

106TH CONGRESS
1ST SESSION

S. 1659

To convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the appurtenant irrigation districts.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 1999

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

A BILL

To convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the appurtenant irrigation districts.

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 “Lower Yellowstone Ir-
5 rigation Project Facilities Conveyance Act of 1999”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

(1) CONTROL BOARD.—The term “Control Board” means the Lower Yellowstone Irrigation Project Board of Control organized under the laws of the State of Montana for the purposes of—

(A) managing—

(i) Lower Yellowstone Irrigation District No. 1; and

(ii) Lower Yellowstone Irrigation District No. 2; and

(B) operating and maintaining the facilities of the Savage Unit and the Intake Project, under contract with the respective irrigation districts.

(2) DIVERSION DAM.—The term “diversion dam” means the Lower Yellowstone Diversion Dam, a feature of the Lower Yellowstone Irrigation Project.

(3) INTAKE IRRIGATION DISTRICT.—The term “Intake Irrigation District” means the Montana Irrigation District that

(A) is organized under the laws of the State of Montana; and

(B) operates the Intake Project.

(4) INTAKE ORIGINAL CONSTRUCTION CONTRACT.—The term “Intake original construction

contract” means the repayment contract between the Intake Irrigation District and the Secretary, numbered Irl-1436.

(5) INTAKE PROJECT.—The term “Intake project” means the Federal irrigation feature operated by the Intake Irrigation District through contract with the Control Board, located adjacent to the main canal and 3 miles below the Diversion Dam, serving approximately 828 irrigated acres, and authorized under the terms of the Act of August 11, 1939 (53 Stat. 1418, chapter 717).

(6) IRRIGATION DISTRICT.—The term “irrigation district” means—

(A) the Intake Irrigation District;

(B) the Lower Yellowstone Irrigation District No. 1;

(C) the Lower Yellowstone Irrigation District No. 2; and

(D) the Savage Irrigation District.

(7) LOWER YELLOWSTONE IRRIGATION DISTRICT NO. 1.—The term “Lower Yellowstone Irrigation District No. 1” means the irrigation district that is organized under the laws of the State of Montana and operates the part of the Lower Yellow-

1 stone Irrigation Project located in the State of Mon-
 2 tana

3 (8) LOWER YELLOWSTONE IRRIGATION DIS-
 4 TRICT NO. 2.—The term “Lower Yellowstone Irriga-
 5 tion District No. 2” means the irrigation district or-
 6 ganized under the laws of the State of North Dakota
 7 and that operates the part of the Lower Yellowstone
 8 Irrigation Project located in the State of North Da-
 9 kota.

10 (9) MAIN CANAL.—The term “main canal”
 11 means the Lower Yellowstone Irrigation Project
 12 main canal, a feature of the Lower Yellowstone Irri-
 13 gation Project that—

14 (A) serves Lower Yellowstone Irrigation
 15 District No. 1, Lower Yellowstone Irrigation
 16 District No. 2, the Savage Irrigation District,
 17 and the Intake Irrigation District; and

18 (B) is operated and maintained by the
 19 Lower Yellowstone Irrigation Project Board of
 20 Control.

21 (10) PICK-SLOAN MISSOURI BASIN PROGRAM.—
 22 The term “Pick-Sloan Missouri Basin Program”
 23 means the comprehensive Federal program for mul-
 24 tipurpose benefits within the Missouri River Basin
 25 (including irrigation) authorized by section 9 of the

1 Act of December 22, 1944 (commonly known as the
2 “Flood Control Act of 1944”) (58 Stat. 891, chapter
3 665).

4 (11) PROJECT.—The term “project” means—

5 (A) the Yellowstone Project;

6 (B) the Intake Irrigation Project; and

7 (C) the Savage Unit.

8 (12) SAVAGE IRRIGATION DISTRICT.—The term
9 “Savage Irrigation District” means the irrigation
10 district that is organized under the laws of the State
11 of Montana that operates the Savage Unit.

12 (13) SAVAGE ORIGINAL CONSTRUCTION CON-
13 TRACT.—The term “Savage original construction
14 contract” means the repayment contract between the
15 Savage Irrigation District and the Secretary, num-
16 bered Irl-1525, as extended or amended.

17 (14) SAVAGE UNIT.—The term “Savage Unit”
18 means the Savage Unit of the Pick-Sloan Missouri
19 Basin Program, a Federal irrigation feature trans-
20 ferred under this Act, operated by the Savage Irriga-
21 tion District through contract with the Control
22 Board, located adjacent to the Main Canal and 12
23 miles below the Diversion Dam, serving approxi-
24 mately 2,187 irrigated acres and authorized by the
25 Act of December 22, 1944 (commonly known as the

1 “Flood Control Act of 1944”) (58 Stat. 891, chapter
2 665).

3 (15) SECRETARY.—The term “Secretary”
4 means the Secretary of the Interior.

5 (16) YELLOWSTONE ORIGINAL CONSTRUCTION
6 CONTRACT.—The term “Yellowstone original con-
7 struction contract” means—

8 (A) the repayment contract between the
9 Lower Yellowstone Irrigation District No. 1 and
10 the Secretary, numbered Irl–103; and

11 (B) the repayment contract between the
12 Lower Yellowstone Irrigation District No. 2 and
13 the Secretary, numbered Irl–104.

14 (17) YELLOWSTONE PROJECT.—The term “Yel-
15 lowstone project” means the Lower Yellowstone Irri-
16 gation Project, operated by Lower Yellowstone Irri-
17 gation District No. 1 and Lower Yellowstone Irriga-
18 tion District No. 2, serving approximately 51,429 ir-
19 rigated acres, and authorized by the Act of June 17,
20 1902 (32 Stat. 388, chapter 1093).

21 **SEC. 3. CONVEYANCE OF PROJECT.**

22 (a) CONVEYANCES.—

23 (1) LOWER YELLOWSTONE IRRIGATION DIS-
24 TRICT NO. 1, LOWER YELLOWSTONE IRRIGATION DIS-
25 TRICT NO. 2, AND SAVAGE IRRIGATION DISTRICT.—

1 (A) IN GENERAL.—On acceptance by
2 Lower Yellowstone Irrigation District No. 1 and
3 Lower Yellowstone Irrigation District No. 2 and
4 by the Intake Irrigation District of the obliga-
5 tions of the Federal Government for the Yellow-
6 stone Project and the Intake Irrigation Project,
7 respectively, the Secretary shall convey the re-
8 spective portions of the projects to each of the
9 irrigation districts.

10 (B) METHOD.—The conveyance under sub-
11 paragraph (A)—

12 (i) shall be by quitclaim deed or pat-
13 ent; and

14 (ii) shall convey—

15 (I) all right, title, and interest in
16 all withdrawn land except certain par-
17 cels not used for purposes of the
18 projects;

19 (II) all fee ownership land used
20 for diversion dam maintenance;

21 (III) all fee ownership land, ease-
22 ments, and rights-of-way in connec-
23 tion with the carriage, distribution,
24 and drainage of water to serve the
25 land of the projects; and

1 (IV) all diversion, carriage, dis-
2 tribution, and drainage physical fea-
3 tures used to serve the land of the
4 projects.

5 (2) CONVEYANCE TO SAVAGE IRRIGATION DIS-
6 TRICT.—

7 (A) IN GENERAL.—The Secretary shall
8 convey the Savage Unit to the Savage Irrigation
9 District, in accordance with the methods de-
10 scribed in subsection (a)(2), immediately after
11 the conditions in subparagraph (B) are satis-
12 fied.

13 (B) CONDITIONS.—The conditions for con-
14 veyance under subparagraph (A) are—

15 (i) the acceptance by the Savage Irri-
16 gation District of the obligations of the
17 Federal Government for the Savage Unit;
18 and

19 (ii) the payment by the Savage Irriga-
20 tion District of the net present value of the
21 remaining repayment obligation of the Sav-
22 age Irrigation District under the Savage
23 original construction contract, determined
24 in accordance with Office of Management

1 and Budget Circular A-129 (as in effect
2 on the date of enactment of this Act).

3 (3) WATER RIGHTS.—

4 (A) IN GENERAL.—The Secretary shall
5 transfer the ownership of the water rights of
6 the projects to the respective and appurtenant
7 irrigation districts in accordance with applicable
8 laws of the State of Montana.

9 (B) NO ALTERATION.—The purpose, point
10 of diversion, place of use, flow rate, and volume
11 of each water right transferred shall not be al-
12 tered.

13 (b) TRANSFER OF DOCUMENTS.—Patents, land
14 deeds, court proceedings, water right abstracts, contracts,
15 special use permits, licenses, permits, and any other docu-
16 ments of each project executed on behalf of the Secretary
17 shall be transferred to the district of the project.

18 (c) PICK-SLOAN MISSOURI BASIN PROGRAM PUMP-
19 ING POWER.—

20 (1) IN GENERAL.—

21 (A) LOWER YELLOWSTONE IRRIGATION
22 DISTRICTS.—The Secretary and the Western
23 Area Power Administration shall continue to
24 provide Lower Yellowstone Irrigation District
25 No. 1 and Lower Yellowstone Irrigation District

1 No. 2 with Pick-Sloan Missouri Basin Program
2 power at 3 pump stations for as long as the
3 Yellowstone Project continues to operate under
4 the Pick-Sloan Missouri Basin Program.

5 (B) RATE OF DELIVERY.—Pick-Sloan
6 power shall be delivered under subparagraph
7 (A) at 460 volts and at a collective rate not to
8 exceed 500 kilowatts.

9 (C) COST.—The cost to Lower Yellowstone
10 Irrigation District No. 1 and Lower Yellowstone
11 Irrigation District No. 2 of power delivered
12 under subparagraph (A) (including trans-
13 mission costs) shall be based on the payment
14 ability of the irrigation districts, as determined
15 by the Secretary.

16 (2) SAVAGE IRRIGATION DISTRICT.—

17 (A) IN GENERAL.—The Secretary and the
18 Western Area Power Administration shall con-
19 tinue to provide the Savage Irrigation District
20 with Pick-Sloan Missouri Basin Program power
21 at the Savage Pumping Plant for as long as the
22 Savage Irrigation District continues to operate
23 as intended under the Pick-Sloan Missouri
24 Basin Program.

1 (B) RATE OF DELIVERY.—Pick-Sloan
2 power shall be delivered under subparagraph
3 (A) at 2,400 volts and at a capacity rate not to
4 exceed 650 kilowatts.

5 (C) COST.—The cost to the Savage Irriga-
6 tion District of power delivered under subpara-
7 graph (A) (including transmission costs) shall
8 be based on the payment ability of the Savage
9 Irrigation District, as determined by the Sec-
10 retary.

11 (3) INTAKE IRRIGATION DISTRICT.—

12 (A) IN GENERAL.—The Secretary and the
13 Western Area Power Administration shall con-
14 tinue to provide the Intake Irrigation District
15 with Pick-Sloan Missouri Basin Program power
16 at the Intake Pumping Plant for as long as the
17 Intake Irrigation District continues to operate
18 as intended under the Pick-Sloan Missouri
19 Basin Program.

20 (B) RATE OF DELIVERY.—Pick-Sloan
21 power shall be delivered under subparagraph
22 (A) at 460 volts and at a capacity rate not to
23 exceed 50 kilowatts.

24 (C) COST.—The cost to the Intake Irriga-
25 tion District for power delivered under subpara-

graph (A) (including transmission costs) shall be based on the payment ability of the Intake Irrigation District, as determined by the Secretary.

(d) DEADLINE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall complete each conveyance under this Act expeditiously, but not later than 180 days after the date of enactment of this Act.

(2) DEADLINES IF CHANGES IN OPERATIONS INTENDED.—If an irrigation district notifies the Secretary that the irrigation district intends to change operations as a result of the conveyance under subsection (a), the Secretary shall—

(A) take into account the potential changes for the purpose of completing any required environmental evaluation associated with the conveyance; and

(B) complete the conveyance not later than 2 years after the date of enactment of this Act.

(3) ADMINISTRATIVE COSTS OF CONVEYANCE.—

(A) UNTIMELY CONVEYANCE.—If the Secretary fails to complete a conveyance under this Act in accordance with the applicable deadline

1 under paragraph (1) or (2), the full costs of
2 any administrative action and environmental
3 compliance for the conveyance shall be paid by
4 the Secretary.

5 (B) **TIMELY CONVEYANCE.**—If the Sec-
6 retary completes a conveyance under this Act in
7 accordance with the applicable deadline under
8 paragraph (1) or (2), the costs of administra-
9 tive action and environmental compliance for
10 the conveyance shall be paid—

11 (i) in an amount equal to 50 percent
12 of the costs, by the Secretary; and

13 (ii) in an amount equal to 50 percent
14 of the costs, by the irrigation district to
15 which the project is conveyed.

16 **SEC. 4. RELATIONSHIP TO EXISTING OPERATIONS.**

17 (a) **IN GENERAL.**—Nothing in this Act expands or
18 otherwise changes the use or operation of a project from
19 the use and operation of the project on the day before
20 the date of enactment of this Act.

21 (b) **FUTURE ALTERATIONS.**—If an irrigation district
22 alters the use or operation of a project, the irrigation dis-
23 trict shall comply with all applicable laws (including regu-
24 lations) governing the alteration of use.

25 (c) **ENVIRONMENTAL CONCERNS.**—

1 (1) FISH ENTRAINMENT.—The Control Board
 2 and the irrigation district for each project shall con-
 3 tinue to work cooperatively with the Commissioner
 4 of Reclamation and the Fish, Wildlife and Parks De-
 5 partment of the State of Montana—

6 (A) to complete a fish entrainment study
 7 at the diversion dam; and

8 (B) if necessary, to assist in the develop-
 9 ment of a method for excluding fish from the
 10 Main Canal.

11 (2) FISH PASSAGE.—The Control Board and
 12 the irrigation district for each project shall continue
 13 to work cooperatively with the Commissioner of Rec-
 14 lamation and the United States Fish and Wildlife
 15 Service—

16 (A) to identify any influences of the diver-
 17 sion dam on fish passage; and

18 (B) if necessary, to assist in the develop-
 19 ment of a method to improve fish passage.

20 (d) RECREATION MANAGEMENT.—Lower Yellow-
 21 stone Irrigation District No. 1 and Lower Yellowstone Ir-
 22 rigation District No. 2 shall each convey a perpetual con-
 23 servation easement to the State of Montana, at no cost
 24 to the State, for the purposes of protecting, preserving,
 25 and enhancing the conservation values and permitting

1 recreation on Yellowstone Project land (including land
2 known as “Joe’s Island”), located at the diversion dam.

3 **SEC. 5. RELATIONSHIP TO CONTRACT OBLIGATIONS.**

4 (a) YELLOWSTONE ORIGINAL AND SUBSEQUENT
5 CONSTRUCTION CONTRACTS AND INTAKE ORIGINAL CON-
6 STRUCTION AND SUBSEQUENT CONTRACTS.—All repay-
7 ment obligations of Lower Yellowstone Irrigation District
8 No. 1, Lower Yellowstone Irrigation District No. 2, and
9 the Intake Irrigation District have been fulfilled.

10 (b) SAVAGE ORIGINAL AND SUBSEQUENT CONSTRUC-
11 TION CONTRACTS.—The acceptance of all obligations of
12 the Federal Government with respect to the Savage Unit
13 by the Savage Irrigation District in accordance with sec-
14 tion 3(a)(2) shall extinguish all repayment contract obliga-
15 tions under the Savage original construction contract.

16 **SEC. 6. APPLICABILITY OF OTHER LAWS.**

17 On conveyance of the projects under this Act, the Act
18 of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts
19 supplemental to and amendatory of that Act (43 U.S.C.
20 371 et seq.) shall not apply to the projects.

21 **SEC. 7. LIABILITY.**

22 Except as otherwise provided by law, effective on the
23 date of conveyance of a project under this Act, the United
24 States shall not be liable for damages of any kind arising
25 out of any act, omission, or occurrence based on prior

- 1 ownership or operation by the United States of the project
- 2 property.

