

108TH CONGRESS  
1ST SESSION

# H. R. 2257

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2003

Mr. REHBERG introduced the following bill; which was referred to the Committee on Resources

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## 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  
5 Reclamation Projects Conveyance Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1           (1) DIVERSION WORKS.—The term “diversion  
2 works” means the land in the N<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub> Sec. 36,  
3 T.18N., R.56E. P. M., Montana, and the diversion  
4 dam structure, canal headworks structure, and first  
5 section of the main canal, all contained therein.

6           (2) INTAKE IRRIGATION DISTRICT.—The term  
7 “Intake Irrigation District” means the Irrigation  
8 District by that name that is organized under the  
9 laws of the State of Montana and operates the In-  
10 take Project.

11           (3) INTAKE PROJECT.—The term “Intake  
12 Project” means the Federal irrigation development  
13 operated by the Intake Irrigation District and au-  
14 thorized under the Act of August 11, 1939 (chapter  
15 717; 53 Stat. 1418).

16           (4) IRRIGATION DISTRICTS.—The term “irriga-  
17 tion districts” means—

18                   (A) the Intake Irrigation District;

19                   (B) the Lower Yellowstone Irrigation Dis-  
20 trict No. 1;

21                   (C) the Lower Yellowstone Irrigation Dis-  
22 trict No. 2; and

23                   (D) the Savage Irrigation District.

24           (5) LOWER YELLOWSTONE IRRIGATION DIS-  
25 TRICT NO. 1.—The term “Lower Yellowstone Irriga-

1       tion District No. 1” means the irrigation district by  
2       that name that is organized under the laws of the  
3       State of Montana and operates the part of the  
4       Lower Yellowstone Irrigation Project located in the  
5       State of Montana.

6               (6) LOWER YELLOWSTONE IRRIGATION DIS-  
7       TRICT NO. 2.—The term “Lower Yellowstone Irriga-  
8       tion District No. 2” means the irrigation district by  
9       that name that is organized under the laws of the  
10      State of North Dakota and operates the part of the  
11      Lower Yellowstone Irrigation Project located in the  
12      State of North Dakota.

13              (7) LOWER YELLOWSTONE IRRIGATION  
14      PROJECT.—The term “Lower Yellowstone Irrigation  
15      Project” means the Federal irrigation development  
16      operated by Lower Yellowstone Irrigation District  
17      No. 1 and Lower Yellowstone Irrigation District No.  
18      2 and authorized by the Act of June 17, 1902  
19      (chapter 1093; 32 Stat. 388).

20              (8) MEMORANDUM OF UNDERSTANDING.—The  
21      term “Memorandum of Understanding” means the  
22      memorandum of understanding dated November 16,  
23      1999, and any subsequent replacements or amend-  
24      ments between the Districts and the Montana Area  
25      Office, Great Plains Region, Bureau of Reclamation,

1 for the purpose of defining certain principles by  
2 which the title to the projects will be transferred  
3 from the United States to the districts.

4 (9) PICK-SLOAN MISSOURI BASIN PROGRAM.—  
5 The term “Pick-Sloan Missouri Basin Program”  
6 means the comprehensive Federal program for mul-  
7 tipurpose benefits within the Missouri River Basin  
8 including irrigation authorized by section 9 of the  
9 Act of December 22, 1944, commonly known as the  
10 “Flood Control Act of 1944” (chapter 665; 58 Stat.  
11 891).

12 (10) PICK-SLOAN MISSOURI BASIN PROGRAM  
13 PROJECT USE POWER.—The term “Pick-Sloan Mis-  
14 souri Basin Program Project Use Power” means  
15 power available for establishing and maintaining the  
16 irrigation developments of the Pick-Sloan Missouri  
17 Basin Program.

18 (11) PROJECTS.—The term “projects” means—

19 (A) the Lower Yellowstone Irrigation  
20 Project;

21 (B) the Intake Project; and

22 (C) the Savage Unit.

23 (12) SAVAGE IRRIGATION DISTRICT.—The term  
24 “Savage Irrigation District” means the irrigation  
25 district by that name that is organized under the

1 laws of the State of Montana and operates the Sav-  
2 age Unit.

3 (13) SAVAGE UNIT.—The term “Savage Unit”  
4 means the Savage Unit of the Pick-Sloan Missouri  
5 Basin Program.

6 (14) SECRETARY.—The term “Secretary”  
7 means the Secretary of the Interior.

8 **SEC. 3. CONVEYANCE OF PROJECTS.**

9 (a) CONVEYANCES.—

10 (1) IN GENERAL.—The Secretary shall, as soon  
11 as practicable, convey the projects, including all  
12 works, facilities, and lands of the projects, to the ir-  
13 rigation districts in accordance with all applicable  
14 laws and pursuant to the terms of the memorandum  
15 of understanding.

16 (2) TWO STAGES.—The conveyance shall take  
17 place in two stages. The first stage shall include all  
18 conveyances under this Act except diversion works.  
19 The second stage shall consist of all conveyances  
20 under this Act of the diversion works.

21 (3) LANDS.—

22 (A) IN GENERAL.—All lands, easements,  
23 and rights-of-way the United States possess  
24 that are conveyed by the Secretary to the re-  
25 spective irrigation districts under this Act shall

1 be conveyed by quitclaim deed. All such convey-  
2 ances are subject to permits, licenses, leases,  
3 rights-of-use, or right-of-way of record out-  
4 standing held by third parties on, over, or  
5 across such lands, easements, and rights-of-  
6 way.

7 (B) MINERAL RIGHTS.—All conveyances of  
8 lands under this Act shall be subject to—

9 (i) a reservation by the United States  
10 of all minerals of any nature whatsoever,  
11 excluding sand and gravel; and

12 (ii) oil, gas, and other mineral rights  
13 reserved of record before the date of con-  
14 veyance by or in favor of third parties.

15 (4) WATER RIGHTS.—The Secretary shall con-  
16 vey to the respective irrigation districts in accord-  
17 ance with and subject to the law of the State of  
18 Montana, all natural flow, wastewater, seepage, re-  
19 turn flow, domestic water, stock water, and ground-  
20 water rights held in part or wholly in the name of  
21 the United States that are used to serve the lands  
22 within the irrigation districts.

23 (5) COSTS.—

24 (A) RECLAMATION WITHDRAWN LANDS.—

25 The irrigation districts shall purchase Reclama-

1 tion Withdrawn lands that are identified in the  
2 Memorandum of Understanding, for their value  
3 in providing operation and maintenance benefits  
4 to the irrigation districts.

5 (B) SAVAGE UNIT REPAYMENT OBLIGA-  
6 TIONS.—

7 (i) SAVAGE IRRIGATION DISTRICT.—

8 As a condition of any conveyance of Rec-  
9 lamation Withdrawn lands under subpara-  
10 graph (A), the Secretary shall require the  
11 Savage Irrigation District to pay to the  
12 Secretary an amount equal to the present  
13 value of the remaining water supply repay-  
14 ment obligation of such district. Payment  
15 of such amount by the district shall be  
16 treated as full payment under Contract  
17 Number I1r-1525, as amended and as ex-  
18 tended by Contract No. 9-07-60-W0770.

19 (ii) PICK-SLOAN MISSOURI BASIN PRO-  
20 GRAM CONSTRUCTION OBLIGATION.—As a  
21 condition of any conveyance of Reclama-  
22 tion Withdrawn lands under subparagraph  
23 (A), the Secretary shall require payment  
24 from the Pick-Sloan Missouri Basin Pro-  
25 gram (Eastern Division) power customers

1           \$94,727. This payment shall be out of the  
2           receipts from the sale of power from the  
3           Pick-Sloan Missouri Basin Program (East-  
4           ern Division) collected by the Western  
5           Area Power Administration and deposited  
6           into the Reclamation fund of the Treasury  
7           in fiscal year 2003. This payment shall be  
8           treated as full and complete repayment by  
9           the power customers of the construction  
10          aid-to-irrigation associated with the facili-  
11          ties of the Savage Unit.

12          (b) REVOCATION OF RECLAMATION WITHDRAWALS  
13   AND ORDERS.—

14           (1) The Reclamation withdrawal established by  
15          Public Land Order 4711 dated October 6, 1969, for  
16          the Lower Yellowstone Irrigation Project in lots 1  
17          and 2, Section 3, T.23N., R. 59 E., is hereby re-  
18          voked in its entirety.

19           (2) The Secretarial Order of March 22, 1906,  
20          which was issued for irrigation works on/in lots 3  
21          and 4, Section 2, T. 23N., R. 59E., and the Secre-  
22          tarial Order of August 8, 1905, which was issued for  
23          irrigation works in Section 2, T. 17 N., R. 56 E.  
24          and Section 6, T. 17 N., R. 57 E., are hereby re-  
25          voked in their entirety.

1           (3) The Secretarial Orders of August 24, 1903,  
2           and July 27, 1908, which were issued in connection  
3           with the Lower Yellowstone Irrigation Project are  
4           revoked insofar as they affect the following lands:

5                   (A) Lot 9 of Sec. 2 and lot 2 of Sec. 30,  
6                   T.18N., R.57E.; lot 3 of Sec. 4, T.19N.,  
7                   R.58E.; lots 2 and 3 and 6 and 7 of Sec. 12,  
8                   T.21N., R.58E.; SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Sec. 26,  
9                   T.22N., R.58E.; lots 1 and 4 and 7 and  
10                   NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Sec. 20, T.22N., R.59E.;  
11                   SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of Sec. 13, T.23N., R.59E.; and lot  
12                   2 of Sec. 18, T.24N., R.60E.; all in the Prin-  
13                   cipal Meridian, Montana.

14                   (B) Lot 8 of Sec. 2 and lot 1 and lot 2  
15                   and lot 3 and NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of Sec. 10 and lot 2  
16                   of Sec. 11 and lot 6 of Sec. 18 and lot 3 of Sec.  
17                   35, T.151N., R.104W.; and lot 7 of Sec. 28,  
18                   T.152N., R.104W.; all in the Fifth Principal  
19                   Meridian, North Dakota.

20 **SEC. 4. REPORT.**

21           If any conveyance under this Act has not occurred  
22           within the 2-year period beginning on the date of the en-  
23           actment of this Act in the case of a conveyance required  
24           to be in the first stage under section 3(a)(2), or within  
25           the 5-year period beginning on the date of the enactment

1 of this Act in the case of a conveyance required to be in  
2 the second stage under section 3(a)(2), the Secretary shall  
3 submit to the Committee on Resources of the House of  
4 Representatives and the Committee on Energy and Re-  
5 sources of the Senate, by not later than 60 days after the  
6 end of that period, a status report on the status of the  
7 conveyance and the anticipated completion date of the con-  
8 veyance.

9 **SEC. 5. RECREATION MANAGEMENT.**

10 As a condition of any conveyance of lands under sec-  
11 tion 3, the Secretary shall require that Lower Yellowstone  
12 Irrigation District No. 1 and Lower Yellowstone Irrigation  
13 District No. 2 convey a perpetual conservation easement  
14 to the State of Montana, at no cost to the State, for the  
15 purposes of protecting, preserving, and enhancing the con-  
16 servation values and permitting recreation on Federal  
17 lands to be conveyed under this Act.

18 **SEC. 6. PROJECT PUMPING POWER.**

19 The Secretary—

20 (1) shall sustain the irrigation developments es-  
21 tablished by the Lower Yellowstone irrigation  
22 project, the Intake Project, and the Savage Unit as  
23 components of the irrigation plan under the Pick-  
24 Sloan Missouri River Basin Program; and

1           (2) shall continue to provide the irrigation dis-  
2           tricts with Pick-Sloan Missouri River Basin Project  
3           Use Power at the irrigation districts' pumping  
4           plants, except that—

5                   (A) the rate shall be at the preference  
6           power rate; and

7                   (B) there shall be no ability-to-pay adjust-  
8           ment with respect to such power.

9   **SEC. 7. YELLOWSTONE RIVER FISHERIES PROTECTION.**

10          (a) IN GENERAL.—The Secretary, prior to the con-  
11          veyance of title to the diversion works under this Act and  
12          in cooperation with the irrigation districts, shall provide  
13          fish protection devices—

14                   (1) to prevent juvenile and adult fish from en-  
15          tering the main canal of the Lower Yellowstone Irri-  
16          gation Project; and

17                   (2) to allow bottom dwelling fish species to mi-  
18          grate above the Project's intake diversion dam.

19          (b) PARTICIPATION.—The Secretary and the Irriga-  
20          tion Districts shall work cooperatively in planning, engi-  
21          neering, and constructing the fish protection devices.

22          (c) CONSTRUCTION SCHEDULE.—Construction of the  
23          fish protection devices shall be completed within 2 years  
24          after the date of enactment of this Act.

1           (d) MONITORING.—The Secretary, acting through  
2 the Commissioner of the Bureau of Reclamation and the  
3 Director of the United States Fish and Wildlife Service,  
4 and prior to the conveyance of title to the diversion works  
5 under this Act, shall establish and implement a monitoring  
6 plan to measure the effectiveness of the fish protection de-  
7 vices for a minimum period of 2 years after construction  
8 of the devices is completed.

9           (e) MODIFICATIONS.—The Secretary of the Interior,  
10 prior to the conveyance of title to the diversion works  
11 under this Act, shall be responsible for modifying the de-  
12 vices as necessary to ensure proper functioning of the de-  
13 vices. All modifications shall be completed within 3 years  
14 after the devices were initially constructed.

15           (f) YELLOWSTONE RIVER FISHERIES PROTECTION  
16 DEVICES COSTS.—The cost incurred in planning, engi-  
17 neering, constructing, monitoring, and modifying the fish  
18 protection devices is deemed to be nonreimbursable.

19           (g) OPERATION, MAINTENANCE AND REPLACEMENTS  
20 RESPONSIBILITY.—Following completion of the construc-  
21 tion period and the 2-year monitoring and modifications  
22 required under this section, the irrigation districts shall  
23 operate, maintain, and replace the fisheries protection de-  
24 vices in a manner to ensure proper functioning.

1 **SEC. 8. RELATIONSHIP WITH OTHER LAWS AND FUTURE**  
2 **BENEFITS.**

3       Upon conveyance of the projects under this Act, the  
4 irrigation districts shall not be subject to the reclamation  
5 laws or entitled to receive any reclamation benefits under  
6 those laws except as provided in section 6.

7 **SEC. 9. LIABILITY.**

8       Effective on the date of conveyance of any of the  
9 projects under this Act, the United States shall not be  
10 liable under any State or Federal law for damages of any  
11 kind arising out of any act, omission, or occurrence relat-  
12 ing to the project, except for damages caused by acts of  
13 negligence committed by the United States or by its em-  
14 ployees, agents, or contractors prior to the date of this  
15 conveyance. Nothing in this section shall be considered to  
16 increase the liability of the United States beyond that cur-  
17 rently provided in chapter 171 of title 28, United States  
18 Code, popularly known as the Federal Tort Act.

19 **SEC. 10. COMPLIANCE WITH LAWS.**

20       As a condition of any conveyance under section 3, the  
21 Secretary shall, by no later than the date on which the  
22 conveyance occurs, complete appropriate analyses of the  
23 conveyance in compliance with the requirements of the  
24 National Environmental Policy Act of 1969 (42 U.S.C.

- 1 4321 et seq.), the Endangered Species Act of 1973 (16
- 2 U.S.C. 1531 et seq.), and other applicable laws.

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