

105TH CONGRESS
1ST SESSION

S. 841

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

IN THE SENATE OF THE UNITED STATES

JUNE 5, 1997

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fort Peck Reservation
5 Rural Water System Act of 1997”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

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

tion in Montana, and the water systems that are available do not meet minimum health and safety standards and therefore pose a threat to public health and safety;

(2) the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Fort Peck Indian Reservation; and

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

(b) 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 Montana; and

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

SEC. 3. DEFINITIONS.

In this Act:

1 (1) COUNTIES WATER SYSTEM.—The term
2 “Counties Water System” means the Roosevelt,
3 Sheridan, Daniels, and Valley Counties Rural Water
4 System authorized by section 5.

5 (2) FORT PECK TRIBE.—The term “Fort Peck
6 tribe” means the Assiniboine Indian Tribe or the
7 Sioux Indian Tribe within the Fort Peck Indian
8 Reservation.

9 (3) FORT PECK WATER SYSTEM.—The term
10 “Fort Peck Water System” means the Fort Peck
11 Reservation Rural Water System authorized by sec-
12 tion 4.

13 (4) PICK-SLOAN.—The term “Pick-Sloan”
14 means the Pick-Sloan Missouri River Basin Program
15 authorized by section 9 of the Act of December 22,
16 1944 (58 Stat. 891, chapter 665) (commonly known
17 as the “Flood Control Act of 1944”).

18 (5) SECRETARY.—The term “Secretary” means
19 the Secretary of the Interior.

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

21 (a) AUTHORIZATION.—The Secretary shall plan, de-
22 sign, construct, operate, maintain, and replace a munici-
23 pal, rural, and industrial water system, to be known as
24 the “Fort Peck Reservation Rural Water System”, as gen-
25 erally described in the report entitled “Technical Report

1 for the Fort Peck Reservation Rural Water System” and
2 dated July 1995.

3 (b) COMPONENTS.—The Fort Peck Water System
4 shall consist of—

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

7 (2) pipelines extending from the Missouri River
8 near Poplar, Montana, throughout the Fort Peck In-
9 dian Reservation;

10 (3) facilities to allow for future interconnections
11 to areas outside the Fort Peck Indian Reservation,
12 including the communities of Plentywood, Scobey,
13 Flaxville, and Culbertson, Montana;

14 (4) distribution and treatment facilities to serve
15 the needs of the Fort Peck Indian Reservation, in-
16 cluding—

17 (A) water systems in existence on the date
18 of enactment of this Act that may be pur-
19 chased, improved, and repaired in accordance
20 with the cooperative agreement under sub-
21 section (c); and

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

25 (5) appurtenant buildings and access roads;

1 (6) all property and property rights necessary
2 for the facilities described in this subsection;

3 (7) electrical power transmission and distribu-
4 tion facilities necessary for services to Fort Peck
5 Water System facilities; and

6 (8) such other pipelines, pumping plants, and
7 facilities as the Secretary determines to be appro-
8 priate to meet the water supply, economic, public
9 health, and environmental needs of the Fort Peck
10 Indian Reservation, including water storage tanks,
11 water lines, and other facilities for the Fort Peck
12 tribes and the villages, towns, and municipalities in
13 the Fort Peck Indian Reservation.

14 (c) COOPERATIVE AGREEMENT.—

15 (1) IN GENERAL.—The Secretary shall enter
16 into a cooperative agreement with the Fort Peck
17 Tribal Executive Board for planning, designing, con-
18 structing, operating, maintaining, and replacing the
19 Fort Peck Water System.

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

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

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

3 (ii) engineering and design;

4 (iii) construction;

5 (iv) water conservation measures; and

6 (v) administration of contracts relat-
 7 ing to performance of the activities de-
 8 scribed in clauses (i) through (iv);

9 (B) the procedures and requirements for
 10 approval and acceptance of the design and con-
 11 struction; and

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

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

21 (4) TERMINATION.—The Secretary may termi-
 22 nate a cooperative agreement under paragraph (1) if
 23 the Secretary determines that—

1 (A) the quality of construction does not
 2 meet all standards established for similar facili-
 3 ties constructed by the Secretary; or

4 (B) the operation and maintenance of the
 5 Fort Peck Water System does not meet condi-
 6 tions acceptable to the Secretary that are ade-
 7 quate to fulfill the obligations of the United
 8 States to the Fort Peck tribes.

9 (5) TRANSFER.—On execution of a cooperative
 10 agreement under paragraph (1), in accordance with
 11 the cooperative agreement, the Secretary may trans-
 12 fer to the Fort Peck tribes, on a nonreimbursable
 13 basis, funds made available for the Fort Peck Water
 14 System under section 7.

15 (d) SERVICE AREA.—The service area of the Fort
 16 Peck Water System shall be—

17 (1) the area within the boundaries of the Fort
 18 Peck Indian Reservation; and

19 (2) the service area of the Counties Water Sys-
 20 tem described in section 5(d).

21 (e) CONSTRUCTION REQUIREMENTS.—The compo-
 22 nents of the Fort Peck Water System shall be planned
 23 and constructed to a size sufficient to meet the municipal,
 24 rural, and industrial water supply requirements of the

1 service area of the Fort Peck Water System described in
2 subsection (d).

3 (f) TITLE TO FORT PECK WATER SYSTEM.—Title to
4 the Fort Peck Water System shall be held in trust by the
5 United States for the Fort Peck tribes and shall not be
6 transferred unless a transfer is authorized by an Act of
7 Congress enacted after the date of enactment of this Act.

8 (g) LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.—The Secretary shall not obligate funds for
9 construction of the Fort Peck Water System until—
10

11 (1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
12 are met with respect to the Fort Peck Water System;
13 and
14

15 (2) a final engineering report for the Fort Peck
16 Water System is approved by the Secretary.

17 (h) TECHNICAL ASSISTANCE.—The Secretary shall
18 provide such technical assistance as is necessary to enable
19 the Fort Peck tribes to plan, design, construct, operate,
20 maintain, and replace the Fort Peck Water System, including
21 operation and management training.

22 (i) APPLICATION OF INDIAN SELF-DETERMINATION
23 ACT.—Planning, design, construction, operation, maintenance,
24 and replacement of the Fort Peck Water System
25 within the Fort Peck Indian Reservation shall be subject

1 to the Indian Self-Determination Act (25 U.S.C. 450f et
2 seq.).

3 (j) USE OF PICK-SLOAN POWER.—

4 (1) IN GENERAL.—The Fort Peck Water Sys-
5 tem shall use power from Pick-Sloan for operation.
6 The use of the power shall be considered to be a
7 project use pumping requirement of Pick-Sloan.

8 (2) RESERVATION OF POWER.—Power identi-
9 fied for future project use pumping shall be reserved
10 for and made available for the purpose authorized by
11 paragraph (1).

12 (3) RATE.—The rate for project use power
13 made available under paragraph (2) shall be the
14 wholesale firm power rate for Pick-Sloan (Eastern
15 Division) in effect at the time at which the power is
16 sold.

17 (4) ADDITIONAL POWER.—

18 (A) IN GENERAL.—If power in addition to
19 that made available under paragraph (2) is re-
20 quired to meet the pumping requirements of the
21 service area of the Fort Peck Water System de-
22 scribed in subsection (d), the Administrator of
23 the Western Area Power Administration may
24 purchase the necessary additional power under

1 such terms and conditions as the Administrator
 2 determines to be appropriate.

3 (B) RECOVERY OF EXPENSES.—Expenses
 4 associated with power purchases under subpara-
 5 graph (A) shall be recovered through a separate
 6 power charge, sufficient to recover the expenses,
 7 applied to the Fort Peck Water System.

8 **SEC. 5. ROOSEVELT, SHERIDAN, DANIELS, AND VALLEY**
 9 **COUNTIES RURAL WATER SYSTEM.**

10 (a) PLANNING AND CONSTRUCTION.—

11 (1) AUTHORIZATION.—The Secretary shall
 12 enter into a cooperative agreement with appropriate
 13 non-Federal entities to provide Federal funds for the
 14 planning, design, and construction of the Roosevelt,
 15 Sheridan, Daniels, and Valley Counties Rural Water
 16 System in Roosevelt, Sheridan, Daniels, and Valley
 17 Counties, Montana, outside the Fort Peck Indian
 18 Reservation.

19 (2) USE OF FEDERAL FUNDS.—

20 (A) FEDERAL SHARE.—The Federal share
 21 of the cost of the planning, design, and con-
 22 struction of the Counties Water System shall be
 23 not more than 75 percent.

24 (B) COOPERATIVE AGREEMENTS.—Federal
 25 funds made available to carry out this section

1 may be obligated and expended only through a
2 cooperative agreement described in subsection
3 (c).

4 (b) COMPONENTS.—The components of the Counties
5 Water System on which Federal funds may be obligated
6 and expended under this section shall include—

7 (1) water intake, pumping, treatment, storage,
8 interconnection, and pipeline facilities;

9 (2) appurtenant buildings and access roads;

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

12 (4) electrical power transmission and distribu-
13 tion facilities necessary for services to Counties
14 Water System facilities;

15 (5) planning and design services for all facili-
16 ties; and

17 (6) other facilities and services customary to
18 the development of rural water distribution systems
19 in Montana.

20 (c) COOPERATIVE AGREEMENT.—

21 (1) IN GENERAL.—The Secretary, with the con-
22 currence of the Fort Peck Reservation Rural Water
23 System Board, shall enter into a cooperative agree-
24 ment with appropriate non-Federal entities to pro-

1 vide Federal assistance for the planning, design, and
2 construction of the Counties Water System.

3 (2) MANDATORY PROVISIONS.—The cooperative
4 agreement under paragraph (1) shall specify, in a
5 manner that is acceptable to the Secretary—

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

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

10 (ii) engineering and design;

11 (iii) construction;

12 (iv) water conservation measures; and

13 (v) administration of contracts relat-
14 ing to performance of the activities de-
15 scribed in clauses (i) through (iv);

16 (B) the procedures and requirements for
17 approval and acceptance of the design and con-
18 struction; and

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

21 (d) SERVICE AREA.—The service area of the Coun-
22 ties Water System shall be the area in Montana north of
23 the Missouri River, south of the border between the Unit-
24 ed States and Canada, west of the border between the
25 States of North Dakota and Montana, and east of a north-

1 south line between the Missouri River and the Canadian
2 border, which line passes through the westernmost bound-
3 ary of the city of Glasgow, except that the service area
4 shall not include the area inside the Fort Peck Indian Res-
5 ervation.

6 (e) LIMITATION ON AVAILABILITY OF CONSTRUCTION
7 FUNDS.—The Secretary shall not obligate funds for con-
8 struction of the Counties Water System before the date
9 that is 90 days after the date of submission of a final
10 engineering report to Congress.

11 (f) INTERCONNECTION OF FACILITIES AND WAIVER
12 OF CHARGES.—The Secretary may—

13 (1) interconnect the Counties Water System
14 with the Fort Peck Water System; and

15 (2) provide for the delivery of water to the
16 Counties Water System, without charge, from the
17 Missouri River through the Fort Peck Water Sys-
18 tem.

19 (g) LIMITATION ON USE OF FEDERAL FUNDS.—The
20 operation and maintenance expenses associated with water
21 deliveries to the Counties Water System shall be a non-
22 Federal responsibility. The Secretary may not obligate or
23 expend any Federal funds for the operation, maintenance,
24 or replacement of the Counties Water System.

1 **SEC. 6. WATER RIGHTS.**

2 This Act does not—

3 (1) impair the validity of or preempt any provi-
4 sion of State water law or any interstate compact
5 governing water;

6 (2) alter the right of any State to any appro-
7 priated share of the waters of any body of surface
8 or ground water, whether determined by any past or
9 future interstate compact or by any past or future
10 legislative or final judicial allocation;

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

14 (4) confer on any non-Federal entity the au-
15 thority to exercise any Federal right to the waters
16 of any stream or to any ground water resource;

17 (5) affect any right of the Fort Peck tribes to
18 water, located within or outside the external bound-
19 aries of the Fort Peck Indian Reservation, based on
20 a treaty, compact, executive order, agreement, Act of
21 Congress, aboriginal title, the decision in *Winters v.*
22 *United States*, 207 U.S. 564 (1908) (commonly
23 known as the “Winters Doctrine”), or other law; or

24 (6) validate or invalidate any assertion of the
25 existence, nonexistence, or extinguishment of any
26 water right or Indian water compact held by the

1 Fort Peck tribes or by any other Indian tribe or in-
2 dividual Indian under Federal or State law.

3 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

4 (a) FORT PECK WATER SYSTEM.—There are author-
5 ized to be appropriated—

6 (1) over a period of 5 fiscal years,
7 \$109,000,000 for the planning, design, and con-
8 struction of the Fort Peck Water System; and

9 (2) such sums as are necessary for the oper-
10 ation and maintenance of the Fort Peck Water Sys-
11 tem.

12 (b) COUNTIES WATER SYSTEM.—There are author-
13 ized to be appropriated such sums as are necessary to
14 carry out section 5.

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