

**Calendar No. 680**

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3648**

**[Report No. 111–357]**

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.

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IN THE SENATE OF THE UNITED STATES

JULY 26, 2010

Mr. DORGAN (for himself, Mr. THUNE, Mr. CONRAD, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

DECEMBER 8, 2010

Reported by Mr. DORGAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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**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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Pick-Sloan Tribal  
3 Commission Act of 2010”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the Pick-Sloan Missouri River Basin Pro-  
7 gram (known as the “Pick-Sloan Program”) author-  
8 ized by section 9 of the Act of December 22, 1944  
9 (commonly known as the “Flood Control Act of  
10 1944”) (58 Stat. 891), was approved—

11 (A) to promote the general economic devel-  
12 opment of the United States;

13 (B) to provide for irrigation above Sioux  
14 City, Iowa;

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

17 (D) for other purposes;

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

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

24 (B) the creation of reservoirs behind the  
25 dams named Lake Sakakawea, Lake Oahe,

1 Lake Sharpe, Lake Francis Case, and Lake  
2 Gavin, respectively;

3 ~~(3)~~ the construction of the dams and creation  
4 of the reservoirs described in paragraph ~~(2)~~ included  
5 the taking of title to land located on the reservations  
6 of 7 Indian tribes (but did not diminish the reserva-  
7 tions), including the taking of—

8 (A) 156,000 acres from the Fort Berthold  
9 reservation;

10 (B) 55,994 acres from the Standing Rock  
11 reservation;

12 (C) 104,420 acres from the Cheyenne  
13 River reservation;

14 (D) 22,955 acres from the Lower Brule  
15 reservation;

16 (E) 15,565 acres from the Crow Creek res-  
17 ervation;

18 (F) 3,252 acres from the Yankton reserva-  
19 tion; and

20 (G) 1,703 acres from the Santee reserva-  
21 tion;

22 ~~(4)~~(A) the water impounded by the Garrison,  
23 Oahe, Big Bend, Fort Randall, and Gavin's Point  
24 projects of the Pick-Sloan Program flooded the most  
25 fertile and wooded bottom land of the 7 Indian

1 tribes referred to in paragraph (3) along the Mis-  
2 souri River;

3 (B) that land constituted the most productive  
4 agricultural, hunting, and collecting land of those  
5 Indian tribes; and

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

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

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

15 (B) the operation of the dams creates dis-  
16 proportionate hardships for the Indian tribes, includ-  
17 ing—

18 (i) poor water quality;

19 (ii) increased trespassing and theft or  
20 damage to cultural resources;

21 (iii) artificial sediment deposits that im-  
22 pact water infrastructure and contain unknown  
23 contaminants;

24 (iv) harming fisheries, including loss of  
25 reservoir retention time;

1                   (v) damage to riparian habitat; and

2                   (vi) increased recreational traffic and im-  
3                   pacts; but with few opportunities to regulate or  
4                   benefit from recreational uses;

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

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

21                  (B) the Joint Tribal Advisory Committee was  
22                  established by the Secretary of the Interior on May  
23                  10, 1985, for the purpose of assessing the impacts  
24                  of the Garrison and Oahe Dams on the Three Affili-  
25                  ated Tribes and the Standing Rock Sioux Tribe;

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

3           (D) in 1992, Congress passed the Three Affili-  
4           ated Tribes and Standing Rock Sioux Tribe Equi-  
5           table Compensation Act (title XXXV of Public Law  
6           102-575; 106 Stat. 4731) to address certain find-  
7           ings of the Committee; and

8           (E) a number of the findings of the Committee  
9           still have not been addressed as of the date of enact-  
10          ment of this Act;

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

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

18          (C) 1 tribe also received compensation through  
19          a court case; and

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

23                  (A) was provided at different levels and  
24                  based on different compensation methods; de-

1           pending on the historical time period during  
 2           which the compensation was provided; and  
 3           ~~(B)~~ resulted in each of the 7 Indian tribes  
 4           being compensated differently.

5 **SEC. 3. DEFINITIONS.**

6       In this Act:

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

- 9                   ~~(A)~~ the Cheyenne River Sioux Tribe;
- 10                  ~~(B)~~ the Crow Creek Sioux Tribe;
- 11                  ~~(C)~~ the Lower Brule Sioux Tribe;
- 12                  ~~(D)~~ the Santee Sioux Tribe;
- 13                  ~~(E)~~ the Standing Rock Sioux Tribe;
- 14                  ~~(F)~~ the Three Affiliated Tribes; and
- 15                  ~~(G)~~ the Yankton Sioux Tribe.

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

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

1 **SEC. 4. PICK-SLOAN TRIBAL COMMISSION FOR COM-**  
 2 **PREHENSIVE RESOLUTION.**

3 ~~(a) ESTABLISHMENT OF COMMISSION.—~~

4 ~~(1) ESTABLISHMENT.—~~There is established a  
 5 commission to be known as the “Pick-Sloan Tribal  
 6 Commission for Comprehensive Resolution”.

7 ~~(2) MEMBERSHIP.—~~

8 ~~(A) IN GENERAL.—~~The Commission shall  
 9 be composed of 7 members, of whom—

10 ~~(i) 1 shall be the Chairperson of the~~  
 11 ~~Commission;~~

12 ~~(ii) at least 1 shall have expertise in~~  
 13 ~~the field of Indian law and policy;~~

14 ~~(iii) at least 1 shall have expertise in~~  
 15 ~~the operation and history of Federal water~~  
 16 ~~projects;~~

17 ~~(iv) 1 shall have expertise in the area~~  
 18 ~~of environmental justice;~~

19 ~~(v) 1 shall be an economist; and~~

20 ~~(vi) at least 1 shall be an authority in~~  
 21 ~~cultural preservation.~~

22 ~~(B) TRIBAL MEMBERSHIP.—~~Of the 7  
 23 members selected for the Commission, at least  
 24 3 shall be members of federally recognized In-  
 25 dian tribes.

26 ~~(C) SELECTION OF COMMISSION.—~~



(i) ~~IN GENERAL.~~—The Chairperson and Vice Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson and Ranking Member of the Committee on Natural Resources of the House of Representatives shall—

(I) select the 7 Commission members; and

(II) appoint 1 of the members to serve as Chairperson of the Commission.

(ii) ~~RECOMMENDATIONS.~~—The affected Indian tribes may make recommendations to the Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson of the Committee on Natural Resources of the House of Representatives regarding members of the Commission.

(D) ~~DEADLINE FOR APPOINTMENT.~~—All members of the Commission shall be appointed not later than 60 days after the date of enactment of this Act.

(3) ~~TERM; VACANCIES.~~—

1           (A) ~~TERM.~~—A member shall be appointed  
2           for the life of the Commission.

3           (B) ~~VACANCIES.~~—A vacancy on the Com-  
4           mission—

5                     (i) shall not affect the powers of the  
6                     Commission; and

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

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

13          (5) ~~MEETINGS.~~—The Commission shall meet at  
14          the call of the Chairperson.

15          (6) ~~QUORUM.~~—A majority of the members of  
16          the Commission shall constitute a quorum, but a  
17          lesser number of members may hold hearings.

18          (7) ~~NONAPPLICABILITY OF FACA.~~—The Federal  
19          Advisory Committee Act (5 U.S.C. App.) shall not  
20          apply to the Commission.

21          (b) ~~DUTIES.~~—

22                     (1) ~~IN GENERAL.~~—In carrying out this section,  
23          the Commission shall consult with the affected In-  
24          dian tribes.

1           (2) ~~STUDY.~~—The Commission shall conduct a  
2     study of—

3           ~~(A)~~ with respect to the period beginning on  
4     the date of commencement of the Pick-Sloan  
5     Program and ending on the date on which the  
6     study is initiated—

7           (i) the impacts on the affected Indian  
8     tribes, directly or indirectly, caused by the  
9     Pick-Sloan Program; and

10          (ii) measures implemented by the  
11     Federal Government to attempt to address  
12     those impacts;

13          ~~(B)~~ other measures that have been pro-  
14     posed to address the impacts on the affected In-  
15     dian tribes caused by the Pick-Sloan Program;

16          ~~(C)~~ the results of any other studies regard-  
17     ing those impacts and potential solutions to the  
18     impacts, including any studies conducted by the  
19     Joint Tribal Advisory Committee relating to the  
20     Pick-Sloan Program; and

21          ~~(D)~~ comparisons involving other situations  
22     in which Federal hydroelectric projects or feder-  
23     ally licensed hydroelectric projects have resulted  
24     in the taking or occupation of Indian land and  
25     the compensation, or other measures, Indian

1 tribes have been or are being provided in those  
2 situations.

3 ~~(3) HEARINGS.—~~

4 ~~(A) IN GENERAL.—~~In carrying out para-  
5 graph ~~(2)~~, the Commission shall hold at least 3  
6 hearings to receive information from Federal  
7 agencies, Indian tribes, and other interested  
8 parties regarding the resolution of Pick-Sloan  
9 Program impacts.

10 ~~(B) PUBLIC PARTICIPATION.—~~A hearing  
11 under this paragraph shall be open to the pub-  
12 lic.

13 ~~(C) RECORDS.—~~For each hearing under  
14 this paragraph, the Commission shall—

15 ~~(i)~~ compile a record consisting of tran-  
16 scripts, written testimony, studies, and  
17 other information presented at the hearing;  
18 and

19 ~~(ii)~~ include the record in the report of  
20 the Commission required under paragraph  
21 ~~(5)~~, as an appendix in electronic format.

22 ~~(4) COMPREHENSIVE RESOLUTION.—~~

23 ~~(A) IN GENERAL.—~~Based on the results of  
24 the study under paragraph ~~(2)~~, and hearings  
25 under paragraph ~~(3)~~, the Commission shall de-

1           velop a proposal to comprehensively resolve the  
 2           impacts to the affected Indian tribes resulting  
 3           from the Pick-Sloan Program.

4           (B) INCLUSIONS.—The proposal under  
 5           subparagraph (A) shall include—

6                   (i) a comprehensive proposal for a  
 7                   program to provide full and final com-  
 8                   pensation to the affected Indian tribes;

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

11                           (I) have not been implemented;

12                           (II) could be implemented; or

13                           (III) should be implemented in a  
 14                   more effective manner;

15                   (iii) relevant measures that could be  
 16                   accomplished administratively;

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

19                   (v) any other measures necessary to  
 20                   comprehensively resolve the impacts of the  
 21                   Pick-Sloan Program on the affected Indian  
 22                   tribes.

23           (5) REPORT.—

24                   (A) IN GENERAL.—Subject to subpara-  
 25                   graph (B), not later than 18 months after the

1 date on which the first meeting of the Commis-  
2 sion takes place, the Commission shall submit  
3 to the President and Congress a report that  
4 contains—

5 (i) a detailed statement of the study  
6 findings and conclusions of the Commis-  
7 sion; and

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

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

21 (i) is received by the Committees be-  
22 fore the deadline described in subpara-  
23 graph (A); and

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

1           (6) WEBSITE.—

2           (A) IN GENERAL.—The Commission shall  
3 maintain a website for the period beginning on  
4 the date on which the first meeting of the Com-  
5 mission takes place and ending on the date that  
6 is 180 days after the date of termination of the  
7 Commission.

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

10           (i) to describe the activities of the  
11 Commission;

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

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

17           (iv) to post the report (including all  
18 appendices to that report) of the Commis-  
19 sion required under paragraph (5).

20           (C) ARCHIVING OF WEBSITE CONTENT.—  
21 At the time at which the website of the Com-  
22 mission is terminated, all content on the  
23 website shall be—

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

4                   (ii) included in the report to be sub-  
5                   mitted under paragraph (5).

6       ~~(c) POWERS.—~~

7           ~~(1) HEARINGS.—~~The Commission may hold  
8           such hearings, meet and act at such times and  
9           places, take such testimony, and receive such evi-  
10          dence as the Commission considers to be advisable  
11          to carry out this Act.

12       ~~(2) INFORMATION FROM FEDERAL AGENCIES.—~~

13           ~~(A) IN GENERAL.—~~The Commission may  
14           secure directly from a Federal agency such in-  
15           formation as the Commission considers to be  
16           necessary to carry out this Act.

17           ~~(B) PROVISION OF INFORMATION.—~~On re-  
18           quest of the Chairperson of the Commission,  
19           the head of an applicable Federal agency shall  
20           provide the information to the Commission.

21       ~~(3) POSTAL SERVICES.—~~The Commission may  
22       use the United States mails in the same manner and  
23       under the same conditions as other agencies of the  
24       Federal Government.



1           (4) GIFTS.—The Commission may accept, use,  
2           and dispose of gifts or donations of services or prop-  
3           erty.

4           (d) COMMISSION PERSONNEL MATTERS.—

5           (1) COMPENSATION OF MEMBERS.—Each mem-  
6           ber of the Commission shall be compensated at a  
7           rate equal to the daily equivalent of the annual rate  
8           of basic pay prescribed for level IV of the Executive  
9           Schedule under section 5315 of title 5, United  
10          States Code, for each day (including travel time)  
11          during which the member is engaged in the perform-  
12          ance of the duties of the Commission.

13          (2) TRAVEL EXPENSES.—Each member of the  
14          Commission shall be allowed travel expenses, includ-  
15          ing per diem in lieu of subsistence, at rates author-  
16          ized for an employee of an agency under subchapter  
17          I of chapter 57 of title 5, United States Code, while  
18          away from the home or regular place of business of  
19          the member in the performance of the duties of the  
20          Commission.

21          (3) STAFF.—

22                (A) IN GENERAL.—The Chairperson of the  
23                Commission may, without regard to the civil  
24                service laws (including regulations), appoint  
25                and terminate an executive director and such

1 other additional personnel as are necessary to  
 2 enable the Commission to perform the duties of  
 3 the Commission.

4 ~~(B) CONFIRMATION OF EXECUTIVE DIRECTOR.~~—The employment of an executive director  
 5 shall be subject to confirmation by the Commis-  
 6 sion.  
 7

8 ~~(C) COMPENSATION.~~—

9 ~~(i) IN GENERAL.~~—Except as provided  
 10 in subparagraph (B), the Chairperson of  
 11 the Commission may fix the compensation  
 12 of the executive director and other per-  
 13 sonnel without regard to the provisions of  
 14 chapter 51 and subchapter III of chapter  
 15 53 of title 5, United States Code, relating  
 16 to classification of positions and General  
 17 Schedule pay rates.

18 ~~(ii) MAXIMUM RATE OF PAY.~~—The  
 19 rate of pay for the executive director and  
 20 other personnel shall not exceed the rate  
 21 payable for level IV of the Executive  
 22 Schedule under section 5316 of title 5,  
 23 United States Code.

24 ~~(D) DETAIL OF FEDERAL GOVERNMENT~~  
 25 ~~EMPLOYEES.~~—

1                   (i) ~~IN GENERAL.~~—An employee of the  
2                   Federal Government may be detailed to  
3                   serve as staff for the Commission without  
4                   reimbursement.

5                   (ii) ~~CIVIL SERVICE STATUS.~~—The de-  
6                   tail of the employee shall be without inter-  
7                   ruption or loss of civil service status or  
8                   privilege.

9                   (4) ~~HUMAN RESOURCES SUPPORT.~~—The Com-  
10                  mission may request the Secretary of Defense to  
11                  provide, and the Secretary of Defense shall provide,  
12                  through human resource departments under the ju-  
13                  risdiction of the Secretary of Defense, on a reim-  
14                  bursable basis, operational support for activities of  
15                  the Commission.

16                  (5) ~~CONTRACT AUTHORITY.~~—The Commission  
17                  may, to such extent and using such amounts as are  
18                  provided in appropriation Acts, enter into contracts  
19                  to enable the Commission to discharge the duties of  
20                  the Commission under this Act.

21                  (6) ~~VOLUNTEER SERVICES.~~—Notwithstanding  
22                  section 1342 of title 31, United States Code, the  
23                  Commission may accept and use such voluntary and  
24                  uncompensated services as the Commission deter-  
25                  mines to be necessary.

1           (7) ~~PROCUREMENT OF TEMPORARY AND INTER-~~  
 2           ~~MITTENT SERVICES.~~—The Chairperson of the Com-  
 3           mission may procure temporary and intermittent  
 4           services in accordance with section ~~3109~~(b) of title  
 5           5, United States Code, at rates for individuals that  
 6           do not exceed the daily equivalent of the annual rate  
 7           of basic pay prescribed for level V of the Executive  
 8           Schedule under section ~~5316~~ of that title.

9           (c) ~~TERMINATION OF COMMISSION.~~—The Commis-  
 10          sion shall terminate 90 days after the date on which the  
 11          Commission submits the report of the Commission under  
 12          subsection (b)(5).

13       **SEC. 5. FUNDING.**

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

18          (b) ~~TRANSFER OF FUNDS IN LIEU OF APPROPRIA-~~  
 19          TION.—

20               (1) ~~IN GENERAL.~~—For any fiscal year, or at  
 21          any time during a fiscal year, in which insufficient  
 22          amounts are available to fund activities of the Com-  
 23          mission, the Secretary of the Interior or the Sec-  
 24          retary of the Army may transfer to the Commission  
 25          such unobligated amounts as are available to the

1 Secretary of the Interior or the Secretary of the  
 2 Army for use by the Commission in carrying out this  
 3 Act.

4 (2) AVAILABILITY.—Amounts transferred to the  
 5 Commission under paragraph (1) shall remain avail-  
 6 able until the earlier of—

7 (A) the date of termination of the Commis-  
 8 sion; or

9 (B) the date on which amounts that are  
 10 sufficient to carry out this Act are made avail-  
 11 able.

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

13 Nothing in this Act diminishes, changes, or otherwise  
 14 affects—

15 (1) the water rights of the affected Indian  
 16 tribes;

17 (2) any other right (including treaty rights) of  
 18 the affected Indian tribes;

19 (3) the status of Indian reservation land or the  
 20 boundaries of any reservation of an Indian tribe; or

21 (4) any Congressional authorization of appro-  
 22 priations for the benefit of the affected Indian  
 23 tribes.

1 **SECTION 1. SHORT TITLE.**

2       *This Act may be cited as the “Pick-Sloan Tribal Com-*  
 3 *mission Act of 2010”.*

4 **SEC. 2. FINDINGS.**

5       *Congress finds that—*

6           *(1) the Pick-Sloan Missouri River Basin Pro-*  
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 12 *opment of the United States;*

13           *(B) to provide for irrigation above Sioux*  
 14 *City, Iowa;*

15           *(C) to protect urban and rural areas from*  
 16 *devastating floods of the Missouri River; and*

17           *(D) for other purposes;*

18           *(2) the United States acquired approximately*  
 19 *1,422,000 acres of land in the States of North Dakota,*  
 20 *South Dakota, and Nebraska for—*

21           *(A) the building of mainstem Missouri*  
 22 *River dams at Garrison, Oahe, Big Bend, Fort*  
 23 *Randall, and Gavin’s Point; and*

24           *(B) the creation of reservoirs behind the*  
 25 *dams named Lake Sakakawea, Lake Oahe, Lake*

1           *Sharpe, Lake Francis Case, and Lewis and*  
 2           *Clark Lake, respectively;*

3           *(3) the construction of the dams and creation of*  
 4           *the reservoirs described in paragraph (2) included the*  
 5           *taking of title to land located on the reservations of*  
 6           *7 Indian tribes (but did not diminish the reserva-*  
 7           *tions), including the taking of approximately—*

8                     *(A) 156,000 acres from the Fort Berthold*  
 9           *Reservation;*

10                    *(B) 55,994 acres from the Standing Rock*  
 11           *Sioux Reservation;*

12                    *(C) 104,420 acres from the Cheyenne River*  
 13           *Sioux Reservation;*

14                    *(D) 22,955 acres from the Lower Brule*  
 15           *Sioux Reservation;*

16                    *(E) 15,565 acres from the Crow Creek Sioux*  
 17           *Reservation;*

18                    *(F) 3,252 acres from the Yankton Sioux*  
 19           *Reservation; and*

20                    *(G) 1,007 acres from the Santee Sioux Res-*  
 21           *ervation;*

22           *(4)(A) the water impounded by the Garrison,*  
 23           *Oahe, Big Bend, Fort Randall, and Gavin's Point*  
 24           *dams of the Pick-Sloan Program flooded the most fer-*  
 25           *tile and wooded bottom land of the 7 Indian tribes*

1        *and reservations referred to in paragraph (3) along*  
 2        *the Missouri River;*

3                *(B) that land constituted the most productive ag-*  
 4        *ricultural, hunting, and collecting land of those In-*  
 5        *dian tribes; and*

6                *(C) the majority of the community infrastructure*  
 7        *of each Indian tribe was also located on the land;*

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

11                *(6)(A) although the 7 Indian tribes reside on the*  
 12        *Missouri River, the economic benefits of the Pick-*  
 13        *Sloan Program have not been passed on to those In-*  
 14        *dian tribes; rather*

15                *(B) the operation of the dams creates dispropor-*  
 16        *tionate hardships for the 7 Indian tribes, including—*

17                        *(i) poor water quality;*

18                        *(ii) increased trespassing and theft or dam-*  
 19        *age to cultural resources;*

20                        *(iii) artificial sediment deposits that im-*  
 21        *pact water infrastructure and contain unknown*  
 22        *contaminants;*

23                        *(iv) harming fisheries, including loss of res-*  
 24        *ervoir retention time;*

25                        *(v) damage to riparian habitat; and*



1           (vi) increased recreational traffic and im-  
2           pacts, but with few opportunities to regulate or  
3           benefit from recreational uses;

4           (7) Congress held a number of hearings and pro-  
5           moted studies of the impacts to the 7 Indian tribes,  
6           pursuant to which representatives of the 7 Indian  
7           tribes testified on impacts to tribal economies, health,  
8           and welfare from the flooding of that land;

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

20          (B) the Joint Tribal Advisory Committee was es-  
21          tablished by the Secretary of the Interior on May 10,  
22          1985, for the purpose of assessing the impacts of the  
23          Garrison and Oahe Dams on the Three Affiliated  
24          Tribes and the Standing Rock Sioux Tribe;

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

3           (D) in 1992, Congress passed the Three Affiliated  
4       Tribes and Standing Rock Sioux Tribe Equitable  
5       Compensation Act (title XXXV of Public Law 102–  
6       575; 106 Stat. 4731) to address certain findings of the  
7       Committee; and

8           (E) a number of the findings of the Committee  
9       still have not been addressed as of the date of enact-  
10      ment of this Act;

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

15          (B) on 17 different occasions, as part of 14 dif-  
16      ferent Acts of Congress, compensation was authorized  
17      for the 7 Indian tribes; and

18          (C) at least 1 of the 7 Indian tribes also received  
19      compensation through a court case; and

20          (10) a single comprehensive bill is needed to re-  
21      solve and finally settle the claims of the 7 Indian  
22      tribes because past compensation—

23              (A) was provided at different levels and  
24      based on different compensation methods, de-

1           *pending on the historical time period during*  
 2           *which the compensation was provided; and*  
 3           *(B) resulted in each of the 7 Indian tribes*  
 4           *being compensated differently.*

5 **SEC. 3. DEFINITIONS.**

6       *In this Act:*

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

- 9                   *(A) the Cheyenne River Sioux Tribe;*
- 10                  *(B) the Crow Creek Sioux Tribe;*
- 11                  *(C) the Lower Brule Sioux Tribe;*
- 12                  *(D) the Santee Sioux Tribe;*
- 13                  *(E) the Standing Rock Sioux Tribe;*
- 14                  *(F) the Three Affiliated Tribes; and*
- 15                  *(G) the Yankton Sioux Tribe.*

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

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

1 **SEC. 4. PICK-SLOAN TRIBAL COMMISSION FOR COM-**  
 2 **PREHENSIVE RESOLUTION.**

3 (a) *ESTABLISHMENT OF COMMISSION.*—

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

7 (2) *MEMBERSHIP.*—

8 (A) *IN GENERAL.*—*The Commission shall be*  
 9 *composed of 7 members, of whom—*

10 (i) *1 shall be the Chairperson of the*  
 11 *Commission;*

12 (ii) *at least 1 shall have expertise in*  
 13 *the field of Indian law and policy;*

14 (iii) *at least 1 shall have expertise in*  
 15 *the operation and history of Federal water*  
 16 *projects;*

17 (iv) *at least 1 shall have expertise in*  
 18 *the area of environmental justice;*

19 (v) *at least 1 shall be an economist;*  
 20 *and*

21 (vi) *at least 1 shall be an authority in*  
 22 *cultural preservation.*

23 (B) *TRIBAL MEMBERSHIP.*—*Of the 7 mem-*  
 24 *bers selected for the Commission, at least 3 shall*  
 25 *be members of federally recognized Indian tribes.*

26 (C) *SELECTION OF COMMISSION.*—

(i) *IN GENERAL.*—*The Chairperson and Vice Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson and Ranking Member of the Committee on Natural Resources of the House of Representatives shall—*

*(I) select the 7 Commission members; and*

*(II) appoint 1 of the members to serve as Chairperson of the Commission.*

(ii) *RECOMMENDATIONS.*—*The affected Indian tribes may make recommendations to the Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson of the Committee on Natural Resources of the House of Representatives regarding members of the Commission.*

(D) *DEADLINE FOR APPOINTMENT.*—*All members of the Commission shall be appointed not later than 60 days after the date of enactment of this Act.*

(3) *TERM; VACANCIES.*—

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

1                   (B) *VACANCIES.*—*A vacancy on the Com-*  
 2                   *mission—*

3                   (i) *shall not affect the powers of the*  
 4                   *Commission; and*

5                   (ii) *shall be filled in the same manner*  
 6                   *as the original appointment was made.*

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

11                  (5) *MEETINGS.*—*The Commission shall meet at*  
 12                  *the call of the Chairperson.*

13                  (6) *QUORUM.*—

14                   (A) *IN GENERAL.*—*A majority of the mem-*  
 15                   *bers of the Commission shall constitute a*  
 16                   *quorum.*

17                   (B) *REQUIREMENT.*—*A quorum shall be*  
 18                   *necessary for the Commission to carry out any*  
 19                   *of the duties or responsibilities of the Commis-*  
 20                   *sion under this Act.*

21                  (7) *RULES FOR CONDUCT.*—*The Commission*  
 22                  *may establish, by majority vote, rules for the conduct*  
 23                  *of Commission business, in accordance with this Act*  
 24                  *and other applicable law.*

1           (8) *NONAPPLICABILITY OF FACA.*—*The Federal*  
 2           *Advisory Committee Act (5 U.S.C. App.) shall not*  
 3           *apply to the Commission.*

4           **(b) DUTIES.**—

5           (1) *IN GENERAL.*—*In carrying out this section,*  
 6           *the Commission shall consult with the affected Indian*  
 7           *tribes.*

8           (2) *STUDY.*—*The Commission shall conduct a*  
 9           *study of—*

10           (A) *with respect to the period beginning on*  
 11           *the date of commencement of the Pick-Sloan Pro-*  
 12           *gram and ending on the date on which the study*  
 13           *is initiated—*

14           (i) *the impacts on the affected Indian*  
 15           *tribes, directly or indirectly, caused by the*  
 16           *Pick-Sloan Program; and*

17           (ii) *measures implemented by the Fed-*  
 18           *eral Government to attempt to address those*  
 19           *impacts;*

20           (B) *other measures that have been proposed*  
 21           *to address the impacts on the affected Indian*  
 22           *tribes caused by the Pick-Sloan Program;*

23           (C) *the results of any other studies regard-*  
 24           *ing those impacts and potential solutions to the*  
 25           *impacts, including any studies conducted by the*

1       *Joint Tribal Advisory Committee relating to the*  
2       *Pick-Sloan Program; and*

3               *(D) comparisons involving other situations*  
4       *in which Federal hydroelectric projects or feder-*  
5       *ally licensed hydroelectric projects have resulted*  
6       *in the taking or occupation of Indian land and*  
7       *the compensation, or other measures, Indian*  
8       *tribes have been or are being provided in those*  
9       *situations.*

10       *(3) MEMBER LANDOWNERS.—The Commission*  
11       *may also study the impacts caused by the Pick-Sloan*  
12       *Program to land (including land allotted under any*  
13       *Federal law) that is—*

14               *(A) owned by members of an affected In-*  
15       *dian tribe (or the heirs of those members); and*

16               *(B) is on the reservation of the affected In-*  
17       *dian tribe.*

18       *(4) HEARINGS.—*

19               *(A) IN GENERAL.—In carrying out para-*  
20       *graph (2) and, if applicable, paragraph (3), the*  
21       *Commission shall hold at least 3 hearings to re-*  
22       *ceive information from Federal agencies, Indian*  
23       *tribes, and other interested parties regarding the*  
24       *resolution of Pick-Sloan Program impacts.*

25               *(B) WITNESS EXPENSES.—*



1                   (i) *IN GENERAL.*—A witness requested  
 2                   to appear before the Commission shall be  
 3                   paid the same fees and allowances as are  
 4                   paid to witnesses under section 1821 of title  
 5                   28, United States Code.

6                   (ii) *SOURCE OF FUNDS.*—The per diem  
 7                   and mileage allowances for a witness under  
 8                   clause (i) shall be paid from funds made  
 9                   available to the Commission.

10                  (C) *PUBLIC PARTICIPATION.*—A hearing  
 11                  under this paragraph shall be open to the public.

12                  (D) *RECORDS.*—For each hearing under  
 13                  this paragraph, the Commission shall—

14                       (i) compile a record consisting of tran-  
 15                       scripts, written testimony, studies, and  
 16                       other information presented at the hearing;  
 17                       and

18                       (ii) include the record in the report of  
 19                       the Commission required under paragraph  
 20                       (6), as an appendix in electronic format.

21                  (5) *PROPOSAL FOR COMPREHENSIVE RESOLU-*  
 22                  *TION.*—

23                       (A) *IN GENERAL.*—Based on the results of  
 24                       the study under paragraph (2), any study under  
 25                       paragraph (3), and hearings under paragraph

1           (4), the Commission shall develop a proposal to  
 2           comprehensively resolve the impacts resulting  
 3           from the Pick-Sloan Program.

4           (B) CONTENTS.—

5           (i) IN GENERAL.—The proposal under  
 6           subparagraph (A) shall include—

7                   (I) a comprehensive proposal to  
 8                   provide full and final compensation to  
 9                   the affected Indian tribes;

10                  (II) a description of the measures  
 11                  referred to in paragraph (2) that—

12                           (aa) have not been imple-  
 13                           mented;

14                           (bb) could be implemented; or

15                           (cc) should be implemented  
 16                           in a more effective manner;

17                  (III) measures that could be ac-  
 18                  complished administratively;

19                  (IV) measures that would require  
 20                  legislation to be implemented; and

21                  (V) any other measures necessary  
 22                  to comprehensively resolve the impacts  
 23                  of the Pick-Sloan Program on the af-  
 24                  fected Indian tribes.

1                   (ii) *MEMBER LANDOWNERS.*—*The pro-*  
 2                   *posal under subparagraph (A) may also in-*  
 3                   *clude measures to resolve the impacts to*  
 4                   *land (including land allotted under any*  
 5                   *Federal law) that is—*

6                               (I) *owned by members of an af-*  
 7                               *ected Indian tribe (or the heirs of*  
 8                               *those members); and*

9                               (II) *is on the reservation of the af-*  
 10                              *ected Indian tribe.*

11               (6) *REPORT.*—

12                       (A) *IN GENERAL.*—*Subject to subparagraph*  
 13                       *(B), not later than 18 months after the date on*  
 14                       *which the first meeting of the Commission takes*  
 15                       *place, the Commission shall submit to the Presi-*  
 16                       *dent and Congress a report that contains—*

17                               (i) *a detailed statement of the study*  
 18                               *findings and conclusions of the Commission;*  
 19                               *and*

20                               (ii) *the proposal of the Commission de-*  
 21                               *veloped under paragraph (5) for legislation*  
 22                               *and administrative actions that the Com-*  
 23                               *mission considers to be appropriate to com-*  
 24                               *prehensively resolve the impacts caused by*  
 25                               *the Pick-Sloan Program.*

1           (B) *EXTENSION.*—*The deadline described in*  
 2           *subparagraph (A) may be extended for a period*  
 3           *of not more than 180 days if the Commission*  
 4           *submits to the Committee on Indian Affairs of*  
 5           *the Senate and the Committee on Natural Re-*  
 6           *sources of the House of Representatives a request*  
 7           *for the extension that—*

8                     (i) *is received by the Committees before*  
 9                     *the deadline described in subparagraph (A);*  
 10                    and

11                   (ii) *includes a description of the rea-*  
 12                    *sons why the extension is needed.*

13       (7) *WEBSITE.*—

14           (A) *IN GENERAL.*—*The Commission shall*  
 15           *maintain a website for the period beginning on*  
 16           *the date on which the first meeting of the Com-*  
 17           *mission takes place and ending on the date on*  
 18           *which the Commission is terminated.*

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

21                     (i) *to describe the activities of the Com-*  
 22                     *mission;*

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

1                   (iii) to provide notice of, and make  
2                   available all information presented at, hear-  
3                   ings of the Commission; and

4                   (iv) to post the report (including all  
5                   appendices to that report) of the Commis-  
6                   sion required under paragraph (6).

7                   (C) *ARCHIVING OF WEBSITE CONTENT.*—At  
8                   the time at which the Commission submits the  
9                   report under paragraph (6), all content on the  
10                  website shall be—

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

14                  (ii) included in the report to be sub-  
15                  mitted under paragraph (6).

16                  (c) *POWERS.*—

17                  (1) *HEARINGS.*—The Commission may hold such  
18                  hearings, meet and act at such times and places, take  
19                  such testimony, and receive such evidence as the Com-  
20                  mission considers to be advisable to carry out this  
21                  Act.

22                  (2) *INFORMATION FROM FEDERAL AGENCIES.*—

23                  (A) *IN GENERAL.*—The Commission may se-  
24                  cure directly from a Federal agency such infor-

1            *mation as the Commission considers to be nec-*  
 2            *essary to carry out this Act.*

3            *(B) PROVISION OF INFORMATION.—On re-*  
 4            *quest of the Chairperson of the Commission, the*  
 5            *head of an applicable Federal agency shall pro-*  
 6            *vide the information to the Commission.*

7            *(3) POSTAL SERVICES.—The Commission may*  
 8            *use the United States mails in the same manner and*  
 9            *under the same conditions as other agencies of the*  
 10           *Federal Government.*

11           *(4) GIFTS.—The Commission may accept, use,*  
 12           *and dispose of gifts or donations of services or prop-*  
 13           *erty.*

14           *(d) COMMISSION PERSONNEL MATTERS.—*

15           *(1) COMPENSATION OF MEMBERS.—Each mem-*  
 16           *ber of the Commission shall be compensated at a rate*  
 17           *equal to the daily equivalent of the annual rate of*  
 18           *basic pay prescribed for level IV of the Executive*  
 19           *Schedule under section 5315 of title 5, United States*  
 20           *Code, for each day (including travel time) during*  
 21           *which the member is engaged in the performance of*  
 22           *the duties of the Commission.*

23           *(2) TRAVEL EXPENSES.—Each member of the*  
 24           *Commission shall be allowed travel expenses, includ-*  
 25           *ing per diem in lieu of subsistence, at rates author-*

1        *ized for an employee of an agency under subchapter*  
 2        *I of chapter 57 of title 5, United States Code, while*  
 3        *away from the home or regular place of business of*  
 4        *the member in the performance of the duties of the*  
 5        *Commission.*

6            (3) *STAFF.—*

7            (A) *IN GENERAL.—The Chairperson of the*  
 8        *Commission may, without regard to the civil*  
 9        *service laws (including regulations), appoint and*  
 10       *terminate an executive director and such other*  
 11       *additional personnel as are necessary to enable*  
 12       *the Commission to perform the duties of the*  
 13       *Commission.*

14          (B) *CONFIRMATION OF EXECUTIVE DIREC-*  
 15       *TOR.—The employment of an executive director*  
 16       *shall be subject to confirmation by a quorum of*  
 17       *the Commission.*

18          (C) *COMPENSATION.—*

19          (i) *IN GENERAL.—Except as provided*  
 20       *in subparagraph (B), the Chairperson of the*  
 21       *Commission may fix the compensation of*  
 22       *the executive director and other personnel*  
 23       *without regard to the provisions of chapter*  
 24       *51 and subchapter III of chapter 53 of title*  
 25       *5, United States Code, relating to classifica-*

tion of positions and General Schedule pay rates.

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

(D) *DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.*—

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

(ii) *CIVIL SERVICE STATUS.*—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(4) *HUMAN RESOURCES SUPPORT.*—The Commission may request the Secretary of Defense to provide, and the Secretary of Defense shall provide, through human resource departments under the jurisdiction of the Secretary of Defense, on a reimbursable basis, operational support for activities of the Commission.



1           (5) *CONTRACT AUTHORITY.*—*The Commission*  
 2           *may, to such extent and using such amounts as are*  
 3           *provided in appropriation Acts, enter into contracts*  
 4           *to enable the Commission to discharge the duties of*  
 5           *the Commission under this Act.*

6           (6) *VOLUNTEER SERVICES.*—*Notwithstanding*  
 7           *section 1342 of title 31, United States Code, the Com-*  
 8           *mission may accept and use such voluntary and un-*  
 9           *compensated services as the Commission determines to*  
 10          *be necessary.*

11          (7) *PROCUREMENT OF TEMPORARY AND INTER-*  
 12          *MITTENT SERVICES.*—*The Chairperson of the Com-*  
 13          *mission may procure temporary and intermittent*  
 14          *services in accordance with section 3109(b) of title 5,*  
 15          *United States Code, at rates for individuals that do*  
 16          *not exceed the daily equivalent of the annual rate of*  
 17          *basic pay prescribed for level V of the Executive*  
 18          *Schedule under section 5316 of that title.*

19          (e) *TERMINATION OF COMMISSION.*—*The Commission*  
 20          *shall terminate 90 days after the date on which the Com-*  
 21          *mission submits the report of the Commission under sub-*  
 22          *section (b)(6).*

23   **SEC. 5. FUNDING.**

24          *Subject to the approval of the appropriate committees*  
 25          *of Congress, out of any unobligated amounts made available*

1 *to the Secretary of the Interior, the Secretary may use to*  
2 *carry out this Act not more than \$2,500,000.*

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

4 *Nothing in this Act diminishes, changes, or otherwise*  
5 *affects—*

6 *(1) the water rights of the affected Indian tribes;*

7 *(2) any other right (including treaty rights) of*  
8 *the affected Indian tribes;*

9 *(3) the status of Indian reservation land or the*  
10 *boundaries of any reservation of an Indian tribe; or*

11 *(4) any Congressional authorization of appro-*  
12 *priations for the benefit of the affected Indian tribes.*



Calendar No. 680

11<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 3648**

[Report No. 111-357]

**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.

DECEMBER 8, 2010

Reported with an amendment