

111TH CONGRESS
1ST SESSION

S. 637

To authorize the construction of the Dry-Redwater Regional Water Authority System in the State of Montana and a portion of McKenzie County, North Dakota, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2009

Mr. BAUCUS (for himself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the construction of the Dry-Redwater Regional Water Authority System in the State of Montana and a portion of McKenzie County, North Dakota, and for other purposes.

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 “Dry-Redwater Re-
5 gional Water Authority System Act of 2009”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

1 (1) there are insufficient available supplies of
 2 safe water to meet the minimum health and safety
 3 standards of the citizens of—

4 (A) Dawson, Garfield, McCone, Prairie,
 5 and Richland Counties of the State; and

6 (B) McKenzie County, North Dakota;

7 (2) McCone and Garfield Counties of the State
 8 were—

9 (A) directly and physically impacted when
 10 the Fort Peck Dam was constructed; and

11 (B) to receive certain impact benefits as a
 12 result of the Pick-Sloan program; and

13 (3) the water that is contained in the Fort Peck
 14 Dam reservoir is managed for purposes relating to—

15 (A) flood control;

16 (B) the production of hydroelectric power;

17 (C) irrigation;

18 (D) the maintenance of a public water sup-
 19 ply;

20 (E) the conservation of fish and wildlife;

21 (F) recreation; and

22 (G) the improvement of water quality.

23 (b) PURPOSE.—The purpose of this Act is to ensure
 24 a safe and adequate municipal, rural, and industrial water
 25 supply for the citizens of—

1 (1) Dawson, Garfield, McCone, Prairie, and
2 Richland Counties of the State; and

3 (2) McKenzie County, North Dakota.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) ADMINISTRATOR.—The term “Adminis-
7 trator” means the Administrator of the Western
8 Area Power Administration.

9 (2) AUTHORITY.—The term “Authority”
10 means—

11 (A) the Dry-Redwater Regional Water Au-
12 thority, which is a publicly owned nonprofit
13 water authority formed in accordance with
14 Mont. Code Ann. § 75–6–302 (2007); and

15 (B) any nonprofit successor entity.

16 (3) FIRM POWER RATE.—The term “firm power
17 rate” means the rate charged by the Administrator
18 for the Pick-Sloan Missouri Basin Program—East-
19 ern Division.

20 (4) PICK-SLOAN PROGRAM.—The term “Pick-
21 Sloan program” means the Pick-Sloan Missouri
22 River Basin Program (authorized by section 9 of the
23 Act of December 22, 1944 (commonly known as the
24 “Flood Control Act of 1944”) (58 Stat. 891, chapter
25 665)).

1 (5) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior.

3 (6) STATE.—The term “State” means the State
4 of Montana.

5 (7) WATER SYSTEM.—The term “Water Sys-
6 tem” means the Dry-Redwater Regional Water Au-
7 thority System authorized under section 4 for—

8 (A) Dawson, Garfield, McCone, Prairie,
9 and Richland Counties of the State; and

10 (B) McKenzie County, North Dakota.

11 **SEC. 4. DRY-REDWATER REGIONAL WATER AUTHORITY SYS-**
12 **TEM.**

13 (a) COOPERATIVE AGREEMENT.—

14 (1) IN GENERAL.—The Secretary shall enter
15 into a cooperative agreement with the Authority to
16 provide Federal assistance for the planning, design,
17 and construction of the Water System.

18 (2) REQUIREMENTS.—A cooperative agreement
19 entered into under paragraph (1) shall specify, in a
20 manner that is acceptable to the Secretary and the
21 Authority—

22 (A) the responsibilities of each party to the
23 cooperative agreement relating to the Water
24 System, including—

25 (i) the final engineering report;

- 1 (ii) an environmental and cultural re-
2 source study;
3 (iii) engineering and design;
4 (iv) construction;
5 (v) water conservation measures; and
6 (vi) administration of contracts relat-
7 ing to the performance of the activities de-
8 scribed in clauses (i) through (v);

9 (B) any procedure or requirement relating
10 to—

11 (i) the carrying out of each activity
12 described in subparagraph (A); and

13 (ii) the approval and acceptance of the
14 design and construction of the Water Sys-
15 tem; and

16 (C) the rights, responsibilities, and liabil-
17 ities of each party to the cooperative agreement.

18 (b) USE OF FEDERAL FUNDS.—

19 (1) FEDERAL SHARE.—

20 (A) IN GENERAL.—The Federal share of
21 the costs relating to the planning, design, and
22 construction of the Water System shall not ex-
23 ceed 75 percent of the total cost of the Water
24 System.

1 (B) LIMITATION.—Amounts made avail-
 2 able under subparagraph (A) shall not be re-
 3 turnable or reimbursable under the reclamation
 4 laws.

5 (2) COMPLIANCE WITH COOPERATIVE AGREE-
 6 MENT.—Federal funds made available to carry out
 7 this section shall be obligated and expended in ac-
 8 cordance with a cooperative agreement entered into
 9 by the Secretary under subsection (a)(1).

10 (c) COMPONENTS.—Components of the Water Sys-
 11 tem facilities for which Federal funds may be obligated
 12 and expended under this section shall include—

13 (1) facilities relating to—

14 (A) water intake;

15 (B) water pumping;

16 (C) water treatment; and

17 (D) water storage;

18 (2) transmission pipelines and pumping sta-
 19 tions;

20 (3) appurtenant buildings, maintenance equip-
 21 ment, and access roads;

22 (4) any interconnection facility that connects a
 23 pipeline of the Water System to a pipeline of a pub-
 24 lic water system;

1 (5) distribution, pumping, and storage facilities
2 that—

3 (A) serve the needs of citizens who use
4 public water systems;

5 (B) are in existence on the date of enact-
6 ment of this Act; and

7 (C) may be purchased, improved, and re-
8 paired in accordance with a cooperative agree-
9 ment entered into by the Secretary under sub-
10 section (a)(1);

11 (6) electrical power transmission and distribu-
12 tion facilities required for the operation and mainte-
13 nance of the Water System;

14 (7) any other facility or service required for the
15 development of a rural water distribution system, as
16 determined by the Secretary; and

17 (8) any property or property right required for
18 the construction or operation of a facility described
19 in this subsection.

20 (d) SERVICE AREA.—The service area of the Water
21 System shall be—

22 (1) the area of Garfield and McCone Counties
23 in the State;

24 (2) the area west of the Yellowstone River in
25 Dawson and Richland Counties in the State;

1 (3) the area including, and north of, Township
2 15N in Prairie County in the State; and

3 (4) the portion of McKenzie County, North Da-
4 kota, that includes all land that is located west of
5 the Yellowstone River in the State of North Dakota.

6 (e) LIMITATION ON AVAILABILITY OF CONSTRUCTION
7 FUNDS.—The Secretary shall not obligate funds for con-
8 struction of the Water System until the date—

9 (1) on which the Water System complies with
10 each requirement under the National Environmental
11 Policy Act of 1969 (42 U.S.C. 4321 et seq.);

12 (2) that is 90 days after the date of receipt by
13 Congress of the final engineering report described in
14 subsection (a)(2)(A)(i) that is approved by the Sec-
15 retary; and

16 (3) on which the Secretary publishes a written
17 finding that the water conservation plan developed
18 pursuant to section 6 contains water conservation
19 measures for the operation of the Water System that
20 are—

21 (A) prudent;

22 (B) reasonable; and

23 (C) economically and financially feasible.

24 (f) LIMITATION ON USE OF FEDERAL FUNDS.—

1 (1) IN GENERAL.—Any cost relating to the op-
 2 eration, maintenance, or replacement of the Water
 3 System—

4 (A) shall not be a Federal responsibility;
 5 and

6 (B) shall be paid by the Water System.

7 (2) FEDERAL FUNDS.—The Secretary shall not
 8 obligate or expend Federal funds for the operation,
 9 maintenance, or replacement of the Water System.

10 (g) TITLE TO THE WATER SYSTEM.—Title to the
 11 Water System shall be held by the Authority.

12 **SEC. 5. USE OF POWER FROM PICK-SLOAN PROGRAM.**

13 (a) FINDINGS.—Congress finds that McCone and
 14 Garfield Counties in the State were designated—

15 (1) as impact counties during the period in
 16 which the Fort Peck Dam was constructed; and

17 (2) to receive impact mitigation benefits in ac-
 18 cordance with the Pick-Sloan program.

19 (b) AVAILABILITY OF POWER.—

20 (1) IN GENERAL.—Subject to paragraph (2),
 21 the Administrator shall make available to the Water
 22 System a quantity of power required to meet the
 23 pumping and incidental operation requirements of
 24 the Water System—

25 (A) from the water intake facilities; and

1 (B) through—

2 (i) the water treatment facilities; and

3 (ii) all first water distribution pump-
4 ing facilities.

5 (2) ELIGIBILITY.—The Water System shall be
6 eligible to receive power under paragraph (1) if the
7 Water System—

8 (A) operates on a not-for-profit basis; and

9 (B) is constructed pursuant to a coopera-
10 tive agreement entered into by the Secretary
11 under section 4(a)(1).

12 (3) RATE.—The Administrator shall establish
13 the cost of the power described in paragraph (1) at
14 the firm power rate.

15 (4) RECOVERY OF EXPENSES.—The Adminis-
16 trator shall recover the costs associated with the
17 quantity of power used by the Authority under para-
18 graph (1).

19 (5) RESPONSIBILITY FOR EXPENSES.—The Au-
20 thority shall be responsible for the payment of the
21 costs described in paragraph (4).

22 **SEC. 6. WATER CONSERVATION PLAN.**

23 (a) IN GENERAL.—The Authority shall develop a
24 water conservation plan containing—

1 (1) a description of water conservation objec-
2 tives;

3 (2) a description of appropriate water conserva-
4 tion measures; and

5 (3) a time schedule for carrying out the meas-
6 ures described in paragraph (2) and this Act to meet
7 the water conservation objectives described in para-
8 graph (1).

9 (b) DESIGN REQUIREMENT.—The water conservation
10 plan developed under subsection (a) shall be designed to
11 ensure that users of water provided by the Water System
12 will use the best practical technology and management
13 techniques to conserve water.

14 (c) PUBLIC PARTICIPATION.—Section 210(c) of the
15 Reclamation Reform Act of 1982 (43 U.S.C. 390jj(c))
16 shall apply to each activity carried out under this Act.

17 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

18 (a) WATER SYSTEM.—There is authorized to be ap-
19 propriated to carry out the planning, design, and construc-
20 tion of the Water System \$115,116,000 for the period of
21 fiscal years 2010 through 2020.

22 (b) COST INDEXING.—The amount authorized to be
23 appropriated under subsection (a) may be increased or de-
24 creased in accordance with ordinary fluctuations in devel-
25 opment costs incurred after January 1, 2008, as indicated

- 1 by any available engineering cost indices applicable to con-
- 2 struction activities that are similar to the construction of
- 3 the Water System.

