

111TH CONGRESS
2D SESSION

H. R. 6100

To establish a commission to conduct a study and provide recommendations on a comprehensive resolution of impacts caused to certain Indian tribes by the Pick-Sloan Program.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 10, 2010

Mr. POMEROY (for himself and Ms. HERSETH SANDLIN) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To establish a commission to conduct a study and provide recommendations on a comprehensive resolution of impacts caused to certain Indian tribes by the Pick-Sloan 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 “Pick-Sloan Tribal
5 Commission Act of 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the Pick-Sloan Missouri River Basin Pro-
2 gram (known as the “Pick-Sloan Program”) author-
3 ized by section 9 of the Act of December 22, 1944
4 (commonly known as the “Flood Control Act of
5 1944”) (58 Stat. 891), was approved—

6 (A) to promote the general economic devel-
7 opment of the United States;

8 (B) to provide for irrigation above Sioux
9 City, Iowa;

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

12 (D) for other purposes;

13 (2) the United States acquired 1,422,000 acres
14 of land in the States of North Dakota, South Da-
15 kota, and Nebraska for—

16 (A) the building of mainstem Missouri
17 River dams at Garrison, Oahe, Big Bend, Fort
18 Randall, and Gavin’s Point; and

19 (B) the creation of reservoirs behind the
20 dams named Lake Sakakawea, Lake Oahe,
21 Lake Sharpe, Lake Francis Case, and Lake
22 Gavin, respectively;

23 (3) the construction of the dams and creation
24 of the reservoirs described in paragraph (2) included
25 the taking of title to land located on the reservations

1 of 7 Indian tribes (but did not diminish the reserva-
2 tions), including the taking of—

3 (A) 156,000 acres from the Fort Berthold
4 reservation;

5 (B) 55,994 acres from the Standing Rock
6 reservation;

7 (C) 104,420 acres from the Cheyenne
8 River reservation;

9 (D) 22,955 acres from the Lower Brule
10 reservation;

11 (E) 15,565 acres from the Crow Creek res-
12 ervation;

13 (F) 3,252 acres from the Yankton reserva-
14 tion; and

15 (G) 1,703 acres from the Santee reserva-
16 tion;

17 (4)(A) the water impounded by the Garrison,
18 Oahe, Big Bend, Fort Randall, and Gavin's Point
19 projects of the Pick-Sloan Program flooded the most
20 fertile and wooded bottom land of the 7 Indian
21 tribes referred to in paragraph (3) along the Mis-
22 souri River;

23 (B) that land constituted the most productive
24 agricultural, hunting, and collecting land of those
25 Indian tribes; and

1 (C) the majority of the community infrastruc-
2 ture of each tribe was also located on the land;

3 (5) the flooding of the productive land described
4 in paragraph (4) greatly damaged the economy and
5 cultural resources of the 7 Indian tribes;

6 (6)(A) although those Indian tribes reside on
7 the Missouri River, the economic benefits of the
8 Pick-Sloan Program have not been passed on to the
9 affected Indian tribes; rather

10 (B) the operation of the dams creates dis-
11 proportionate hardships for the Indian tribes, includ-
12 ing—

13 (i) poor water quality;

14 (ii) increased trespassing and theft or
15 damage to cultural resources;

16 (iii) artificial sediment deposits that im-
17 pact water infrastructure and contain unknown
18 contaminants;

19 (iv) harming fisheries, including loss of
20 reservoir retention time;

21 (v) damage to riparian habitat; and

22 (vi) increased recreational traffic and im-
23 pacts, but with few opportunities to regulate or
24 benefit from recreational uses;

1 (7) Congress held a number of hearings and
2 promoted studies of the impacts to those tribes, pur-
3 suant to which representatives of the tribes testified
4 on impacts to tribal economies, health, and welfare
5 from the flooding of that land;

6 (8)(A) Congress has established prior commis-
7 sions to study and make recommendations regarding
8 impacts of the Pick-Sloan Program, including the
9 Garrison Diversion Unit Commission established
10 under section 207(c)(1) of the Energy and Water
11 Development Appropriation Act, 1985 (Public Law
12 98–360; 98 Stat. 411), which recommended that a
13 Joint Tribal Advisory Committee be formed to exam-
14 ine and make recommendations with respect to the
15 effects of the impoundment of water behind the Gar-
16 rison and Oahe Dams;

17 (B) the Joint Tribal Advisory Committee was
18 established by the Secretary of the Interior on May
19 10, 1985, for the purpose of assessing the impacts
20 of the Garrison and Oahe Dams on the Three Affili-
21 ated Tribes and the Standing Rock Sioux Tribe;

22 (C) the Committee delivered a final report to
23 the Secretary on May 23, 1986;

24 (D) in 1992, Congress passed the Three Affili-
25 ated Tribes and Standing Rock Sioux Tribe Equi-

1 table Compensation Act (title XXXV of Public Law
2 102–575; 106 Stat. 4731) to address certain find-
3 ings of the Committee; and

4 (E) a number of the findings of the Committee
5 still have not been addressed as of the date of enact-
6 ment of this Act;

7 (9)(A) before the date of enactment of this Act,
8 Congress provided compensation to the 7 affected
9 Indian tribes for the land taken from the tribes over
10 a 55-year period;

11 (B) on 17 different occasions, as part of 14 dif-
12 ferent Acts of Congress, compensation was author-
13 ized for the 7 affected Indian tribes; and

14 (C) 1 tribe also received compensation through
15 a court case; and

16 (10) a single comprehensive bill is needed to re-
17 solve and finally settle the claims of the affected In-
18 dian tribes because past compensation—

19 (A) was provided at different levels and
20 based on different compensation methods, de-
21 pending on the historical time period during
22 which the compensation was provided; and

23 (B) resulted in each of the 7 Indian tribes
24 being compensated differently.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) **AFFECTED INDIAN TRIBE.**—The term “af-
4 fected Indian tribe” means any of—

5 (A) the Cheyenne River Sioux Tribe;

6 (B) the Crow Creek Sioux Tribe;

7 (C) the Lower Brule Sioux Tribe;

8 (D) the Santee Sioux Tribe;

9 (E) the Standing Rock Sioux Tribe;

10 (F) the Three Affiliated Tribes; and

11 (G) the Yankton Sioux Tribe.

12 (2) **COMMISSION.**—The term “Commission”
13 means the Pick-Sloan Tribal Commission for Com-
14 prehensive Resolution established by section 4(a)(1).

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

20 **SEC. 4. PICK-SLOAN TRIBAL COMMISSION FOR COM-**
21 **PREHENSIVE RESOLUTION.**

22 (a) **ESTABLISHMENT OF COMMISSION.**—

23 (1) **ESTABLISHMENT.**—There is established a
24 commission to be known as the “Pick-Sloan Tribal
25 Commission for Comprehensive Resolution”.

26 (2) **MEMBERSHIP.**—

1 (A) IN GENERAL.—The Commission shall
2 be composed of 7 members, of whom—

3 (i) 1 shall be the Chairperson of the
4 Commission;

5 (ii) at least 1 shall have expertise in
6 the field of Indian law and policy;

7 (iii) at least 1 shall have expertise in
8 the operation and history of Federal water
9 projects;

10 (iv) 1 shall have expertise in the area
11 of environmental justice;

12 (v) 1 shall be an economist; and

13 (vi) at least 1 shall be an authority in
14 cultural preservation.

15 (B) TRIBAL MEMBERSHIP.—Of the 7
16 members selected for the Commission, at least
17 3 shall be members of federally recognized In-
18 dian tribes.

19 (C) SELECTION OF COMMISSION.—

20 (i) IN GENERAL.—The Chairperson
21 and Vice Chairperson of the Committee on
22 Indian Affairs of the Senate and the
23 Chairperson and Ranking Member of the
24 Committee on Natural Resources of the
25 House of Representatives shall—

1 (I) select the 7 Commission
2 members; and

3 (II) appoint 1 of the members to
4 serve as Chairperson of the Commis-
5 sion.

6 (ii) RECOMMENDATIONS.—The af-
7 fected Indian tribes may make rec-
8 ommendations to the Chairperson of the
9 Committee on Indian Affairs of the Senate
10 and the Chairperson of the Committee on
11 Natural Resources of the House of Rep-
12 resentatives regarding members of the
13 Commission.

14 (D) DEADLINE FOR APPOINTMENT.—All
15 members of the Commission shall be appointed
16 not later than 60 days after the date of enact-
17 ment of this Act.

18 (3) TERM; VACANCIES.—

19 (A) TERM.—A member shall be appointed
20 for the life of the Commission.

21 (B) VACANCIES.—A vacancy on the Com-
22 mission—

23 (i) shall not affect the powers of the
24 Commission; and

1 (ii) shall be filled in the same manner
2 as the original appointment was made.

3 (4) INITIAL MEETING.—Not later than 30 days
4 after the date on which all members of the Commis-
5 sion have been appointed, the Commission shall hold
6 the initial meeting of the Commission.

7 (5) MEETINGS.—The Commission shall meet at
8 the call of the Chairperson.

9 (6) QUORUM.—A majority of the members of
10 the Commission shall constitute a quorum, but a
11 lesser number of members may hold hearings.

12 (7) NONAPPLICABILITY OF FACA.—The Federal
13 Advisory Committee Act (5 U.S.C. App.) shall not
14 apply to the Commission.

15 (b) DUTIES.—

16 (1) IN GENERAL.—In carrying out this section,
17 the Commission shall consult with the affected In-
18 dian tribes.

19 (2) STUDY.—The Commission shall conduct a
20 study of—

21 (A) with respect to the period beginning on
22 the date of commencement of the Pick-Sloan
23 Program and ending on the date on which the
24 study is initiated—

1 (i) the impacts on the affected Indian
2 tribes, directly or indirectly, caused by the
3 Pick-Sloan Program; and

4 (ii) measures implemented by the
5 Federal Government to attempt to address
6 those impacts;

7 (B) other measures that have been pro-
8 posed to address the impacts on the affected In-
9 dian tribes caused by the Pick-Sloan Program;

10 (C) the results of any other studies regard-
11 ing those impacts and potential solutions to the
12 impacts, including any studies conducted by the
13 Joint Tribal Advisory Committee relating to the
14 Pick-Sloan Program; and

15 (D) comparisons involving other situations
16 in which Federal hydroelectric projects or feder-
17 ally licensed hydroelectric projects have resulted
18 in the taking or occupation of Indian land and
19 the compensation, or other measures, Indian
20 tribes have been or are being provided in those
21 situations.

22 (3) HEARINGS.—

23 (A) IN GENERAL.—In carrying out para-
24 graph (2), the Commission shall hold at least 3
25 hearings to receive information from Federal

1 agencies, Indian tribes, and other interested
2 parties regarding the resolution of Pick-Sloan
3 Program impacts.

4 (B) PUBLIC PARTICIPATION.—A hearing
5 under this paragraph shall be open to the pub-
6 lic.

7 (C) RECORDS.—For each hearing under
8 this paragraph, the Commission shall—

9 (i) compile a record consisting of tran-
10 scripts, written testimony, studies, and
11 other information presented at the hearing;
12 and

13 (ii) include the record in the report of
14 the Commission required under paragraph
15 (5), as an appendix in electronic format.

16 (4) COMPREHENSIVE RESOLUTION.—

17 (A) IN GENERAL.—Based on the results of
18 the study under paragraph (2), and hearings
19 under paragraph (3), the Commission shall de-
20 velop a proposal to comprehensively resolve the
21 impacts to the affected Indian tribes resulting
22 from the Pick-Sloan Program.

23 (B) INCLUSIONS.—The proposal under
24 subparagraph (A) shall include—

1 (i) a comprehensive proposal for a
2 program to provide full and final com-
3 pensation to the affected Indian tribes;

4 (ii) a description of the measures re-
5 ferred to in paragraph (2) that—

6 (I) have not been implemented;

7 (II) could be implemented; or

8 (III) should be implemented in a
9 more effective manner;

10 (iii) relevant measures that could be
11 accomplished administratively;

12 (iv) relevant measures that would re-
13 quire legislation to be implemented; and

14 (v) any other measures necessary to
15 comprehensively resolve the impacts of the
16 Pick-Sloan Program on the affected Indian
17 tribes.

18 (5) REPORT.—

19 (A) IN GENERAL.—Subject to subpara-
20 graph (B), not later than 18 months after the
21 date on which the first meeting of the Commis-
22 sion takes place, the Commission shall submit
23 to the President and Congress a report that
24 contains—

1 (i) a detailed statement of the study
2 findings and conclusions of the Commis-
3 sion; and

4 (ii) the proposal of the Commission
5 for such legislation and administrative ac-
6 tions as the Commission considers to be
7 appropriate to resolve the impacts on the
8 affected Indian tribes caused by the Pick-
9 Sloan Program.

10 (B) EXTENSION.—The deadline described
11 in subparagraph (A) may be extended for a pe-
12 riod of not more than 180 days if the Commis-
13 sion submits to the Committee on Indian Af-
14 fairs of the Senate and the Committee on Nat-
15 ural Resources of the House of Representatives
16 a request for the extension that—

17 (i) is received by the Committees be-
18 fore the deadline described in subpara-
19 graph (A); and

20 (ii) includes a description of the rea-
21 sons why the extension is needed.

22 (6) WEBSITE.—

23 (A) IN GENERAL.—The Commission shall
24 maintain a website for the period beginning on
25 the date on which the first meeting of the Com-

mission takes place and ending on the date that is 180 days after the date of termination of the Commission.

(B) REQUIREMENTS.—The Commission shall use the website—

(i) to describe the activities of the Commission;

(ii) to provide access to information studied by the Commission;

(iii) to provide notice of, and make available all information presented at, hearings of the Commission; and

(iv) to post the report (including all appendices to that report) of the Commission required under paragraph (5).

(C) ARCHIVING OF WEBSITE CONTENT.—At the time at which the website of the Commission is terminated, all content on the website shall be—

(i) collected on compact disk, digital video disk, or other appropriate digital media; and

(ii) included in the report to be submitted under paragraph (5).

(c) POWERS.—

1 (1) HEARINGS.—The Commission may hold
2 such hearings, meet and act at such times and
3 places, take such testimony, and receive such evi-
4 dence as the Commission considers to be advisable
5 to carry out this Act.

6 (2) INFORMATION FROM FEDERAL AGENCIES.—

7 (A) IN GENERAL.—The Commission may
8 secure directly from a Federal agency such in-
9 formation as the Commission considers to be
10 necessary to carry out this Act.

11 (B) PROVISION OF INFORMATION.—On re-
12 quest of the Chairperson of the Commission,
13 the head of an applicable Federal agency shall
14 provide the information to the Commission.

15 (3) POSTAL SERVICES.—The Commission may
16 use the United States mails in the same manner and
17 under the same conditions as other agencies of the
18 Federal Government.

19 (4) GIFTS.—The Commission may accept, use,
20 and dispose of gifts or donations of services or prop-
21 erty.

22 (d) COMMISSION PERSONNEL MATTERS.—

23 (1) COMPENSATION OF MEMBERS.—Each mem-
24 ber of the Commission shall be compensated at a
25 rate equal to the daily equivalent of the annual rate

1 of basic pay prescribed for level IV of the Executive
2 Schedule under section 5315 of title 5, United
3 States Code, for each day (including travel time)
4 during which the member is engaged in the perform-
5 ance of the duties of the Commission.

6 (2) TRAVEL EXPENSES.—Each member of the
7 Commission shall be allowed travel expenses, includ-
8 ing per diem in lieu of subsistence, at rates author-
9 ized for an employee of an agency under subchapter
10 I of chapter 57 of title 5, United States Code, while
11 away from the home or regular place of business of
12 the member in the performance of the duties of the
13 Commission.

14 (3) STAFF.—

15 (A) IN GENERAL.—The Chairperson of the
16 Commission may, without regard to the civil
17 service laws (including regulations), appoint
18 and terminate an executive director and such
19 other additional personnel as are necessary to
20 enable the Commission to perform the duties of
21 the Commission.

22 (B) CONFIRMATION OF EXECUTIVE DIREC-
23 TOR.—The employment of an executive director
24 shall be subject to confirmation by the Commis-
25 sion.

1 (C) COMPENSATION.—

2 (i) IN GENERAL.—Except as provided
3 in subparagraph (B), the Chairperson of
4 the Commission may fix the compensation
5 of the executive director and other per-
6 sonnel without regard to the provisions of
7 chapter 51 and subchapter III of chapter
8 53 of title 5, United States Code, relating
9 to classification of positions and General
10 Schedule pay rates.

11 (ii) MAXIMUM RATE OF PAY.—The
12 rate of pay for the executive director and
13 other personnel shall not exceed the rate
14 payable for level IV of the Executive
15 Schedule under section 5316 of title 5,
16 United States Code.

17 (D) DETAIL OF FEDERAL GOVERNMENT
18 EMPLOYEES.—

19 (i) IN GENERAL.—An employee of the
20 Federal Government may be detailed to
21 serve as staff for the Commission without
22 reimbursement.

23 (ii) CIVIL SERVICE STATUS.—The de-
24 tail of the employee shall be without inter-

1 ruption or loss of civil service status or
2 privilege.

3 (4) HUMAN RESOURCES SUPPORT.—The Com-
4 mission may request the Secretary of Defense to
5 provide, and the Secretary of Defense shall provide,
6 through human resource departments under the ju-
7 risdiction of the Secretary of Defense, on a reim-
8 bursable basis, operational support for activities of
9 the Commission.

10 (5) CONTRACT AUTHORITY.—The Commission
11 may, to such extent and using such amounts as are
12 provided in appropriation Acts, enter into contracts
13 to enable the Commission to discharge the duties of
14 the Commission under this Act.

15 (6) VOLUNTEER SERVICES.—Notwithstanding
16 section 1342 of title 31, United States Code, the
17 Commission may accept and use such voluntary and
18 uncompensated services as the Commission deter-
19 mines to be necessary.

20 (7) PROCUREMENT OF TEMPORARY AND INTER-
21 MITTENT SERVICES.—The Chairperson of the Com-
22 mission may procure temporary and intermittent
23 services in accordance with section 3109(b) of title
24 5, United States Code, at rates for individuals that
25 do not exceed the daily equivalent of the annual rate

1 of basic pay prescribed for level V of the Executive
2 Schedule under section 5316 of that title.

3 (e) TERMINATION OF COMMISSION.—The Commis-
4 sion shall terminate 90 days after the date on which the
5 Commission submits the report of the Commission under
6 subsection (b)(5).

7 **SEC. 5. FUNDING.**

8 (a) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated such sums as are nec-
10 essary to carry out this Act for each of fiscal years 2010
11 and 2011, to remain available until expended.

12 (b) TRANSFER OF FUNDS IN LIEU OF APPROPRIA-
13 TION.—

14 (1) IN GENERAL.—For any fiscal year, or at
15 any time during a fiscal year, in which insufficient
16 amounts are available to fund activities of the Com-
17 mission, the Secretary of the Interior or the Sec-
18 retary of the Army may transfer to the Commission
19 such unobligated amounts as are available to the
20 Secretary of the Interior or the Secretary of the
21 Army for use by the Commission in carrying out this
22 Act.

23 (2) AVAILABILITY.—Amounts transferred to the
24 Commission under paragraph (1) shall remain avail-
25 able until the earlier of—

1 (A) the date of termination of the Commis-
2 sion; or

3 (B) the date on which amounts that are
4 sufficient to carry out this Act are made avail-
5 able.

6 **SEC. 6. SAVINGS CLAUSE.**

7 Nothing in this Act diminishes, changes, or otherwise
8 affects—

9 (1) the water rights of the affected Indian
10 tribes;

11 (2) any other right (including treaty rights) of
12 the affected Indian tribes;

13 (3) the status of Indian reservation land or the
14 boundaries of any reservation of an Indian tribe; or

15 (4) any Congressional authorization of appro-
16 priations for the benefit of the affected Indian
17 tribes.

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