

Calendar No. 242

106TH CONGRESS
1ST Session

S. 244

[Report No. 106-130]

A BILL

To authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system, and for other purposes.

JULY 30, 1999

Reported with an amendment

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To authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. JOHNSON (for himself, Mr. DASCHLE, Mr. GRAMS, Mr. WELLSTONE, Mr. GRASSLEY, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JULY 30, 1999

Reported by Mr. MURKOWSKI, with an amendment

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

A BILL

To authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system, 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 “Lewis and Clark Rural
 5 Water System Act of 1999”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ENVIRONMENTAL ENHANCEMENT.—The
 9 term “environmental enhancement” means the wet-
 10 land and wildlife enhancement activities that are
 11 carried out substantially in accordance with the envi-
 12 ronmental enhancement component of the feasibility
 13 study.

14 (2) ENVIRONMENTAL ENHANCEMENT COMPO-
 15 NENT.—The term “environmental enhancement
 16 component” means the component described in the
 17 report entitled “Wetlands and Wildlife Enhancement
 18 for the Lewis and Clark Rural Water System”,
 19 dated April 1991, that is included in the feasibility
 20 study.

21 (3) FEASIBILITY STUDY.—The term “feasibility
 22 study” means the study entitled “Feasibility Level
 23 Evaluation of a Missouri River Regional Water Sup-
 24 ply for South Dakota, Iowa and Minnesota”, dated
 25 September 1993, that includes a water conservation

1 plan, environmental report, and environmental en-
2 hancement component.

3 (4) ~~MEMBER ENTITY.~~—The term “member en-
4 tity” means a rural water system or municipality
5 that signed a Letter of Commitment to participate
6 in the water supply system.

7 (5) ~~PROJECT CONSTRUCTION BUDGET.~~—The
8 term “project construction budget” means the de-
9 scription of the total amount of funds needed for the
10 construction of the water supply system, as con-
11 tained in the feasibility study.

12 (6) ~~PUMPING AND INCIDENTAL OPERATIONAL~~
13 ~~REQUIREMENTS.~~—The term “pumping and inci-
14 dental operational requirements” means all power
15 requirements that are incidental to the operation of
16 intake facilities, pumping stations, water treatment
17 facilities, reservoirs, and pipelines up to the point of
18 delivery of water by the water supply system to each
19 member entity that distributes water at retail to in-
20 dividual users.

21 (7) ~~SECRETARY.~~—The term “Secretary” means
22 the Secretary of the Interior.

23 (8) ~~WATER SUPPLY SYSTEM.~~—The term “water
24 supply system” means the Lewis and Clark Rural
25 Water System, Inc., a nonprofit corporation estab-

1 lished and operated substantially in accordance with
 2 the feasibility study.

3 **SEC. 3. FEDERAL ASSISTANCE FOR THE WATER SUPPLY**
 4 **SYSTEM.**

5 (a) IN GENERAL.—The Secretary shall make grants
 6 to the water supply system for the planning and construc-
 7 tion of the water supply system.

8 (b) SERVICE AREA.—The water supply system shall
 9 provide for safe and adequate municipal, rural, and indus-
 10 trial water supplies; environmental enhancement; mitiga-
 11 tion of wetland areas; and water conservation in—

12 (1) Lake County, McCook County, Minnehaha
 13 County, Turner County, Lincoln County, Clay Coun-
 14 ty, and Union County, in southeastern South Da-
 15 kota;

16 (2) Rock County and Nobles County, in south-
 17 western Minnesota; and

18 (3) Lyon County, Sioux County, Osceola Coun-
 19 ty, O'Brien County, Dickinson County, and Clay
 20 County, in northwestern Iowa.

21 (c) AMOUNT OF GRANTS.—Grants made available
 22 under subsection (a) to the water supply system shall not
 23 exceed the amount of funds authorized under section 10.

1 (d) ~~LIMITATION ON AVAILABILITY OF CONSTRU-~~
 2 ~~CTION FUNDS.~~—The Secretary shall not obligate funds for
 3 the construction of the water supply system until—

4 (1) the requirements of the National Environ-
 5 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
 6 are met;

7 (2) a final engineering report is prepared and
 8 submitted to Congress not less than 90 days before
 9 the commencement of construction of the water sup-
 10 ply system; and

11 (3) a water conservation program is developed
 12 and implemented.

13 **SEC. 4. FEDERAL ASSISTANCE FOR THE ENVIRONMENTAL**
 14 **ENHANCEMENT COMPONENT.**

15 (a) ~~INITIAL DEVELOPMENT.~~—The Secretary shall
 16 make grants and other funds available to the water supply
 17 system and other private, State, and Federal entities, for
 18 the initial development of the environmental enhancement
 19 component.

20 (b) ~~NONREIMBURSEMENT.~~—Funds provided under
 21 subsection (a) shall be nonreimbursable and nonreturn-
 22 able.

23 **SEC. 5. WATER CONSERVATION PROGRAM.**

24 (a) ~~IN GENERAL.~~—The water supply system shall es-
 25 tablish a water conservation program that ensures that

1 users of water from the water supply system use the best
 2 practicable technology and management techniques to con-
 3 serve water use.

4 (b) REQUIREMENTS.—The water conservation pro-
 5 grams shall include—

6 (1) low consumption performance standards for
 7 all newly installed plumbing fixtures;

8 (2) leak detection and repair programs;

9 (3) rate schedules that do not include declining
 10 block rate schedules for municipal households and
 11 special water users (as defined in the feasibility
 12 study);

13 (4) public education programs and technical as-
 14 sistance to member entities; and

15 (5) coordinated operation among each rural
 16 water system; and each water supply facility in exist-
 17 ence on the date of enactment of this Act, in the
 18 service area of the system.

19 (c) REVIEW AND REVISION.—The programs de-
 20 scribed in subsection (b) shall contain provisions for peri-
 21 odic review and revision, in cooperation with the Secretary.

22 **SEC. 6. MITIGATION OF FISH AND WILDLIFE LOSSES.**

23 Mitigation for fish and wildlife losses incurred as a
 24 result of the construction and operation of the water sup-
 25 ply system shall be on an acre-for-acre basis, based on eco-

1 logical equivalency, concurrent with project construction;
 2 as provided in the feasibility study.

3 **SEC. 7. USE OF PICK-SLOAN POWER.**

4 (a) IN GENERAL.—From power designated for future
 5 irrigation and drainage pumping for the Pick-Sloan Mis-
 6 souri Basin program, the Western Area Power Adminis-
 7 tration shall make available the capacity and energy re-
 8 quired to meet the pumping and incidental operational re-
 9 quirements of the water supply system during the period
 10 beginning on May 1 and ending on October 31 of each
 11 year.

12 (b) CONDITIONS.—The capacity and energy described
 13 in subsection (a) shall be made available on the following
 14 conditions:

15 (1) The water supply system shall be operated
 16 on a not-for-profit basis.

17 (2) The water supply system shall contract to
 18 purchase the entire electric service requirements of
 19 the system, including the capacity and energy made
 20 available under subsection (a), from a qualified pref-
 21 erence power supplier that itself purchases power
 22 from the Western Area Power Administration.

23 (3) The rate schedule applicable to the capacity
 24 and energy made available under subsection (a) shall
 25 be the firm power rate schedule of the Pick-Sloan

1 Eastern Division of the Western Area Power Admin-
 2 istration in effect when the power is delivered by the
 3 Administration.

4 (4) It is agreed by contract among—

5 (A) the Western Area Power Administra-
 6 tion;

7 (B) the power supplier with which the
 8 water supply system contracts under paragraph
 9 (2);

10 (C) the power supplier of the entity de-
 11 scribed in subparagraph (B); and

12 (D) the water supply system;

13 that in the case of the capacity and energy made
 14 available under subsection (a), the benefit of the
 15 rate schedule described in paragraph (3) shall be
 16 passed through to the water supply system; except
 17 that the power supplier of the water supply system
 18 shall not be precluded from including, in the charges
 19 of the supplier to the water system for the electric
 20 service, the other usual and customary charges of
 21 the supplier.

22 **SEC. 8. NO LIMITATION ON WATER PROJECTS IN STATES.**

23 This Act does not limit the authorization for water
 24 projects in the States of South Dakota, Iowa, and Min-

1 nesota under law in effect on or after the date of enact-
 2 ment of this Act.

3 **SEC. 9. WATER RIGHTS.**

4 Nothing in this Act—

5 (1) invalidates or preempts State water law or
 6 an interstate compact governing water;

7 (2) alters the rights of any State to any appro-
 8 priated share of the waters of any body of surface
 9 or ground water, whether determined by past or fu-
 10 ture interstate compacts or by past or future legisla-
 11 tive or final judicial allocations;

12 (3) preempts or modifies any Federal or State
 13 law, or interstate compact, governing water quality
 14 or disposal; or

15 (4) confers on any non-Federal entity the abil-
 16 ity to exercise any Federal right to the waters of any
 17 stream or to any ground water resource.

18 **SEC. 10. COST SHARING.**

19 (a) **FEDERAL COST SHARE.**—

20 (1) **IN GENERAL.**—Except as provided in para-
 21 graph (2), the Secretary shall provide funds equal to
 22 80 percent of—

23 (A) the amount allocated in the total
 24 project construction budget for planning and

1 construction of the water supply system under
2 section 3;

3 ~~(B)~~ such amounts as are necessary to de-
4 fray increases in the budget for planning and
5 construction of the water supply system under
6 section 3; and

7 ~~(C)~~ such amounts as are necessary to de-
8 fray increases in development costs reflected in
9 appropriate engineering cost indices after Sep-
10 tember 1, 1993.

11 ~~(2) SIOUX FALLS.~~—The Secretary shall provide
12 funds for the city of Sioux Falls, South Dakota, in
13 an amount equal to 50 percent of the incremental
14 cost to the city of participation in the project.

15 ~~(b) NON-FEDERAL COST SHARE.~~—

16 ~~(1) IN GENERAL.~~—Except as provided in para-
17 graph (2), the non-Federal share of the costs allo-
18 cated to the water supply system shall be 20 percent
19 of the amounts described in subsection (a)(1).

20 ~~(2) SIOUX FALLS.~~—The non-Federal cost-share
21 for the city of Sioux Falls, South Dakota, shall be
22 50 percent of the incremental cost to the city of par-
23 ticipation in the project.

1 **SEC. 11. BUREAU OF RECLAMATION.**

2 (a) AUTHORIZATION.—The Secretary may allow the
3 Director of the Bureau of Reclamation to provide project
4 construction oversight to the water supply system and en-
5 vironmental enhancement component for the service area
6 of the water supply system described in section 3(b).

7 (b) PROJECT OVERSIGHT ADMINISTRATION.—The
8 amount of funds used by the Director of the Bureau of
9 Reclamation for planning and construction of the water
10 supply system shall not exceed the amount that is equal
11 to 1 percent of the amount provided in the total project
12 construction budget for the entire project construction pe-
13 riod.

14 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

15 There is authorized to be appropriated to carry out
16 this Act \$226,320,000, of which not less than \$8,487,000
17 shall be used for the initial development of the environ-
18 mental enhancement component under section 4, to re-
19 main available until expended.

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “Lewis and Clark Rural*
22 *Water System Act of 1999”.*

23 **SEC. 2. DEFINITIONS.**

24 *In this Act:*

25 (1) ENVIRONMENTAL ENHANCEMENT.—*The term*
26 *“environmental enhancement” means the wetland and*

1 *wildlife enhancement activities that are carried out*
 2 *substantially in accordance with the environmental*
 3 *enhancement component of the feasibility study.*

4 (2) *ENVIRONMENTAL ENHANCEMENT COMPO-*
 5 *NENT.—The term “environmental enhancement com-*
 6 *ponent” means the proposals described in the report*
 7 *entitled “Wetlands and Wildlife Enhancement for the*
 8 *Lewis and Clark Rural Water System”, dated Decem-*
 9 *ber 1994.*

10 (3) *FEASIBILITY STUDY.—The term “feasibility*
 11 *study” means the study entitled “Feasibility Level*
 12 *Evaluation of a Missouri River Regional Water Sup-*
 13 *ply for South Dakota, Iowa and Minnesota”, dated*
 14 *September 1993, that includes a water conservation*
 15 *plan, environmental report, and environmental en-*
 16 *hancement component.*

17 (4) *INCREMENTAL COST.—The term “incre-*
 18 *mental cost” means the cost of the savings to the*
 19 *project were the city of Sioux Falls not to participate*
 20 *in the water supply system.*

21 (5) *MEMBER ENTITY.—The term “member enti-*
 22 *ty” means a rural water system or municipality that*
 23 *meets the requirements for membership as defined by*
 24 *the Lewis and Clark Rural Water System, Inc. by-*
 25 *laws, dated September 6, 1990.*

1 (6) *PROJECT CONSTRUCTION BUDGET.*—*The term*
 2 *“project construction budget” means the description of*
 3 *the total amount of funds needed for the construction*
 4 *of the water supply project, as contained in the feasi-*
 5 *bility study.*

6 (7) *PUMPING AND INCIDENTAL OPERATIONAL RE-*
 7 *QUIREMENTS.*—*The term “pumping and incidental*
 8 *operational requirements” means all power require-*
 9 *ments that are necessary for the operation of intake*
 10 *facilities, pumping stations, water treatment facili-*
 11 *ties, reservoirs, and pipelines up to the point of deliv-*
 12 *ery of water by the water supply system to each mem-*
 13 *ber entity that distributes water at retail to indi-*
 14 *vidual users.*

15 (8) *SECRETARY.*—*The term “Secretary” means*
 16 *the Secretary of the Interior.*

17 (9) *WATER SUPPLY PROJECT.*—

18 (A) *IN GENERAL.*—*The term “water supply*
 19 *project” means the physical components of the*
 20 *Lewis and Clark Rural Water Project.*

21 (B) *INCLUSIONS.*—*The term “water supply*
 22 *project” includes—*

23 (i) *necessary pumping, treatment, and*
 24 *distribution facilities;*

25 (ii) *pipelines;*

1 (iii) appurtenant buildings and prop-
2 erty rights;

3 (iv) electrical power transmission and
4 distribution facilities necessary for services
5 to water systems facilities; and

6 (v) such other pipelines, pumping
7 plants, and facilities as the Secretary con-
8 siders necessary and appropriate to meet
9 the water supply, economic, public health,
10 and environment needs of the member enti-
11 ties (including water storage tanks, water
12 lines, and other facilities for the member en-
13 tities).

14 (10) WATER SUPPLY SYSTEM.—The term “water
15 supply system” means the Lewis and Clark Rural
16 Water System, Inc., a nonprofit corporation estab-
17 lished and operated substantially in accordance with
18 the feasibility study.

19 **SEC. 3. FEDERAL ASSISTANCE FOR THE WATER SUPPLY**
20 **SYSTEM.**

21 (a) IN GENERAL.—The Secretary shall make grants to
22 the water supply system for the planning and construction
23 of the water supply project.

24 (b) SERVICE AREA.—The water supply system shall
25 provide for the member entities safe and adequate munic-

1 *ipal, rural, and industrial water supplies, environmental*
 2 *enhancement, mitigation of wetland areas, and water con-*
 3 *servation in—*

4 (1) *Lake County, McCook County, Minnehaha*
 5 *County, Turner County, Lincoln County, Clay Coun-*
 6 *ty, and Union County, in southeastern South Dakota;*

7 (2) *Rock County and Nobles County, in south-*
 8 *western Minnesota; and*

9 (3) *Lyon County, Sioux County, Osceola County,*
 10 *O'Brien County, Dickinson County, and Clay Coun-*
 11 *ty, in northwestern Iowa.*

12 (c) *AMOUNT OF GRANTS.—Grants made available*
 13 *under subsection (a) to the water supply system shall not*
 14 *exceed the amount of funds authorized under section 9.*

15 (d) *LIMITATION ON AVAILABILITY OF CONSTRUCTION*
 16 *FUNDS.—The Secretary shall not obligate funds for the con-*
 17 *struction of the water supply project until—*

18 (1) *the requirements of the National Environ-*
 19 *mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)*
 20 *are met; and*

21 (2) *a final engineering report and a plan for a*
 22 *water conservation program are prepared and sub-*
 23 *mitted to Congress not less than 90 days before the*
 24 *commencement of construction of the water supply*
 25 *project.*

1 **SEC. 4. FEDERAL ASSISTANCE FOR THE ENVIRONMENTAL**
 2 **ENHANCEMENT COMPONENT.**

3 (a) *INITIAL DEVELOPMENT.*—*The Secretary shall*
 4 *make grants and other funds available to the water supply*
 5 *system and other private, State, and Federal entities, for*
 6 *the initial development of the environmental enhancement*
 7 *component.*

8 (b) *NONREIMBURSEMENT.*—*Funds provided under*
 9 *subsection (a) shall be nonreimbursable and nonreturnable.*

10 **SEC. 5. MITIGATION OF FISH AND WILDLIFE LOSSES.**

11 *Mitigation for fish and wildlife losses incurred as a*
 12 *result of the construction and operation of the water supply*
 13 *project shall be on an acre-for-acre basis, based on ecological*
 14 *equivalency, concurrent with project construction, as pro-*
 15 *vided in the feasibility study.*

16 **SEC. 6. USE OF PICK-SLOAN POWER.**

17 (a) *IN GENERAL.*—*From power designated for future*
 18 *irrigation and drainage pumping for the Pick-Sloan Mis-*
 19 *souri River Basin Program, the Western Area Power Ad-*
 20 *ministration shall make available the capacity and energy*
 21 *required to meet the pumping and incidental operational*
 22 *requirements of the water supply project during the period*
 23 *beginning May 1 and ending October 31 of each year.*

24 (b) *CONDITIONS.*—*The capacity and energy described*
 25 *in subsection (a) shall be made available on the following*
 26 *conditions:*

1 (1) *The water supply system shall be operated on*
2 *a not-for-profit basis.*

3 (2) *The water supply system shall contract to*
4 *purchase the entire electric service requirements of the*
5 *project, including the capacity and energy made*
6 *available under subsection (a), from a qualified pref-*
7 *erence power supplier that itself purchases power*
8 *from the Western Area Power Administration.*

9 (3) *The rate schedule applicable to the capacity*
10 *and energy made available under subsection (a) shall*
11 *be the firm power rate schedule of the Pick-Sloan*
12 *Eastern Division of the Western Area Power Admin-*
13 *istration in effect when the power is delivered by the*
14 *Administration to the qualified preference power sup-*
15 *plier.*

16 (4) *It is agreed by contract among—*

17 (A) *the Western Area Power Administra-*
18 *tion;*

19 (B) *the power supplier with which the*
20 *water supply system contracts under paragraph*
21 (2);

22 (C) *the power supplier of the entity de-*
23 *scribed in subparagraph (B); and*

24 (D) *the water supply system;*

1 *that in the case of the capacity and energy made*
 2 *available under subsection (a), the benefit of the rate*
 3 *schedule described in paragraph (3) shall be passed*
 4 *through to the water supply system, except that the*
 5 *power supplier of the water supply system shall not*
 6 *be precluded from including, in the charges of the*
 7 *supplier to the water system for the electric service,*
 8 *the other usual and customary charges of the supplier.*

9 **SEC. 7. NO LIMITATION ON WATER PROJECTS IN STATES.**

10 *This Act does not limit the authorization for water*
 11 *projects in the States of South Dakota, Iowa, and Min-*
 12 *nesota under law in effect on or after the date of enactment*
 13 *of this Act.*

14 **SEC. 8. WATER RIGHTS.**

15 *Nothing in this Act—*

16 *(1) invalidates or preempts State water law or*
 17 *an interstate compact governing water;*

18 *(2) alters the rights of any State to any appro-*
 19 *priated share of the waters of any body of surface or*
 20 *ground water, whether determined by past or future*
 21 *interstate compacts or by past or future legislative or*
 22 *final judicial allocations;*

23 *(3) preempts or modifies any Federal or State*
 24 *law, or interstate compact, governing water quality or*
 25 *disposal; or*

1 (4) *confers on any non-Federal entity the ability*
 2 *to exercise any Federal right to the waters of any*
 3 *stream or to any ground water resource.*

4 **SEC. 9. COST SHARING.**

5 (a) *FEDERAL COST SHARE.*—

6 (1) *IN GENERAL.*—*Except as provided in para-*
 7 *graph (2), the Secretary shall provide funds equal to*
 8 *80 percent of—*

9 (A) *the amount allocated in the total project*
 10 *construction budget for planning and construc-*
 11 *tion of the water supply project under section 3;*
 12 *and*

13 (B) *such amounts as are necessary to defray*
 14 *increases in development costs reflected in appro-*
 15 *priate engineering cost indices after September*
 16 *1, 1993.*

17 (2) *SIoux FALLS.*—*The Secretary shall provide*
 18 *funds for the city of Sioux Falls, South Dakota, in*
 19 *an amount equal to 50 percent of the incremental cost*
 20 *to the city of participation in the project.*

21 (b) *NON-FEDERAL COST SHARE.*—

22 (1) *IN GENERAL.*—*Except as provided in para-*
 23 *graph (2), the non-Federal share of the costs allocated*
 24 *to the water supply system shall be 20 percent of the*
 25 *amounts described in subsection (a)(1).*

1 (2) *SIOUX FALLS.*—*The non-Federal cost-share*
 2 *for the city of Sioux Falls, South Dakota, shall be 50*
 3 *percent of the incremental cost to the city of partici-*
 4 *pation in the project.*

5 **SEC. 10. BUREAU OF RECLAMATION.**

6 (a) *AUTHORIZATION.*—*At the request of the water sup-*
 7 *ply system, the Secretary may allow the Commissioner of*
 8 *Reclamation to provide project construction oversight to the*
 9 *water supply project and environmental enhancement com-*
 10 *ponent for the service area of the water supply system de-*
 11 *scribed in section 3(b).*

12 (b) *PROJECT OVERSIGHT ADMINISTRATION.*—*The*
 13 *amount of funds used by the Commissioner of Reclamation*
 14 *for oversight described in subsection (a) shall not exceed the*
 15 *amount that is equal to 1 percent of the amount provided*
 16 *in the total project construction budget for the entire project*
 17 *construction period.*

18 (c) *OPERATION AND MAINTENANCE.*—*The water sup-*
 19 *ply system shall be responsible for annual operation and*
 20 *maintenance of the project.*

21 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

22 *There is authorized to be appropriated to carry out*
 23 *this Act \$223,987,700, to remain available until expended,*
 24 *of which not more than \$10,100,000 shall be used for the*

- 1 *initial development of the environmental enhancement com-*
- 2 *ponent under section 4.*