

108TH CONGRESS  
2D SESSION

# H. R. 5139

To enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 2004

Ms. HERSETH introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program.

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 “Oglala Sioux Tribe  
5       Angostura Irrigation Project Modernization and Develop-  
6       ment Act”.

7       **SEC. 2. FINDINGS.**

8       Congress finds that—

9               (1) Congress approved the Pick-Sloan Missouri  
10       River basin program by passing the Act of Decem-

1       ber 22, 1944 (commonly known as the “Flood Con-  
2       trol Act of 1944”) (33 U.S.C. 701–1 et seq.)—

3               (A) to promote the economic development  
4       of the United States;

5               (B) to provide for irrigation in regions  
6       north of Sioux City, Iowa;

7               (C) to protect urban and rural areas from  
8       devastating floods of the Missouri River; and

9               (D) for other purposes;

10       (2) the Angostura Unit—

11              (A) is a component of the Pick-Sloan pro-  
12       gram; and

13              (B) provides for—

14                      (i) irrigation of 12,218 acres of pro-  
15       ductive farm land in South Dakota; and

16                      (ii) substantial recreation and fish  
17       and wildlife benefits;

18       (3) the Commissioner of Reclamation has deter-  
19       mined that—

20              (A) the national economic development  
21       benefits from irrigation at the Angostura Unit  
22       total approximately \$3,410,000 annually; and

23              (B) the national economic development  
24       benefits of recreation at Angostura Reservoir  
25       total approximately \$7,100,000 annually;

1           (4) the Angostura Unit impounds the Cheyenne  
2       River 20 miles upstream of the Pine Ridge Indian  
3       Reservation in South Dakota;

4           (5)(A) the Reservation experiences extremely  
5       high rates of unemployment and poverty; and

6           (B) there is a need for economic development  
7       on the Reservation;

8           (6) the national economic development benefits  
9       of the Angostura Unit do not extend to the Reserva-  
10      tion;

11          (7) the Angostura Unit may be associated with  
12      negative affects on water quality and riparian vege-  
13      tation in the Cheyenne River on the Reservation;

14          (8) modernization of the irrigation facilities at  
15      the Angostura Unit would—

16           (A) enhance the national economic develop-  
17      ment benefits of the Angostura Unit; and

18           (B) result in improved water efficiency and  
19      environmental restoration benefits on the Res-  
20      ervation; and

21          (9) the establishment of a trust fund for the  
22      Oglala Sioux Tribe would—

23           (A) produce economic development benefits  
24      for the Reservation comparable to the benefits  
25      produced at the Angostura Unit; and

1 (B) provide resources that are necessary  
2 for restoration of the Cheyenne River corridor  
3 on the Reservation.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) ANGOSTURA UNIT.—The term “Angostura  
7 Unit” means the irrigation unit of the Angostura ir-  
8 rigation project developed under the Act of August  
9 11, 1939 (16 U.S.C. 590y et seq.).

10 (2) FUND.—The term “Fund” means the Og-  
11 lala Sioux Tribal Development Trust Fund estab-  
12 lished by section 201(a).

13 (3) PICK-SLOAN PROGRAM.—The term “Pick-  
14 Sloan program” means the Pick-Sloan Missouri  
15 River basin program approved under the Act of De-  
16 cember 22, 1944 (commonly known as the “Flood  
17 Control Act of 1944”) (33 U.S.C. 701–1 et seq.).

18 (4) PLAN.—The term “plan” means the devel-  
19 opment plan developed by the Tribe under section  
20 201(f).

21 (5) RESERVATION.—The term “Reservation”  
22 means the Pine Ridge Indian Reservation in the  
23 State.

24 (6) SECRETARY.—The term “Secretary” means  
25 the Secretary of the Interior.

1 (7) TRIBE.—The term “Tribe” means the Og-  
2 lala Sioux Tribe of South Dakota.

3 (8) TRIBAL COUNCIL.—The term “Tribal Coun-  
4 cil” means the governing body of the Tribe.

## 5 **TITLE I—MODERNIZATION**

### 6 **SEC. 101. MODERNIZATION OF FACILITIES AT ANGOSTURA** 7 **UNIT.**

8 (a) IN GENERAL.—The Secretary shall carry out the  
9 modernization and improvement of the facilities at the An-  
10 gostura Unit as described in the Improved Efficiencies Al-  
11 ternative included in the report entitled “Final Environ-  
12 mental Impact Statement, Angostura Unit Contract Nego-  
13 tiation and Water Management (August 2002)”.

14 (b) NONREIMBURSABILITY.—The cost of the mod-  
15 ernization and improvement of the facilities at the Angos-  
16 tura Unit shall be carried out on a nonreimbursable basis.

### 17 **SEC. 102. DELIVERY OF WATER TO PINE RIDGE INDIAN** 18 **RESERVATION.**

19 The Secretary shall provide for the delivery of the  
20 water saved through the modernization and improvement  
21 of the facilities of the Angostura Unit to be used for fish  
22 and wildlife purposes and environmental restoration on the  
23 Reservation.

1 **SEC. 103. AUTHORIZATION OF APPROPRIATIONS.**

2       There is authorized to be appropriated to carry out  
3 section 101 \$4,660,000, to remain available until ex-  
4 pended.

5 **TITLE II—DEVELOPMENT**

6 **SEC. 201. OGLALA SIOUX TRIBAL DEVELOPMENT TRUST**  
7 **FUND.**

8       (a) OGLALA SIOUX TRIBAL DEVELOPMENT TRUST  
9 FUND.—There is established in the Treasury of the  
10 United States a fund to be known as the “Oglala Sioux  
11 Tribal Development Trust Fund”, consisting of any  
12 amounts deposited in the Fund under this title.

13       (b) FUNDING.—On the first day of the 11th fiscal  
14 year that begins after the date of enactment of this Act,  
15 the Secretary of the Treasury shall, from the General  
16 Fund of the Treasury, deposit in the Fund—

17               (1) \$92,500,000; and

18               (2) the amount that equals the amount of inter-  
19 est that would have accrued on the amount de-  
20 scribed in paragraph (1) if that amount had been in-  
21 vested in interest-bearing obligations of the United  
22 States on the first day of the first fiscal year that  
23 begins after the date of enactment of this Act and  
24 compounded annually thereafter.

25       (c) INVESTMENT OF TRUST FUND.—

1           (1) IN GENERAL.—The Secretary of the Treas-  
2       ury shall invest such portion of the Fund as is not,  
3       in the judgment of the Secretary of the Treasury,  
4       required to meet current withdrawals.

5           (2) ELIGIBLE OBLIGATIONS.—Notwithstanding  
6       any other provision of law, the Secretary of the  
7       Treasury shall invest the amounts deposited under  
8       subsection (b) and the interest earned on those  
9       amounts only in interest-bearing obligations of the  
10      United States issued directly to the Fund.

11          (3) INTEREST.—The Secretary of the Treasury  
12      shall deposit interest resulting from such invest-  
13      ments into the Fund.

14      (d) PAYMENT OF INTEREST TO TRIBE.—

15          (1) WITHDRAWAL OF INTEREST.—Beginning on  
16      the first day of the 11th fiscal year after the date  
17      of enactment of this Act and, on the first day of  
18      each fiscal year thereafter, the Secretary of the  
19      Treasury shall transfer the aggregate amount of in-  
20      terest deposited into the Fund for the fiscal year to  
21      the Secretary for use in accordance with paragraph  
22      (3).

23          (2) AVAILABILITY.—Each amount transferred  
24      under paragraph (1) shall be available without fiscal  
25      year limitation.

1           (3) PAYMENTS TO TRIBE.—

2           (A) IN GENERAL.—The Secretary shall use  
3           the amounts transferred under paragraph (1)  
4           only for the purpose of making payments to the  
5           Tribe, as such payments are requested by the  
6           Tribe pursuant to tribal resolution.

7           (B) LIMITATION.—Payments may be made  
8           by the Secretary of the Interior under subpara-  
9           graph (A) only after the Tribe has adopted a  
10          plan under subsection (f).

11          (C) USE OF PAYMENTS BY TRIBE.—The  
12          Tribe shall use the payments made under sub-  
13          paragraph (B) only for carrying out projects  
14          and programs under the plan prepared under  
15          subsection (f).

16          (e) LIMITATION ON TRANSFERS AND WITH-  
17          DRAWALS.—Except as provided in subsections (c) and  
18          (d)(1), the Secretary of the Treasury shall not transfer  
19          or withdraw any amount deposited under subsection (b).

20          (f) DEVELOPMENT PLAN.—

21               (1) IN GENERAL.—Not later than 18 months  
22               after the date of enactment of this Act, the gov-  
23               erning body of the Tribe shall prepare a plan for the  
24               use of the payments to the Tribe under subsection  
25               (d).



1           (2) CONTENTS.—The plan shall provide for the  
2           manner in which the Tribe shall expend payments to  
3           the Tribe under subsection (d) to promote—

4                   (A) economic development;

5                   (B) infrastructure development;

6                   (C) the educational, health, recreational,  
7           and social welfare objectives of the Tribe and  
8           members of the Tribe; or

9                   (D) any combination of the activities de-  
10          scribed in subparagraphs (A) through (C).

11          (3) PLAN REVIEW AND REVISION.—

12               (A) IN GENERAL.—The Tribal Council  
13          shall make available for review and comment by  
14          the members of the Tribe a copy of the plan be-  
15          fore the plan becomes final, in accordance with  
16          procedures established by the Tribal Council.

17               (B) UPDATING OF PLAN.—

18                   (i) IN GENERAL.—The Tribal Council  
19          may, on an annual basis, revise the plan to  
20          update the plan.

21                   (ii) REVIEW AND COMMENT.—In re-  
22          vising the plan, the Tribal Council shall  
23          provide the members of the Tribe oppor-  
24          tunity to review and comment on any pro-  
25          posed revision to the plan.

1 (C) CONSULTATION.—In preparing the  
2 plan and any revisions to update the plan, the  
3 Tribal Council shall consult with the Secretary  
4 and the Secretary of Health and Human Serv-  
5 ices.

6 (4) AUDIT.—

7 (A) IN GENERAL.—The activities of the  
8 Tribe in carrying out the plan shall be audited  
9 as part of the annual single-agency audit that  
10 the Tribe is required to prepare pursuant to the  
11 Office of Management and Budget circular  
12 numbered A–133.

13 (B) DETERMINATION BY AUDITORS.—The  
14 auditors that conduct the audit under subpara-  
15 graph (A) shall—

16 (i) determine whether funds received  
17 by the Tribe under this section for the pe-  
18 riod covered by the audit were expended to  
19 carry out the plan in a manner consistent  
20 with this section; and

21 (ii) include in the written findings of  
22 the audit the determination made under  
23 clause (i).

24 (C) INCLUSION OF FINDINGS WITH PUBLI-  
25 CATION OF PROCEEDINGS OF TRIBAL COUN-

1 CIL.—A copy of the written findings of the  
2 audit described in subparagraph (A) shall be in-  
3 serted in the published minutes of the Tribal  
4 Council proceedings for the session at which the  
5 audit is presented to the Tribal Council.

6 (g) PROHIBITION OF PER CAPITA PAYMENTS.—No  
7 portion of any payment made under this title may be dis-  
8 tributed to any member of the Tribe on a per capita basis.

9 **SEC. 202. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS**  
10 **AND SERVICES.**

11 No payment made to the Tribe under this title shall  
12 result in the reduction or denial of any service or program  
13 with respect to which, under Federal law—

14 (1) the Tribe is otherwise entitled because of  
15 the status of the Tribe as a federally recognized In-  
16 dian tribe; or

17 (2) any individual who is a member of the Tribe  
18 is entitled because of the status of the individual as  
19 a member of the Tribe.

20 **SEC. 203. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such sums  
22 as are necessary to pay the administrative expenses of the  
23 Fund.

24 **SEC. 204. WATER RIGHTS.**

25 Nothing in this Act—

1           (1)(A) affects any rights, benefits, privileges or  
2       claims (including water rights or claims to water  
3       rights) of the Tribe, whether located within or with-  
4       out the external boundaries of the Reservation,  
5       based on treaty, Executive order, agreement, Act of  
6       Congress, aboriginal title, the Winters doctrine  
7       (Winters v. United States, 207 U.S. 564 (1908)), or  
8       otherwise; or

9           (B) validates or invalidates any assertion of the  
10      existence, nonexistence or extinguishment of any  
11      water rights, or claims to water rights, held by the  
12      Tribe or any other Indian tribe or individual Indian  
13      under Federal or State law; or

14          (2) affects any other water rights in existence  
15      on the date of enactment of this Act held by any  
16      person or entity.

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