

106TH CONGRESS
1ST SESSION

S. 1279

To improve the environmental quality and public use and appreciation of the Missouri River and to provide additional authority to the Army Corps of Engineers to protect, enhance, and restore fish and wildlife habitat on the Missouri River.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 1999

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

A BILL

To improve the environmental quality and public use and appreciation of the Missouri River and to provide additional authority to the Army Corps of Engineers to protect, enhance, and restore fish and wildlife habitat on the Missouri River.

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 “Missouri River Valley
5 Improvement Act of 1999”.

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

7 (a) FINDINGS.—Congress finds that—

1 (1) Lewis and Clark were pioneering naturalists
2 that recorded dozens of species previously unknown
3 to science while ascending the Missouri River in
4 1804;

5 (2) the Missouri River, which is 2,321 miles
6 long, drains $\frac{1}{6}$ of the United States, is home to ap-
7 proximately 10,000,000 people in 10 States and 28
8 Native American tribes, and is a resource of incalcu-
9 lable value to the United States;

10 (3) the construction of dams, levees, and river
11 training structures in the past 150 years has aided
12 navigation, flood control, and water supply along the
13 Missouri River, but has reduced habitat for native
14 river fish and wildlife and opportunities for river-
15 based recreation;

16 (4) river organizations, including the Missouri
17 River Basin Association, support habitat restoration,
18 riverfront revitalization, and improved operational
19 flexibility so long as these efforts do not significantly
20 interfere with uses of the Missouri River; and

21 (5) restoring a string of natural places by the
22 year 2004 would aid native river fish and wildlife,
23 reduce flood losses, enhance recreation and tourism,
24 and celebrate the bicentennial of Lewis and Clark's
25 voyage.

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

2 (1) protect, restore, and enhance the fish, wild-
3 life, and plants, and the associated habitats on
4 which they depend, of the Missouri River;

5 (2) restore a string of natural places that aid
6 native river fish and wildlife, reduce flood losses, and
7 enhance recreation and tourism;

8 (3) revitalize historic riverfronts to improve
9 quality of life in riverside communities and attract
10 recreation and tourism;

11 (4) monitor the health of the Missouri River
12 and measure biological, chemical, and physical re-
13 sponses to changes in River management;

14 (5) allow the Army Corps of Engineers in-
15 creased authority to restore and protect fish and
16 wildlife habitat on the Missouri River;

17 (6) protect and replenish cottonwoods, and their
18 associated riparian woodland communities, along the
19 upper Missouri River; and

20 (7) educate the public about the economic, envi-
21 ronmental, and cultural importance of the Missouri
22 River and the scientific and cultural discoveries of
23 Lewis and Clark.

1 **SEC. 3. DEFINITION OF MISSOURI RIVER.**

2 In this Act, the term “Missouri River” means the
3 Missouri River and the adjacent floodplain that extends
4 from the mouth of the Missouri River (RM 0) to the con-
5 fluence of the Jefferson, Madison, and Gallatin Rivers
6 (RM 2341) in Montana.

7 **SEC. 4. AUTHORITY TO PROTECT, ENHANCE, AND RESTORE**
8 **FISH AND WILDLIFE HABITAT.**

9 Section 9(b) of the Act entitled “An Act authorizing
10 the construction of certain public works on rivers and har-
11 bors for flood control, and for other purposes”, approved
12 December 22, 1944 (commonly known as the “Flood Con-
13 trol Act of 1944”) (58 Stat. 891), is amended—

14 (1) by striking “(b) The general” and inserting
15 the following:

16 “(b) COMPREHENSIVE PLAN.—

17 “(1) IN GENERAL.—The general”;

18 (2) by striking “paragraph” and inserting “sub-
19 section”; and

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

21 “(2) FISH AND WILDLIFE HABITAT.—In addi-
22 tion to carrying out the duties under the comprehen-
23 sive plan described in paragraph (1), the Chief of
24 Engineers shall, to the maximum extent practicable,
25 protect, enhance, and restore fish and wildlife habi-
26 tat on the Missouri River.”.

1 **SEC. 5. ACQUISITION OF LAND FOR THE NATIONAL WILD-**
 2 **LIFE REFUGE SYSTEM.**

3 (a) IN GENERAL.—The Secretary of the Interior shall
 4 conduct a study of the Missouri River to examine needs
 5 and opportunities for acquisition of land and water sur-
 6 rounding the Missouri River as part of the National Wild-
 7 life Refuge System.

8 (b) NEW REFUGE LAND.—Any planning or acquisi-
 9 tion of new refuge land resulting from the study under
 10 subsection (a) shall be—

11 (1) conducted using existing acquisition au-
 12 thorities and procedures; and

13 (2) purchased from willing sellers only.

14 **SEC. 6. MISSOURI RIVER MITIGATION PROJECT.**

15 The matter under the heading “MISSOURI RIVER
 16 MITIGATION, MISSOURI, KANSAS, IOWA, AND NEBRASKA”
 17 of section 601(a) of the Water Resources Development Act
 18 of 1986 (100 Stat. 4143) is amended by adding at the
 19 end the following:

20 “Not later than 180 days after the date of enactment
 21 of this paragraph, the Secretary of the Army, in consulta-
 22 tion with the United States Fish and Wildlife Service and
 23 State fish and wildlife agencies, shall submit a report to
 24 Congress outlining the feasibility and costs of acquiring
 25 and restoring up to 25 percent of lost habitat, comprising
 26 approximately 118,650 acres, in the Missouri River flood-

1 plain in the States of Nebraska, Iowa, Kansas, and Mis-
2 souri.”.

3 **SEC. 7. UPPER MISSOURI RIVER AQUATIC AND RIPARIAN**
4 **HABITAT MITIGATION PROGRAM.**

5 (a) IN GENERAL.—

6 (1) STUDY.—Not later than 2 years after the
7 date of enactment of this Act, the Secretary of the
8 Army, through an interagency agreement with the
9 Director of the United States Fish and Wildlife
10 Service and in accordance with the Fish and Wildlife
11 Conservation Act of 1980 (16 U.S.C. 2901 et seq.),
12 shall complete a study that—

13 (A) analyzes any adverse effects on aquatic
14 and riparian-dependent fish and wildlife result-
15 ing from the operation of the Missouri River
16 Mainstem Reservoir Project in the States of
17 Nebraska, South Dakota, North Dakota, and
18 Montana; and

19 (B) recommends measures appropriate to
20 mitigate the adverse effects described in sub-
21 paragraph (A).

22 (2) REPORT.—Not later than 2 years after the
23 date of enactment of this Act, the Secretary of the
24 Army shall submit to Congress a report describing
25 the results of the study under paragraph (1).

1 (b) PILOT PROGRAM.—The Secretary of the Army,
2 in consultation with the Director of the United States Fish
3 and Wildlife Service and the affected State fish and wild-
4 life agencies, shall develop and administer a pilot mitiga-
5 tion program that—

6 (1) involves the experimental releases of warm
7 water from the spillways at Fort Peck Dam during
8 the appropriate spawning periods for native fish;

9 (2) involves the monitoring of the response of
10 fish to and the effectiveness of the preservation of
11 native fish and wildlife habitat of the releases de-
12 scribed in paragraph (1); and

13 (3) shall not adversely impact a use of the res-
14 ervoir existing on the date the pilot program is im-
15 plemented.

16 (c) RESERVOIR FISH LOSS STUDY.—

17 (1) IN GENERAL.—Not later than 2 years after
18 the date of enactment of this Act, the Secretary of
19 the Army, in consultation with the North Dakota
20 Game and Fish Department and the South Dakota
21 Department of Game, Fish and Parks, shall com-
22 plete a study to analyze and recommend measures to
23 avoid or reduce the loss of fish, including rainbow
24 smelt, through Garrison Dam in North Dakota and
25 Oahe Dam in South Dakota.

1 (2) REPORT.—Not later than 2 years after the
 2 date of enactment of this Act, the Secretary of the
 3 Army shall submit to Congress a report describing
 4 the results of the study under paragraph (1).

5 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
 6 authorized to be appropriated to the Secretary of the
 7 Army—

8 (1) to complete the study required under sub-
 9 section (c), \$200,000; and

10 (2) to carry out the other provisions of this sec-
 11 tion, \$1,000,000 for each of fiscal years 2000
 12 through 2010.

13 **SEC. 8. MISSOURI RIVER CHANNEL ENHANCEMENT PRO-**
 14 **GRAM.**

15 (a) IN GENERAL.—The Secretary of the Army, acting
 16 through the Chief of Engineers and in consultation with
 17 the Director of the United States Fish and Wildlife Serv-
 18 ice, shall, in the course of ongoing operations and mainte-
 19 nance of the Missouri River bank stabilization and naviga-
 20 tion project, modify and improve navigation training and
 21 bank stabilization structures to protect, enhance, and re-
 22 store native river fish and wildlife habitat and support eco-
 23 system restoration.

24 (b) NAVIGATION, FLOOD CONTROL, AND WATER
 25 SUPPLY.—As part of the project, the Secretary of the

1 Army shall modify navigation training and bank stabiliza-
2 tion structures on publicly owned property where the
3 modifications would benefit native fish and wildlife and
4 ecosystem restoration.

5 (c) OPERATION AND MAINTENANCE.—The operation
6 and maintenance of each activity under the project shall
7 be a Federal responsibility.

8 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
9 authorized to be appropriated to the Secretary of the
10 Army to carry out this section \$5,000,000 for each of fis-
11 cal years 2000 through 2010.

12 **SEC. 9. RIVERFRONT REVITALIZATION.**

13 Section 11(b) of the Wild and Scenic Rivers Act (16
14 U.S.C. 1282) is amended—

15 (1) by redesignating paragraphs (3) and (4) as
16 paragraphs (4) and (5), respectively; and

17 (2) by inserting after paragraph (2) the fol-
18 lowing:

19 “(3) MISSOURI RIVER.—

20 “(A) IN GENERAL.—The Secretary of the
21 Interior, acting through the Director of the Riv-
22 ers and Trails Conservation Assistance Pro-
23 gram of the National Park Service, shall, if re-
24 quested, work with riverside communities to de-

velop projects to revitalize historic riverfronts,
including the communities of—

“(i) Saint Charles, Missouri;

“(ii) Kansas City, Missouri/Kansas
City, Kansas;

“(iii) Saint Joseph, Missouri;

“(iv) Omaha, Nebraska;

“(v) Council Bluffs, Iowa;

“(vi) Sioux City, Iowa;

“(vii) Yankton, South Dakota;

“(viii) Pierre, South Dakota/Ft.
Pierre, South Dakota;

“(ix) Bismarck, North Dakota; and

“(x) Fort Peck, Montana.

“(B) FUNDING.—

“(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this paragraph \$15,000,000.

“(ii) LIMITATION ON SHARE OF COSTS.—The Federal share of costs associated with any single project described in this paragraph shall not exceed 25 percent of the total cost of that project.

1 “(iii) NO FUNDS FOR OPERATION OR
 2 MAINTENANCE.—The Secretary shall pro-
 3 vide no funds for the operation and main-
 4 tenance of a project under this para-
 5 graph.”.

6 **SEC. 10. COTTONWOOD PROTECTION STUDY.**

7 (a) IN GENERAL.—The Secretary of the Interior, act-
 8 ing through the Commissioner of the Bureau of Reclama-
 9 tion and in consultation with the Secretary of the Army,
 10 shall complete a study to evaluate opportunities to protect
 11 and replenish cottonwoods in the associated riparian wood-
 12 land communities along the Missouri River between Fort
 13 Benton and Fort Peck Reservoir, Montana, in accordance
 14 with the Water Resources Research Act of 1984 (42
 15 U.S.C. 10301 et seq.).

16 (b) EVALUATION.—The study shall include an eval-
 17 uation of—

- 18 (1) cottonwood reproduction;
- 19 (2) native fish and other river wildlife, including
- 20 competition from non-native species;
- 21 (3) flood losses;
- 22 (4) water supply needs;
- 23 (5) recreation; and
- 24 (6) main stem and tributary dam operations.

1 (c) REPORT.—Not later than July 31, 2001, the Sec-
2 retary shall submit to Congress a report describing the
3 results of the study required under this section.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to the Secretary to carry
6 out this section \$5,000,000.

7 **SEC. 11. LONG-TERM MONITORING PROGRAM.**

8 (a) ESTABLISHMENT.—The Secretary of the Interior,
9 in consultation with the Director of the United States Ge-
10 ological Survey, shall establish a program at the River
11 Studies Center of the Biological Services Division of the
12 United States Geological Study, located in Columbia, Mis-
13 souri, to monitor the physical, biological, and chemical
14 characteristics of the Missouri River in accordance with
15 title I of the Department of the Interior and Related
16 Agencies Appropriations Act, 1997 (43 U.S.C. 31j).

17 (b) PROGRAM.—Not later than 2 years after the date
18 of enactment of this Act, the Secretary shall develop a pro-
19 gram to monitor and assess the biota, habitats, and water
20 quality of the Missouri River, in consultation with—

21 (1) the Governors of affected States, acting
22 through the Missouri River Natural Resources Com-
23 mittee and another representative of each Governor's
24 designation;

25 (2) the Secretary of Agriculture;

1 (3) the Secretary of the Army;

2 (4) the Secretary of Energy;

3 (5) the Administrator of the Environmental
4 Protection Agency; and

5 (6) the Missouri River Basin Tribes.

6 (c) ACTIVITIES.—The program under subsection (b)
7 shall provide scientific information to—

8 (1) guide operation and management of the
9 Missouri River, including operation of dams by the
10 Corps of Engineers and the Bureau of Reclamation;
11 and

12 (2) measure and model the impact of manage-
13 ment alternatives through—

14 (A) monitoring of biota, habitats, and
15 water quality;

16 (B) focused identification of cause and ef-
17 fect relationships; and

18 (C) valuation of methods to conserve fish
19 and wildlife.

20 (d) BASELINE.—The program under subsection (b)
21 shall establish a baseline of conditions against which fu-
22 ture activities can be measured.

23 (e) DATABASE.—The Secretary shall—

24 (1) establish a database on Missouri River
25 biota, habitats, and water quality; and

1 (2) make the database readily available to the
2 public.

3 (f) REPORT.—Not later than 3 years after the date
4 of establishment of the program under subsection (b), and
5 not less frequently than every 3 years thereafter, the Sec-
6 retary, acting through the Director of the Biological Re-
7 sources Division of the United States Geological Survey,
8 shall—

9 (1) review the program;

10 (2) as necessary, establish and revise the objec-
11 tives of the program; and

12 (3) submit to Congress a report on the environ-
13 mental health of the Missouri River.

14 (g) AUTHORIZATION OF APPROPRIATIONS.—

15 (1) IN GENERAL.—There are authorized to be
16 appropriated to the Secretary of the Interior to
17 carry out this section—

18 (A) \$5,000,000 for fiscal year 2000;

19 (B) \$7,000,000 for fiscal year 2001; and

20 (C) \$13,600,000 for each of fiscal years
21 2002 through 2014.

22 (2) NONREIMBURSABLE EXPENDITURE.—Of
23 the costs associated with the development and imple-
24 mentation of this program—

1 (A) 90 percent shall be allocated to the
 2 United States as a nonreimbursable expendi-
 3 ture; and

4 (B) 10 percent shall be allocated equally
 5 among the States of Iowa, Kansas, Missouri,
 6 Nebraska, Montana, North Dakota, and South
 7 Dakota.

8 (3) NON-FEDERAL SHARE.—The Secretary may
 9 accept as part of the non-Federal cost share the con-
 10 tribution of such in-kind services by participating
 11 States as the Secretary determines will contribute
 12 substantially toward the development and adminis-
 13 tration of the program.

14 **SEC. 12. INTERPRETATION AND RECREATION.**

15 (a) INTERPRETATIVE CENTERS.—

16 (1) IN GENERAL.—The Secretary of the Inte-
 17 rior, acting through the Director of the National
 18 Park Service, shall establish Lewis and Clark Inter-
 19 pretive Centers to educate the public about the eco-
 20 nomic and environmental importance of the Missouri
 21 River and the scientific and cultural discoveries of
 22 Lewis and Clark in the vicinity of Missouri River
 23 communities, including the communities of—

24 (A) Kansas City, Missouri;

25 (B) Nebraska City, Nebraska;

1 (C) Sioux City, Iowa;

2 (D) Pierre, South Dakota/Ft. Pierre,
3 South Dakota;

4 (E) Bismarck, North Dakota; and

5 (F) Great Falls, Montana.

6 (2) SPENDING LIMIT.—

7 (A) IN GENERAL.—The Secretary's share
8 of costs associated with any single project de-
9 scribed in this subsection shall not exceed 25
10 percent of the total cost of carrying out the
11 project.

12 (B) NO FUNDS FOR OPERATION AND MAIN-
13 TENANCE.—The Secretary shall not provide
14 funds for the operation and maintenance of the
15 project.

16 (3) AUTHORIZATION OF APPROPRIATIONS.—
17 There is authorized to be appropriated to the Sec-
18 retary of the Interior to carry out this subsection
19 \$6,000,000 for each of fiscal years 2000 through
20 2006.

21 (b) RECREATION IMPROVEMENTS.—

22 (1) IN GENERAL.—The Secretary of the Army,
23 acting through the Chief of Engineers, shall provide
24 improvements to recreation facilities and visitor cen-
25 ters at the Missouri River main-stem projects to pro-

1 vide for increased visitor use associated with the
2 Lewis and Clark commemoration.

3 (2) AUTHORIZATION OF APPROPRIATIONS.—

4 There is authorized to be appropriated to the Sec-
5 retary of the Army to carry out this subsection
6 \$500,000 for each of fiscal years 2000 through
7 2003.

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