

Calendar No. 614

105TH CONGRESS
1ST SESSION

S. 777

To authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21, 1997

Mr. JOHNSON (for himself, Mr. DASCHLE, Mr. WELLSTONE, Mr. GRAMS, Mr. HARKIN, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

SEPTEMBER 25, 1998

Reported by Mr. MURKOWSKI, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system, 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 “Lewis and Clark Rural
3 Water System Act of 1997”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) ENVIRONMENTAL ENHANCEMENT.—The
7 term “environmental enhancement” means the wet-
8 land and wildlife enhancement activities that are
9 carried out substantially in accordance with the envi-
10 ronmental enhancement component of the feasibility
11 study.

12 (2) ENVIRONMENTAL ENHANCEMENT COMPO-
13 NENT.—The term “environmental enhancement
14 component” means the component described in the
15 report entitled “Wetlands and Wildlife Enhancement
16 for the Lewis and Clark Rural Water System”,
17 dated April 1991, that is included in the feasibility
18 study.

19 (3) FEASIBILITY STUDY.—The term “feasibility
20 study” means the study entitled “Feasibility Level
21 Evaluation of a Missouri River Regional Water Sup-
22 ply for South Dakota, Iowa and Minnesota”, dated
23 September 1993, that includes a water conservation
24 plan, environmental report, and environmental en-
25 hancement component.

1 (4) MEMBER ENTITY.—The term “member en-
 2 tity” means a rural water system or municipality
 3 that signed a Letter of Commitment to participate
 4 in the water supply system.

5 (5) PROJECT CONSTRUCTION BUDGET.—The
 6 term “project construction budget” means the de-
 7 scription of the total amount of funds needed for the
 8 construction of the water supply system, as con-
 9 tained in the feasibility study.

10 (6) PUMPING AND INCIDENTAL OPERATIONAL
 11 REQUIREMENTS.—The term “pumping and inciden-
 12 tal operational requirements” means all power re-
 13 quirements that are incidental to the operation of in-
 14 take facilities, pumping stations, water treatment fa-
 15 cilities, reservoirs, and pipelines up to the point of
 16 delivery of water by the water supply system to each
 17 member entity that distributes water at retail to in-
 18 dividual users.

19 ~~(7) SECRETARY.—The term “Secretary” means~~
 20 ~~the Secretary of the Interior.~~

21 (7) *SYSTEM FUNDING AGENCIES.*—*The term*
 22 *“System Funding Agencies” means the Environ-*
 23 *mental Protection Agency and the Department of Ag-*
 24 *riculture.*

1 (8) WATER SUPPLY SYSTEM.—The term “water
 2 supply system” means the Lewis and Clark Rural
 3 Water System, Inc., a nonprofit corporation estab-
 4 lished and operated substantially in accordance with
 5 the feasibility study.

6 **SEC. 3. FEDERAL ASSISTANCE FOR THE WATER SUPPLY**
 7 **SYSTEM.**

8 (a) IN GENERAL.—The ~~Secretary~~ *System Funding*
 9 *Agencies* shall make grants to the water supply system for
 10 the planning and construction of the water supply system.

11 (b) SERVICE AREA.—The water supply system shall
 12 provide for safe and adequate municipal, rural, and indus-
 13 trial water supplies, environmental enhancement, mitiga-
 14 tion of wetland areas, and water conservation in—

15 (1) Lake County, McCook County, Minnehaha
 16 County, Turner County, Lincoln County, Clay Coun-
 17 ty, and Union County, in southeastern South Da-
 18 kota;

19 (2) Rock County and Nobles County, in south-
 20 western Minnesota; and

21 (3) Lyon County, Sioux County, Osceola Coun-
 22 ty, O’Brien County, Dickinson County, and Clay
 23 County, in northwestern Iowa.

1 (c) AMOUNT OF GRANTS.—Grants made available
 2 under subsection (a) to the water supply system shall not
 3 exceed the amount of funds authorized under section 10.

4 (d) LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.—The ~~Secretary~~ *System Funding Agencies*
 5 shall not obligate funds for the construction of the water
 6 supply system until—
 7

8 (1) the requirements of the National Environmental
 9 Policy Act of 1969 (42 U.S.C. 4321 et seq.)
 10 are met;

11 (2) a final engineering report is prepared and
 12 submitted to Congress not less than 90 days before
 13 the commencement of construction of the water supply
 14 system; and

15 (3) a water conservation program is developed
 16 and implemented.

17 **SEC. 4. FEDERAL ASSISTANCE FOR THE ENVIRONMENTAL**
 18 **ENHANCEMENT COMPONENT.**

19 (a) INITIAL DEVELOPMENT.—The ~~Secretary~~ *System*
 20 *Funding Agencies* shall make grants and other funds available
 21 to the water supply system and other private, State,
 22 and Federal entities, for the initial development of the environmental
 23 enhancement component.

1 (b) NONREIMBURSEMENT.—Funds provided under
2 subsection (a) shall be nonreimbursable and nonreturn-
3 able.

4 **SEC. 5. WATER CONSERVATION PROGRAM.**

5 (a) IN GENERAL.—The water supply system shall es-
6 tablish a water conservation program that ensures that
7 users of water from the water supply system use the best
8 practicable technology and management techniques to con-
9 serve water use.

10 (b) REQUIREMENTS.—The water conservation pro-
11 grams shall include—

12 (1) low consumption performance standards for
13 all newly installed plumbing fixtures;

14 (2) leak detection and repair programs;

15 (3) rate schedules that do not include declining
16 block rate schedules for municipal households and
17 special water users (as defined in the feasibility
18 study);

19 (4) public education programs and technical as-
20 sistance to member entities; and

21 (5) coordinated operation among each rural
22 water system, and each water supply facility in exist-
23 ence on the date of enactment of this Act, in the
24 service area of the system.

1 (c) REVIEW AND REVISION.—The programs de-
2 scribed in subsection (b) shall contain provisions for peri-
3 odic review and revision, in cooperation with the ~~Secretary~~.
4 *Secretary of the Interior*.

5 **SEC. 6. MITIGATION OF FISH AND WILDLIFE LOSSES.**

6 Mitigation for fish and wildlife losses incurred as a
7 result of the construction and operation of the water sup-
8 ply system shall be on an acre-for-acre basis, based on eco-
9 logical equivalency, concurrent with project construction,
10 as provided in the feasibility study.

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

12 (a) IN GENERAL.—From power designated for future
13 irrigation and drainage pumping for the Pick-Sloan Mis-
14 souri Basin program, the Western Area Power Adminis-
15 tration shall make available the capacity and energy re-
16 quired to meet the pumping and incidental operational re-
17 quirements of the water supply system during the period
18 beginning on May 1 and ending on October 31 of each
19 year.

20 (b) CONDITIONS.—The capacity and energy described
21 in subsection (a) shall be made available on the following
22 conditions:

23 (1) The water supply system shall be operated
24 on a not-for-profit basis.

1 (2) The water supply system shall contract to
2 purchase the entire electric service requirements of
3 the system, including the capacity and energy made
4 available under subsection (a), from a qualified pref-
5 erence power supplier that itself purchases power
6 from the Western Area Power Administration.

7 (3) The rate schedule applicable to the capacity
8 and energy made available under subsection (a) shall
9 be the firm power rate schedule of the Pick-Sloan
10 Eastern Division of the Western Area Power Admin-
11 istration in effect when the power is delivered by the
12 Administration.

13 (4) It is agreed by contract among—

14 (A) the Western Area Power Administra-
15 tion;

16 (B) the power supplier with which the
17 water supply system contracts under paragraph
18 (2);

19 (C) the power supplier of the entity de-
20 scribed in subparagraph (B); and

21 (D) the water supply system;

22 that in the case of the capacity and energy made
23 available under subsection (a), the benefit of the
24 rate schedule described in paragraph (3) shall be
25 passed through to the water supply system, except

1 that the power supplier of the water supply system
2 shall not be precluded from including, in the charges
3 of the supplier to the water system for the electric
4 service, the other usual and customary charges of
5 the supplier.

6 **SEC. 8. NO LIMITATION ON WATER PROJECTS IN STATES.**

7 This Act does not limit the authorization for water
8 projects in the States of South Dakota, Iowa, and Min-
9 nesota under law in effect on or after the date of enact-
10 ment of this Act.

11 **SEC. 9. WATER RIGHTS.**

12 Nothing in this Act—

13 (1) invalidates or preempts State water law or
14 an interstate compact governing water;

15 (2) alters the rights of any State to any appro-
16 priated share of the waters of any body of surface
17 or ground water, whether determined by past or fu-
18 ture interstate compacts or by past or future legisla-
19 tive or final judicial allocations;

20 (3) preempts or modifies any Federal or State
21 law, or interstate compact, governing water quality
22 or disposal; or

23 (4) confers on any non-Federal entity the abil-
24 ity to exercise any Federal right to the waters of any
25 stream or to any ground water resource.

1 **SEC. 10. COST SHARING.**

2 (a) FEDERAL COST SHARE.—

3 (1) IN GENERAL.—Except as provided in para-
 4 graph (2), the ~~Secretary~~ *System Funding Agencies*
 5 shall provide funds equal to 80 percent of—

6 (A) the amount allocated in the total
 7 project construction budget for planning and
 8 construction of the water supply system under
 9 section 3;

10 (B) such amounts as are necessary to de-
 11 fray increases in the budget for planning and
 12 construction of the water supply system under
 13 section 3; and

14 (C) such amounts as are necessary to de-
 15 fray increases in development costs reflected in
 16 appropriate engineering cost indices after Sep-
 17 tember 1, 1993.

18 (2) SIOUX FALLS.—The ~~Secretary~~ *System*
 19 *Funding Agencies* shall provide funds for the city of
 20 Sioux Falls, South Dakota, in an amount equal to
 21 50 percent of the incremental cost to the city of par-
 22 ticipation in the project.

23 (b) NON-FEDERAL COST SHARE.—

24 (1) IN GENERAL.—Except as provided in para-
 25 graph (2), the non-Federal share of the costs allo-

1 cated to the water supply system shall be 20 percent
 2 of the amounts described in subsection (a)(1).

3 (2) SIOUX FALLS.—The non-Federal cost-share
 4 for the city of Sioux Falls, South Dakota, shall be
 5 50 percent of the incremental cost to the city of par-
 6 ticipation in the project.

7 **SEC. 11. BUREAU OF RECLAMATION.**

8 (a) AUTHORIZATION.—The Secretary *of the Interior*
 9 may allow the Director of the Bureau of Reclamation to
 10 provide project construction oversight to the water supply
 11 system and environmental enhancement component for the
 12 service area of the water supply system described in sec-
 13 tion 3(b).

14 (b) PROJECT OVERSIGHT ADMINISTRATION.—The
 15 amount of funds used by the Director of the Bureau of
 16 Reclamation for ~~planning and construction~~ *oversight and*
 17 *other technical assistance* of the water supply system shall
 18 not exceed the amount that is equal to 1 percent of the
 19 amount provided in the total project construction budget
 20 for the entire project construction period.

21 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

22 There is authorized to be appropriated to carry out
 23 this Act \$226,320,000, of which not less than \$8,487,000
 24 shall be used for the initial development of the environ-

- 1 mental enhancement component under section 4, to re-
- 2 main available until expended.

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