

105TH CONGRESS
1ST SESSION

S. 1515

To amend Public Law 89–108 to increase authorization levels for State and Indian tribal, municipal, rural, and industrial water supplies, to meet current and future water quantity and quality needs of the Red River Valley, to deauthorize certain project features and irrigation service areas, to enhance natural resources and fish and wildlife habitat, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1997

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

A BILL

To amend Public Law 89–108 to increase authorization levels for State and Indian tribal, municipal, rural, and industrial water supplies, to meet current and future water quantity and quality needs of the Red River Valley, to deauthorize certain project features and irrigation service areas, to enhance natural resources and fish and wildlife habitat, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Dakota Water Re-
3 sources Act of 1997”.

4 **SEC. 2. PURPOSES AND AUTHORIZATION.**

5 Section 1 of Public Law 89–108 (79 Stat. 433; 100
6 Stat. 418) is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (2), by striking “of” and
9 inserting “within”;

10 (B) in paragraph (5), by striking “more
11 timely” and inserting “appropriate”; and

12 (C) in paragraph (7), by striking “provid-
13 ing irrigation for 130,940 acres of land” and
14 inserting “providing for the development of mu-
15 nicipal, rural, and industrial water systems,
16 ground water recharge, augmented stream
17 flows, irrigation, and enhanced fish and wildlife
18 habitat and other natural resources”;

19 (2) in subsection (b)—

20 (A) by inserting “, jointly with the State of
21 North Dakota,” after “construct”;

22 (B) by striking “the irrigation of 130,940
23 acres” and inserting “irrigation”;

24 (C) by striking “fish and wildlife conserva-
25 tion” and inserting “fish, wildlife, and other
26 natural resource conservation”;

1 (D) by inserting “augmented stream flows,
 2 ground water recharge,” after “flood control,”;
 3 and

4 (E) by inserting “(as modified by this
 5 Act)” before the period at the end;

6 (3) in subsection (e), by striking “terminated,”
 7 and all that follows and inserting “terminated.”; and

8 (4) by striking subsections (f) and (g) and in-
 9 serting the following:

10 “(f) NONREIMBURSABILITY OF FEATURES.—All fea-
 11 tures constructed by the Secretary before the date of en-
 12 actment of the Dakota Water Resources Act of 1997, in-
 13 cluding the Oakes Test Area, shall be nonreimbursable.

14 “(g) AGREEMENT BETWEEN THE SECRETARY AND
 15 THE STATE.—The Secretary shall enter into an agreement
 16 with the State of North Dakota providing for the oper-
 17 ation and maintenance of the completed unit facilities and
 18 the design and construction of authorized new unit facili-
 19 ties by the State. The Secretary shall be responsible for
 20 the cost of operation and maintenance of the proportionate
 21 share attributable to the facilities which remain unused.

22 “(h) MITIGATION AND ENHANCEMENT.—The Sec-
 23 retary shall be responsible for operation, maintenance, and
 24 replacement of mitigation and enhancement measures as-
 25 sociated with features constructed under this Act.”.

1 **SEC. 3. FISH AND WILDLIFE.**

2 Section 2 of Public Law 89–108 (79 Stat. 433; 100
3 Stat. 419) is amended—

4 (1) in subsection (c)—

5 (A) in paragraph (1)—

6 (i) by striking “(1) If, before com-
7 mencement of construction of the unit,
8 non-Federal public bodies agree” and in-
9 serting “If non-Federal public bodies con-
10 tinue to agree”; and

11 (ii) by inserting “and the State of
12 North Dakota” after “the Secretary”; and

13 (B) by striking paragraph (2);

14 (2) in subsection (d), by striking “: *Provided*,
15 That” and all that follows through “years”;

16 (3) in subsection (e)—

17 (A) by redesignating paragraphs (1) and
18 (2) as paragraphs (2) and (3), respectively;

19 (B) by inserting “(1)” after “(e)”;

20 (C) in the first sentence of paragraph (2)
21 (as redesignated by subparagraph (A)), by
22 striking “within ten years after initial unit op-
23 eration”; and

24 (D) in the first sentence of paragraph (3)
25 (as redesignated by subparagraph (A))—

- 1 (i) by striking “, within ten years
 2 after initial operation of the unit,”; and
 3 (ii) by striking “paragraph (1) of this
 4 subsection” and inserting “paragraph (2)
 5 of this subsection”; and
 6 (4) in subsection (j)—
 7 (A) by striking paragraph (1); and
 8 (B) by redesignating paragraphs (2) and
 9 (3) as paragraphs (1) and (2), respectively.

10 **SEC. 4. IRRIGATION FACILITIES.**

11 Section 5 of Public Law 89–108 (100 Stat. 419) is
 12 amended—

- 13 (1) by striking “SEC. 5. (a)(1)” and all that
 14 follows through subsection (c) and inserting the fol-
 15 lowing:

16 **“SEC. 5. IRRIGATION FACILITIES.**

17 “(a) In addition to the existing 5,000-acre Oakes
 18 Test Area, the Secretary is authorized to develop irriga-
 19 tion in the following project service areas: Turtle Lake
 20 (13,700 acres) and McClusky Canal (10,000 acres). The
 21 Secretary may also develop 1,200 acres of irrigation in the
 22 New Rockford Canal Service Area provided that the Sec-
 23 retary also implements user fees for full reimbursement.
 24 The Secretary is prohibited from developing irrigation in
 25 these areas in excess of the acreage specified herein, ex-

cept that the Secretary is authorized and directed to develop up to 28,000 acres of irrigation in other areas of North Dakota (such as Nesson Valley and Horsehead Flats areas), not located in the Hudson Bay, Devils Lake, or James River drainage basins.”;

(2) by redesignating subsections (d), (e), and (f) as subsections (b), (c), and (d), respectively;

(3) in the first sentence of subsection (b) (as redesignated by paragraph (2)), by striking “(a)(1)” and inserting “(a)”;

(4) in the first sentence of subsection (c) (as redesignated by paragraph (2)), by striking “Lucky Mound (7,700 acres), Upper Six Mile Creek (7,500 acres)” and inserting “Lucky Mound (7,700 acres) and Upper Six Mile Creek (7,500 acres), or such other lands at Fort Berthold of equal acreage as may be selected by the tribe and approved by the Secretary,”.

SEC. 5. POWER.

Section 6 of Public Law 89–108 (79 Stat. 435; 100 Stat. 421) is amended—

(1) in subsection (b)—

(A) by striking “Notwithstanding the provisions of” and inserting “Pursuant to the provisions of”; and

1 (B) by striking “revenues,” and all that
 2 follows and inserting “revenues.”; and
 3 (2) in subsection (c)—

4 (A) in the first sentence, by striking “any
 5 reallocation” and all that follows and inserting
 6 “section 1(e) shall not result in any reallocation
 7 of project costs and shall not result in increased
 8 rates to Pick-Sloan Missouri Basin Program
 9 customers.”; and

10 (B) by adding at the end the following:
 11 “Nothing in this Act shall alter or affect in any
 12 way the current repayment methodology for
 13 other features of the Pick-Sloan Missouri Basin
 14 Program.”.

15 **SEC. 6. MUNICIPAL, RURAL, AND INDUSTRIAL WATER SERV-**
 16 **ICE.**

17 Section 7 of Public Law 89–108 (100 Stat. 422) is
 18 amended—

19 (1) in subsection (a)—

20 (A) in paragraph (3)—

21 (i) in the second sentence—

22 (I) by striking “The non-Federal
 23 share” and inserting “Unless other-
 24 wise provided in this Act, the non-
 25 Federal share”; and

1 (II) by striking “this section
 2 shall be 25 percent” and inserting
 3 “this section and section 8(a) shall be
 4 15 percent”;

5 (ii) by inserting after the second sen-
 6 tence the following: “The State may use
 7 the Federal and non-Federal funds to pro-
 8 vide grants or loans for municipal, rural,
 9 and industrial water systems. The State
 10 may continue to use funds from repaid
 11 loans for municipal, rural, and industrial
 12 water systems.”; and

13 (iii) by striking the last sentence and
 14 inserting the following: “The Southwest
 15 Pipeline Project, the Northwest Area
 16 Water Supply Project, the Red River Val-
 17 ley Water Supply Project, and other mu-
 18 nicipal, industrial, and rural water systems
 19 in the State of North Dakota shall be eligi-
 20 ble for funding under this section.”; and

21 (B) by adding at the end the following:

22 “(4) PROJECT FEATURES FOR RED RIVER VAL-
 23 LEY WATER NEEDS.—

24 “(A) REPORT ON RED RIVER VALLEY
 25 WATER NEEDS AND DELIVERY OPTIONS.—Not

1 later than 90 days after the effective date of
2 the Dakota Water Resources Act of 1997, the
3 Secretary, acting through the Commissioner of
4 the Bureau of Reclamation, and the State of
5 North Dakota shall jointly submit to Congress
6 a report on the comprehensive water quality
7 and quantity needs of the Red River Valley and
8 the options for meeting those needs, including
9 the delivery of Missouri River water to the Red
10 River Valley. Such needs shall include, but not
11 be limited to, augmenting stream flows and en-
12 hancing: municipal, rural, and industrial water
13 supplies; water quality; aquatic environment;
14 and recreation.

15 “(B) ENVIRONMENTAL IMPACT STATE-
16 MENT.—Not later than 180 days after the date
17 of enactment of the Dakota Water Resources
18 Act of 1997, the Secretary shall, in coordina-
19 tion with and with the concurrence of the State
20 of North Dakota, prepare and complete a draft
21 environmental impact statement concerning all
22 feasible options to meet the comprehensive
23 water quality and quantity needs of the Red
24 River Valley and the options for meeting those

1 needs, including the delivery of Missouri River
2 water to the Red River Valley.

3 “(C) PROCESS FOR SELECTION.—After re-
4 viewing the final report required by section
5 7(a)(4)(A) and complying with the require-
6 ments of section 7(a)(4)(B), and after consulta-
7 tion with the Secretary of the Interior, the Sec-
8 retary of State, and other interested parties,
9 the State of North Dakota in coordination with
10 affected local communities shall select 1 or
11 more project features described in section
12 8(a)(1) that will meet the comprehensive water
13 quality and quantity needs of the Red River
14 Valley. The Secretary is authorized and directed
15 to enter into, within 180 days after the record
16 of decision has been executed, agreements in ac-
17 cordance with sections 1(g) and 7(a) to con-
18 struct the feature or features selected by the
19 State.

20 “(D) WATER CONSERVATION PROGRAM.—
21 Funds provided in section 10(b)(1) and funds
22 provided in section 10(b)(2) to carry out section
23 8(a) may be used by the State to develop and
24 implement a water conservation program. The
25 Secretary and State shall jointly establish water

1 conservation goals to meet the purposes of the
 2 State’s program and to improve the availability
 3 of water supplies to meet the purposes of this
 4 Act. If the State achieves the established water
 5 conservation goals, the non-Federal cost share
 6 established in section 7(a)(3) shall be reduced
 7 by 0.5 percent.”.

8 (2) in subsection (b)—

9 (A) in the first sentence, by striking the
 10 period at the end and inserting “or such other
 11 feature or features as may be selected under
 12 subsection (a)(4)(C).”;

13 (B) in the second sentence, by striking
 14 “conveyance” and inserting “a project feature
 15 selected under subsection (a)(4)(C)”; and

16 (C) by adding at the end the following: “In
 17 addition, the costs of construction, operation,
 18 maintenance, and replacement of Northwest
 19 Area Water Supply Project water treatment fa-
 20 cilities deemed attributable to meeting the re-
 21 quirements of the Boundary Waters Treaty of
 22 1909 shall also be nonreimbursable.”.

23 (3) in subsection (c), by striking “and Fort
 24 Totten Indian Reservations” and inserting “Turtle
 25 Mountain (including the Trenton Indian Service

1 Area), and Fort Totten Indian Reservations and ad-
 2 jacent areas”; and

3 (4) by adding at the end the following:

4 “(e) NONREIMBURSABILITY OF COSTS.—With re-
 5 spect to the Southwest Pipeline Project, the Northwest
 6 Area Water Supply Project, the Red River Valley Water
 7 Supply Project, and other municipal, industrial, and rural
 8 water systems in North Dakota, the costs of the features
 9 constructed on the Missouri River by the Secretary of the
 10 Army before the date of enactment of the Dakota Water
 11 Resources Act of 1997 shall be nonreimbursable.”.

12 **SEC. 7. SPECIFIC FEATURES.**

13 (a) IN GENERAL.—Section 8 of Public Law 89–108
 14 (100 Stat. 423) is amended by striking “SEC. 8.” and all
 15 that follows through subsection (a) and inserting the fol-
 16 lowing:

17 **“SEC. 8. SPECIFIC FEATURES.**

18 “(a) AUTHORIZATION.—

19 “(1) IN GENERAL.—The Secretary is authorized
 20 and directed to construct a feature or features to de-
 21 liver Missouri River water to the Sheyenne River
 22 water supply and release facility or such other fea-
 23 ture or features as are selected under section
 24 7(a)(4)(C). The feature shall be designed and con-
 25 structed to meet only the water delivery require-

1 ments of the irrigation areas, municipal, rural, and
2 industrial water supply needs, ground water re-
3 charge, and streamflow augmentation (as described
4 in section 7(a)(4)(A)) authorized in this Act. The
5 feature shall be located, constructed, and operated
6 so that, in the opinion of the Secretaries of the Inte-
7 rior and State, no violation of the Boundary Waters
8 Treaty of 1909 would result. The Secretary may not
9 commence construction on the feature until a master
10 repayment contract consistent with the provisions of
11 this Act between the Secretary and the appropriate
12 non-Federal entity has been executed.

13 “(2) DEAUTHORIZATION OF LONETREE DAM
14 AND RESERVOIR.—The Lonetree Dam and Reservoir
15 is deauthorized, and the Secretary shall designate
16 the lands acquired for the former reservoir site a
17 wildlife conservation area.

18 “(3) The Secretary is authorized and directed
19 to enter into an agreement with the State of North
20 Dakota providing for the operation and maintenance
21 of the Lonetree wildlife conservation area, the costs
22 of which shall be paid by the Secretary.

23 (b) TAAYER RESERVOIR.—Section 8(b) of Public
24 Law 89–108 (100 Stat. 423) is amended in the second
25 sentence—

1 (1) by inserting “acting through the Commis-
 2 sioner of the Bureau of Reclamation” after “Sec-
 3 retary”; and

4 (2) by inserting “, including acquisition through
 5 donation or exchange,” after “acquire”.

6 **SEC. 8. EXCESS CROPS.**

7 Section 9 of Public Law 89–108 (100 Stat. 423) is
 8 amended by adding at the end the following: “Upon trans-
 9 fer of the Oakes Test Area to the State of North Dakota,
 10 but not later than 1 year after enactment of the Dakota
 11 Water Resources Act of 1997, Federal funds authorized
 12 by this Act may not be used to subsidize the irrigation
 13 of any crop at the Oakes Test Area.”.

14 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

15 Section 10 of Public Law 89–108 (100 Stat. 424;
 16 106 Stat. 4669, 4739) is amended—

17 (1) in subsection (a)—

18 (A) in the first sentence of paragraph (1),
 19 by striking “\$270,395,000 for carrying out the
 20 provisions of section 5(a) through section 5(c)
 21 and section 8(a)(1) of this Act” and inserting
 22 “to carry out section 5(a) \$84,200,000”; and

23 (B) in the first sentence of paragraph (2),
 24 by striking “5(e) of this Act” and inserting
 25 “5(c)”;

1 (2) in subsection (b)—

2 (A) in paragraph (1), by inserting after
3 the first sentence the following: “In addition to
4 the amount authorized under the preceding sen-
5 tence, there is authorized to be appropriated
6 \$300,000,000 to carry out section 7(a).”; and

7 (B) in paragraph (2), by inserting after
8 the first sentence the following: “In addition to
9 the amount authorized under the preceding sen-
10 tence, there are authorized to be appropriated
11 \$200,000,000 to carry out section 7(c), to be
12 allocated as follows: \$30,000,000 to the Fort
13 Totten Indian Reservation, \$70,000,000 to the
14 Fort Berthold Indian Reservation, \$80,000,000
15 to the Standing Rock Indian Reservation, and
16 \$20,000,000 to the Turtle Mountain Indian
17 Reservation. Also, in addition to the amount
18 authorized under the first sentence of this sub-
19 section, there are authorized to be appropriated
20 \$200,000,000 to carry out section 8(a).”.

21 (3) in subsection (c)—

22 (A) by striking the second sentence and in-
23 serting the following: “In addition to the
24 amount authorized under the preceding sen-
25 tence, there are authorized to be appropriated

1 \$6,500,000 to carry out recreational projects
 2 and, subject to section 11(a)(2), \$25,000,000 to
 3 carry out section 11. Of the funds authorized
 4 for recreational projects, up to \$1,500,000 may
 5 be used to fund a wetland interpretive center in
 6 the State of North Dakota.”;

7 (B) in the last sentence, by striking the pe-
 8 riod at the end and inserting “(including the
 9 mitigation and enhancement features).”; and

10 (C) by adding at the end the following:
 11 “Expenditures for operation and maintenance
 12 of features substantially completed and features
 13 constructed before the date of enactment of the
 14 Dakota Water Resources Act of 1997, including
 15 funds expended for such purposes since the
 16 date of enactment of Public Law 99–294, shall
 17 not be subject to the authorization limits in this
 18 section. When the features authorized by sec-
 19 tion 8(a) are operational, a separate account in
 20 the Natural Resources Trust authorized in sec-
 21 tion 11 shall be established for operation and
 22 maintenance of the mitigation and enhancement
 23 lands associated with the unit.”;

24 (4) in subsection (e), by striking “portion of the
 25 \$61,000,000 authorized for Indian municipal, rural,

1 and industrial water features” and inserting
2 “amounts under subsection (b)”;

3 (5) by adding at the end the following:

4 “(f) FOUR BEARS BRIDGE.—There is authorized to
5 be appropriated, for demolition of the existing structure
6 and construction of the Four Bears Bridge across Lake
7 Sakakawea within the Fort Berthold Indian Reservation,
8 \$40,000,000.”.

9 **SEC. 10. NATURAL RESOURCES TRUST.**

10 Section 11 of Public Law 89–108 (100 Stat. 424)
11 is amended—

12 (1) in subsection (a)—

13 (A) by striking “Wetlands” and inserting
14 “Natural Resources”;

15 (B) by striking “The amount of each such
16 annual contribution shall be as follows.”;

17 (C) by striking paragraphs (1), (2), and
18 (3);

19 (D) by redesignating paragraph (4) as
20 paragraph (1); and

21 (E) by inserting after paragraph (1) (as
22 redesignated by subparagraph (D)) the follow-
23 ing:

24 “(2) ADDITIONAL FEDERAL CONTRIBUTION.—

25 In addition to the amounts authorized in the preced-

1 ing subsection, the total amount of the Federal con-
 2 tribution pursuant to this Act is increased by
 3 \$25,000,000.

4 “(A) The amount of each annual Federal
 5 contribution authorized by this subsection shall
 6 be 5 percent of the total amount appropriated
 7 under section 10(b)(1) and under section
 8 10(b)(2) to carry out section 8(a) of this Act.

9 “(B) The sums appropriated under section
 10 11(a)(2)(A) shall not exceed \$10,000,000, sub-
 11 ject to the provisions of section 11(a)(2)(C).

12 “(C) The remaining \$15,000,000 may not
 13 be appropriated until the features authorized by
 14 section 8(a) are operational and meeting the ob-
 15 jectives of that section as determined jointly by
 16 the Secretary and the State.”;

17 (2) in subsection (b), by striking “Wetlands
 18 Trust” and inserting “Natural Resources Trust”;
 19 and

20 (3) in subsection (c)—

21 (A) by striking “Wetland Trust” and in-
 22 serting “Natural Resources Trust”;

23 (B) by striking “are met” and inserting
 24 “is met”;

1 (C) in paragraph (1), by inserting “, grass-
 2 land conservation and riparian areas” after
 3 “habitat”; and

4 (D) in paragraph (2), by adding at the end
 5 the following:

6 “(C) The power to fund incentives for con-
 7 servation practices by landowners.”.

8 **SEC. 11. BANK STABILIZATION.**

9 The Secretary of the Interior shall cause to be per-
 10 formed a review of the options for stabilization of the
 11 banks of the Missouri River downstream of the Garrison
 12 Dam in the State of North Dakota.

○