Tribe.

3 (2) MEMBER.—The term “member” means an  
4 individual who is an enrolled member of an Indian  
5 tribe.

6 (3) NON-INDIAN.—The term “non-Indian”  
7 means an individual who is not an enrolled member  
8 of an Indian tribe.

9 (4) SECRETARY OF THE ARMY.—The term  
10 “Secretary of the Army” means the Secretary of the  
11 Army, acting through the Chief of Engineers.

12 (5) TERRESTRIAL WILDLIFE HABITAT.—The  
13 term “terrestrial wildlife habitat” means a habitat  
14 for a wildlife species (including game and nongame  
15 species) that existed or exists on an upland habitat  
16 (including a prairie grassland, woodland, bottom  
17 land forest, scrub, or shrub) or an emergent wetland  
18 habitat.

19 **SEC. 4. LEASE OF CORPS OF ENGINEERS RECREATION**  
20 **LAND TO THE STATE OF SOUTH DAKOTA.**

21 (a) IN GENERAL.—At the request of the State of  
22 South Dakota, the Secretary of the Army shall lease to  
23 the State of South Dakota the land described in subsection  
24 (b) for a term not less than 50 years, with an option for  
25 renewal.

1 (b) LAND LEASED.—The land described in this sub-  
2 section is any other land within the projects of the Pick-  
3 Sloan Missouri River Basin program in the State of South  
4 Dakota that—

5 (1) is located outside the external boundaries of  
6 a reservation of an Indian tribe; and

7 (2) the Secretary of the Army determines at the  
8 time of the transfer is designated as a recreation  
9 area in the current Project Master Plans.

10 (c) LEASE CONDITIONS.—The Secretary of the Army  
11 shall lease the land described in subsection (b) to the State  
12 of South Dakota on the following conditions:

13 (1) RESPONSIBILITY FOR DAMAGE.—The Sec-  
14 retary of the Army shall not be responsible for any  
15 damage to the land leased under this section caused  
16 by sloughing, erosion, or other changes to the land  
17 caused by the operation of any project of the Pick-  
18 Sloan Missouri River Basin program.

19 (2) FLOWAGE EASEMENT.—The Secretary of  
20 the Army shall retain a flowage easement on the  
21 land leased under this section, and the lease shall  
22 not interrupt the ability of the Army Corps of Engi-  
23 neers to operate the projects in accordance with the  
24 Act of December 22, 1944 (58 Stat. 887, chapter  
25 665; 33 U.S.C. 701–1 et seq.).

1           (3) MANAGEMENT OF RECREATION AREAS.—To  
2           the extent consistent with other Federal law, the  
3           Secretary of the Army shall not unreasonably im-  
4           pede or restrict the ability of the State of South Da-  
5           kota to freely manage the recreation areas included  
6           in the lease.

7           (4) AGREEMENT BY THE STATE.—The State of  
8           South Dakota shall agree—

9                   (A) to carry out the duties of the State  
10                  under this Act, including, managing, operating,  
11                  and maintaining the recreation areas leased to  
12                  the State under this Act;

13                   (B) to take such action as may be nec-  
14                  essary to ensure that the hunting and fishing  
15                  rights and privileges of Indian tribes described  
16                  in section 5 are recognized and enforced; and

17                   (C) not to assess a fee for sport or recre-  
18                  ation hunting or fishing on the Missouri River  
19                  by a member within the boundaries of an In-  
20                  dian reservation.

21           (5) EASEMENTS, RIGHTS-OF-WAY, LEASES, AND  
22           COST-SHARING AGREEMENTS.—The State of South  
23           Dakota shall maintain all existing easements, rights-  
24           of-way, leases, and cost-sharing agreements that are

1 in effect as of the date of execution of a lease under  
2 this section.

3 (6) COMPLIANCE WITH FEDERAL LAWS.—The  
4 State of South Dakota shall ensure that the leased  
5 land described in subsection (b) are used in accord-  
6 ance with—

7 (A) the Endangered Species Act of 1973  
8 (16 U.S.C. 1531 et seq.);

9 (B) the Migratory Bird Treaty Act (16  
10 U.S.C. 703 et seq.);

11 (C) the Act entitled “An Act for the pro-  
12 tection of the bald eagle”, approved June 8,  
13 1940 (16 U.S.C. 668 et seq.);

14 (D) the Native American Graves Protec-  
15 tion and Repatriation Act (25 U.S.C. 3001 et  
16 seq.); and

17 (E) the National Historic Preservation Act  
18 (16 U.S.C. 470 et seq.).

19 (d) MANAGEMENT TRANSITION.—The Secretary of  
20 the Army shall continue to fund and implement, until such  
21 time as funds are available for use from the South Dakota  
22 Wildlife Habitat Mitigation Trust Fund under section  
23 7(d)(3)(A)(i), the terrestrial wildlife habitat mitigation  
24 plans under section 6(a).

1 **SEC. 5. TRANSFER OF ARMY CORPS OF ENGINEERS LAND**  
2 **FOR INDIAN TRIBES.**

3 (a) IN GENERAL.—

4 (1) TRANSFER.—The Secretary of the Army  
5 shall transfer to the Secretary of the Interior the  
6 land described in subsection (b).

7 (2) TRUST.—The Secretary of the Interior shall  
8 hold in trust for each Indian tribe the land trans-  
9 ferred under this section that are located within the  
10 external boundaries of the reservation of the Indian  
11 tribe.

12 (b) LAND TRANSFERRED.—The land described in  
13 this subsection is land that—

14 (1) is located above the top of the exclusive  
15 flood pool of the projects of the Pick-Sloan Missouri  
16 River Basin program;

17 (2) was acquired by the Secretary of the Army  
18 for the implementation of the Pick-Sloan Missouri  
19 River Basin program; and

20 (3) is located within the external boundaries of  
21 a reservation of an Indian tribe.

22 (c) MAP.—The Secretary of the Army, in cooperation  
23 with the governing bodies of the Indian tribes, shall pre-  
24 pare a map of the land transferred under this section. The  
25 map shall be on file in the appropriate offices of the Sec-  
26 retary of the Army.

1           (d) TRANSFER CONDITIONS.—The land described in  
2 subsection (b) that was acquired for the Pick-Sloan Mis-  
3 souri River Basin program shall be transferred to, and  
4 held in trust by, the Secretary of the Interior on the fol-  
5 lowing conditions:

6           (1) RESPONSIBILITY FOR DAMAGE.—The Sec-  
7 retary of the Army shall not be responsible for any  
8 damage to the land transferred under this section  
9 caused by sloughing, erosion, or other changes to the  
10 land caused by the operation of any project of the  
11 Pick-Sloan Missouri River Basin program (except as  
12 otherwise provided by Federal law).

13           (2) FLOWAGE EASEMENT.—The Secretary of  
14 the Army shall retain a flowage easement on the  
15 land transferred under this section and the transfer  
16 shall not interrupt the ability of the Army Corps of  
17 Engineers to operate the projects in accordance with  
18 the Act of December 22, 1944 (58 Stat. 887, chap-  
19 ter 665; 33 U.S.C. 701–1 et seq.).

20           (3) ACCESS BY ORIGINAL OWNERS.—An origi-  
21 nal owner of land (including an heir or assignee)  
22 shall be allowed access to the land in accordance  
23 with subsection (e) for the purposes described in  
24 that subsection.

1           (4) ACCESS BY THE STATE.—Each Indian tribe  
2 agrees to provide free and unencumbered access to  
3 the State of South Dakota, for purposes of fish and  
4 wildlife management, to each reservoir of the Mis-  
5 souri River that is located on or adjacent to the res-  
6 ervation of the Indian tribe.

7           (5) MANAGEMENT BY INDIAN TRIBES.—Each  
8 Indian tribe agrees, with respect to land held in  
9 trust for the Indian tribe, to manage, operate, and  
10 maintain any recreation area transferred to the In-  
11 dian tribe under this section.

12           (6) REGULATION OF HUNTING, FISHING, AND  
13 RECREATION WITHIN EXTERIOR RESERVATION  
14 BOUNDARIES.—

15           (A) APPLICABILITY.—The conditions de-  
16 scribed in this paragraph shall apply—

17                   (i) to the extent not inconsistent with  
18 other law;

19                   (ii) except as otherwise provided in  
20 this section; and

21                   (iii) with respect to—

22                           (I) the water of the Missouri  
23 River within the exterior boundaries  
24 of a reservation of an Indian tribe;  
25 and

1 (II) land and water within the  
2 exterior boundaries of a reservation of  
3 an Indian tribe that is above the wa-  
4 ter's edge of the Missouri River,  
5 which land and water consists of allot-  
6 ted land and tribal trust land.

7 (B) LICENSE REQUIREMENTS.—

8 (i) IN GENERAL.—Each Indian tribe  
9 shall allow any non-Indian to purchase a li-  
10 cense from the Indian tribe to hunt on al-  
11 lotted land and trust land of the Indian  
12 tribe without being required to purchase a  
13 hunting license from the State of South  
14 Dakota.

15 (ii) ALLOTTED LAND.—Hunting and  
16 fishing on allotted land shall require the  
17 permission of the allottee or a designated  
18 agent of the allottee.

19 (iii) MIGRATORY WATERFOWL.—A  
20 non-Indian shall not hunt migratory water-  
21 fowl on trust land unless the non-Indian is  
22 in possession of a Federal migratory-bird  
23 hunting and conservation stamp (known as  
24 a “Duck Stamp”) issued under the Act of

1 March 16, 1934 (48 Stat. 451, chapter 71;  
2 16 U.S.C. 718 et seq.).

3 (iv) STATE GAME LICENSES.—Each  
4 Indian tribe shall honor big game and  
5 small game licenses issued by the State of  
6 South Dakota on non-Indian private deed-  
7 ed land and public land and water within  
8 the exterior boundaries of the reservation  
9 of the Indian tribe described in subpara-  
10 graph (A)(iii) (referred to in this para-  
11 graph as the “reservation boundaries”)  
12 without requiring a State licensee to pur-  
13 chase a hunting license or permit from the  
14 Indian tribe.

15 (v) NON-INDIAN LAND.—A non-Indian  
16 landowner who resides within the reserva-  
17 tion boundaries of an Indian tribe may  
18 hunt on the non-Indian’s land without se-  
19 curing a license from the Indian tribe.

20 (vi) DEEDED LAND.—Hunting on  
21 non-Indian and member private deeded  
22 land within the reservation boundaries of  
23 an Indian tribe shall be contingent on ob-  
24 taining permission from the owner or les-  
25 see.

1 (vii) MEMBERS.—A member of an In-  
2 dian tribe may hunt and fish on allotted or  
3 tribal trust land within the reservation  
4 boundaries of the Indian tribe with only a  
5 license from the Indian tribe, if such a li-  
6 cense is required.

7 (C) ESTABLISHMENT OF WILDLIFE MAN-  
8 AGEMENT RULES.—

9 (i) RULES FOR MEMBERS.—Each In-  
10 dian tribe shall establish such regulations,  
11 seasons, and bag limits for hunting or fish-  
12 ing by a member on allotted land and trust  
13 land of the Indian tribe as the wildlife  
14 management agency of the Indian tribe de-  
15 termines appropriate.

16 (ii) RULES FOR NON-INDIANS.—Each  
17 Indian tribe shall establish such regula-  
18 tions, seasons, and bag limits for hunting  
19 or fishing by non-Indians on allotted land  
20 and trust land of the Indian tribe as the  
21 wildlife management agency of the Indian  
22 tribe determines appropriate.

23 (iii) FISHING RULES.—Each Indian  
24 tribe shall adopt and enforce rules that af-  
25 fect fishing on the water of the Missouri

1 River within the reservation boundaries of  
2 the Indian tribe that are agreed to by the  
3 State and affected tribe.

4 (D) PROHIBITIONS.—

5 (i) IN GENERAL.—Each Indian tribe  
6 shall—

7 (I) prohibit the use of gill or  
8 trammel nets and snagging of fish,  
9 other than when used in a fishery  
10 management effort by a certified trib-  
11 al or State game, fish, and parks offi-  
12 cer or employee;

13 (II) require the use of nontoxic  
14 shot in the hunting of migratory wa-  
15 terfowl; and

16 (III) prohibit the sale, trade, or  
17 barter of fish or terrestrial wildlife or  
18 other such practices that are det-  
19 rimental to game and fish resources.

20 (ii) ENFORCEMENT.—Each Indian  
21 tribe and the State of South Dakota shall  
22 actively enforce the prohibitions described  
23 in clause (i) against members and non-In-  
24 dians without discrimination.

25 (E) ENFORCEMENT OF RULES.—

1 (i) EXECUTION OF CROSS-DEPUTIZA-  
2 TION AGREEMENTS.—

3 (I) IN GENERAL.—Each Indian  
4 tribe shall enter into a cross-deputiza-  
5 tion agreement with the State of  
6 South Dakota under which tribal offi-  
7 cers, on certification by the Law En-  
8 forcement Training and Standards  
9 Commission or after receiving equiva-  
10 lent Federal training, are granted the  
11 credentials of a State of South Da-  
12 kota Deputy Conservation officer ef-  
13 fective only within the reservation  
14 boundaries of the Indian tribe.

15 (II) PROVISION OF TRIBAL EN-  
16 FORCEMENT CREDENTIALS.—Each  
17 Indian tribe shall provide tribal en-  
18 forcement credentials to State of  
19 South Dakota Conservation officers  
20 on proof to the tribe that the officers  
21 are certified as conservation officers  
22 under Federal, tribal, or State law, ef-  
23 fective only within the reservation  
24 boundaries of the Indian tribe.

25 (ii) ARRESTS.—

1 (I) COORDINATION.—Any arrest  
2 made under the authority of a cross-  
3 deputization agreement shall be co-  
4 ordinated through the officer of the  
5 government that has prosecutorial ju-  
6 risdiction for the arrest.

7 (II) AVAILABILITY TO TES-  
8 TIFY.—The officer who arrests or  
9 causes the arrest of a person under  
10 the authority of a cross-deputization  
11 agreement shall be reasonably avail-  
12 able to testify in the appropriate trib-  
13 al, Federal, or State court.

14 (F) PROSECUTION.—

15 (i) ALLOTTED LAND AND TRIBAL  
16 TRUST LAND.—

17 (I) NON-INDIANS.—A non-Indian  
18 violator of a regulation that affects a  
19 hunting, fishing, or recreational activ-  
20 ity on the allotted land or tribal trust  
21 land of an Indian tribe shall be pros-  
22 ecuted in Federal court or a court of  
23 the Indian tribe, whichever is appro-  
24 priate.

1 (II) MEMBERS.—A member vio-  
2 lator of a regulation that affects a  
3 hunting, fishing, or recreational activ-  
4 ity on the allotted land or tribal trust  
5 land of an Indian tribe shall be pros-  
6 ecuted in a court of the Indian tribe.

7 (ii) MISSOURI RIVER.—

8 (I) NON-INDIANS.—A non-Indian  
9 violator of a regulation that affects a  
10 hunting, fishing, or recreational activ-  
11 ity on the water of the Missouri River  
12 shall be prosecuted in a Federal or  
13 State court, whichever is appropriate.

14 (II) MEMBERS.—A member vio-  
15 lator of a regulation that affects a  
16 hunting, fishing, or recreational activ-  
17 ity on the water of the Missouri River  
18 within the reservation boundaries of  
19 an Indian tribe shall be prosecuted in  
20 the court of the Indian tribe.

21 (G) PENALTIES.—The penalties for viola-  
22 tions of regulations that affect a hunting, fish-  
23 ing, or recreational activity on the water of the  
24 Missouri River shall be identical for members  
25 and non-Indians.

1           (7) OTHER INDIAN TRIBE REQUIREMENTS.—  
2       Each Indian tribe shall agree to meet the require-  
3       ments applicable to the Indian tribe under this Act.

4           (8) BOATING SAFETY; TEMPORARY LAND-  
5       INGS.—Each Indian tribe shall grant any person  
6       who operates a vessel the right of access, without  
7       charge, to land under the jurisdiction of the Indian  
8       tribe located along the shore of the Missouri River  
9       or the reservoirs of the Pick-Sloan Missouri River  
10      Basin program projects for the purposes of—

11           (A) ensuring safety under adverse weather  
12      conditions (including storms and high winds);

13           (B) otherwise making a landing that—

14           (i) is for a purpose other than hunt-  
15      ing, fishing, or removing objects, including  
16      Indian cultural or archaeological materials;

17           (ii) is of a duration of not more than  
18      24 hours; and

19           (iii) is consistent with the protection  
20      of natural resources and the environment.

21           (C) carrying out any subsequent co-man-  
22      agement agreement that may be negotiated be-  
23      tween the State of South Dakota and the In-  
24      dian tribe relating to hunting, fishing, or rec-  
25      reational use; and

1 (D) making an unarmed retrieval of water-  
2 fowl (as determined under the law of the State  
3 of South Dakota).

4 (9) EASEMENTS, RIGHTS-OF-WAY, LEASES, AND  
5 COST-SHARING AGREEMENTS.—

6 (A) MAINTENANCE.—The Secretary of the  
7 Interior shall maintain all existing easements,  
8 rights-of-way, leases, and cost-sharing agree-  
9 ments that are in effect as of the date of the  
10 transfer.

11 (B) PAYMENTS TO COUNTY.—The Sec-  
12 retary of the Interior shall pay the affected  
13 county 100 percent of the receipts from the  
14 easements, rights-of-way, leases, and cost-shar-  
15 ing agreements described in subparagraph (A).

16 (e) ACCESS BY ORIGINAL OWNERS.—

17 (1) IN GENERAL.—An original owner of land  
18 transferred under this section (including an Indian  
19 allottee), and any other person who has been as-  
20 signed or has inherited land from an original land-  
21 owner (or Indian allottee), who maintains base prop-  
22 erty in the vicinity of the land, shall be guaranteed  
23 access to and a right to lease, for agricultural pur-  
24 poses (including grazing), the land acquired from

1 the original owner by the Secretary of the Army for  
2 the Pick-Sloan Missouri River Basin program.

3 (2) EASEMENTS AND RIGHTS-OF-WAY.—An In-  
4 dian tribe shall honor past easements and rights-of-  
5 way and provide reasonable future easements and  
6 rights-of-way to ensure access for use of the land.

7 (3) FENCING.—Any agency or Indian tribe that  
8 requires the land to be fenced shall be responsible  
9 for building and maintaining the fencing required.

10 (4) FEES.—An Indian tribe that leases land to  
11 an original owner or other person described in para-  
12 graph (1) may charge a grazing fee at a rate that  
13 does not exceed the rate charged by the Indian tribe  
14 for grazing on comparable land within the external  
15 boundaries of the reservation of the Indian tribe.

16 (5) ELIGIBILITY TO LEASE LAND FOR AGRICUL-  
17 TURAL PURPOSES.—Not later than 1 year after the  
18 date of enactment of this Act, the Secretary of the  
19 Interior shall determine which original owners, heirs,  
20 and assignees (including Indian allottees) meet the  
21 eligibility criteria to lease land for agricultural pur-  
22 poses under this section.

23 **SEC. 6. TERRESTRIAL WILDLIFE HABITAT MITIGATION.**

24 (a) TERRESTRIAL WILDLIFE HABITAT MITIGATION  
25 PLANS.—

1           (1) IN GENERAL.—In accordance with this sub-  
2           section and with the assistance of the Secretary of  
3           the Army and the Secretary of the Interior, the  
4           State of South Dakota and each Indian tribe shall,  
5           as a condition of the receipt of funds under this Act,  
6           develop a plan for the mitigation of terrestrial wild-  
7           life habitat loss that occurred as a result of flooding  
8           related to projects carried out as part of the Pick-  
9           Sloan Missouri River Basin program.

10           (2) FUNDING FOR CARRYING OUT PLANS.—

11           (A) STATE.—The Secretary of the Treas-  
12           ury shall make available to the State of South  
13           Dakota funds from the South Dakota Wildlife  
14           Habitat Mitigation Trust Fund established by  
15           section 7, to be used to carry out the plan.

16           (B) INDIAN TRIBES.—The Secretary of the  
17           Interior shall make available to each Indian  
18           tribe funds from the Native American Wildlife  
19           Habitat Mitigation Trust Fund established by  
20           section 8, to be used to carry out the plan.

21           (b) PROGRAMS FOR THE PURCHASE OF WILDLIFE  
22           HABITAT LEASES.—

23           (1) IN GENERAL.—The State of South Dakota  
24           may use payments received under section  
25           7(d)(3)(A)(ii), and each Indian tribe may use pay-

1       ments received under section 8(d)(3)(A)(ii), to de-  
2       velop or expand a program for the purchase of wild-  
3       life habitat leases that meets the requirements of  
4       this subsection.

5               (2) DEVELOPMENT OF PLAN.—

6                       (A) IN GENERAL.—If the State of South  
7       Dakota, or an Indian tribe, conducts a program  
8       in accordance with this subsection, the State of  
9       South Dakota, or the Indian tribe, in consulta-  
10      tion with the United States Fish and Wildlife  
11      Service and with opportunity for public com-  
12      ment, shall develop a plan to lease land for the  
13      protection and development of wildlife habitat,  
14      including habitat for threatened and endan-  
15      gered species associated with the Missouri River  
16      ecosystem.

17                      (B) USE FOR PROGRAM.—The plan shall  
18      be used by the State of South Dakota, or the  
19      Indian tribe, in carrying out the program devel-  
20      oped under paragraph (1).

21               (3) CONDITIONS OF LEASES.—Each lease cov-  
22      ered under a program under paragraph (1) shall  
23      specify that the owner of the property that is subject  
24      to the lease shall provide—

1 (A) public access for sportsmen during  
2 hunting seasons; and

3 (B) other outdoor uses covered under the  
4 lease, as negotiated by the landowner and the  
5 State of South Dakota or Indian tribe.

6 (4) USE OF ASSISTANCE.—

7 (A) STATE OF SOUTH DAKOTA.—If the  
8 State of South Dakota conducts a program in  
9 accordance with this subsection, the State may  
10 use payments received under section  
11 7(d)(3)(A)(ii) to—

12 (i) acquire easements, rights-of-way,  
13 or leases for management of wildlife habi-  
14 tat, including habitat for threatened and  
15 endangered species, and public access to  
16 wildlife on private land in the State of  
17 South Dakota;

18 (ii) create public access to Federal or  
19 State land through the purchase of ease-  
20 ments or rights-of-way that traverse pri-  
21 vate property; or

22 (iii) lease land for the creation or res-  
23 toration of a wetland on tribal or private  
24 land in the State of South Dakota.

1 (B) INDIAN TRIBES.—If an Indian tribe  
2 conducts a program in accordance with this  
3 subsection, the Indian tribe may use payments  
4 received under section 7(d)(3)(A)(ii) for the  
5 purposes described in subparagraph (A).

6 (c) DEAUTHORIZATION OF BLUNT RESERVOIR  
7 PROJECT.—

8 (1) IN GENERAL.—The Blunt Reservoir and  
9 Pierre Canal features of the Oahe Unit, adminis-  
10 tered by the Bureau of Reclamation in the State of  
11 South Dakota, are not authorized after the date of  
12 enactment of this Act.

13 (2) TRANSFER OF LAND.—Land associated  
14 with the Blunt Reservoir and Pierre Canal features  
15 of the Oahe Unit that is administered by the Bureau  
16 of Reclamation is transferred in fee title to the State  
17 of South Dakota to be used for the purpose of ter-  
18 restrial wildlife habitat mitigation.

19 **SEC. 7. SOUTH DAKOTA WILDLIFE HABITAT MITIGATION**  
20 **TRUST FUND.**

21 (a) ESTABLISHMENT.—There is established in the  
22 Treasury of the United States a fund to be known as the  
23 “South Dakota Wildlife Habitat Mitigation Trust Fund”  
24 (referred to in this section as the “Fund”).

1           (b) FUNDING.—For the fiscal year following the fis-  
2 cal year during which the aggregate of the amounts depos-  
3 ited in the Lower Brule Sioux Tribe Infrastructure Devel-  
4 opment Trust Fund is equal to the amount specified in  
5 section 4(b) of the Lower Brule Sioux Tribe Infrastruc-  
6 ture Development Trust Fund Act of 1997, and for each  
7 fiscal year thereafter until such time as the aggregate of  
8 the amounts deposited in the Fund under this subsection,  
9 is equal to \$108,000,000, the Secretary of the Treasury  
10 shall deposit in the Fund an amount equal to 15 percent  
11 of the receipts from the deposits in the Treasury of the  
12 United States for the preceding fiscal year from the power  
13 program of the Pick-Sloan Missouri River Basin program,  
14 administered by the Western Area Power Administration.

15           (c) INVESTMENTS.—The Secretary of the Treasury  
16 shall invest the amounts deposited under subsection (b)  
17 only in interest-bearing obligations of the United States  
18 or in obligations guaranteed as to both principal and inter-  
19 est by the United States.

20           (d) PAYMENTS.—

21               (1) IN GENERAL.—All amounts credited as in-  
22 terest under subsection (c) shall be available, with-  
23 out fiscal year limitation, to the State of South Da-  
24 kota for use in accordance with paragraph (3).

1           (2) WITHDRAWAL AND TRANSFER OF FUNDS.—

2           The Secretary of the Treasury shall withdraw  
3           amounts credited as interest under paragraph (1)  
4           and transfer the amounts to the State of South Da-  
5           kota for use in accordance with paragraph (3). The  
6           Secretary of the Treasury may not withdraw the  
7           amounts for any other purpose.

8           (3) USE OF TRANSFERRED FUNDS.—

9           (A) IN GENERAL.—Subject to subpara-  
10          graphs (B) and (C), the State of South Dakota  
11          shall use the amounts transferred under para-  
12          graph (2) only to carry out the following activi-  
13          ties:

14                   (i) The implementation and adminis-  
15                   tration of a terrestrial wildlife habitat miti-  
16                   gation plan under section 6(a).

17                   (ii) The purchase and administration  
18                   of wildlife habitat leases under section 6(b)  
19                   and other activities described in that sec-  
20                   tion.

21                   (iii) The management, operation, ad-  
22                   ministration, maintenance, and develop-  
23                   ment, in accordance with this Act, of all  
24                   recreation areas that are leased to the

1 State of South Dakota by the Army Corps  
2 of Engineers.

3 (iv) The development and mainte-  
4 nance of public access to, and protection  
5 of, wildlife habitat and recreation areas  
6 along the Missouri River.

7 (B) ALLOCATION FOR PLAN.—The State of  
8 South Dakota shall use the amounts trans-  
9 ferred under paragraph (2) to fully implement  
10 the terrestrial wildlife habitat mitigation plan of  
11 the State under section 6(a).

12 (C) PROHIBITION.—The amounts trans-  
13 ferred under paragraph (2) shall not be used  
14 for the purchase of land in fee title.

15 (e) TRANSFERS AND WITHDRAWALS.—Except as  
16 provided in subsection (d), the Secretary of the Treasury  
17 may not transfer or withdraw any amount deposited under  
18 subsection (b).

19 (f) ADMINISTRATIVE EXPENSES.—There are author-  
20 ized to be appropriated to the Secretary of the Treasury  
21 such sums as are necessary to pay the administrative ex-  
22 penses of the Fund.

1 **SEC. 8. NATIVE AMERICAN WILDLIFE HABITAT MITIGATION**  
2 **TRUST FUND.**

3 (a) ESTABLISHMENT.—There is established in the  
4 Treasury of the United States a fund to be known as the  
5 “Native American Wildlife Habitat Mitigation Trust  
6 Fund” (referred to in this section as the “Fund”).

7 (b) FUNDING.—For the fiscal year following the fis-  
8 cal year during which the aggregate of the amounts depos-  
9 ited in the Lower Brule Sioux Tribe Infrastructure Devel-  
10 opment Trust Fund is equal to the amount specified in  
11 section 4(b) of the Lower Brule Sioux Tribe Infrastruc-  
12 ture Development Trust Fund Act of 1997, and for each  
13 fiscal year thereafter until such time as the aggregate of  
14 the amounts deposited in the Fund under this subsection,  
15 is equal to \$47,400,000, the Secretary of the Treasury  
16 shall deposit in the Fund an amount equal to 10 percent  
17 of the receipts from the deposits in the Treasury of the  
18 United States for the preceding fiscal year from the power  
19 program of the Pick-Sloan Missouri River Basin program,  
20 administered by the Western Area Power Administration.

21 (c) INVESTMENTS.—The Secretary of the Treasury  
22 shall invest the amounts deposited under subsection (b)  
23 only in interest-bearing obligations of the United States  
24 or in obligations guaranteed as to both principal and inter-  
25 est by the United States.

26 (d) PAYMENTS.—

1           (1) IN GENERAL.—All amounts credited as in-  
2           terest under subsection (c) shall be available, with-  
3           out fiscal year limitation, to the Secretary of the In-  
4           terior for use in accordance with paragraphs (3) and  
5           (4).

6           (2) WITHDRAWAL AND TRANSFER OF FUNDS.—  
7           At the request of the Secretary of the Interior, the  
8           Secretary of the Treasury shall withdraw amounts  
9           credited as interest under paragraph (1) and trans-  
10          fer the amounts to the Secretary of the Interior for  
11          use in accordance with paragraphs (3) and (4). The  
12          Secretary of the Treasury may not withdraw the  
13          amounts for any other purpose.

14          (3) USE OF TRANSFERRED FUNDS.—

15               (A) IN GENERAL.—Subject to subpara-  
16               graphs (B) and (C) and paragraph (4), the Sec-  
17               retary of the Interior shall use the amounts  
18               transferred under paragraph (2) only for the  
19               purpose of making payments to Indian tribes to  
20               carry out the following activities:

21                       (i) The implementation and adminis-  
22                       tration of a terrestrial wildlife habitat miti-  
23                       gation plan under section 6(a), which pay-  
24                       ment shall be made at such time as the  
25                       Secretary of the Army approves a terres-

1 trial wildlife habitat mitigation plan devel-  
2 oped by the Indian tribe under that sec-  
3 tion.

4 (ii) The purchase and administration  
5 of wildlife habitat leases under section 6(b)  
6 and other activities described in that sec-  
7 tion.

8 (iii) The management, operation, ad-  
9 ministration, maintenance, and develop-  
10 ment, in accordance with this Act, of recre-  
11 ation areas held in trust for the Indian  
12 tribes.

13 (iv) The development and mainte-  
14 nance of public access to, and protection  
15 of, wildlife habitat and recreation areas  
16 along the Missouri River.

17 (v) The preservation of Native Amer-  
18 ican cultural sites located on the trans-  
19 ferred land.

20 (B) ALLOCATION FOR PLAN.—Each Indian  
21 tribe shall use the amounts transferred under  
22 paragraph (2) and paid to the Indian tribe to  
23 fully implement the terrestrial wildlife habitat  
24 mitigation plan of the Indian tribe under sec-  
25 tion 6(a).

1 (C) PROHIBITION.—The amounts trans-  
2 ferred under paragraph (2) and paid to an In-  
3 dian tribe shall not be used for the purchase of  
4 land in fee title.

5 (4) PRO RATA SHARE OF PAYMENTS.—In mak-  
6 ing payments from the interest generated under the  
7 Fund, the Secretary of the Interior shall ensure that  
8 the total amount of payments received by the Indian  
9 tribes under paragraph (3) is distributed as follows:

10 (A) 79 percent shall be available to the  
11 Cheyenne River Sioux Tribe.

12 (B) 21 percent shall be available to the  
13 Lower Brule Sioux Tribe.

14 (e) TRANSFERS AND WITHDRAWALS.—Except as  
15 provided in subsection (d), the Secretary of the Treasury  
16 may not transfer or withdraw any amount deposited under  
17 subsection (b).

18 (f) ADMINISTRATIVE EXPENSES.—There are author-  
19 ized to be appropriated to the Secretary of the Treasury  
20 such sums as are necessary to pay the administrative ex-  
21 penses of the Fund.

22 **SEC. 9. AUTHORIZATION OF ADMINISTRATIVE COSTS OF**  
23 **THE ARMY CORPS OF ENGINEERS.**

24 There are authorized to be appropriated to the Sec-  
25 retary of the Army such sums as are necessary—

1           (1) to pay administrative expenses incurred in  
2 carrying out this Act; and

3           (2) to fund the implementation of terrestrial  
4 wildlife habitat mitigation plans under section 6(a)  
5 until such time as funds are available for use under  
6 sections 7(d)(3)(A)(i) and 8(d)(3)(A)(i).

7 **SEC. 10. RULE OF CONSTRUCTION; PROHIBITION.**

8           (a) **STATUTORY CONSTRUCTION.**—Nothing in this  
9 Act diminishes or affects—

10           (1) any water right of an Indian tribe;

11           (2) any other right of an Indian tribe, except as  
12 specifically provided in another provision of this Act;

13           (3) any valid, existing treaty right that is in ef-  
14 fect on the date of enactment of this Act;

15           (4) the external boundaries of any reservation  
16 of an Indian tribe;

17           (5) any authority of the State of South Dakota  
18 that relates to the protection, regulation, or manage-  
19 ment of fish and terrestrial wildlife resources, except  
20 as specifically provided in another provision of this  
21 Act;

22           (6) any authority or responsibility of the Sec-  
23 retary of the Army or the Secretary of the Interior  
24 under a law in existence on the date of enactment  
25 of this Act, including—

1 (A) the Endangered Species Act of 1973  
2 (16 U.S.C. 1531 et seq.);

3 (B) the Migratory Bird Treaty Act (16  
4 U.S.C. 703 et seq.);

5 (C) the Act entitled “An Act for the pro-  
6 tection of the bald eagle”, approved June 8,  
7 1940 (16 U.S.C. 668 et seq.);

8 (D) the Native American Graves Protec-  
9 tion and Repatriation Act (25 U.S.C. 3001 et  
10 seq.); and

11 (E) the National Historic Preservation Act  
12 (16 U.S.C. 470 et seq.); or

13 (7) the ability of an Indian tribe to use the  
14 trust land transferred to the Indian tribe under this  
15 Act in a manner that is consistent with the use of  
16 other Indian trust land, except as otherwise specifi-  
17 cally provided in this Act.

18 (b) POWER RATES.—No payment made under this  
19 Act shall affect any power rate under the Pick-Sloan Mis-  
20 souri River Basin program.

21 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated to the De-  
23 partment of the Interior such sums as are necessary to  
24 carry out this Act.

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