

106TH CONGRESS
1ST SESSION

S. 624

AN ACT

To authorize construction of the Fort Peck Reservation Rural Water System in the State of Montana, 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 “Fort Peck Reservation
5 Rural Water System Act of 1999”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) there are insufficient water supplies avail-
4 able to residents of the Fort Peck Indian Reserva-
5 tion in the State of Montana, and the water systems
6 that are available do not meet minimum health and
7 safety standards and therefore pose a threat to pub-
8 lic health and safety;

9 (2) in carrying out its trust responsibility, the
10 United States should ensure that adequate and safe
11 water supplies are available to meet the economic,
12 environmental, water supply, and public health needs
13 of the Fort Peck Indian Reservation; and

14 (3) the best available, reliable, and safe rural
15 and municipal water supply to serve the needs of the
16 Fort Peck Indian Reservation is the Missouri River.

17 (b) PURPOSES.—The purposes of this Act are—

18 (1) to ensure a safe and adequate municipal,
19 rural, and industrial water supply for the residents
20 of the Fort Peck Indian Reservation in the State of
21 Montana; and

22 (2) to assist the citizens of Roosevelt, Sheridan,
23 Daniels, and Valley Counties in the State, outside
24 the Fort Peck Indian Reservation, in developing safe
25 and adequate municipal, rural, and industrial water
26 supplies.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) ASSINIBOINE AND SIOUX RURAL WATER
4 SYSTEM.—The term “Assiniboine and Sioux Rural
5 Water System” means the rural water system within
6 the Fort Peck Indian Reservation authorized by sec-
7 tion 4.

8 (2) DRY PRAIRIE RURAL WATER SYSTEM.—The
9 term “Dry Prairie Rural Water System” means the
10 rural water system authorized by section 5 in the
11 Roosevelt, Sheridan, Daniels, and Valley Counties of
12 the State.

13 (3) FORT PECK RESERVATION RURAL WATER
14 SYSTEM.—The term “Fort Peck Reservation Rural
15 Water System” means the Assiniboine and Sioux
16 Rural Water System and the Dry Prairie Rural
17 Water System.

18 (4) FORT PECK TRIBES.—The term “Fort Peck
19 Tribes” means the Assiniboine and Sioux Indian
20 Tribes within the Fort Peck Indian Reservation.

21 (5) PICK-SLOAN.—The term “Pick-Sloan”
22 means the Pick-Sloan Missouri River Basin Program
23 (authorized by section 9 of the Act entitled “An Act
24 authorizing the construction of certain public works
25 on rivers and harbors for flood control, and for other
26 purposes”, approved December 22, 1944 (commonly

1 known as the “Flood Control Act of 1944”) (58
2 Stat. 891)).

3 (6) SECRETARY.—The term “Secretary” means
4 the Secretary of the Interior.

5 (7) STATE.—The term “State” means the State
6 of Montana.

7 **SEC. 4. ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.**

8 (a) AUTHORIZATION.—The Secretary shall plan, de-
9 sign, construct, operate, maintain, and replace a munic-
10 ipal, rural, and industrial water system, to be known as
11 the “Assiniboine and Sioux Rural Water System”, as gen-
12 erally described in the report required by subsection
13 (g)(2).

14 (b) COMPONENTS.—The Assiniboine and Sioux Rural
15 Water System shall consist of—

16 (1) pumping and treatment facilities located
17 along the Missouri River within the boundaries of
18 the Fort Peck Indian Reservation;

19 (2) pipelines extending from the water treat-
20 ment plant throughout the Fort Peck Indian Res-
21 ervation;

22 (3) distribution and treatment facilities to serve
23 the needs of the Fort Peck Indian Reservation,
24 including—

1 (A) public water systems in existence on
2 the date of enactment of this Act that may be
3 purchased, improved, and repaired in accord-
4 ance with the cooperative agreement entered
5 into under subsection (c); and

6 (B) water systems owned by individual
7 tribal members and other residents of the Fort
8 Peck Indian Reservation;

9 (4) appurtenant buildings and access roads;

10 (5) all property and property rights necessary
11 for the facilities described in this subsection;

12 (6) electrical power transmission and distribu-
13 tion facilities necessary for services to Fort Peck
14 Reservation Rural Water System facilities; and

15 (7) such other pipelines, pumping plants, and
16 facilities as the Secretary determines to be appro-
17 priate to meet the water supply, economic, public
18 health, and environmental needs of the Fort Peck
19 Indian Reservation, including water storage tanks,
20 water lines, and other facilities for the Fort Peck
21 Tribes and the villages, towns, and municipalities in
22 the Fort Peck Indian Reservation.

23 (c) COOPERATIVE AGREEMENT.—

24 (1) IN GENERAL.—The Secretary shall enter
25 into a cooperative agreement with the Fort Peck

1 Tribal Executive Board for planning, designing, con-
2 structing, operating, maintaining, and replacing the
3 Assiniboine and Sioux Rural Water System.

4 (2) MANDATORY PROVISIONS.—The cooperative
5 agreement under paragraph (1) shall specify, in a
6 manner that is acceptable to the Secretary and the
7 Fort Peck Tribal Executive Board—

8 (A) the responsibilities of each party to the
9 agreement for—

10 (i) needs assessment, feasibility, and
11 environmental studies;

12 (ii) engineering and design;

13 (iii) construction;

14 (iv) water conservation measures; and

15 (v) administration of contracts relat-
16 ing to performance of the activities de-
17 scribed in clauses (i) through (iv);

18 (B) the procedures and requirements for
19 approval and acceptance of the design and con-
20 struction and for carrying out other activities
21 described in subparagraph (A); and

22 (C) the rights, responsibilities, and liabil-
23 ities of each party to the agreement.

24 (3) OPTIONAL PROVISIONS.—The cooperative
25 agreement under paragraph (1) may include provi-

1 sions relating to the purchase, improvement, and re-
2 pair of water systems in existence on the date of en-
3 actment of this Act, including systems owned by in-
4 dividual tribal members and other residents of the
5 Fort Peck Indian Reservation.

6 (4) TERMINATION.—The Secretary may termi-
7 nate a cooperative agreement under paragraph (1) if
8 the Secretary determines that—

9 (A) the quality of construction does not
10 meet all standards established for similar facili-
11 ties constructed by the Secretary; or

12 (B) the operation and maintenance of the
13 Assiniboine and Sioux Rural Water System
14 does not meet conditions acceptable to the Sec-
15 retary that are adequate to fulfill the obliga-
16 tions of the United States to the Fort Peck
17 Tribes.

18 (5) TRANSFER.—On execution of a cooperative
19 agreement under paragraph (1), in accordance with
20 the cooperative agreement, the Secretary may trans-
21 fer to the Fort Peck Tribes, on a nonreimbursable
22 basis, funds made available for the Assiniboine and
23 Sioux Rural Water System under section 9.

24 (d) SERVICE AREA.—The service area of the Assini-
25 boine and Sioux Rural Water System shall be the area

1 within the boundaries of the Fort Peck Indian Reserva-
2 tion.

3 (e) CONSTRUCTION REQUIREMENTS.—The compo-
4 nents of the Assiniboine and Sioux Rural Water System
5 shall be planned and constructed to a size that is sufficient
6 to meet the municipal, rural, and industrial water supply
7 requirements of the service area of the Fort Peck Reserva-
8 tion Rural Water System.

9 (f) TITLE TO ASSINIBOINE AND SIOUX RURAL
10 WATER SYSTEM.—Title to the Assiniboine and Sioux
11 Rural Water System shall be held in trust by the United
12 States for the Fort Peck Tribes and shall not be trans-
13 ferred unless a transfer is authorized by an Act of Con-
14 gress enacted after the date of enactment of this Act.

15 (g) LIMITATION ON AVAILABILITY OF CONSTRUC-
16 TION FUNDS.—The Secretary shall not obligate funds for
17 construction of the Assiniboine and Sioux Rural Water
18 System until—

19 (1) the requirements of the National Environ-
20 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
21 are met with respect to the Assiniboine and Sioux
22 Rural Water System;

23 (2) on or after the date that is 90 days after
24 the date of submission to Congress of a final engi-
25 neering report approved by the Secretary; and

1 (3) the Secretary publishes a written finding
2 that the water conservation plan developed under
3 section 7 includes prudent and reasonable water con-
4 servation measures for the operation of the Assini-
5 boine and Sioux Rural Water System that have been
6 shown to be economically and financially feasible.

7 (h) TECHNICAL ASSISTANCE.—The Secretary shall
8 provide such technical assistance as is necessary to enable
9 the Fort Peck Tribes to plan, design, construct, operate,
10 maintain, and replace the Assiniboine and Sioux Rural
11 Water System, including operation and management
12 training.

13 (i) APPLICATION OF INDIAN SELF-DETERMINATION
14 ACT.—Planning, design, construction, operation, mainte-
15 nance, and replacement of the Assiniboine and Sioux
16 Rural Water System within the Fort Peck Indian Reserva-
17 tion shall be subject to the Indian Self-Determination and
18 Education Assistance Act (25 U.S.C. 450 et seq.).

19 **SEC. 5. DRY PRAIRIE RURAL WATER SYSTEM.**

20 (a) PLANNING AND CONSTRUCTION.—

21 (1) AUTHORIZATION.—The Secretary shall
22 enter into a cooperative agreement with Dry Prairie
23 Rural Water Association Incorporated (or any suc-
24 cessor non-Federal entity) to provide Federal funds
25 for the planning, design, and construction of the Dry

1 Prairie Rural Water System in Roosevelt, Sheridan,
2 Daniels, and Valley Counties, Montana, outside the
3 Fort Peck Indian Reservation.

4 (2) USE OF FEDERAL FUNDS.—

5 (A) FEDERAL SHARE.—The Federal share
6 of the cost of planning, design, and construction
7 of the Dry Prairie Rural Water System shall be
8 not more than 76 percent.

9 (B) COOPERATIVE AGREEMENTS.—Federal
10 funds made available to carry out this section
11 may be obligated and expended only through a
12 cooperative agreement entered into under sub-
13 section (c).

14 (b) COMPONENTS.—The components of the Dry Prai-
15 rie Rural Water System facilities on which Federal funds
16 may be obligated and expended under this section shall
17 include—

18 (1) storage, pumping, interconnection, and
19 pipeline facilities;

20 (2) appurtenant buildings and access roads;

21 (3) all property and property rights necessary
22 for the facilities described in this subsection;

23 (4) electrical power transmission and distribu-
24 tion facilities necessary for service to Dry Prairie
25 Rural Water System facilities; and

1 (5) other facilities customary to the develop-
2 ment of rural water distribution systems in the
3 State, including supplemental water intake, pump-
4 ing, and treatment facilities.

5 (c) COOPERATIVE AGREEMENT.—

6 (1) IN GENERAL.—The Secretary, with the con-
7 currence of the Assiniboine and Sioux Rural Water
8 System Board, shall enter into a cooperative agree-
9 ment with Dry Prairie Rural Water Association In-
10 corporated to provide Federal assistance for the
11 planning, design, and construction of the Dry Prai-
12 rie Rural Water System.

13 (2) MANDATORY PROVISIONS.—The cooperative
14 agreement under paragraph (1) shall specify, in a
15 manner that is acceptable to the Secretary and Dry
16 Prairie Rural Water Association Incorporated—

17 (A) the responsibilities of each party to the
18 agreement for—

19 (i) needs assessment, feasibility, and
20 environmental studies;

21 (ii) engineering and design;

22 (iii) construction;

23 (iv) water conservation measures; and

1 (v) administration of contracts relat-
2 ing to performance of the activities de-
3 scribed in clauses (i) through (iv);

4 (B) the procedures and requirements for
5 approval and acceptance of the design and con-
6 struction and for carrying out other activities
7 described in subparagraph (A); and

8 (C) the rights, responsibilities, and liabil-
9 ities of each party to the agreement.

10 (d) SERVICE AREA.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the service area of the Dry Prairie Rural
13 Water System shall be the area in the State—

14 (A) north of the Missouri River;

15 (B) south of the border between the
16 United States and Canada;

17 (C) west of the border between the States
18 of North Dakota and Montana; and

19 (D) east of the western line of range 39
20 east.

21 (2) FORT PECK INDIAN RESERVATION.—The
22 service area shall not include the area inside the
23 Fort Peck Indian Reservation.

1 (e) LIMITATION ON AVAILABILITY OF CONSTRUCTION
2 FUNDS.—The Secretary shall not obligate funds for con-
3 struction of the Dry Prairie Rural Water 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 with respect to the Dry Prairie Rural Water
7 System;

8 (2) on or after the date that is 90 days after
9 the date of submission to Congress of a final engi-
10 neering report approved by the Secretary; and

11 (3) the Secretary publishes a written finding
12 that the water conservation plan developed under
13 section 7 includes prudent and reasonable water con-
14 servation measures for the operation of the Dry
15 Prairie Rural Water System that have been shown
16 to be economically and financially feasible.

17 (f) INTERCONNECTION OF FACILITIES.—

18 (1) IN GENERAL.—The Secretary shall—

19 (A) interconnect the Dry Prairie Rural
20 Water System with the Assiniboine and Sioux
21 Rural Water System; and

22 (B) provide for the delivery of water to the
23 Dry Prairie Rural Water System from the Mis-
24 souri River through the Assiniboine and Sioux
25 Rural Water System.

1 (2) CHARGES.—The Secretary shall not charge
2 for the water delivered.

3 (g) LIMITATION ON USE OF FEDERAL FUNDS.—

4 (1) IN GENERAL.—The operation, maintenance,
5 and replacement expenses associated with water de-
6 liveries from the Assiniboine and Sioux Rural Water
7 System to the Dry Prairie Rural Water System shall
8 not be a Federal responsibility and shall be borne by
9 the Dry Prairie Rural Water System.

10 (2) FEDERAL FUNDS.—The Secretary may not
11 obligate or expend any Federal funds for the oper-
12 ation, maintenance, or replacement of the Dry Prai-
13 rie Rural Water System.

14 (h) TITLE TO DRY PRAIRIE RURAL WATER SYS-
15 TEM.—Title to the Dry Prairie Rural Water System shall
16 be held by Dry Prairie Rural Water Association, Incor-
17 porated.

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

19 (a) IN GENERAL.—From power designated for future
20 irrigation and drainage pumping for the Pick-Sloan Mis-
21 souri River Basin Program, the Western Area Power Ad-
22 ministration shall make available the capacity and energy
23 required to meet the pumping, treatment, and incidental
24 operational requirements of the Dry Prairie Rural Water

1 System and Assiniboine and Sioux Rural Water System,
2 as described in sections 4 and 5.

3 (b) CONDITIONS.—The capacity and energy described
4 in subsection (a) shall be made available on the following
5 conditions:

6 (1) The Dry Prairie Rural Water System and
7 Assiniboine and Sioux Rural Water Systems shall be
8 operated on a not-for-profit basis.

9 (2) The Dry Prairie Rural Water System and
10 Assiniboine and Sioux Rural Water System shall
11 contract to purchase their entire electric service re-
12 quirements, including the capacity and energy made
13 available under subsection (a), from a qualified pref-
14 erence power supplier that purchases power from the
15 Western Area Power Administration.

16 (3) The rate schedule applicable to the capacity
17 and energy made available under subsection (a) shall
18 be the wholesale firm power rate schedule of the
19 Pick-Sloan Eastern Division of the Western Area
20 Power Administration in effect when the power is
21 delivered by the Administration.

22 (4) It shall be agreed by contract among—

23 (A) the Western Area Power Administra-
24 tion;

1 (B) the power supplier with which the
2 water Dry Prairie Rural Water System and As-
3 siniboine and Sioux Rural Water System con-
4 tract under paragraph (2);

5 (C) the power supplier of the entity de-
6 scribed in subparagraph (B);

7 (D) the Dry Prairie Rural Water Associa-
8 tion, Inc.; and

9 (E) the Fort Peck Tribes;

10 that in the case of the capacity and energy made
11 available under subsection (a), the benefit of the
12 rate schedule described in paragraph (3) shall be
13 passed through to the Dry Prairie Rural Water Sys-
14 tem and Assiniboine and Sioux Rural Water System,
15 except that the power supplier of the Dry Prairie
16 Rural Water System and Assiniboine and Sioux
17 Rural Water System shall not be precluded from in-
18 cluding, in the charges of the supplier to the water
19 system for the electric service, the other usual and
20 customary charges of the supplier.

21 (c) ADDITIONAL POWER.—If power in addition to
22 that made available under subsection (a) is required to
23 meet the pumping requirements of the service area of the
24 Fort Peck Reservation Rural Water System described in
25 sections 4 and 5, the Administrator of the Western Area

1 Power Administration may purchase the necessary addi-
2 tional power under such terms and conditions as the Ad-
3 ministrator determines to be appropriate.

4 (d) RECOVERY OF EXPENSES.—

5 (1) ASSINIBOINE AND SIOUX RURAL WATER
6 SYSTEM.—In the case of the Assiniboine and Sioux
7 Rural Water System, expenses associated with power
8 purchases under subsection (a) shall be recovered
9 through a separate power charge, sufficient to cover
10 expenses, applied to the Assiniboine and Sioux Rural
11 Water System's operation and maintenance cost.

12 (2) DRY PRAIRIE RURAL WATER SYSTEM.—In
13 the case of the Dry Prairie Rural Water System, ex-
14 penses associated with power purchases under sub-
15 sections (a) shall be recovered through a separate
16 power charge, sufficient to cover expenses, to be paid
17 fully by the Dry Prairie Rural Water Association,
18 Inc.

19 **SEC. 7. WATER CONSERVATION PLAN.**

20 (a) IN GENERAL.—The Fort Peck Tribes and Dry
21 Prairie Rural Water Association Incorporated shall de-
22 velop a water conservation plan containing—

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

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

3 (3) a time schedule for implementing the meas-
4 ures and this Act to meet the water conservation ob-
5 jectives.

6 (b) PURPOSE.—The water conservation plan under
7 subsection (a) shall be designed to ensure that users of
8 water from the Assiniboine and Sioux Rural Water System
9 and the Dry Prairie Rural Water System will use the best
10 practicable technology and management techniques to con-
11 serve water.

12 (c) PUBLIC PARTICIPATION.—Section 210(c) of the
13 Reclamation Reform Act of 1982 (43 U.S.C. 390jj(e))
14 shall apply to an activity authorized under this Act.

15 **SEC. 8. WATER RIGHTS.**

16 This Act does not—

17 (1) impair the validity of or preempt any provi-
18 sion of State water law or any interstate compact
19 governing water;

20 (2) alter the right of any State to any appro-
21 priated share of the water of any body of surface or
22 ground water, whether determined by any past or
23 future interstate compact or by any past or future
24 legislative or final judicial allocation;

1 (3) preempt or modify any Federal or State law
2 or interstate compact concerning water quality or
3 disposal;

4 (4) confer on any non-Federal entity the au-
5 thority to exercise any Federal right to the water of
6 any stream or to any ground water resource;

7 (5) affect any right of the Fort Peck Tribes to
8 water, located within or outside the external bound-
9 aries of the Fort Peck Indian Reservation, based on
10 a treaty, compact, executive order, agreement, Act of
11 Congress, aboriginal title, the decision in *Winters v.*
12 *United States*, 207 U.S. 564 (1908) (commonly
13 known as the “Winters Doctrine”), or other law; or

14 (6) validate or invalidate any assertion of the
15 existence, nonexistence, or extinguishment of any
16 water right held or Indian water compact entered
17 into by the Fort Peck Tribes or by any other Indian
18 tribe or individual Indian under Federal or State
19 law.

20 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) ASSINIBOINE AND SIOUX RURAL WATER SYS-
22 TEM.—There are authorized to be appropriated—

23 (1) over a period of 10 fiscal years,
24 \$124,000,000 for the planning, design, and con-
25 struction of the Assiniboine and Sioux Rural Water

1 System in accordance with subsections (b), (d), and
2 (e) of section 4; and

3 (2) such sums as are necessary for the oper-
4 ation, maintenance, and replacement of the Assini-
5 boine and Sioux Rural Water System, including
6 power costs of the Western Area Power Administra-
7 tion.

8 (b) DRY PRAIRIE RURAL WATER SYSTEM.—There is
9 authorized to be appropriated, over a period of 10 fiscal
10 years, \$51,000,000 for the planning, design, and construc-
11 tion of the Dry Prairie Rural Water System.

12 (c) COST INDEXING.—The funds authorized to be ap-
13 propriated may be increased or decreased by such amounts
14 as are justified by reason of ordinary fluctuations in devel-
15 opment costs incurred after October 1, 1998, as indicated
16 by engineering cost indices applicable for the type of con-
17 struction involved.

Passed the Senate November 19, 1999.

Attest:

Secretary.

106TH CONGRESS
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To authorize construction of the Fort Peck Reservation Rural Water System in the State of Montana, and for other purposes.