

Public Law 106-382
106th Congress

An Act

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

Oct. 27, 2000

[S. 624]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Fort Peck
Reservation
Rural Water
System Act of
2000.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fort Peck Reservation Rural Water System Act of 2000”.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to ensure a safe and adequate municipal, rural, and industrial water supply for the residents of the Fort Peck Indian Reservation in the State of Montana; and

(2) to assist the citizens of Roosevelt, Sheridan, Daniels, and Valley Counties in the State, outside the Fort Peck Indian Reservation, in developing safe and adequate municipal, rural, and industrial water supplies.

SEC. 3. DEFINITIONS.

In this Act:

(1) ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.—The term “Assiniboine and Sioux Rural Water System” means the rural water system within the Fort Peck Indian Reservation authorized by section 4.

(2) DRY PRAIRIE RURAL WATER SYSTEM.—The term “Dry Prairie Rural Water System” means the rural water system authorized by section 5 in the Roosevelt, Sheridan, Daniels, and Valley Counties of the State.

(3) FORT PECK RESERVATION RURAL WATER SYSTEM.—The term “Fort Peck Reservation Rural Water System” means the Assiniboine and Sioux Rural Water System and the Dry Prairie Rural Water System.

(4) FORT PECK TRIBES.—The term “Fort Peck Tribes” means the Assiniboine and Sioux Indian Tribes within the Fort Peck Indian Reservation.

(5) PICK-SLOAN.—The term “Pick-Sloan” means the Pick-Sloan Missouri River Basin program (authorized by section 9 of the Act entitled “An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes”, approved December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 891)).

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

(7) STATE.—The term “State” means the State of Montana.

SEC. 4. ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.

(a) AUTHORIZATION.—The Secretary shall plan, design, construct, operate, maintain, and replace a municipal, rural, and industrial water system, to be known as the “Assiniboine and Sioux Rural Water System”, as generally described in the report required by subsection (g)(2).

(b) COMPONENTS.—The Assiniboine and Sioux Rural Water System shall consist of—

(1) pumping and treatment facilities located along the Missouri River within the boundaries of the Fort Peck Indian Reservation;

(2) pipelines extending from the water treatment plant throughout the Fort Peck Indian Reservation;

(3) distribution and treatment facilities to serve the needs of the Fort Peck Indian Reservation, including—

(A) public water systems in existence on the date of the enactment of this Act that may be purchased, improved, and repaired in accordance with the cooperative agreement entered into under subsection (c); and

(B) water systems owned by individual tribal members and other residents of the Fort Peck Indian Reservation;

(4) appurtenant buildings and access roads;

(5) all property and property rights necessary for the facilities described in this subsection;

(6) electrical power transmission and distribution facilities necessary for services to Fort Peck Reservation Rural Water System facilities; and

(7) such other pipelines, pumping plants, and facilities as the Secretary determines to be appropriate to meet the water supply, economic, public health, and environmental needs of the Fort Peck Indian Reservation, including water storage tanks, water lines, and other facilities for the Fort Peck Tribes and the villages, towns, and municipalities in the Fort Peck Indian Reservation.

(c) COOPERATIVE AGREEMENT.—

(1) IN GENERAL.—The Secretary shall enter into a cooperative agreement with the Fort Peck Tribal Executive Board for planning, designing, constructing, operating, maintaining, and replacing the Assiniboine and Sioux Rural Water System.

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

(A) the responsibilities of each party to the agreement for—

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

(ii) engineering and design;

(iii) construction;

(iv) water conservation measures; and

(v) administration of contracts relating to performance of the activities described in clauses (i) through (iv);

(B) the procedures and requirements for approval and acceptance of the design and construction and for carrying out other activities described in subparagraph (A); and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(3) **OPTIONAL PROVISIONS.**—The cooperative agreement under paragraph (1) may include provisions relating to the purchase, improvement, and repair of water systems in existence on the date of the enactment of this Act, including systems owned by individual tribal members and other residents of the Fort Peck Indian Reservation.

(4) **TERMINATION.**—The Secretary may terminate a cooperative agreement under paragraph (1) if the Secretary determines that—

(A) the quality of construction does not meet all standards established for similar facilities constructed by the Secretary; or

(B) the operation and maintenance of the Assiniboine and Sioux Rural Water System does not meet conditions acceptable to the Secretary that are adequate to fulfill the obligations of the United States to the Fort Peck Tribes.

(5) **TRANSFER.**—On execution of a cooperative agreement under paragraph (1), in accordance with the cooperative agreement, the Secretary may transfer to the Fort Peck Tribes, on a nonreimbursable basis, funds made available for the Assiniboine and Sioux Rural Water System under section 9.

(d) **SERVICE AREA.**—The service area of the Assiniboine and Sioux Rural Water System shall be the area within the boundaries of the Fort Peck Indian Reservation.

(e) **CONSTRUCTION REQUIREMENTS.**—The components of the Assiniboine and Sioux Rural Water System shall be planned and constructed to a size that is sufficient to meet the municipal, rural, and industrial water supply requirements of the service area of the Fort Peck Reservation Rural Water System.

(f) **TITLE TO ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.**—Title to the Assiniboine and Sioux Rural Water System shall be held in trust by the United States for the Fort Peck Tribes and shall not be transferred unless a transfer is authorized by an Act of Congress enacted after the date of the enactment of this Act.

(g) **LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.**—The Secretary shall not obligate funds for construction of the Assiniboine and Sioux Rural Water System until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to the Assiniboine and Sioux Rural Water System;

(2) on or after the date that is 90 days after the date of submission to Congress of a final engineering report approved by the Secretary; and

(3) the Secretary publishes a written finding that the water conservation plan developed under section 7 includes prudent and reasonable water conservation measures for the operation of the Assiniboine and Sioux Rural Water System that have been shown to be economically and financially feasible.

(h) **TECHNICAL ASSISTANCE.**—The Secretary shall provide such technical assistance as is necessary to enable the Fort Peck Tribes

Deadline.
Reports.

Publication.

to plan, design, construct, operate, maintain, and replace the Assiniboine and Sioux Rural Water System, including operation and management training.

(i) APPLICATION OF INDIAN SELF-DETERMINATION ACT.—Planning, design, construction, operation, maintenance, and replacement of the Assiniboine and Sioux Rural Water System within the Fort Peck Indian Reservation shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(j) COST SHARING.—

(1) CONSTRUCTION.—The Federal share of the cost of construction of the Assiniboine and Sioux Rural Water System shall be 100 percent, and shall be funded through annual appropriations to the Bureau of Reclamation.

(2) OPERATION AND MAINTENANCE.—The Federal share of the cost of operation and maintenance of the Assiniboine and Sioux Rural Water System shall be 100 percent, and shall be funded through annual appropriations to the Bureau of Indian Affairs.

SEC. 5. DRY PRAIRIE RURAL WATER SYSTEM.

(a) PLANNING AND CONSTRUCTION.—

(1) AUTHORIZATION.—The Secretary shall enter into a cooperative agreement with Dry Prairie Rural Water Association Incorporated (or any successor non-Federal entity) to provide Federal funds for the planning, design, and construction of the Dry Prairie Rural Water System in Roosevelt, Sheridan, Daniels, and Valley Counties, Montana, outside the Fort Peck Indian Reservation.

(2) USE OF FEDERAL FUNDS.—

(A) FEDERAL SHARE.—The Federal share of the cost of planning, design, and construction of the Dry Prairie Rural Water System shall be not more than 76 percent, and shall be funded with amounts appropriated from the reclamation fund. Such amounts shall not be returnable or reimbursable under the Federal reclamation laws.

(B) COOPERATIVE AGREEMENTS.—Federal funds made available to carry out this section may be obligated and expended only through a cooperative agreement entered into under subsection (c).

(b) COMPONENTS.—The components of the Dry Prairie Rural Water System facilities on which Federal funds may be obligated and expended under this section shall include—

(1) storage, pumping, interconnection, and pipeline facilities;

(2) appurtenant buildings and access roads;

(3) all property and property rights necessary for the facilities described in this subsection;

(4) electrical power transmission and distribution facilities necessary for service to Dry Prairie Rural Water System facilities; and

(5) other facilities customary to the development of rural water distribution systems in the State, including supplemental water intake, pumping, and treatment facilities.

(c) COOPERATIVE AGREEMENT.—

(1) IN GENERAL.—The Secretary, with the concurrence of the Assiniboine and Sioux Rural Water System Board, shall enter into a cooperative agreement with Dry Prairie Rural

Water Association Incorporated to provide Federal assistance for the planning, design, and construction of the Dry Prairie Rural Water System.

(2) **MANDATORY PROVISIONS.**—The cooperative agreement under paragraph (1) shall specify, in a manner that is acceptable to the Secretary and Dry Prairie Rural Water Association Incorporated—

(A) the responsibilities of each party to the agreement for—

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

(ii) engineering and design;

(iii) construction;

(iv) water conservation measures; and

(v) administration of contracts relating to performance of the activities described in clauses (i) through (iv);

(B) the procedures and requirements for approval and acceptance of the design and construction and for carrying out other activities described in subparagraph (A); and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(d) **SERVICE AREA.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the service area of the Dry Prairie Rural Water System shall be the area in the State—

(A) north of the Missouri River;

(B) south of the border between the United States and Canada;

(C) west of the border between the States of North Dakota and Montana; and

(D) east of the western line of range 39 east.

(2) **FORT PECK INDIAN RESERVATION.**—The service area shall not include the area inside the Fort Peck Indian Reservation.

(e) **LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.**—The Secretary shall not obligate funds for construction of the Dry Prairie Rural Water System until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to the Dry Prairie Rural Water System;

(2) on or after the date that is 90 days after the date of submission to Congress of a final engineering report approved by the Secretary; and

Deadline.
Reports.

(3) the Secretary publishes a written finding that the water conservation plan developed under section 7 includes prudent and reasonable water conservation measures for the operation of the Dry Prairie Rural Water System that have been shown to be economically and financially feasible.

Publication.

(f) **INTERCONNECTION OF FACILITIES.**—The Secretary shall—

(1) interconnect the Dry Prairie Rural Water System with the Assiniboine and Sioux Rural Water System; and

(2) provide for the delivery of water to the Dry Prairie Rural Water System from the Missouri River through the Assiniboine and Sioux Rural Water System.

(g) **LIMITATION ON USE OF FEDERAL FUNDS.—**

(1) **IN GENERAL.**—The operation, maintenance, and replacement expenses associated with water deliveries from the Assiniboine and Sioux Rural Water System to the Dry Prairie Rural Water System shall not be a Federal responsibility and shall be borne by the Dry Prairie Rural Water System.

(2) **FEDERAL FUNDS.**—The Secretary may not obligate or expend any Federal funds for the operation, maintenance, or replacement of the Dry Prairie Rural Water System.

(h) **TITLE TO DRY PRAIRIE RURAL WATER SYSTEM.**—Title to the Dry Prairie Rural Water System shall be held by Dry Prairie Rural Water Association, Incorporated.

SEC. 6. USE OF PICK-SLOAN POWER.

(a) **IN GENERAL.**—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri Basin program, the Western Area Power Administration shall make available, at the firm power rate, the capacity and energy required to meet the pumping and incidental operational requirements of the Fort Peck Reservation Rural Water System.

(b) **QUALIFICATION TO USE PICK-SLOAN POWER.**—For as long as the Fort Peck Reservation rural water supply system operates on a not-for-profit basis, the portions of the water supply project constructed with assistance under this Act shall be eligible to receive firm power from the Pick-Sloan Missouri Basin program established by section 9 of the Act of December 22, 1944 (chapter 665; 58 Stat. 887), popularly known as the Flood Control Act of 1944.

(c) **RECOVERY OF EXPENSES.—**

(1) **ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.**—In the case of the Assiniboine and Sioux Rural Water System, the Western Area Power Administration shall recover expenses associated with power purchases under subsection (a) through a separate power charge sufficient to cover such expenses. Such charge shall be paid fully through the annual appropriations to the Bureau of Indian Affairs.

(2) **DRY PRAIRIE RURAL WATER SYSTEM.**—In the case of the Dry Prairie Rural Water System, the Western Area Power Administration shall recover expenses associated with power purchases under subsection (a) through a separate power charge sufficient to cover expenses. Such charge shall be paid fully by the Dry Prairie Rural Water System.

(d) **ADDITIONAL POWER.**—If power in addition to that made available under subsection (a) is required to meet the pumping requirements of the Fort Peck Reservation Rural Water System, the Administrator of the Western Area Power Administration may purchase the necessary additional power at the best available rate. The costs of such purchases shall be reimbursed to the Administrator according to the terms identified in subsection (c).

SEC. 7. WATER CONSERVATION PLAN.

(a) **IN GENERAL.**—The Fort Peck Tribes and Dry Prairie Rural Water Association Incorporated shall develop a water conservation plan containing—

(1) a description of water conservation objectives;

(2) a description of appropriate water conservation measures; and

(3) a time schedule for implementing the measures and this Act to meet the water conservation objectives.

(b) **PURPOSE.**—The water conservation plan under subsection (a) shall be designed to ensure that users of water from the Assiniboine and Sioux Rural Water System and the Dry Prairie Rural Water System will use the best practicable technology and management techniques to conserve water.

(c) **PUBLIC PARTICIPATION.**—Section 210(c) of the Reclamation Reform Act of 1982 (43 U.S.C. 390jj(c)) shall apply to an activity authorized under this Act.

Applicability.

SEC. 8. WATER RIGHTS.

(a) **IN GENERAL.**—This Act does not—

(1) impair the validity of or preempt any provision of State water law or any interstate compact governing water;

(2) alter the right of any State to any appropriated share of the water of any body of surface or ground water, whether determined by any past or future interstate compact or by any past or future legislative or final judicial allocation;

(3) preempt or modify any Federal or State law or interstate compact concerning water quality or disposal;

(4) confer on any non-Federal entity the authority to exercise any Federal right to the water of any stream or to any ground water resource;

(5) affect any right of the Fort Peck Tribes to water, located within or outside the external boundaries 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 other law; or

(6) validate or invalidate any assertion of the existence, nonexistence, or extinguishment of any water right held or Indian water compact entered into by the Fort Peck Tribes or by any other Indian tribe or individual Indian under Federal or State law.

(b) **OFFSET AGAINST CLAIMS.**—Any funds received by the Fort Peck Tribes pursuant to this Act shall be used to offset any claims for money damages against the United States by the Fort Peck Tribes, existing on the date of the enactment of this Act, for water rights 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), or other law.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) **ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.**—There are authorized to be appropriated—

(1) to the Bureau of Reclamation over a period of 10 fiscal years, \$124,000,000 for the planning, design, and construction of the Assiniboine and Sioux Rural Water System; and

(2) to the Bureau of Indian Affairs such sums as are necessary for the operation and maintenance of the Assiniboine and Sioux Rural Water System.

(b) **DRY PRAIRIE RURAL WATER SYSTEM.**—There is authorized to be appropriated, over a period of 10 fiscal years, \$51,000,000 for the planning, design, and construction of the Dry Prairie Rural Water System.

(c) **COST INDEXING.**—The funds authorized to be appropriated may be increased or decreased by such amounts as are justified by reason of ordinary fluctuations in development costs incurred after October 1, 1998, as indicated by engineering cost indices applicable for the type of construction involved.

Approved October 27, 2000.

LEGISLATIVE HISTORY—S. 624 (H.R. 1124):

HOUSE REPORTS: Nos. 106-823 and 106-824 accompanying H.R. 1124 (both from Comm. on Resources).

SENATE REPORTS: No. 106-198 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 145 (1999): Nov. 19, considered and passed Senate.

Vol. 146 (2000): Sept. 12, considered and passed House, amended.
Oct. 13, Senate concurred in House amendment.