

106TH CONGRESS
1ST SESSION

S. 624

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

IN THE SENATE OF THE UNITED STATES

MARCH 16, 1999

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

A BILL

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”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) there are insufficient water supplies avail-
9 able to residents of the Fort Peck Indian Reserva-

1 tion in the State of Montana, and the water systems
2 that are available do not meet minimum health and
3 safety standards and therefore pose a threat to pub-
4 lic health and safety;

5 (2) the United States has a trust responsibility
6 to ensure that adequate and safe water supplies are
7 available to meet the economic, environmental, water
8 supply, and public health needs of the Fort Peck In-
9 dian Reservation; and

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

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

14 (1) to ensure a safe and adequate municipal,
15 rural, and industrial water supply for the residents
16 of the Fort Peck Indian Reservation in the State of
17 Montana; and

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

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

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

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

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

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

19 (5) PICK-SLOAN.—The term “Pick-Sloan”
20 means the Pick-Sloan Missouri River Basin Program
21 (authorized by section 9 of the Act entitled “An Act
22 authorizing the construction of certain public works
23 on rivers and harbors for flood control, and for other
24 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 entitled “Technical Report
13 for the Fort Peck Reservation Rural Water System” and
14 dated May 1996, as finalized by the report required by
15 subsection (g)(2).

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

18 (1) pumping and treatment facilities located
19 along the Missouri River near Poplar, Montana;

20 (2) pipelines extending from the Missouri River
21 near Poplar, Montana, throughout the Fort Peck In-
22 dian Reservation;

23 (3) facilities to allow for future interconnections
24 to areas outside the Fort Peck Indian Reservation,

1 including the communities within the service area of
2 the Dry Prairie Rural Water System;

3 (4) distribution and treatment facilities to serve
4 the needs of the Fort Peck Indian Reservation,
5 including—

6 (A) public water systems in existence on
7 the date of enactment of this Act that may be
8 purchased, improved, and repaired in accord-
9 ance with the cooperative agreement entered
10 into under subsection (c); and

11 (B) water systems owned by individual
12 tribal members and other residents of the Fort
13 Peck Indian Reservation;

14 (5) appurtenant buildings and access roads;

15 (6) all property and property rights necessary
16 for the facilities described in this subsection;

17 (7) electrical power transmission and distribu-
18 tion facilities necessary for services to Fort Peck
19 Reservation Rural Water System facilities; and

20 (8) such other pipelines, pumping plants, and
21 facilities as the Secretary determines to be appro-
22 priate to meet the water supply, economic, public
23 health, and environmental needs of the Fort Peck
24 Indian Reservation, including water storage tanks,
25 water lines, and other facilities for the Fort Peck

1 tribes and the villages, towns, and municipalities in
2 the Fort Peck Indian Reservation.

3 (c) COOPERATIVE AGREEMENT.—

4 (1) IN GENERAL.—The Secretary shall enter
5 into a cooperative agreement with the Fort Peck
6 Tribal Executive Board for planning, designing, con-
7 structing, operating, maintaining, and replacing the
8 Assiniboine and Sioux Rural Water System.

9 (2) MANDATORY PROVISIONS.—The cooperative
10 agreement under paragraph (1) shall specify, in a
11 manner that is acceptable to the Secretary and the
12 Fort Peck Tribal Executive Board—

13 (A) the responsibilities of each party to the
14 agreement for—

15 (i) needs assessment, feasibility, and
16 environmental studies;

17 (ii) engineering and design;

18 (iii) construction;

19 (iv) water conservation measures; and

20 (v) administration of contracts relat-
21 ing to performance of the activities de-
22 scribed in clauses (i) through (iv);

23 (B) the procedures and requirements for
24 approval and acceptance of the design and con-

1 struction and for carrying out other activities
2 described in subparagraph (A); and

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

5 (3) OPTIONAL PROVISIONS.—The cooperative
6 agreement under paragraph (1) may include provi-
7 sions relating to the purchase, improvement, and re-
8 pair of water systems in existence on the date of en-
9 actment of this Act, including systems owned by in-
10 dividual tribal members and other residents of the
11 Fort Peck Indian Reservation.

12 (4) TERMINATION.—The Secretary may termi-
13 nate a cooperative agreement under paragraph (1) if
14 the Secretary determines that—

15 (A) the quality of construction does not
16 meet all standards established for similar facili-
17 ties constructed by the Secretary; or

18 (B) the operation and maintenance of the
19 Assiniboine and Sioux Rural Water System
20 does not meet conditions acceptable to the Sec-
21 retary that are adequate to fulfill the obliga-
22 tions of the United States to the Fort Peck
23 tribes.

24 (5) TRANSFER.—On execution of a cooperative
25 agreement under paragraph (1), in accordance with

1 the cooperative agreement, the Secretary may trans-
2 fer to the Fort Peck tribes, on a nonreimbursable
3 basis, funds made available for the Assiniboine and
4 Sioux Rural Water System under section 9.

5 (d) SERVICE AREA.—The service area of the Assini-
6 boine and Sioux Rural Water System shall be the area
7 within the boundaries of the Fort Peck Indian Reserva-
8 tion.

9 (e) CONSTRUCTION REQUIREMENTS.—The compo-
10 nents of the Assiniboine and Sioux Rural Water System
11 shall be planned and constructed to a size that is sufficient
12 to meet the municipal, rural, and industrial water supply
13 requirements of the service area of the Fort Peck Reserva-
14 tion Rural Water System.

15 (f) TITLE TO ASSINIBOINE AND SIOUX RURAL
16 WATER SYSTEM.—Title to the Assiniboine and Sioux
17 Rural Water System shall be held in trust by the United
18 States for the Fort Peck tribes and shall not be trans-
19 ferred unless a transfer is authorized by an Act of Con-
20 gress enacted after the date of enactment of this Act.

21 (g) LIMITATION ON AVAILABILITY OF CONSTRUC-
22 TION FUNDS.—The Secretary shall not obligate funds for
23 construction of the Assiniboine and Sioux Rural Water
24 System until—

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

5 (2) on or after the date that is 90 days after
6 the date of submission of a final engineering report
7 to Congress; and

8 (3) the Secretary publishes a written finding
9 that the water conservation plan developed under
10 section 7 includes prudent and reasonable water con-
11 servation measures for the operation of the Assini-
12 boine and Sioux Rural Water System that have been
13 shown to be economically and financially feasible.

14 (h) TECHNICAL ASSISTANCE.—The Secretary shall
15 provide such technical assistance as is necessary to enable
16 the Fort Peck tribes to plan, design, construct, operate,
17 maintain, and replace the Assiniboine and Sioux Rural
18 Water System, including operation and management
19 training.

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

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

2 (a) **PLANNING AND CONSTRUCTION.**—

3 (1) **AUTHORIZATION.**—The Secretary shall
4 enter into a cooperative agreement with Dry Prairie
5 Rural Water Association Incorporated (or any suc-
6 cessor non-Federal entity) to provide Federal funds
7 for the planning, design, and construction of the Dry
8 Prairie Rural Water System in Roosevelt, Sheridan,
9 Daniels, and Valley Counties, Montana, outside the
10 Fort Peck Indian Reservation.

11 (2) **USE OF FEDERAL FUNDS.**—

12 (A) **FEDERAL SHARE.**—The Federal share
13 of the cost of planning, design, and construction
14 of the Dry Prairie Rural Water System shall be
15 not more than 76 percent.

16 (B) **COOPERATIVE AGREEMENTS.**—Federal
17 funds made available to carry out this section
18 may be obligated and expended only through a
19 cooperative agreement entered into under sub-
20 section (c).

21 (b) **COMPONENTS.**—The components of the Dry Prai-
22 rie Rural Water System facilities on which Federal funds
23 may be obligated and expended under this section shall
24 include—

25 (1) storage, pumping, interconnection, and
26 pipeline facilities;

1 (2) appurtenant buildings and access roads;

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

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

7 (5) planning and design services for all facili-
8 ties; and

9 (6) other facilities and services customary to
10 the development of rural water distribution systems
11 in the State, including supplemental water intake,
12 pumping, and treatment facilities.

13 (c) COOPERATIVE AGREEMENT.—

14 (1) IN GENERAL.—The Secretary, with the con-
15 currence of the Assiniboine and Sioux Rural Water
16 System Board, shall enter into a cooperative agree-
17 ment with Dry Prairie Rural Water Association In-
18 corporated to provide Federal assistance for the
19 planning, design, and construction of the Dry Prai-
20 rie Rural Water System.

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

1 (A) the responsibilities of each party to the
2 agreement for—

3 (i) needs assessment, feasibility, and
4 environmental studies;

5 (ii) engineering and design;

6 (iii) construction;

7 (iv) water conservation measures; and

8 (v) administration of contracts relat-
9 ing to performance of the activities de-
10 scribed in clauses (i) through (iv);

11 (B) the procedures and requirements for
12 approval and acceptance of the design and con-
13 struction and for carrying out other activities
14 described in subparagraph (A); and

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

17 (d) SERVICE AREA.—

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

21 (A) north of the Missouri River;

22 (B) south of the border between the
23 United States and Canada;

24 (C) west of the border between the States
25 of North Dakota and Montana; and

1 (D) east of the western line of range 39
2 east.

3 (2) FORT PECK INDIAN RESERVATION.—The
4 service area shall not include the area inside the
5 Fort Peck Indian Reservation.

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

9 (1) the requirements of the National Environ-
10 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
11 are met with respect to the Dry Prairie Rural Water
12 System;

13 (2) on or after the date that is 90 days after
14 the date of submission of a final engineering report
15 to Congress; and

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

22 (f) INTERCONNECTION OF FACILITIES.—

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

1 (A) interconnect the Dry Prairie Rural
2 Water System with the Assiniboine and Sioux
3 Rural Water System; and

4 (B) provide for the delivery of water to the
5 Dry Prairie Rural Water System from the Mis-
6 souri River through the Assiniboine and Sioux
7 Rural Water System.

8 (2) CHARGES.—The Secretary shall not charge
9 for the corpus of the water delivered.

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

11 (1) IN GENERAL.—The operation and mainte-
12 nance expenses associated with water deliveries from
13 the Assiniboine and Sioux Rural Water System to
14 the Dry Prairie Rural Water System shall not be a
15 Federal responsibility and shall be borne by the Dry
16 Prairie Rural Water System.

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

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

22 (a) IN GENERAL.—The Fort Peck Reservation Rural
23 Water System shall use power from the Pick-Sloan East-
24 ern Division to start up and operate the Assiniboine and

1 Sioux Rural Water System and the Dry Prairie Rural
2 Water System.

3 (b) RESERVATION OF POWER.—

4 (1) IRRIGATION SEASON.—During the irrigation
5 season, Pick-Sloan Eastern Division power identified
6 for future project use pumping shall be reserved for
7 and made available for the purpose authorized by
8 subsection (a).

9 (2) NONIRRIGATION SEASON.—During the non-
10 irrigation season, Pick-Sloan Eastern Division pref-
11 erence power shall used to the extent that the power
12 is available.

13 (c) RATE.—The rate for project use power made
14 available under subsection (b) shall be—

15 (1) during the irrigation season, the project use
16 pumping power rate; and

17 (2) during the non-irrigation season, the whole-
18 sale firm power rate.

19 (d) ADDITIONAL POWER.—If power in addition to
20 that made available under subsection (b) is required to
21 meet the pumping requirements of the service area of the
22 Fort Peck Reservation Rural Water System described in
23 sections 4 and 5, the Administrator of the Western Area
24 Power Administration may purchase the necessary addi-

1 tional power under such terms and conditions as the Ad-
2 ministrator determines to be appropriate.

3 (e) RECOVERY OF EXPENSES.—

4 (1) ASSINIBOINE AND SIOUX RURAL WATER
5 SYSTEM.—In the case of the Assiniboine and Sioux
6 Rural Water System, expenses associated with power
7 purchases under subsections (a) and (d) shall be re-
8 covered through a separate power charge, sufficient
9 to cover expenses, applied to the Assiniboine and
10 Sioux Rural Water System's operation and mainte-
11 nance 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) and (d) shall be recovered through a
16 separate power charge, sufficient to cover expenses,
17 to be paid fully by the Dry Prairie Rural Water Sys-
18 tem.

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) FORT PECK RESERVATION RURAL WATER SYS-
22 TEM.—There are authorized to be appropriated—

23 (1) over a period of 5 fiscal years,
24 \$103,000,000 for the planning, design, and con-

1 construction of the Assiniboine and Sioux Rural Water
2 System; and

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

7 (b) DRY PRAIRIE RURAL WATER SYSTEM.—There is
8 authorized to be appropriated \$60,000,000 for the plan-
9 ning, design, and construction of the Dry Prairie Rural
10 Water System.

11 (c) COST INDEXING.—The funds authorized to be ap-
12 propriated may be increased or decreased by such amounts
13 as are justified by reason of ordinary fluctuations in devel-
14 opment costs incurred after January 1, 1996, as indicated
15 by engineering cost indices applicable for the type of con-
16 struction involved.

○