

Public Law 100-516
100th Congress

An Act

Oct. 24, 1988
[H.R. 2772]

To authorize construction of the Mni Wiconi Rural Water Supply Project, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Mni Wiconi
Project
Act of 1988.
Fish and fishing.
Wildlife.
South Dakota.
Indians.
Conservation.

SECTION 1. SHORT TITLE.

Sections 1 through 12 of this Act may be cited as the "Mni Wiconi Project Act of 1988".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) there are insufficient water supplies available to residents of the Pine Ridge Indian Reservation in South Dakota, and the water supplies that are available do not meet minimum health and safety standards, thereby posing a threat to public health and safety;

(2) Shannon County, South Dakota, one of the counties where the Pine Ridge Indian Reservation is located, is the poorest county in the United States, and the lack of water supplies on the Pine Ridge Indian Reservation restricts efforts to promote economic development on the reservation;

(3) serious problems in water quantity and water quality exist in the rural counties of Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota;

(4) the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Pine Ridge Indian Reservation; and

(5) the best available, reliable, and safe rural and municipal water supply to serve the needs of the Pine Ridge Indian Reservation, and the residents of Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties is the Missouri River.

(b) PURPOSE.—The Congress declares that the purposes of sections 1 through 12 are to—

(1) ensure a safe and adequate municipal, rural, and industrial water supply for the residents of the Pine Ridge Indian Reservation in South Dakota;

(2) assist the citizens of Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota, to develop safe and adequate municipal, rural, and industrial water supplies;

(3) promote the implementation of water conservation programs on the Pine Ridge Indian Reservation and in Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota;

(4) provide certain benefits to fish, wildlife, and the natural environment of South Dakota, including the Pine Ridge Indian Reservation; and

(5) repeal the authorization of appropriations for the Pollock-Herreid Unit of the Pick-Sloan Missouri Basin Program.

SEC. 3. OGLALA SIOUX RURAL WATER SUPPLY SYSTEM.

(a) **AUTHORIZATION.**—The Secretary of the Interior (hereafter in sections 1 through 12 referred to as the “Secretary”) is authorized and directed to plan, design, construct, operate, maintain, and replace a municipal, rural, and industrial water system, to be known as the Oglala Sioux Rural Water Supply System, as generally described in the report entitled “1988 Planning Report and Environmental Assessment” and dated February 1988. The Oglala Sioux Rural Water Supply System shall consist of—

(1) pumping and treatment facilities located along the Missouri River near Fort Pierre, South Dakota;

(2) pipelines extending from the Missouri River near Fort Pierre, South Dakota, to the Pine Ridge Indian Reservation;

(3) facilities to allow for interconnections with the West River Rural Water System and Lyman-Jones Rural Water System;

(4) distribution and treatment facilities to serve the needs of the Pine Ridge Indian Reservation, including but not limited to the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents on the Pine Ridge Indian Reservation;

(5) appurtenant buildings and access roads;

(6) necessary property and property rights;

(7) electrical power transmission and distribution facilities necessary for services to water systems facilities; and

(8) such other pipelines, pumping plants, and facilities as the Secretary deems necessary or appropriate to meet the water supply, economic, public health, and environmental needs of the reservation, including (but not limited to) water storage tanks, water lines, and other facilities for the Oglala Sioux Tribe and reservation villages, towns, and municipalities.

Highways.
Real property.
Utilities.
Energy.

(b) **AGREEMENT WITH NON-FEDERAL ENTITY TO PLAN, CONSTRUCT, OPERATE AND MAINTAIN THE OGLALA SIOUX RURAL WATER SUPPLY SYSTEM.**—

(1) In carrying out subsection (a), the Secretary, with the concurrence of the Oglala Sioux Tribal Council, shall enter into agreements with the appropriate non-Federal entity or entities for planning, designing, constructing, operating, maintaining, and replacing the Oglala Sioux Rural Water Supply System.

(2) Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

(A) the responsibilities of the parties for needs assessment, feasibility, and environmental studies; engineering and design; construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

(B) the procedures and requirements for approval and acceptance of such design and construction; and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(3) Such cooperative agreements may include purchase, improvement, and repair of existing water systems, including

systems owned by individual tribal members and other residents located on the Pine Ridge Indian Reservation.

(4) The Secretary may unilaterally terminate any cooperative agreement entered into pursuant to this section if the Secretary determines that the quality of construction does not meet all standards established for similar facilities constructed by the Secretary or that the operation and maintenance of the system does not meet conditions acceptable to the Secretary for fulfilling the obligations of the United States to the Oglala Sioux Tribe.

(5) Upon execution of any cooperative agreement authorized under this section, the Secretary is authorized to transfer to the appropriate non-Federal entity, on a nonreimbursable basis, the funds authorized to be appropriated by section 10 for the Oglala Sioux Rural Water Supply System.

(c) **SERVICE AREA.**—The service area of the Oglala Sioux Rural Water Supply System shall be the boundaries of the Pine Ridge Indian Reservation.

(d) **CONSTRUCTION REQUIREMENTS.**—The pumping plants, pipelines, treatment facilities, and other appurtenant facilities for the Oglala Sioux Rural Water Supply System shall be planned and constructed to a size sufficient to meet the municipal, rural, and industrial water supply requirements of the Pine Ridge Indian Reservation, the West River Rural Water System, and the Lyman-Jones Rural Water System, taking into account the effects of the conservation plans described in section 5. All three systems may be interconnected and provided with water service from common facilities. Any joint costs associated with common facilities shall be allocated to the Oglala Sioux Rural Water Supply System.

(e) **TITLE TO SYSTEM.**—Title to the Oglala Sioux Rural Water Supply System shall be held in trust for the Oglala Sioux Tribe by the United States and shall not be transferred without a subsequent Act of Congress.

(f) **LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.**—The Secretary shall not obligate funds for the construction of the Oglala Sioux Rural Water Supply System until—

(1) the requirements of the National Environmental Policy Act of 1969 have been met; and

(2) a final engineering report has been prepared and submitted to the Congress for a period of not less than ninety days.

(g) **TECHNICAL ASSISTANCE.**—The Secretary is authorized and directed to provide such technical assistance as may be necessary to the Oglala Sioux Tribe to plan, develop, construct, operate, maintain, and replace the Oglala Sioux Rural Water Supply System, including (but not limited to) operation and management training.

(h) **APPLICATION OF INDIAN SELF-DETERMINATION ACT.**—Planning, design, construction and operation of the Oglala Sioux Rural Water Supply System within the Pine Ridge Reservation shall be subject to the provisions of the Indian Self-Determination Act (Public Law 93-638; 25 U.S.C. 450).

SEC. 4. WEST RIVER RURAL WATER SYSTEM AND LYMAN-JONES RURAL WATER SYSTEM.

(a) **PLANNING AND CONSTRUCTION.**—

(1) The Secretary is authorized and directed to enter into cooperative agreements with appropriate non-Federal entities to provide Federal funds for the planning and construction of

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the West River Rural Water System and the Lyman-Jones Rural Water System in Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota, as described in the report entitled "1988 Planning Report and Environmental Assessment" and dated February 1988.

(2) The Secretary may not provide more than 65 per centum of the total cost of—

(A) the West River Rural Water System, and

(B) the Lyman-Jones Rural Water System. Such Federal funds may be obligated and expended only through cooperative agreements described in subsection (b).

(3) The non-Federal share of the costs allocated to the West River and Lyman-Jones Rural Water Systems shall be 35 per centum.

(b) COOPERATIVE AGREEMENTS.—

(1) The Secretary, with the concurrence of the Lyman-Jones and West River Rural Water Systems, shall execute cooperative agreements with the appropriate non-Federal entities to provide Federal assistance for the planning, design, and construction of the West River Rural Water System and the Lyman-Jones Rural Water System. Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

(A) the responsibilities of the parties for needs assessment, feasibility and environmental studies; engineering and design; construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

(B) the procedures and requirements for approval and acceptance of such design and construction; and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(c) FACILITIES ON WHICH FEDERAL FUNDS MAY BE EXPENDED.—The facilities on which Federal funds may be obligated and expended under this section shall include—

(1) water intake, pumping, treatment, storage, interconnection, and pipeline facilities;

(2) appurtenant buildings and access roads;

(3) necessary property and property rights;

(4) electrical power transmission and distribution facilities necessary for service to water system facilities;

(5) planning and design services for all facilities; and

(6) other facilities and services customary to the development of rural water distribution systems in South Dakota.

(d) SERVICE AREA.—The service area of the West River Rural Water System and the Lyman-Jones Rural Water System shall be as described in the engineering study entitled "1988 Planning Report and Environmental Assessment" and dated February 1988.

(e) LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.—The Secretary shall not obligate funds for the construction of the West River Rural Water System and the Lyman-Jones Rural Water System until—

(1) the requirements of the National Environmental Policy Act of 1969 have been met; and

(2) final engineering reports have been prepared and submitted to the Congress for a period of not less than ninety days.

(f) PROHIBITIONS ON USE OF FEDERAL FUNDS.—The Secretary may not obligate or expend any Federal funds for the operation, maintenance,

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nance, or replacement of either the West River or Lyman-Jones Rural Water System.

SEC. 5. WATER CONSERVATION.

Public
information.

In order to reduce costs to consumers and to reduce water consumption, the Secretary, prior to obligating any construction funds, shall issue a public notice finding that plans for the rural water systems include prudent and responsible water conservation measures for the operation of such systems where such measures are shown to be economically and financially feasible. The non-Federal parties (including the Oglala Sioux Tribe) participating in the systems shall develop a water conservation plan containing definite goals, appropriate water conservation measures, and a time schedule for meeting the water conservation objectives. The provisions of section 210(c) of Public Law 97-293 (96 Stat. 1268) shall apply with respect to the systems.

SEC. 6. MITIGATION OF FISH AND WILDLIFE LOSSES.

(a) **OGLALA SIOUX RURAL WATER SUPPLY SYSTEM AND THE WEST RIVER AND LYMAN-JONES RURAL WATER SYSTEMS.**—Mitigation for fish and wildlife losses incurred as a result of the construction and operation of the Oglala Sioux Rural Water Supply System, the West River Rural Water System, and the Lyman-Jones Rural Water System shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction.

(b) **OAHE AND BIG BEND DAMS AND RESERVOIRS.**—The Secretary, in cooperation with the State of South Dakota and other Federal agencies, shall develop and submit recommendations to the Congress for financing and implementing mitigation plans for fish and wildlife losses incurred as a result of the construction and operation of the Oahe Dam Reservoir and Big Bend Dam and Reservoir. Such plans shall incorporate the proposal of the United States Army Chief of Engineers as outlined in Design Memorandum M (Gen)-19 of December 1987 for improved management of existing Federal lands, and purchase of single-purpose mitigation lands, such as the Olson and Mudon Ranches, from willing sellers.

SEC. 7. PROHIBITION ON USE OF FUNDS FOR IRRIGATION PURPOSES.

None of the funds made available to the Secretary for planning or construction of the Oglala Sioux Rural Water Supply System, the West River Rural Water System, or the Lyman-Jones Rural Water System may be used to plan or construct facilities used to supply water for the purpose of irrigation.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in sections 1 through 12 is intended, nor shall be construed, to preclude the State of South Dakota or the Oglala Sioux Tribe from seeking congressional authorization to plan, design, operate, or construct additional federally assisted water resource development projects.

SEC. 9. USE OF PICK-SLOAN POWER.

(a) **IN GENERAL.**—The Systems authorized by sections 3 and 4 of this Act shall utilize power from Pick-Sloan for their operation. This power shall be deemed to be a project use pumping requirement of Pick-Sloan.

(b) **POWER TO BE USED.**—As of the date of enactment of this Act, power identified for future project use pumping at the Pollock-

Herreid Unit of the Pick-Sloan shall be reserved for and utilized by the Systems and made available for the purpose authorized by subsection (a).

(c) **RATE.**—The rate for project use power made available pursuant to subsection (a) shall be the wholesale firm power rate for Pick-Sloan (Eastern Division) in effect at the time the power is sold.

(d) **ADDITIONAL POWER.**—If additional power beyond that made available through subsection (b) is required to meet the pumping requirements of the Systems, the Administrator of the Western Area Power Administration is authorized to purchase the additional power needed under such terms and conditions the Administrator deems appropriate. Expenses associated with such power purchases shall be recovered through a separate power charge, sufficient to recover these expenses, applied to the Systems.

(e) **DEFINITIONS.**—For purposes of this section—

(1) the term “Systems” means the Oglala Sioux Rural Water Supply System, the West River Rural Water System, and the Lyman-Jones Rural Water System; and

(2) the term “Pick-Sloan” means the Pick-Sloan Missouri Basin Program authorized by section 9 of the Act of December 22, 1944 (58 Stat. 891; commonly referred to as the Flood Control Act of 1944).

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) **PLANNING, DESIGN, AND CONSTRUCTION.**—There are authorized to be appropriated \$87,500,000 for the planning, design, and construction of the Oglala Sioux Rural Water Supply System, the West River Rural Water System, and the Lyman-Jones Rural Water System under the provisions of sections 3 and 4. Such funds are authorized to be appropriated only through the end of the ninth fiscal year after which construction funds are first made available. The funds authorized to be appropriated by the first sentence of this section, less any amounts previously obligated for the Systems, may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 1987, as indicated by engineering costs indices applicable for the type of construction involved.

(b) **OPERATION AND MAINTENANCE OF OGLALA SIOUX RURAL WATER SUPPLY SYSTEM.**—There are authorized to be appropriated such sums as may be necessary for the operation and maintenance of the Oglala Sioux Rural Water Supply System.

SEC. 11. WATER RIGHTS.

Nothing in sections 1 through 12 shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interstate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(4) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights or claims thereto of the Oglala Sioux Tribe, whether located within or without the external

State and local governments.

Claims.

boundaries of the Pine Ridge Indian Reservation, based on treaty, Executive order, agreement, Act of Congress, aboriginal title, the Winter's doctrine (*Winter's v. United States*, 207 U.S. 564 (1908)), or otherwise. Nothing contained in this section or in section 1 through 12, however, is intended to validate or invalidate any assertion of the existence, nonexistence or extinguishment of any water rights, or claims thereto, held by the Oglala Sioux Tribe, or any other Indian tribe or individual Indian under Federal or State law.

SEC. 12. REPEAL OF AUTHORIZATION OF APPROPRIATIONS.

(a) **POLLOCK-HERREID UNIT.**—Section 407 of the Reclamation Authorization Act of 1975 (Public Law 94-228; 90 Stat. 209) relating to the authorization of appropriations for the Pollock-Herreid Unit of the Pick-Sloan Missouri Basin Program is hereby repealed. The Pollock-Herreid Unit shall remain an authorized feature of the Pick-Sloan Missouri Basin Program.

(b) **FEASIBILITY STUDIES.**—Delete section 3 of Public Law 97-273 (96 Stat. 1181) and substitute in lieu thereof the following:

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"SEC. 3. The Secretary is authorized, in cooperation with the State of South Dakota, to conduct a feasibility investigation of the alternate uses of facilities constructed for use in conjunction with the Oahe Unit, initial stage, James Division, Pick-Sloan Missouri Basin Program, South Dakota, and to report to the Congress the findings of such study along with his recommendations."

SEC. 13. GRAND VALLEY PROJECT, COLORADO.

The Secretary of the Interior is authorized to extend the Grand Valley Project Contract Numbered 6-07-40-P0080, dated April 10, 1986, among the United States, the Grand Valley Water Users Association, Public Service Company of Colorado, and the Orchard Mesa Irrigation District, for a period not to exceed two years to provide for the continued operation of the Grand Valley Power Project.

Public lands.

SEC. 14. VETERAN, WYOMING TOWNSITE.

(a) Notwithstanding any law or court order to the contrary, the Secretary of the Interior shall amend, subject to valid existing rights, the official subdivision survey and plat for the town site of Veteran, Wyoming, to take into account the actual and common use of streets and alleys on such lands for designation as public reservations in accordance with the Act of April 16, 1906 (34 Stat. 116, as amended).

Patents and
trademarks.

(b) After completion of the work required to amend the town site survey and plat, the title of the United States in and to the public reservation lands shall be patented to Goshen County, Wyoming. Title of the United States in and to a 90 feet by 75 feet lot of approximately 0.15 acres which is described in the records of the Goshen County, Wyoming, clerk's office as "a tract in southwest corner of town of Veteran, Block 40 in the original town of Veteran," shall be patented to Goshen County Unified School District Number One.

(c) The Secretary is authorized to dispose of Federal lands within the town site area by negotiated sale at fair market value or by public sale.

SEC. 15. CONTRACTS WITH THE REDWOOD VALLEY COUNTY WATER DISTRICT, CALIFORNIA. Loans.

(a) **RENEGOTIATION OF CONTRACTS.**—(1) Notwithstanding any other provision of law, the Secretary of the Interior shall renegotiate the schedules of payment for the loans to the Redwood Valley County Water District which are numbered 14-06-200-8423A and 14-06-200-8423A Amendatory.

(2) Such renegotiated schedules of payment may not take effect until October 1, 1989.

(b) The obligation to repay amounts loaned to the Redwood Valley County Water District, California, pursuant to the original negotiated schedule of payment of a loan specified in subsection (a) is suspended until the renegotiated schedule of payment for that loan takes effect. Any obligation to repay amounts under any such loan which is due, but not paid as of the date of enactment of this Act, is suspended. The renegotiated schedules of payment referred to in subsection (a) shall take into account any obligation suspended by this subsection.

(c) No interest may be charged on any payment under either of the loans specified in subsection (a) which is due but not paid before the renegotiated schedule of payment for such loan takes effect.

SEC. 16. WATER PURCHASE BY LAKEVIEW IRRIGATION DISTRICT, WYOMING.

(a) **OPTION TO PURCHASE WATER.**—The Secretary of the Interior is hereby authorized and directed to offer annually to the Lakeview Irrigation District, Wyoming, an option to purchase up to 15,000 acre-feet of storage in the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming, of which 3,200 acre-feet shall be a firm water supply and the remainder shall be available as needed pending completion of the Polecat Bench Reclamation Project.

(b) **EXERCISE OF OPTION.**—The Lakeview Irrigation District may exercise its purchase option only in those water years when there is insufficient yield for the District only after the primary flow rights of the Shoshone Project have been satisfied. Any water purchased by the district pursuant to this section shall be provided through exchange by the Bureau of Reclamation in return for the district's right to continue upstream withdrawals of Shoshone Project water.

(c) **WAIVER OF CERTAIN REQUIREMENTS.**—The Secretary of the Interior is authorized and directed to waive land classification and related study requirements in connection with any contract entered into pursuant to this section.

Contracts.

(d) **STATE LAW.**—Any allocation or reallocation from existing uses of water stored in the Buffalo Bill Dam and Reservoir resulting from this section shall be pursuant to the laws of the State of Wyoming.

SEC. 17. NAVY LAND, CALIFORNIA.

Section 2 of the Act entitled "An Act to provide for deferment of construction charges payable by Westlands Water District attributable to lands of the Naval Air Station: Lemoore, California, included in said district, and for other purposes", approved August 10, 1972 (86 Stat. 380), is amended by inserting: "Proceeds from the leases in excess of these needs and from lease parcels not within Westlands Water District may be utilized by the Secretary of the Navy to acquire easements in Kings County, California." after "are fully paid."

Contracts.

SEC. 18. ENERGY PURCHASE FROM SHOSHONE IRRIGATION DISTRICT, WYOMING.

(a) **EXTENSION.**—The Secretary of Energy, acting through the Western Area Power Administration, is directed to offer an extension of the energy purchase provisions of article 9 of the contract numbered 2-07-70-PO287 and dated March 15, 1982, to the Shoshone Irrigation District, an irrigation district and municipal corporation organized under the laws of the State of Wyoming. Such extension, if accepted, shall take effect as of April 15, 1988, shall remain in force and effect for a period of five years thereafter, and shall be subject to all of the original conditions, terms, and rates specified in such contract. At the end of the five-year extension, purchases of electric energy under article 9 of such contract may be extended by mutual agreement between the Western Area Power Administration and the Shoshone Irrigation District for successive one-year intervals at rates for purchase which may not be less than the rates specified in article 9.

(b) **LIMITATION.**—In no event shall sales of electric energy to the United States pursuant to subsection (a) be made after September 30, 1999.

SEC. 19. COLORADO COASTAL PLAINS PROJECT, TEXAS, SHAWS BEND DAMSITE.

(a) **FINDINGS.**—The Congress finds that—

(1) there have been five studies of the Shaws Bend site of the Colorado Coastal Plains project, authorized as part of the study for the Texas Basins project under the Act entitled “An Act to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource development proposals”, approved September 7, 1966 (80 Stat. 707), and

(2) there is no need for the construction of a dam at the Shaws Bend site.

(b) **PROHIBITION ON APPROPRIATIONS.**—Notwithstanding the first section of such Act and effective after the date of enactment of this Act, no funds may be appropriated for the analysis and study of the Shaws Bend site of the Colorado Coastal Plains project, authorized as part of the study for the Texas Basin project.

SEC. 20. FRANKLIN COUNTY, WASHINGTON ROADS STUDY.

(a) For the purposes of taking actions necessary to protect the county road system in irrigated portions of Franklin County, Washington, within the Federal Columbia Basin reclamation project and which are underlain or adjacent to lands underlain by the unique geological setting identified as the Ringold Formation, the Secretary of the Interior is directed to investigate road instability problems caused by high water tables and landslides, to design corrective actions, and to make recommendations for action.

(b) Funds not to exceed \$500,000 are authorized to be appropriated for the investigations directed in subsection (a) of this section, which shall be nonreimbursable, and the Secretary shall submit a report of his findings and recommendations for corrective action to the President and the Congress within three years after the date of enactment of this Act and availability of funds.

SEC. 21. DISTRIBUTION SYSTEM CONTRACTS.

To expedite completion of construction of the irrigation distribution systems of the Maricopa-Stanfield and Central Arizona Irriga-

tion and Drainage Districts, Central Arizona Project, pursuant to Contract Numbered 4-07-30-W0047, as supplemented, and Contract Numbered 4-07-30-W0048, as supplemented, the sixty-day congressional review period provided for in the Act of June 13, 1956 (70 Stat. 274) is hereby waived.

SEC. 22. CLOSED BASIN PROJECT AMENDMENTS.

Colorado.

The Reclamation Project Authorization Act of 1972 (Public Law 92-514, 86 Stat. 964), as amended by the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505), and by the Act of October 30, 1984 (Public Law 98-570, 98 Stat. 2941), is further amended as follows:

(1) Section 101(a) is amended by striking the phrase "including channel rectification of the Rio Grande between the uppermost point of discharge into the river of water salvaged by the project, and the Colorado-New Mexico State line, so as to provide for the carriage of water so salvaged without flooding of surrounding lands, to minimize losses of waters through evaporation, transpiration, and seepage, and to provide a conduit for the reception of water salvaged by drainage projects undertaken in the San Luis Valley below Alamosa, Colorado,".

New Mexico.

(2) Section 101(c) is amended by striking the phrase "Water Quality Act of 1965 (79 Stat. 903)" and inserting in lieu thereof the phrase "Clean Water Act (Public Law 92-500), as amended.".

(3) Section 102(a) is amended by striking the phrase "except channel rectification,".

(4) Section 102 is amended by adding a new subsection (c) at the end thereof to read as follows:

"(c) The Secretary is authorized to acquire water pursuant to the procedural and substantive laws of the State of Colorado from within the Rio Grande Basin in the State of Colorado by purchase, lease, or exchange from willing sellers for the purposes of this Act, provided that—

Contracts.

"(1) such water is obtained, made available, and delivered for project purposes at less cost for operation and maintenance than the same amounts of water can be made available by operation of project pumping facilities and without necessitating the construction of additional physical facilities by the Secretary;

"(2) such water may be used in lieu of water pumped from the project only if the Secretary has complied with all Federal, State, and local laws, rules, and regulations which apply to such water or the facilities other than those of the project which develop such water;

"(3) such water is subject to all of the limitations, conditions, and requirements of this Act to the same extent and in the same manner as water pumped by the project; and

"(4) this authorization shall not entitle the Secretary to obtain such water or any water rights by condemnation or by exercising the power of eminent domain.".

(5) Section 104(b)(2) is amended by adding a new sentence at the end thereof to read as follows: "The Secretary is authorized to negotiate and enter into an agreement with the Rio Grande Water Conservation District which provides for the temporary delivery of project salvaged water to the refuge and the habitat area in those years in which there is not sufficient water to fully satisfy the purposes of both paragraphs (1) and (2) of this subsection.".

Contracts.

Contracts. (6) Section 104(b)(4) is amended to read as follows:
“(4) For irrigation or other beneficial uses in Colorado: *Provided*, That no water shall be delivered until contracts between the United States and water users in Colorado, or the Rio Grande Water Conservation District acting for them, have been executed providing for the repayment of such construction costs as in the opinion of the Secretary are appropriate and within the ability of the users to pay and for the payment of all of the costs of operation and maintenance which are allocable to the production of this priority 4 water.”.

Appropriation authorization. (7) Section 109 is amended to read as follows:
“SEC. 109. There is hereby authorized to be appropriated the sum of \$94,000,000 (October 1988 prices) for the construction of the Closed Basin Division of the San Luis Valley project, of which amount not more than \$31,000,000 may be adjusted plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein, and such additional sums for the operation and maintenance of the project as may be required: *Provided*, That none of the funds authorized herein for construction in excess of \$75,000,000 may be expended by the Secretary unless and until the State of Colorado or a political subdivision thereof has entered into a binding agreement with the Secretary to contribute during construction one-third of the costs of construction in excess of \$75,000,000, or \$6,000,000, whichever is less. Such agreement shall include a reasonable limitation on administrative overhead expenses charged by the Secretary.”.

SEC. 23. BESSEMER DITCH, COLORADO.

The Act of July 9, 1980 (Public Law 96-309, 94 Stat. 940), is amended by adding a section 4 as follows:

Appropriation authorization. “SEC. 4. The Secretary is hereby authorized to undertake the design and construction of approximately 11,000 feet of gunite lining of the Bessemer Ditch in addition to that lining which was constructed pursuant to section 1 of this Act. There is hereby authorized to be appropriated as the Federal share of costs for the purpose of this section the sum of \$1,170,000 (based on August 1988 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction cost indices applicable to the type of construction involved: *Provided*, That non-Federal interests shall contribute during construction of the additional gunite lining an amount equal to 22 per centum of the total cost of the design and construction of such additional lining. The non-Federal contribution

may include cash and in kind contributions and shall not be subject to the conditions of section 2 of this Act. The Secretary is authorized to contract with the Bessemer Irrigation Ditch Company for the construction at cost of the additional gunite lining authorized by this section.”.

Contracts.

Approved October 24, 1988.

LEGISLATIVE HISTORY—H.R. 2772:

HOUSE REPORTS: No. 100-733 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-490 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 134 (1988):

June 27, 28, considered and passed House.

Sept. 8, considered and passed Senate, amended.

Oct. 3, 4, House disagreed to certain Senate amendments and concurred in another with an amendment.

Oct. 7, Senate concurred in House amendment.