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SENATE

{ REPORT  
106-203

### DAKOTA WATER RESOURCES ACT OF 1999

NOVEMBER 1, 1999.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### REPORT

[To accompany S. 623]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 623) to amend Public Law 89-108 to increase authorization levels for State and Indian tribal, municipal, rural, and industrial water supplies, to meet current and future water quantity and quality needs of the Red River Valley, to deauthorize certain project features and irrigation service areas, to enhance natural resources and fish and wildlife habitat, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 4, lines 7 through 11, strike paragraph (3) in its entirety and insert in lieu thereof the following:

(3) OPERATION AND MAINTENANCE COSTS.—Except as otherwise provided in this Act or Reclamation Law—

(A) The Secretary shall be responsible for the costs of operation and maintenance of the proportionate share of unit facilities in existence on the date of enactment of the Dakota Water Resources Act of 1999 attributable to the capacity of the facilities (including mitigation facilities) that remain unused;

(B) The State of North Dakota shall be responsible for costs of operation and maintenance of the proportionate share of existing unit facilities that are used and shall be responsible for the full costs of operation and maintenance of any facility con-

structed after the date of enactment of the Dakota Water Resources Act of 1999;

(C) The State of North Dakota shall be responsible for the costs of providing energy to authorized unit facilities.

2. On page 4, line 19 through page 5, line 6, strike paragraph (h)(1) in its entirety and insert in lieu thereof the following:

(1) DELIVERY OF WATER INTO THE HUDSON BAY BASIN.—Prior to construction of any water systems authorized under this Act to deliver Missouri River water into the Hudson Bay basin, the Secretary, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, must determine that adequate treatment can be provided to meet the requirements of the Treaty between the United States and Great Britain relating to Boundary Waters Between the United States and Canada, signed at Washington, January 11, 1909 (26 Stat. 2448; TS 548) (commonly known as the Boundary Waters Treaty of 1909).

3. On page 11, lines 7 through 12, strike paragraph (5) in its entirety and insert in lieu thereof the following:

(5) PRINCIPAL SUPPLY WORKS.—The Secretary shall maintain the Snake Creek Pumping Plant, New Rockford Canal, and McClusky Canal features of the principal supply works. As appropriate, the Secretary shall rehabilitate or complete such features consistent with the purposes of this Act. Subject to the provisions of sections (8)(c) and (8)(d)(1) of this Act, the Secretary shall select a preferred alternative to implement the Dakota Water Resources Act of 1999. In making this selection one of the alternatives the Secretary shall consider is whether to connect the principal supply works in existence on the date of enactment.

4. On page 12, line 9, insert “economic,” before “financial”.

5. On page 14, line 16, insert after the period the following: “Proceeds from loan repayments and any interest thereon shall be treated as Federal funds.”

6. On page 22, line 11, strike “4739)—” and insert in lieu thereof “4739) is amended—”.

7. On page 24, line 11, strike “\$300,000,000” and insert in lieu thereof, “\$200,000,000”.

8. On page 27, line 19, strike “\$300,000,000” and insert in lieu thereof, “\$200,000,000”.

9. On page 28, lines 3 through 7, strike subsection (f) in its entirety.

10. On page 29, lines 14 through 21, strike paragraph (C) in its entirety.

#### PURPOSE

As ordered reported, S. 623 amends Public Law 89–109, relating to the Garrison Diversion Project in North Dakota, to increase au-

thorized funding levels for State and Indian tribal, municipal, rural, and industrial water supplies; to meet current and future water quantity and quality needs of the Red River Valley; to deauthorize certain project features and irrigation service areas; to enhance natural resources and fish and wildlife habitat; and to assist the United States in meeting its obligations under the Boundary Waters Treaty of 1909.

S. 623 authorizes a multipurpose Federally assisted water project to meet the water needs of North Dakota and to compensate the State and tribes for the loss of 550,000 acres under the Garrison and Oahe Reservoirs, but changes the focus of water development from large-scale irrigation to the delivery of municipal, rural, and industrial water to communities and the four Indian reservations located in North Dakota. S. 623 will allow for the completion of the Garrison Diversion Project, while enhancing wildlife habitat and water conservation in North Dakota.

#### BACKGROUND AND NEED

The Pick-Sloan Missouri River Flood Control Act of 1944 authorized the construction of six mainstem dams and reservoirs and numerous reclamation projects along the Missouri River and its tributaries. In North Dakota, the plan included the Garrison Dam and Reservoir. While providing flood control and water storage benefits for downstream states, the Dams inundated approximately 550,000 acres of farm and tribal lands in North Dakota under Lake Sakakawea (the reservoir behind Garrison Dam) and Lake Oahe. As part of the Pick-Sloan compromise, the Bureau of Reclamation would provide irrigation for over 1.2 million acres of land in central and western North Dakota, originally from the Fort Peck reservoir, and later from Lake Sakakawea as compensation to the State and the tribes for the losses incurred.

For various reasons, however, Congressional authorization for construction of the Garrison Diversion Project did not occur until 1965, when Congress enacted the 250,000 acre Garrison Diversion Unit as the initial stage of a project encompassing over a million acres. Construction on the project began in 1968. Although major sections of the main water storage and delivery facilities were built shortly after the 1965 authorization, the project became embroiled in controversy over environmental and cost issues, and much of the Garrison project was never completed.

During the 1970's, additional concerns were raised from opponents of irrigated agriculture, environmentalists, and the Canadian government about water flowing from the Missouri Basin into the Hudson Bay basin. Progress slowed during the Carter Administration as part of its general opposition to the Reclamation program. In 1984, the Reagan Administration halted construction and directed the Secretary of the Interior to establish a review commission to reformulate the project.

In addition to the concerns noted above, it became apparent that the large-scale irrigation purpose for which the project was originally intended no longer addressed the contemporary water needs of North Dakota, as water use priorities within the State had changed over time from irrigation to primarily municipal and industrial uses.

In 1984 Congress established a special commission to examine the water needs of North Dakota. Its charge was to recommend how to reformulate the existing project in order to meet the contemporary water needs of the State. In 1986 Congress enacted the Garrison Diversion Unit Reformulation Act (Public Law 99-294) to amend the 1965 authorization and to implement the commission's recommendations, unless otherwise specified.

The amended Act reduced the irrigation component to 130,940 acres and gave greater emphasis to municipal, rural, and industrial (MR&I) water needs. The reformulated project provided a comprehensive MR&I program for 130 towns and cities, rural areas, and three Indian reservations. The amended Act also minimized environmental impacts associated with construction and operation of the reformulated project and assisted the United States in meeting its responsibilities under the Boundary Waters Treaty of 1909 by authorizing a water treatment facility to treat Missouri River Water transferred to the Hudson Bay drainage via the Sheyenne River and the Red River to Fargo and Grand Forks. Moreover, the amended Act provided for more timely repayment of project costs, the preservation of existing rights of the State of North Dakota to use water from the Missouri River, and the offset of inundated lands resulting from the construction of the Garrison Dam with a multi-purpose water development project.

As a result of the passage of the 1986 Reformulation Act, a Wetlands Trust was established to provide funding for the protection of the wetland resources in the State of North Dakota. Funding for the Trust was to be a combination of State and Federal funds. The authorized Federal funding has been fully appropriated, and the State funding is in accordance with agreements reached between the Secretary and the State. The Lonetree Wildlife Management Area was established subject to the possible reauthorization of the area as a reservoir site. An additional enhancement area, known as the Kraft Slough project, has been funded but not all the land acquisition has been completed as yet; however, nearly 90 percent of the actual wetlands associated with the project have been acquired. Development of this enhancement to the wildlife resources of the State has been fully funded. Non-refuge mitigation has been fully funded under revised criteria and now stands at 140 percent of actual need. Refuge mitigation is well underway and is expected to be finished within the next few years.

Passage of the 1986 Reformulation Act did not lead to completion of the project. In 1990, a task force created by then-Secretary of Interior Manuel Lujan recommended that all irrigation and M&I facilities for Indian tribes be completed, but there be no further funding for non-tribal project features and related supply works. This policy has continued under the Clinton Administration.

President Bush did not request any funds for the project in his 1991 budget because of concerns with the economic viability of the irrigation component of the project. Funding has been appropriated annually for the MR&I program, for environmental mitigation purposes, for the Wetlands Trust, and for operation and maintenance and other costs of the unit. However, many of the features authorized by the 1986 Reformulation Act, including the Sykeston Canal and James River Feeder Canal, were not constructed. Additionally,

except for the 5,000-acre Oakes Test Area, none of the authorized irrigation development has been constructed because of concerns about the ability of project beneficiaries to meet even the costs of operating and maintaining the facilities.

A 1990 Task Group, appointed by the Secretary of the Interior, recommended that funding continue to be provided only to those features in the reformulated project that were consistent with the contemporary water needs of the state, with national priorities, and the history of the project—essentially irrigation and MR&I facilities for Indian tribes. The present Administration has continued the policy recommended by the 1990 Task Group report, with respect to project funding. In 1993, the Bureau of Reclamation participated in a “collaborative process” with the State of North Dakota to again define a new direction for the project. That process identified certain areas for which studies were initiated, focusing on MR&I water development needs as outlined by North Dakota as the priority for the State.

#### *Transboundary issues*

In 1975 the Canadian government, particularly the Province of Manitoba, raised several concerns about the potential environmental impact of the project that was authorized in the 1965 legislation. The Canadian government alleged a potential violation of the 1909 Boundary Waters Treaty between the United States and Great Britain. The two countries agreed to refer the issues to the International Joint Commission (IJC), which was established by the Boundary Waters Treaty. The IJC issued its findings and recommendations in a report dated August 12, 1977, “Transboundary Implications of the Garrison Diversion Unit.”

Incorporating the recommendations of the IJC, the 1986 Reformulation Act included authorization for a water treatment plant to treat any water transferred into the Hudson Bay drainage. It provided protective language providing that the Secretary of the Interior must determine compliance before water is delivered to the Hudson Bay drainage. It also barred any return flows from irrigation into the Hudson Bay drainage. Canada praised the plan in a Diplomatic Note and declared that the project “does not pose threats to Canadian waters\* \* \*” The two countries continued to review the plans for the project through a Joint Technical Committee established for that purpose by the two countries. As a result of those deliberations several design changes occurred and tests were run to assure the parties that all reasonable steps were taken to avoid harm and to comply with the Boundary Waters Treaty.

In addition, the Bureau of Reclamation, the State of North Dakota and the Garrison Diversion Conservancy District provided funding for additional research and examination into the potential injury to Canadian waters if Missouri River water was transferred for use in the North Dakota portion of the Hudson Bay drainage. The research was administered by the North Dakota Water Research Institute and involved researchers and scientists from both countries. A compendium of the study results will soon be published.

S. 623 goes one step further and permanently deauthorizes the Lonetree Reservoir, a primary feature of the project, which has been a major concern of the Canadian government and conservation interests in the United States, and converts it into a wildlife enhancement feature.

As ordered reported, S. 623 will allow for the completion of a much-reduced irrigation component, while addressing many of the concerns that were raised about previous project authorizations, including project costs, environmental issues, and project feasibility requirements. The bill reflects lengthy negotiations in North Dakota among the State, water users, Indian tribes, and local environmentalists and as amended, incorporates an agreement between the State, the North Dakota Congressional delegation, and the Administration.

#### LEGISLATIVE HISTORY

S. 623 was introduced by Senators Conrad and Dorgan on March 16, 1999. A hearing was held in the Water and Power Subcommittee on May 27, 1999.

At the business meeting on September 22, 1999, the Committee on Energy and Natural Resources ordered S. 623 favorably reported, as amended.

#### COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session of September 22, 1999, by a majority voice vote of a quorum present, recommends that the Senate pass S. 623, if amended as described herein. Senator Bunning asked to be recorded in opposition to the measure.

#### COMMITTEE AMENDMENTS

During the consideration of S. 623, the Committee adopted a series of amendments. Explanations of those amendments follow:

The first amendment provides for clearer and more detailed cost-sharing of operation and maintenance costs between the State of North Dakota and the Bureau of Reclamation. The State costs represent the proportionate share of use for existing facilities and for all new facilities. The State is also responsible for the costs of providing energy to authorized facilities.

The second amendment regarding the Hudson Bay Basin retains the requirement in S. 623 and current law that any inter-basin transfers of water from the Missouri River Basin to the Hudson Bay Basin comply with the Boundary Waters Treaty of 1909. The amendment further requires that the Secretary of the Interior (in consultation with the Secretary of State and the Administrator of EPA) determine such compliance before construction of any inter-basin conveyance. The underlying bill requires such action before the operation of the system. The effect is to provide earlier assurances to Canada of U.S. compliance with the Treaty.

The third amendment regarding the principal supply works details what facilities the Secretary shall maintain and clarifies that any rehabilitation or new construction of facilities be carried out consistent with other provisions of the bill. Those provisions de-

scribe the process of selecting water supply features for the Red River Valley. The amendment also sets out that one alternative feature to be considered is whether to connect the supply works in existence on the date of enactment.

The fourth amendment adds “economic” to the feasibility tests for irrigation projects for which a report by the Secretary of the Interior is required under section 5(e). The requirements in the underlying bill are for “financial and engineering” feasibility.

The fifth amendment clarifies how loan proceeds shall be treated. The underlying bill authorizes the State to use MR&I funds to set up a revolving loan program. The amendment specifically ensures that proceeds from MR&I loan repayments and related interest earnings will be treated as federal funds. In other words, when loans are repaid, the requirements of law pertaining to the use of federal funds will continue to apply to any new loans.

The sixth amendment is a technical correction.

The seventh amendment reduces the \$300 million authorization in S. 623 to \$200 million for the State’s MR&I program in the Dakota Water Resources Act.

The eighth amendment is a conforming amendment and applies the customary indexing of accounts to the reduced State MR&I authority of \$200 million rather than the \$300 million in the underlying bill.

The ninth amendment strikes the authorization of \$40 million for construction of a bridge to replace the existing structure across the Missouri River on the Fort Berthold Reservation.

The tenth amendment removes the link between construction of the selected Red River Supply System and the funding for the Resources Trust Fund. The authorization for the Trust is no longer contingent upon construction of unrelated features.

## SECTION-BY-SECTION ANALYSIS

### SEC. 1. SHORT TITLE

Section 1 contains the short title of the bill, the “Dakota Water Resources Act of 1999”.

### SEC. 2. PURPOSES AND AUTHORIZATION

Section 2 amends section 1 of Public Law 89–108, the authorizing legislation for the Garrison Diversion Project in North Dakota. As amended, this section sets forth the purposes of the Act, which are to meet the water needs of North Dakota and the four Indian reservations located within the State by development of a multi-purpose water project. The project would develop MR&I water systems; authorize reduced irrigation development; enhance fish and wildlife habitat; promote ground water recharge and augmented stream flows; enhance recreation; assure appropriate repayment of Federal funds; and assure compliance with environmental laws and the Boundary Water Treaty of 1909.

This section makes fish and wildlife enhancement a specific project purpose. It also strikes language from the 1986 Garrison Diversion Unit Reformulation Act directing the Secretary of the Interior (the “Secretary”) to construct all supply works to the capacity identified in the 1984 Commission Report. This section also author-

izes the Secretary to enter into the necessary agreements with the State to carry out the Act.

This section requires the State of North Dakota to repay the Federal government for the proportionate share of the cost of features constructed prior to the Dakota Water Resources Act (DWRA) that are used. This section also specifies how operation and maintenance costs will be divided between the State and Federal government. For existing features, the Secretary shall be responsible for the proportionate share of O&M costs attributable to unused capacity of project features. The State shall be responsible for the proportionate share of O&M costs of existing features that are used, for O&M on all features constructed after the date of enactment of the DWRA, and for the full costs of providing energy to unit facilities.

Finally, this section specifies that the Secretary of Interior, after consulting with the Secretary of State and Administrator of the Environmental Protection Agency, must determine that the Boundary Waters Treaty with Canada will not be violated prior to construction of project features to deliver water from the Missouri River into the Hudson Bay drainage basin. The costs of constructing water treatment and related facilities to meeting the requirements of the Boundary Waters Treaty continue to be nonreimbursable.

#### SEC. 3. FISH AND WILDLIFE

Section 3 amends section 2 of Public Law 89-108 to require all fish and wildlife enhancement costs for waterfowl refuges, waterfowl production areas, and wildlife conservation areas continue to be a federal responsibility. Further, the bill requires the Secretary to consult with the State of North Dakota before approving recreation areas, and adds “services in kind” as an acceptable form of repayment for recreation areas.

This section also moves existing language, that deauthorizes the Taayer Reservoir and authorized the Kraft and Pickell Slough as a component of the National Wildlife Refuge System, from section 8 of current law to this section. This section also clarifies that the Bureau of Reclamation is authorized to acquire land in the Kraft and Pickell Slough areas through donation or exchange of land.

Finally, this section deauthorizes the Lonetree Dam and Reservoir, and designates the lands as a wildlife conservation area to provide additional wildlife habitat. The intent of the term “wildlife conservation area” is that the area not become part of the National Wildlife Refuge System, but that the State of North Dakota would continue to manage it as a State Wildlife Management Area, the costs of which would be paid by the Secretary. If the feature selected under section 8 to meet the water needs of the Red River Valley includes a buried pipeline between the McClusky Canal and New Rockford Canal, the bill authorizes the use of the wildlife conservation area and Sheyenne Lake National Wildlife Refuge for a route for the pipeline.

#### SEC. 4. INTEREST CALCULATION

Section 4 amends section 4 of Public Law 89-108 to provide that interest on repayable capital costs shall only be calculated until such time as the feature is substantially complete.



## SEC. 5. IRRIGATION FACILITIES

Section 5 amends section 5 of Public Law 89–108. The bill retains authorization for the existing 5,000-acre Oakes Test area. In addition, the bill authorizes the Secretary to develop irrigation on 13,700 acres at Turtle Lake, 10,000 acres at McClusky Canal, and 1,200 acres of canal-side irrigation along the New Rockford Canal provided the full investment costs are repaid by the users at New Rockford (without “aid-to-irrigation”). Also, the bill authorizes development of irrigation on 28,000 undesignated acres in the Missouri River basin. No other irrigation is authorized. This section also authorizes irrigation units under this bill to receive project pumping power.

Prior to development of any projects in the undesignated 28,000 acres, the Secretary must report to Congress on the costs and benefits of the proposed irrigation and the economic, financial and engineering feasibility of the proposed unit. The Committee intends that the Secretary’s investigation and report should be conducted expeditiously and without unnecessarily formal or costly reviews. Compliance with the National Environmental Policy Act is also required before developing any projects. This section specifically prohibits any irrigation development authorized under the bill in the Hudson Bay/Devils Lake drainage basin.

This section retains irrigation authorization on the Fort Berthold Indian Reservation (7,700 acres at Lucky Mound and 7,500 acres at Upper Six Mile Creek, but allows for other areas of equal acreage if approved by the Tribe and Secretary) and on the Standing Rock Sioux Reservation (2,380 acres).

Finally, this section directs the Secretary to maintain the Snake Creek Pumping Plant, New Rockford Canal, and McClusky Canal, and to rehabilitate or complete those features as appropriate. In selecting the preferred alternative under section 8, the Secretary is directed to consider connecting the existing supply works as an alternative to meet the comprehensive water quality and quantity needs of the Red River Valley.

## SEC. 6. POWER

Section 6 amends section 6 of Public Law 89–108 to harmonize the repayment required by power users of power from the Garrison Dam with how other power users repay capital costs for other power generating facilities. Additionally, this section specifically prohibits any increase in power rates for Pick-Sloan Program customers that would result from any provisions in the Dakota Water Resources Act.

## SEC. 7. MUNICIPAL, RURAL, AND INDUSTRIAL WATER SERVICE

Section 7 amends section 7 of Public Law 89–108. This section maintains the 25 percent non-Federal cost-share for MR&I projects developed under this section, and allows the State to credit amounts that exceed the 25 percent minimum toward future cost-shares for MR&I development projects. This section also permits the State to make loans and to grants, and requires that proceeds from repaid loans be recycled back only into the MR&I grant or loan program. It also includes a provision clarifying that any loans

repaid to the state under the revolving loan program will continue to be treated as Federal funds for purposes of compliance with applicable Federal laws. The Southwest Pipeline Project, Northwest Area Water Supply Project, Red River Valley Water Supply Project, and other MR&I systems in the State are eligible.

Section 7 also authorizes the State to develop a water conservation program, and calls on the Secretary and State to establish water conservation goals. If the State meets the goals of the program, the 25 percent on-federal cost share for MR&I systems is reduced to 24.5 percent. The section also makes the cost of features previously constructed on the Missouri River by the Army Corps of Engineers nonreimbursable. Finally, it maintains the authority for the Secretary to develop MR&I systems on the four Indian reservations located in North Dakota, and adds adjacent areas to that authorization to permit water systems to serve tribal members living outside the reservation boundaries.

#### SEC. 8. SPECIFIC FEATURES

Section 8 amends section 8 of Public Law 89–108 by deleting the existing authority in section 8 to construct the Sykeston Canal, which was to be a connecting link between the existing McClusky and New Rockford Canals to deliver water from the Missouri River to the Red River Valley. Instead, the DWRA authorizes a Red river Valley Water Supply project and establishes a formal process of evaluating the water quantity and quality needs of the Red river Valley and the options for meeting those needs, and makes the Secretary responsible for the decision on which feature (or features) to construct to meet those needs. The Secretary and the State are to be partners in developing these studies.

The Secretary and the State of North Dakota are required to complete a draft environmental impact statement within one year of the date of enactment of the DWRA (or, if unable to meet that deadline, to report to Congress on the status of the DEIS). The Secretary and the State are required to submit a final EIS within one year of filing the DEIS (or, if unable to meet that deadline, to report to Congress on the status of the FEIS). The Secretary, in consultation with the State of North Dakota, is then authorized to select a feature (or features) to meet the comprehensive water development needs of the Red River Valley, after reviewing the water needs report, the report on options for meeting those needs, and the EIS, and after consulting with the State (which will coordinate with affected local communities). Within 180 days of the Secretary signing the Record of Decision, the Secretary is required to enter an agreement with the State to construct the feature (or features) selected. If the feature selected includes delivering Missouri River water to the Red river Valley, the Sheyenne River water supply and release feature remains authorized to deliver 10 cfs of water (or another amount determined by the reports in this section) to the cities of Fargo and Grand forks.

#### SEC. 9. OAKES TEST AREA TITLE TRANSFER

Section 9 amends section 9 of Public Law 89–108. This section deletes existing language relating to “surplus crop production charges” because changes to the Farm Program contained in the

1996 Farm Bill made the existing language obsolete. The new language authorizes the Secretary to transfer the Oakes Test Area (OTA) to the State not later than 2 years after signing the Record of Decision required under Section 8 (relating to meeting the needs of the Red River Valley), under terms that the Secretary believes would protect the public interest. If the Secretary and the State do not reach an agreement for a transfer by the time limit, the Secretary is directed to dispose of the OTA in accordance with the Federal Property and Administrative Services Act of 1949.

#### SEC. 10. AUTHORIZATION OF APPROPRIATIONS

Section 10 amends section 10 of Public Law 89–108 to reduce the authorization ceiling for irrigation and related facilities from \$270,395,000 to \$164,000,000. It also authorizes \$200 million for the Red River Valley Water supply project, to be used for the project feature (or features) selected by the Secretary pursuant to section 8. This project is reimbursable.

Section 10 authorizes an additional \$200 million for statewide MR&I systems authorized under section 7, and an additional \$200 million for MR&I systems on the four Indian reservations located within North Dakota (allocated as follows: \$30 million for Fort Totten Reservation, \$70 million for Fort Berthold, \$80 million for Standing Rock, and \$20 million for Turtle Mountain).

This section authorizes an additional \$6.5 million for recreation projects, and permits up to \$1.5 million of the amount to develop a Wetlands Interpretive Center in North Dakota. The bill also authorizes an additional \$25 million for the Natural Resources Trust (authorized in section 11). It also authorizes creation of a separate account (after the features selected under section 8 are operational) within the Trust for operation and maintenance costs of mitigation and enhancement lands, but does not authorize appropriations for that account.

Finally, section 10 includes a provision to index certain construction costs for inflation from the date of enactment of the DWRA, to reflect normal fluctuations in construction costs consistent with current Bureau of Reclamation practices. The section also includes a provision which prohibits counting funds spent since 1986 on operations and maintenance against the construction authorization ceilings in this section.

#### SEC. 11. NATURAL RESOURCES TRUST

Section 11 amends section 11 of Public Law 89–108. The name of the current Wetlands Trust is changed to the Natural Resources Trust. In addition, the section establishes that the Trust is to be operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat, grassland conservation and riparian areas in the State of North Dakota. This section authorizes the Trust, in addition to its existing authorities, to fund incentives for conservation practices by landowners.

Section 11 also establishes a schedule for annual appropriations for the Trust determined by a formula at 5 percent of the annual funds appropriated for the Statewide MR&I program and the Red River Valley Water Supply project.

## COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate report had not been received at the time the report was filed. When the report becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

## REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 623. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 623, as ordered reported.

## EXECUTIVE COMMUNICATIONS

On April 21, 1999, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 623. These reports had not been received at the time the report on S. 623 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF PATRICIA J. BENEKE, ASSISTANT SECRETARY  
FOR WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR

My name is Patricia Beneke. I am Assistant Secretary for Water and Science within the U.S. Department of the Interior. The Bureau of Reclamation is one of the bureaus that I oversee. I am pleased to provide the Administration's testimony on S. 623, the Dakota Water Resources Act of 1999.

Mr. Chairman, S. 623 would alter the Garrison Diversion Unit of the Pick Sloan Missouri Basin Program as currently authorized to increase the funding authorization levels for State and Indian tribal, municipal, rural, and industrial water supplies, to meet current and future water quantity and quality needs of the Red River Valley, to reauthorize certain project features and irrigation service areas, to enhance natural resources and fish and wildlife habitat, and for other purposes.

First, I would like to express my appreciation to the North Dakota delegation for their continued willingness to work with the Bureau of Reclamation and the Administration on these important matters. In the past several years, a great deal of progress has been made on a number of longstanding and extremely difficult issues. The delega-

tion, as well as the North Dakota Governor's office, State legislative leaders, the State Engineer, the Conservancy District and others have worked hard along with the Administration, Reclamation and other stakeholders to find solutions. The Administration supports many elements of the bill as introduced.

Since the bill was introduced, the Administration has had many hours of discussions with the North Dakota delegation working to address the significant issues that are associated with this legislation.

We believe we have reached agreement on nearly all of these issues. If the bill is amended to address these issues as set out below, the Administration would be able to support this legislation.

#### *Background*

Mr. Chairman, the Garrison Diversion Unit (GDU) has had a long history. I will not go into great detail, but there are several things that are important to note in order to provide context for consideration of this legislation and for the issues associated with it.

The Garrison Diversion Unit in North Dakota, is part of the Pick Sloan Missouri Basin Program (PSMBP) which was originally authorized as part of the Flood Control Act of 1944. Originally known as the Missouri-Souris project, the authorization envisioned irrigation development of 1,275,000 acres in the state of North Dakota.

In 1957, the Bureau of Reclamation completed the feasibility report on the Garrison Unit of the PSMBP. In that report, submitted to Congress, Reclamation recommended the development of 1,007,000 acres of irrigation and in 1965, P.L. 98-108 authorized construction of 250,000 acres as the initial stage of the project.

Over the next several years, it became increasingly evident that the level of development envisioned in the 1965 Act raised environmental and economic concerns. Concerns were also raised that the Act might result in violations of the International Boundary Water Treaty of 1990 with Canada. Consequently, in 1984, P.L. 98-360 directed the Secretary of the Interior to appoint a commission to examine the water supply needs in North Dakota and to make recommendations on how to reformulate the project.

In December 1984, the Commission issued its final report which included the following major recommendations: (1) Reduce irrigation development to 130,940 acres of which none would be located in the Hudsons Bay Drainage and 17,580 of which would be developed on two Indian Reservations that were most impacted by the initial development; (2) Develop Municipal, Rural and Industrial (MR&I) water service for as many as 130 towns and rural areas, and three Reservations in the State; (3) Develop a water treatment facility to provide MR&I water to Fargo and Grand Forks; (4) Mitigate impacts to fish and wildlife, and (5) Develop recreational sites.

In 1986, Congress passed the Garrison Diversion Unit Reformulation Act of 1986 (P.L. 99-294) which generally authorized the recommendations of the GDU Commission's final report.

In 1990, The Department of the Interior's Office of the Inspector General completed a review (OIG Report 90-49) of the financial issues associated with the project. The report stated that the "operating costs assigned to irrigators will exceed their ability to pay because the project as reformulated does not appear to be financially feasible." In other words, it concluded that the farmers would be unable to pay their estimated operations, maintenance and replacement (OM&R) costs as is required under Reclamation law. This fact led to the Inspector General's conclusion that the irrigation component of the Garrison Diversion Unit was economically infeasible.

In response to the OIG Report, Secretary Lujan appointed a GDU Task Group to evaluate and make recommendations on how to proceed with this project, given the findings of the OIG report. In October 1990, the GDU Task Group Report recommended termination of Federal funding for the development and construction of non-Indian irrigation facilities and for the principle supply works, but recommended continuation of the MR&I program. Since that time, the recommendations of this Task Group have been the basis for the policies of both the Bush and Clinton Administrations with respect to this Project, and has guided subsequent budget requests.

In 1993, in an attempt to develop a consensus solution to meeting the contemporary water needs of the State, the North Dakota Water Management Collaborative Process was initiated whereby all interested stakeholders were convened.

In 1995, after the initiation of several studies, and a great deal of hard work by the parties, the Collaborative Process was terminated without reaching a consensus on how GDU should be completed to best meet the contemporary water resource needs of the State. However, Reclamation continued to work towards completion of the studies it had agreed to undertake.

In 1998, the delegation introduced a revised and reformulated Dakota Water Resources Act that altered the Garrison Diversion Unit of the Pick Sloan Missouri Basin Program as authorized in 1986 to increase the funding authorization levels for State and Indian tribal, municipal, rural, and industrial water supplies, to meet current and future water quantity and quality needs of the Red River Valley, to deauthorize certain project features and irrigation service areas, to enhance natural resources and fish and wildlife habitat, and for other purposes.

In summary, Mr. Chairman, the Pick Sloan Missouri Basin Program when conceived foresaw a comprehensive system of flood control, navigation improvement, irrigation, municipal and industrial (M&I) water supplies, and hydroelectric power generation for ten states. That plan envisioned 213 multi-purpose projects providing

over 1.1 million kilowatts of power and irrigation of more than 5 million acres.

Since that time, changes in both the national economy and priorities, combined with the development of refined analytical tools and criteria have resulted in a significantly different project than was originally planned. Six dams have been constructed on the mainstem of the Missouri River, and numerous multi-purpose projects on the tributaries have been completed. Flood control and navigation benefits are greater than anticipated with navigation benefits estimated to be about \$17.7 million per year. Power development has exceeded expectations with an installed plant capacity of 220 percent of original estimates and hydropower sales averaging \$200 million annually. Benefits from recreational development have also exceeded the original plan. Irrigation development, on the other hand, has fallen well short of original goals with less than 600,000 (11%) of the planned 5.3 million acres having been developed.

#### *Amendments to S. 623*

Since S. 623 was introduced, the Administration and the delegation have met several times and have made significant progress in resolving the Administration's serious concerns about the proposal. The following describes amendments to S. 623 that would resolve outstanding issues mentioned in past Administration testimony on the Dakota Water Resources Act:

*MR&I Facility Funding.*—The Administration recognizes that there is additional need for good quality water for domestic and other purposes in a large portion of the State. Since the Administration last provided testimony on the Dakota Water Resources Act in September 1998, we have been working closely with the North Dakota delegation, the State Engineer and the Governor's office to find ways to address this problem in a way that also recognizes Federal budget constraints. The Administration supports the bill's proposed \$200 million authorization of MR&I funding for Indian communities, and the proposed \$200 million authorization subject to repayment at the project's original authorization interest rate for construction of facilities in the Red River Valley. In addition, the Administration would support extending the current grant authorization to address other State-wide MR&I needs by an additional \$200 million, with a 25 percent local cost-sharing.

This combination of authorizations provides a total of \$600 million in new Federal funding authority to address priority needs within the State for quality water in a way that addresses continuing Federal budget constraints. We also believe it is important that this package of programs includes repayment of funding provided for Red River Valley facilities. This repayment reflects the Administration's long-standing policy that in the case of non-Indian rural water supply system development, non-Federal interests should repay 100 percent of allocated project construction costs with interest.

We believe we have reached agreement with the North Dakota delegation on amendments to address several other key issues:

*Status of MR&I Funds.*—All MR&I funds would continue to be managed as "Federal" funds for the purpose of the compliance with

Federal laws such as the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

*Operation and Maintenance.*—Consistent with long-standing cost-allocation procedures, the State would pay: (1) a pro-rata share of OM&R on existing principle supply works, including associated mitigation, based on a percentage of capacity used; (2) 100 percent of OM&R on all new facilities with the exception of facilities required to meet treaty obligations or comply with Reclamation law; and (3) all energy costs with the same exceptions.

*Irrigation Development.*—The development of 28,000 acres of undesignated irrigation “not located in the Hudson’s Bay, Devils Lake or James River drainage basins” would be required to meet an economic feasibility test with respect national economic development (NED) benefits—thereby holding this project to the same standard as other Federal projects.

*International Treaty Compliance.*—Before any construction is undertaken on any part of the system capable of moving water into the Hudson Bay basin, the Secretary of the Interior, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, must determine that adequate treatment has been provided to meet requirements of the U.S.-Canada Boundary Waters Treaty. We welcome this recognition of the United States’ obligation under the Treaty not to pollute water flowing into Canada. We also believe it is important in this case to ensure that transboundary pollution and the United States’ obligations under the Boundary Waters Treaty are considered as the NEPA process is carried out.

*Four Bears Bridge.*—Reconstruction of Four Bears Bridge would not be accomplished through the Department of the Interior.

*Red River Valley Water Needs Assessment Studies.*—Completion of a report by the Secretary of the Interior and the State of North Dakota on the comprehensive water quality and quantity needs of the Red River Valley and options for meeting those needs, including delivery of Missouri River water to the Red River Valley, would include consultations with the Environmental Protection Agency, the U.S. Department of State, and the U.S. Army Corps of Engineers. The Administration will continue to work with the North Dakota delegation concerning consultation with other interested and affected entities, including the states of South Dakota, Iowa, Missouri, Minnesota, and the appropriate Federally recognized Indian tribes.

*Status of MR&I Grant Funds.*—All MR&I grant funds, including accrued interest, would be managed as “Federal” for the purpose of the compliance with Federal laws such as the NEPA and NHPA.

*Completion of the Principal Supply Works.*—Completing and maintaining the principal supply works identified in the 1984 Garrison Diversion Unit Commission Final Report would not be a requirement of law, but would be one of the alternatives to be reviewed to meet the comprehensive water quality and quantity needs of the Red River Valley.

We have not yet resolved, despite considerable time and attention from the North Dakota delegation and the Administration, concerns with the Natural Resources Trust. While we support expanding the Wetlands Trust, which was originally authorized in



1986, to include other natural resources as well as wetlands, the Administration is concerned about several other changes to this Section of the Act. First, the substitute amendment increases the Federal contributions to the Trust by \$25 million, but proposes to eliminate the state and local contribution that was required in the 1986 reformulation, thereby giving the State no financial stake in the Fund. Second, the substitute amendment restricts annual Federal appropriations to the Trust Fund to no more than 5 percent of appropriations made for the Red River Valley Water Supply Project. Third, it also prohibits both the appropriation of \$15 million of the total amount authorized for the Trust Fund and the establishment of an OM&R account for the mitigation and enhancement lands associated with the Project until the Red River Valley Supply Project is operational.

The Administration does not support, or agree with, this linkage and believes that each activity should be weighed on its own merits during the budget and appropriations process. We continue to be optimistic that these issues can be satisfactorily resolved.

We note that S. 623, as current drafted, may affect revenues and therefore, may have PAYGO implications. We also have additional technical changes that we would like to work with the Committee to address.

Mr. Chairman, I would like to reiterate my appreciation to the North Dakota delegation and others for working with the Administration to address the significant issues that are associated with this legislation. A great deal of hard work has taken place and significant progress has been made. I would like to continue that effort to work with the project sponsors and supporters as well as the opponents to try to find an appropriate solution to what has become a long standing and difficult issue.

That concludes my statement, I would be happy to answer any questions.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 623, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE ACT OF AUGUST 5, 1965 (PUBLIC LAW 89-108, 79 STAT. 443)  
AS AMENDED BY §§ 1-9 OF THE GARRISON DIVERSION REFORMULATION ACT OF 1986 (PUBLIC LAW 99-294, 100 STAT. 418) AND AS FURTHER AMENDED BY §§ 3510 AND 1701 OF THE RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT OF 1992 (PUBLIC LAW 102-575, 106 STAT. 4600)

#### SECTION 1.

- (a) The Congress declares that the purposes of this Act are to:
  - (1) implement the recommendations of the Garrison Diversion Unit Commission Final Report (dated December 20, 1984) in the manner specified by this Act;

(2) meet the water needs **[of]** *within* the State of North Dakota, including municipal, rural and industrial water needs, as identified in the Garrison Diversion Unit Commission Final Report,

(3) minimize the environmental impacts associated with the construction and operation of the Garrison Diversion Unit;

(4) assist the United States in meeting its responsibilities under the Boundary Waters Treaty of 1909;

(5) assure **[more timely]** *appropriate* repayment of Federal funds expended for the Garrison Diversion Unit;

(6) preserve any existing rights of the State of North Dakota to use water from the Missouri River; and

(7) offset the loss of farmland within the State of North Dakota resulting from the construction of major features of the Pick-Sloan Missouri Basin Program, by means of a **[federally-assisted water resource development project providing irrigation for 130,940 acres of land]** *multipurpose federally assisted water resource project providing irrigation, municipal, rural, and industrial water systems, fish, wildlife and other natural resource conservation and development, recreation, flood control, ground water recharge, and augmented stream flows.*

(b) The Secretary of the Interior (hereafter referred to as “the Secretary”) is authorized to plan and construct, *jointly with the State of North Dakota*, a multi-purpose water resource development project within the State of North Dakota providing for **[the irrigation of 130,940 acres]** *irrigation*, municipal, rural, and industrial water, **[fish and wildlife conservation]** *fish, wildlife, and other natural resource conservation* and development, recreation, flood control *augmented stream flows, ground water recharge*, and other project purposes in accordance with Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and substantially in accordance with the plans set out in the Garrison Diversion Unit Commission Final Report dated December 20, 1984 *(as modified by the Dakota Water Resources Act of 1999)*.

(c) Nothing in this Act is intended, nor shall be construed, to preclude the State of North Dakota from seeking Congressional authorization to plan, design, and construct additional Federally-assisted water resource development projects in the future.

(d) Nothing in this Act shall be deemed to diminish the quantity of water from the Missouri River which the State of North Dakota may beneficially use, pursuant to any right or rights it may have under Federal law existing immediately before the date of enactment of this Act and consistent with the treaty obligations of the United States.

(e) The authorization for all features of the Missouri-Souris Unit of the Pick-Sloan Missouri Basin Program located in the State of North Dakota, heretofore authorized in section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 891), for which no funds have been appropriated for construction, and which are not authorized for construction by this Act, is hereby **[terminated, and sections 1 and 6 of the Act of August 5, 1965 (Public Law 89–108, 79 Stat. 433) are hereby repealed]** *terminated*.

[(f) In implementing the provisions of this Act, the Secretary is directed to construct all supply works to the capacity identified in the Garrison Diversion Unit Commission Final Report, except that the Secretary is directed to construct the James River Feeder Canal to a capacity of no more than 450 cubic feet per second, and the Sykeston Canal to the capacity specified in section 8(a)(1) of this Act.

[(g) Where features constructed by the Secretary are no longer used to full capacity pursuant to the recommendations of the Garrison Diversion Unit Commission Final Report, that portion of the Secretary's investment attributable to the construction of such unused capacity shall be nonreimbursable.]

(f) COSTS.—

(1) ESTIMATE.—*The Secretary shall estimate—*

*(A) the actual construction costs of the facilities (including mitigation facilities) in existence as of the date of enactment of the Dakota Water Resources Act of 1999; and*

*(B) the annual operation, maintenance, and replacement costs associated with the used and unused capacity of the features in existence as of that date.*

(2) REPAYMENT CONTRACT.—*An appropriate repayment contract shall be negotiated that provides for the making of a payment for each payment period in an amount that is commensurate with the percentage of the total capacity of the project that is in actual use during the payment period.*

(3) OPERATION AND MAINTENANCE COSTS.—*Except as otherwise provided in this Act or in Reclamation law—*

*(A) The Secretary shall be responsible for the costs of operation and maintenance of the proportionate share of unit facilities in existence on the date of enactment of the Dakota Water Resources Act of 1999 attributable to the capacity of the facilities (including mitigation facilities) that remain unused;*

*(B) The State of North Dakota shall be responsible for costs of operation and maintenance of the proportionate share of existing unit facilities that are used and shall be responsible for the full costs of operation and maintenance of any facility constructed after the date of enactment of the Dakota Water Resources Act of 1999;*

*(C) The State of North Dakota shall be responsible for the costs of providing energy to authorized unit facilities.*

(g) AGREEMENT BETWEEN THE SECRETARY AND THE STATE.—*The Secretary shall enter into 1 or more agreements with the State of North Dakota to carry out this Act, including operation and maintenance of completed unit facilities and the design and construction of authorized new unit facilities by the State.*

(h) BOUNDARY WATERS TREATY OF 1909.—

(1) DELIVERY OF WATER INTO THE HUDSON BAY BASIN.—*Prior to construction of any water systems authorized under this Act to deliver Missouri River water into the Hudson Bay basin, the Secretary, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, must determine that adequate treatment can be provided to meet the requirements of the Treaty between the United States and Great*

*Britain relating to Boundary Waters Between the United States and Canada, signed at Washington January 11, 1909 (26 Stat. 2448; TS 548) (commonly known as the 'Boundary Waters Treaty of 1909').*

(2) *COSTS.*—All costs of construction, operation, maintenance, and replacement of water treatment and related facilities authorized by this Act and attributable to meeting the requirements of the treaty referred to in paragraph (1) shall be non-reimbursable.

## SEC. 2.

(a) Subject to the provision of subsections (b), (c), (d), and (e) of this section, the Secretary is authorized in connection with the Garrison diversion unit (i) to construct, operate, and maintain or provide for the construction, operation, and maintenance of public outdoor recreation and fish and wildlife enhancement facilities, (ii) to acquire or otherwise to include within the unit area such adjacent lands or interest in land as are necessary for present or future public recreation or fish and wildlife use, (iii) to allocate water and reservoir capacity to recreation and fish and wildlife enhancement, and (iv) to provide for the public use and enjoyment of unit lands, facilities, and water areas in a manner coordinated with other unit purposes. The Secretary is further authorized to enter into agreements with Federal agencies or State or local public bodies for the operation, maintenance, and replacement of unit facilities, and to transfer unit lands or facilities to Federal agencies or State or local public bodies by lease or exchange, upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes.

[(b) All costs allocated to fish and wildlife enhancement and incurred in connection with waterfowl refuges and waterfowl production areas proposed for Federal administration shall be non-reimbursable.

[(c)(1) If, before commencement of construction of the unit, non-Federal public bodies agree to administer for recreation or fish and wildlife enhancement or for both of these purposes pursuant to the plan for the development of the unit approved by the Secretary land and water areas which are not included within Federal waterfowl refuges and waterfowl production areas and to bear not less than one-half the separable costs of the unit allocated to either or both of said purposes, as the case may be, and attributable to such areas and all the costs of operation, maintenance, and replacement incurred in connection therewith, the remainder of the separable capital costs so allocated and attributed shall be nonreimbursable.

[(2) In the absence of such a preconstruction agreement recreation and fish and wildlife enhancement facilities (other than minimum facilities for the public health and safety at reservoir access points and facilities related to Federal waterfowl refuges and waterfowl production areas) shall not be provided, and the allocation of unit costs shall reflect only the number of visitor days and the value per visitor day estimated to result from such diminished recreation development without reference to lands which may be provided pursuant to subsection (e) of this section.

[(d) The non-Federal share of the separable capital costs of unit allocated to recreation and fish and wildlife enhancement shall be borne by non-Federal interests, under either or both of the following methods as may be determined appropriate by the Secretary: (i) payment, or provision of lands, interests therein, or facilities for the unit; or (ii) repayment, with interest, within fifty years of first use of unit recreation or fish and wildlife enhancement facilities: *Provided*, That the source of repayment may be limited to entrance and user fees for charges collected at the unit by non-Federal interests if the fee schedule and the portion of fees dedicated to repayment are established on a basis calculated to achieve repayment as aforesaid and are made subject to review and renegotiation at intervals of not more than five years.]

(b) *FISH AND WILDLIFE COSTS.*—All fish and wildlife enhancement costs incurred in connection with waterfowl refuges, waterfowl production areas, and wildlife conservation areas proposed for Federal or State administration shall be nonreimbursable.

(c) *RECREATION AREAS.*—

(1) *COSTS.*—If non-Federal public bodies continue to agree to administer land and water areas approved for recreation and agree to bear not less than 50 percent of the separable costs of the unit allocated to recreation and attributable to those areas and all the costs of operation, maintenance, and replacement incurred in connection therewith, the remainder of the separable capital costs so allocated and attributed shall be nonreimbursable.

(2) *APPROVAL.*—The recreation areas shall be approved by the Secretary in consultation and coordination with the State of North Dakota.

(d) *NON-FEDERAL SHARE.*—The non-Federal share of the separable capital costs of the unit allocated to recreation shall be borne by non-Federal interests, using the following methods, as the Secretary may determine to be appropriate:

(1) *Services in kind.*

(2) *Payment, or provision of lands, interests therein, or facilities for the unit.*

(3) *Repayment, with interest, within 50 years of first use of the unit recreation facilities.*

(e)(1) Notwithstanding the absence of preconstruction agreements as specified in subsection (c) of this section lands may be acquired in connection with construction of the unit to preserve the recreation and fish and wildlife enhancement potential of the unit.

[(1)](2) If non-Federal public bodies agree [within ten years after the initial unit operation to administer for recreation and fish and wildlife enhancement] to administer for recreation pursuant to the plan for development of the unit approved by the Secretary land and water areas [which are not included within Federal waterfowl refuges and waterfowl production areas] and to bear not less than one-half the costs of lands acquired therefor pursuant to this subsection and facilities and project modifications provided for those purposes and all costs of operation, maintenance, and replacement incurred therefor, the remainder of the costs of such lands, facilities, and project modifications shall be nonreimbursable. Such agreement and subsequent development shall not be the

basis for any allocation of joint costs of the unit to recreation [or fish and wildlife enhancement].

[(2)](3) [ within ten years after initial operation of the unit,] there is not an executed agreement as specified in [paragraph (1) of this subsection] *paragraph (2)*, the Secretary may utilize the lands for any lawful purpose within the jurisdiction of the Department of the Interior, or may transfer custody of the land to another Federal agency for use for any lawful purpose within the jurisdiction of that agency, or may lease the lands to a non-Federal public body, or may transfer the lands to the Administrator of General Services for disposition in accordance with the surplus property laws of the United States. In no case shall the lands used or made available for use for any purpose in conflict with the purposes for which the project was constructed, and in every case preference shall be given to uses which will preserve and promote the recreation and fish and wildlife enhancement potential of the project or, in the absence thereof, will not detract from that potential.

(f) Subject to the limitations hereinbefore stated, joint capital costs allocated to recreation [and fish and wildlife enhancement] shall be nonreimbursable.

(g) Costs of means and measures to prevent loss of and damage to fish and wildlife shall be treated as unit costs and allocated among all unit purposes.

(h) As used in this Act, the term "nonreimbursable" shall not be construed to prohibit the imposition of entrance, admission, and other recreation user fees or charges.

(i) Notwithstanding any other provisions of this section, the mitigation for fish and wildlife losses incurred as a result of construction of the project shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction.

(j) The Secretary is directed to implement the provisions of the Garrison Diversion Unit Commission Final Report with respect to fish and wildlife conservation, including habitat impacts, mitigation procedures, and enhancement, except for the following:

(1) The Secretary shall take no action to alter the status of Sheyenne Lake National Wildlife Refuge [prior to the completion of construction of Lonetree Dam and Reservoir].

(2) Development and implementation of the mitigation and enhancement plan for fish and wildlife resources impacted by construction and operation of the Garrison Diversion Unit shall not be limited by the cost constraints based on estimates contained in the Garrison Diversion Unit Commission Final Report.

(3) Credit toward mitigation recommended by the Garrison Diversion Unit Commission Final Report for reservoir sites is not authorized.

(4) *TAAYER RESERVOIR.—Taayer Reservoir is deauthorized as a project feature. The Secretary acting through the Commissioner of Reclamation shall acquire (including acquisition through donation or exchange) up to 5,000 acres in the Kraft and Pickell Slough areas and to manage the area as a component of the National Wildlife Refuge System giving consideration to the unique wildlife values of the area. In acquiring the lands which comprise the Kraft and Pickell Slough complex, the*

*Secretary shall acquire wetlands in the immediate vicinity which may be hydrologically related and nearby uplands as may be necessary to provide for proper management of the complex. The Secretary is also authorized to provide for appropriate visitor access and control at the refuge.*

(5) *DEAUTHORIZATION OF LONETREE DAM AND RESERVOIR.—The Lonetree Dam and Reservoir is deauthorized, and the Secretary shall designate the lands acquired for the former reservoir site a wildlife conservation area. The Secretary shall enter into an agreement with the State of North Dakota providing for the operation and maintenance of the wildlife conservation area as an enhancement feature, the costs of which shall be paid by the Secretary. If the features selected under section 8 include a buried pipeline and appurtenances between the McClusky Canal and New Rockford Canal, the use of the wildlife conservation area and Sheyenne Lake National Wildlife Refuge for such route is hereby authorized.*

#### SEC. 3.

The Garrison diversion unit shall be integrated physically and financially with the other Federal works constructed or authorized to be constructed under the comprehensive plan approved by Section 9 of the Act of December 22, 1944, as amended and supplemented. The Secretary shall give consideration to returning to the Missouri River to the fullest extent practicable such of the return flows as are not required for beneficial purposes. (79 Stat. 434)

#### SEC. 4.

(a) The interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the Garrison diversion unit as authorized in this Act shall be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. *Interest during construction shall be calculated only until such date as the Secretary declares any particular feature to be substantially complete, regardless of whether the feature is placed into service.*

(b) From and after July 1, 1965, the interest rate on the unamortized balance of the investment allocated to commercial power in facilities construction or under construction on June 30, 1965, by the Department of the Army in the Missouri River Basin, the commercial power from which is marketed by the Department of the Interior, and in the transmission and marketing facilities associated therewith, shall be 2½ per centum per annum. (79 Stat. 435)

#### ISEC. 5.

[(a)(1) Subject to the provisions of subsection (a)(2) of this section, the Secretary is authorized to develop irrigation in the following project service areas: Turtle Lake (13,700 acres), McClusky Canal (4,000 acres), Lincoln Valley (6,515 acres), Harvey Pumping (2,000 acres), New Rockford (20,935 acres), New Rockford Canal (1,200 acres), LaMoure (13,350 acres), West Oakes Extension

(4,000 acres), and West Oakes (19,660 acres). The Secretary is prohibited from developing irrigation in these areas in excess of the acreage specified herein, except that the Secretary is authorized and directed to develop up to 28,000 acres of irrigation in other areas of North Dakota, not located in the Hudson Bay, Devils Lake, or James River drainage basins.

[(2) The Secretary is prohibited from obligating any funds for construction of irrigation service facilities in the areas listed in subsection (a)(1) of this section prior to September 30, 1990. After that date, the Secretary may obligate funds only after completing and submitting to the Congress, the report required by section 5(c) of this Act.

[(b)(1) The Secretary may not commence construction of the Sykeston Canal, the James River Feeder Canal, and James River channel improvements until 60 days after the report required by section 5(c) of this Act has been completed and submitted to the Congress.

[(2) The Secretary is directed to proceed immediately with the construction of—

[(A) the New Rockford Canal;

[(B) the Oakes Test Area; and

[(C) project features authorized in section 7 of this Act.

[(c)(1) The Secretary is directed to submit a comprehensive report to the Congress as soon as practicable, but not later than the end of fiscal year 1988 on the effects on the James River in North Dakota and South Dakota of water resource development proposals recommended by the Garrison Diversion Unit Commission and authorized in this Act. The report shall include the findings of the Secretary with regard to:

[(A) the feasibility of using the Oakes Aquifer as a water and recharge facility, and an evaluation of the need for offstream regulatory storage in the lower James River basin;

[(B) the capability of the river to handle irrigation return flows, project water supplies, and natural runoff without causing flooding, property damage, or damage to wildlife areas, and mechanisms or procedures for compensation or reimbursement of affected landowners for damages from project operation;

[(C) the impacts of Garrison Diversion Unit irrigation return flows on the river and on adjacent riverine wetland areas and components of the National Wildlife Refuge System, with regard to water quality, and fish and wildlife values;

[(D) the need to channelization of the James River under the irrigation and municipal, rural, and industrial water development programs authorized by this Act;

[(E) the cost and efficiency of measures required to guarantee that irrigation return flows from the New Rockford (Robinson Coulee) irrigation service areas will not enter the Hudson Bay drainage and the impact these return flows will have on the James River;

[(F) the feasibility of conveying project flows into the lower James River via Pipestem Creek; and

[(G) alternative management plans for operation of Jamestown and Pipestem Reservoirs to minimize impacts on the lower James River.



[(2) The costs of the study authorized by this subsection shall be nonreimbursable.

[(3) The study authorized by this subsection shall be carried out in accordance with the requirements of the National Environmental Policy Act.]

**SEC. 5. IRRIGATION FACILITIES.**

(a) *IN GENERAL.*—

(1) *AUTHORIZED DEVELOPMENT.*—*In addition to the 5,000-acre Oakes Test Area in existence on the date of the enactment of the Dakota Water Resources Act of 1999, the Secretary may develop irrigation in—*

*(A) the Turtle Lake service area (13,700 acres);*

*(B) the McClusky Canal service area (10,000 acres); and*

*(C) if the investment costs are fully reimbursed without aid to irrigation from the Pick-Sloan Missouri Basin Program, the New Rockford Canal service area (1,200 acres).*

(2) *DEVELOPMENT NOT AUTHORIZED.*—*None of the irrigation authorized by this section may be developed in the Hudson Bay/Devils Lake Basin.*

(3) *NO EXCESS DEVELOPMENT.*—*The Secretary shall not develop irrigation in the service areas described in paragraph (1) in excess of the acreage specified in that paragraph, except that the Secretary shall develop up to 28,000 acres of irrigation in other areas of North Dakota (such as the Elk/Charbonneau, Mon-Dak, Nesson Valley, Horsehead Flats, and Olivier-Mercer areas) that are not located in the Hudson Bay/Devils Lake drainage basin or James River drainage basin.*

(4) *PUMPING POWER.*—*Irrigation development authorized by this section shall be considered authorized units of the Pick-Sloan Missouri Basin Program and eligible to receive project pumping power.*

(5) *PRINCIPAL SUPPLY WORKS.*—*The Secretary shall maintain the Snake Creek Pumping Plant, New Rockford Canal, and McClusky Canal features of the principal supply works. As appropriate, the Secretary shall rehabilitate or complete such features consistent with the purposes of this Act. Subject to the provisions of Section 8 (c) and (d)(1) of this Act, the Secretary shall select a preferred alternative to implement the Dakota Water Resources Act of 1999. In making this selection, one of the alternatives the Secretary shall consider is whether to connect the principal supply works in existence on the date of enactment.*

[(d)] (b) The Secretary is prohibited from obligating fund to construct irrigation facilities in the service areas listed in subsection [(a)(1)] (a) until a contract or contracts, in a form approved by the Secretary, providing for the appropriate payment of the costs allocated to irrigation have been properly executed by a district or districts organized under State law. Such contract or contracts shall be consistent with the requirements of the Reclamation Reform Act of 1982 (title II, Public Law 97–293, 96 Stat. 1263).

[(e)] (c) The Secretary is authorized to develop irrigation in the following project service areas within the boundaries of the Fort Berthold and Standing Rock Indian Reservations: [Lucky Mound (7,700 acres), Upper Six Mile Creek (7,500 acres)] *Lucky Mound*

(7,700 acres) and Upper Six Mile Creek (7,500 acres), or such other lands at Fort Berthold of equal acreage as may be selected by the tribe and approved by the Secretary. and one or more locations within the Standing Rock Indian Reservation (2,380 acres), except that, no funds are authorized to be appropriated for construction of these projects until the Secretary has made a finding of irrigability of the lands to receive water as required by the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. 390a). Repayment for the units authorized under this subsection shall be made pursuant to the Leavitt act (25 U.S.C. 386a).

[(f)] (d) The Secretary shall not permit the use of project facilities for non-project drainage not included in project design or required for project operations.

(e) *IRRIGATION REPORT TO CONGRESS.*—

(1) *IN GENERAL.*—*The Secretary shall investigate and prepare a detailed report on the undesignated 28,000 acres in subsection (a)(3) as to the costs and benefits for any irrigation units to be developed under Reclamation law.*

(2) *FINDING.*—*The report shall include a finding on the economic, financial and engineering feasibility of the proposed irrigation unit, but shall be limited to the undesignated 28,000 acres.*

(3) *AUTHORIZATION.*—*If the Secretary finds that the proposed construction is feasible, such irrigation units are authorized without further Act of Congress.*

(4) *DOCUMENTATION.*—*No expenditure for the construction of facilities authorized under this section shall be made until after the Secretary, in cooperation with the State of North Dakota, has prepared the appropriate documentation in accordance with section 1 and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) analyzing the direct and indirect impacts of implementing the report.*

#### SEC. 6.

(a) Municipal, rural, and industrial water systems constructed with funds authorized by section 7 of this Act shall utilize power from the Pick-Sloan Missouri Basin Program, as established by section 9 of the Flood Control Act of 1944 (Act of December 22, 1944), for the operation of such systems.

(b) [Notwithstanding the provisions of] *Pursuant to the provisions of section 302(a)(3) of the Department of Energy Organization Act (42 U.S.C. 7152(a)(3)), any portion of the costs properly chargeable to irrigation for the Garrison Diversion Unit which are beyond the ability of water users to repay as authorized by Reclamation law may be repaid from power [revenues, except repayment of investment in irrigation for the Garrison Diversion Unit made after the date of enactment of this Act may not exceed forty years from the year in which irrigation water is first delivered for use by the contracting party and shall be made in equal annual installments.] revenues.*

[(c)] *Pursuant to the provisions of the last sentence of section 302(a)(3) of the Department of Energy Organization Act of 1978 (42 U.S.C. 7152(a)(3)), any reallocation of costs to project purposes other than irrigation as a result of section 1(e) of this Act shall not result in increased rates to Pick-Sloan Missouri Basin Program*

customers unless: (1) full use has been made of the current development method of ratesetting in analyzing the repayment status and cost allocations for the Garrison Diversion Unit and (2) the resulting rate increase, if any, is made in equal amounts over the ten year period beginning on the date of any such reallocation pursuant to this Act. Costs reallocated to project purposes other than irrigation as a result of section 1(e) of this Act shall be repaid, if reimbursable, with interest at the rate specified in section 4(b) of this Act beginning on the date of any such reallocation without retroactive interest. Nothing in this Act shall alter or affect in any way the current repayment methodology for other features of the Pick-Sloan Missouri Basin Program.】

(c) *NO INCREASE IN RATES OR AFFECT ON REPAYMENT METHODOLOGY.*—*In accordance with the last sentence of section 302(a)(3) of the Department of Energy Organization Act (42 U.S.C. 7152(a)(3)), section 1(e) shall not result in any reallocation of project costs and shall not result in increased rates to Pick-Sloan Missouri Basin Program customers. Nothing in the Dakota Water Resources Act of 1999 alters or affects in any way the repayment methodology in effect as of the date of enactment of that Act for other features of the Pick-Sloan Missouri Basin Program.*

#### SEC. 7.

(a)(1) The Secretary of the Interior is authorized to construct municipal, rural, and industrial water systems to serve areas throughout the State of North Dakota.

(2) All planning, design, construction and operation of the municipal, rural, and industrial water systems authorized by this section shall be undertaken in accordance with a cooperative agreement between the Secretary and the State of North Dakota. Such cooperative agreement shall set forth in a manner acceptable to the Secretary the responsibilities of the State for:

- (A) needs assessment;
- (B) feasibility studies;
- (C) engineering and design;
- (D) construction;
- (E) operation and maintenance; and
- (F) the administration of contracts pertaining to any of the foregoing.

(3) Upon execution of the cooperative agreement required under this subsection, the Secretary is authorized to convey to the State of North Dakota, on a nonreimbursable basis, the funds authorized in section 10(b)(1) of this Act. 【The non-Federal share】 *Unless otherwise provided in this Act, the non-Federal share of the total cost of construction of 【each water system】 water systems for which the State of North Dakota receives funding pursuant to this section shall be 25 percent, committed prior to the initiation of construction. The State may use the Federal and non-Federal funds to provide grants or loans for municipal, rural, and industrial water systems. The State shall use the proceeds of repaid loans for municipal, rural, and industrial water systems. Proceeds from loan repayments and any interest thereon shall be treated as federal funds. The non-Federal share of the cost of operation, maintenance, and replacement of each municipal, rural, and industrial water system funded by this section shall be 100 percent. 【The Southwest Pipeline*

Project shall be deemed to be eligible for funding under the terms of this section.】 *The Southwest Pipeline Project, the Northwest Area Water Supply Project, the Red River Valley Water Supply Project, and other municipal, industrial, and rural water systems in the State of North Dakota shall be eligible for funding under this section. Funding provided under this section for the Red River Valley Water Supply Project shall be in addition to funding for that project under section 10(a)(1)(B). The amount of non-Federal contributions after May 12, 1986 that exceeds the 25 percent requirement shall be credited to the State for future use in municipal, rural, and industrial projects under this section.*

【(b) The Secretary is authorized and directed to construct, operate, and maintain a Sheyenne River water supply and release feature (including a water treatment plant) capable of delivering 100 cubic feet per second of water for the cities of Fargo and Grand Forks and surrounding communities. The costs of the construction, operation, maintenance, and replacement of this feature, exclusive of conveyance shall be nonreimbursable and deemed attributable to meeting the requirements of the Boundary Waters Treaty of 1909.

【(c) The Secretary is authorized and directed to construct, operate, and maintain such municipal, rural, and industrial water systems as he deems necessary to meet the economic, public health and environmental needs of the Fort Berthold, Standing Rock, and Fort Totten Indian Reservations and Fort Totten Indian Reservations.

【(d) Municipal, rural, and industrial water systems constructed with funds authorized under this Act may deliver Missouri River water into the Hudson Bay drainage only after the Secretary of the Interior, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, has determined that adequate treatment has been provided to meet the requirements of the Boundary Waters Treaty of 1909.】

(b) *WATER CONSERVATION PROGRAM.*—*The State of North Dakota may use funds provided under subsection (a) and (b)(1)(A) of section 10 to develop and implement a water conservation program. The Secretary and the State shall jointly establish water conservation goals to meet the purposes of the State program and to improve the availability of water supplies to meet the purposes of this Act. If the states achieves the established water conservation goals, the non-Federal cost share for future projects under subsection (a)(3) shall be reduced to 24.5 percent.*

(c) *NONREIMBURSABILITY OF COSTS.*—*With respect to the Southwest Pipeline Project, the Northwest Area Water Supply Project, the Red River Valley Water Supply Project, and other municipal, industrial, and rural water systems in North Dakota, the costs of the features constructed on the Missouri River by the Secretary of the Army before the date of enactment of the Dakota Water Resources Act of 1999 shall be nonreimbursable.*

(d) *INDIAN MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY.*—*The Secretary shall construct, operate, and maintain such municipal, rural, and industrial water systems as the Secretary determines to be necessary to meet the economic, public health and environmental needs of the Fort Berthold, Standing Rock, Turtle Moun-*

*tain (including the Trenton Indian Service Area) and Fort Totten Indian Reservations, and adjacent areas.*

**[SEC. 8.**

**[(a)** In accordance with the recommendations of the Garrison Diversion Unit Commission Final Report and section 1 of this Act, the Sykeston Canal shall be constructed as a functional replacement for the Lonetree Dam and Reservoir. The Sykeston Canal shall be designed and constructed to meet only the water delivery requirements of the irrigation areas and municipal, rural, and industrial water supply needs authorized in this Act. The Sykeston Canal shall be located, constructed, and operated so that, in the opinion of the Secretaries of the Interior and State, no violation of the Boundary Waters Treaty of 1909 would result. The Secretary may not commence construction on the Sykeston Canal until a master repayment contract consistent with the provisions of this Act between the Secretary and the appropriate non-Federal entity has been executed.

**[(2)** The Lonetree Dam and Reservoir shall remain an authorized feature of the Garrison Diversion Unit; however, construction funds may be requested by the Secretary for Lonetree Dam and Reservoir only after:

**[(A)** the Secretary has determined that there is a need for the dam and reservoir based on a contemporary appraisal using procedures such as those employed in the preparation of feasibility studies for water resources development projects submitted to Congress;

**[(B)** consultations with the Government of Canada have reached a conclusion satisfactory to the Secretary of State, after consultation with the Administrator of the Environmental Protection Agency, that no violation of the Boundary Waters Treaty of 1909 would result from the construction and operation of the dam and reservoir; and

**[(C)** the Secretaries of the Interior and State have submitted the determinations required by subparagraphs (A) and (B) above to the Congress and 90 calendar days have elapsed.

**[(b)** Taayer Reservoir is deauthorized as a project feature. The Secretary is directed to acquire up to 5,000 acres in the Kraft and Pickell Slough areas and to manage the area as a component of the National Wildlife Refuge System giving consideration to the unique wildlife values of the area. In acquiring the lands which comprise the Kraft and Pickell Slough complex, the Secretary is authorized to acquire wetlands in the immediate vicinity which may be hydrologically related and nearby uplands as may be necessary to provide for proper management of the complex. The Secretary is also authorized to provide for appropriate visitor access and control at the refuge.]

**SEC. 8. SPECIFIC FEATURES.**

**(a) RED RIVER VALLEY WATER SUPPLY PROJECT.—**

**(1) IN GENERAL.—***The Secretary shall construct a feature or features to deliver Missouri River water to the Sheyenne River water supply and release facility or such other feature or features as are selected under subsection (d).*

(2) *DESIGN AND CONSTRUCTION.*—*The feature shall be designed and constructed to meet only the water delivery requirements of the irrigation areas, municipal, rural, and industrial water supply needs, ground water recharge, and streamflow augmentation (as described in subsection (b)(2)) authorized in this Act.*

(3) *COMMENCEMENT OF CONSTRUCTION.*—*The Secretary may not commence construction on the feature until a master repayment contract or water service agreement consistent with this Act between the Secretary and the appropriate non-Federal entity has been executed.*

(b) *REPORT ON RED RIVER VALLEY WATER NEEDS AND DELIVERY OPTIONS.*—

(1) *IN GENERAL.*—*Pursuant to section 1(g), not later than 90 days after the effective date of the Dakota Water Resources Act of 1999, the Secretary and the State of North Dakota shall jointly submit to Congress a report on the comprehensive water quality and quantity needs of the Red River Valley and the options for meeting those needs, including the delivery of Missouri River water to the Red River Valley.*

(2) *NEEDS.*—*The needs addressed in the report shall include such needs as—*

- (A) *augmenting streamflows;*
- (B) *groundwater recharge; and*
- (C) *enhancing—*
  - (i) *municipal, rural, and industrial water supplies;*
  - (ii) *water quality;*
  - (iii) *aquatic environment; and*
  - (iv) *recreation.*

(3) *STUDIES.*—*Existing and ongoing studies by the Bureau of Reclamation on Red River Water Supply needs and options shall be deemed to meet the requirements of this section.*

(c) *ENVIRONMENTAL IMPACT STATEMENT.*—

(1) *DRAFT.*—

(A) *DEADLINE.*—*Pursuant to an agreement between the Secretary and State of North Dakota as authorized under section 1(g), not later than 1 year after the date of enactment of the Dakota Water Resources Act of 1999, the Secretary and the State of North Dakota shall jointly prepare and complete a draft environmental impact statement concerning all feasible options to meet the comprehensive water quality and quantity needs of the Red River Valley and the options for meeting those needs, including the delivery of Missouri River water to the Red River Valley.*

(B) *REPORT ON STATUS.*—*If the Secretary and State of North Dakota cannot prepare and complete the draft environmental impact statement within 1 year after the date of enactment of the Dakota Water Resources Act of 1999, the Secretary, in consultation and coordination with the State of North Dakota, shall report to Congress on the status of this activity, including an estimate of the date of completion.*

(2) *FINAL.*—

(A) *DEADLINE.*—Not later than 1 year after filing the draft environmental impact statement, a final environmental impact statement shall be prepared and published.

(B) *REPORT ON STATUS.*—If the Secretary and State of North Dakota cannot prepare and complete a final environmental impact statement within 1 year of the completion of the draft environmental impact statement, the Secretary, in consultation and coordination with the State of North Dakota, shall report to Congress on the status of this activity, including an estimate of the date of completion.

(d) *PROCESS FOR SELECTION.*—

(1) *IN GENERAL.*—After reviewing the final report required by subsection (b)(1) and complying with subsection (c), the Secretary, in consultation and coordination with the State of North Dakota in coordination with affected local communities, shall select 1 or more project features described in subsection (a) that will meet the comprehensive water quality and quantity needs of the Red River Valley.

(2) *AGREEMENTS.*—Not later than 180 days after the record of decision has been executed, the Secretary shall enter into a cooperative agreement with the State of North Dakota to construct the feature or features selected.

(e) *SHEYENNE RIVER WATER SUPPLY AND RELEASE OR ALTERNATE FEATURES.*—The Secretary shall construct, operate, and maintain a Sheyenne River water supply and release feature (including a water treatment plant) capable of delivering 100 cubic feet per second of water or any other amount determined in the reports under this section, for the cities of Fargo and Grand Forks and surrounding communities, or such other feature or features as may be selected under subsection (d).

**[SEC. 9.**

**]** Until the construction costs of the facilities authorized in section 5 are repaid, the Secretary is directed to charge a “surplus crop production charge” equal to 10 percent of full cost, as defined in section 202(3)(A)-(C) of the Reclamation Reform Act of 1982 (Public Law 97–293, 96 Stat. 1263), for the delivery of project water used in the production of any basic agricultural commodity if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the amount of the surplus crop production charge for the succeeding year on or before July 1 of each year. The surplus crop production charge shall not apply to crops produced in the 5,000 acre Oakes Test Area for research purposes under the direction of the Secretaries of the Interior or Agriculture. **]**

**SEC. 9. OAKES TEST AREA TITLE TRANSFER.**

(a) *IN GENERAL.*—Not later than 2 years after the execution of a record of decision under section 8(d) on whether to use the New Rockford Canal as a means of delivering water to the Red River Basin as described in section 8, the Secretary shall enter into an agreement with the State of North Dakota, or its designee, to convey title and all or any rights, interests, and obligations of the United

*States in and to the Oakes Test Area as constructed and operated under Public Law 99-294 (100 Stat. 418) under such terms and conditions as the Secretary believes would fully protect the public interest.*

(b) *TERMS AND CONDITIONS.*—*The agreement shall define the terms and conditions of the transfer of the facilities, lands, mineral estate, easements, rights-of-way and water rights including the avoidance costs that the Federal Government would otherwise incur in the case of a failure to agree under provisions described in subsection (d).*

(c) *COMPLIANCE.*—*The action of the Secretary under this section shall comply with all applicable requirements of Federal, State, and local law.*

(d) *FAILURE TO AGREE.*—*If an agreement is not reached within the time limit specified in subsection (a), the Secretary shall dispose of the Oakes Test Area facilities under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).*

#### **SEC. 10.**

[(a)(1) There are authorized to be appropriated \$270,395,000 for carrying out the provisions of section 5(a) through section 5(c) and section 8(a)(1) of this Act]

(a) *WATER DISTRIBUTION FEATURES.*—

(1) *IN GENERAL.*—

(A) *MAIN STEM SUPPLY WORKS.*—*There is authorized to be appropriated \$164,000,000 to carry out section 5(a).*

(B) *RED RIVER VALLEY WATER SUPPLY PROJECT.*—*There is authorized to be appropriated to carry out section 8(a)(1) \$200,000,000.*

(C) *AVAILABILITY.*—*Such sums [Such sums] shall remain available until expended.*

(2) *INDIAN IRRIGATION.*—

(A) *IN GENERAL.*—*There is [There is] authorized to be appropriated \$12,570,000 [for carrying out the provisions of section 5(e)] to carry out section 5(c) of this Act*

(B) *AVAILABILITY.*—*Such sums [Such sums] shall remain available until expended.*

(b) *MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY.*—

(1) *STATEWIDE.*—

(A) *INITIAL AMOUNT.*—*There is [(b)(1) There is] authorized to be appropriated \$200,000,000 to carry out the provisions of section 7(a) of this Act.*

(B) *ADDITIONAL AMOUNT.*—*In addition to the amount under subparagraph (A), there is authorized to be appropriated to carry out section 7(a) \$200,000,000.*

(C) *AVAILABILITY.*—*Such sums [Such sums] shall remain available until expended.*

[(2) There are authorized to be appropriated \$61,000,000 to carry out the provisions of section 7(b) through section 7(d) of this Act.]

(2) *INDIAN MUNICIPAL, RURAL, AND INDUSTRIAL WATER AND OTHER DELIVERY FEATURES.*—

(A) *INITIAL AMOUNT.*—*There is authorized to be appropriated—*

*(i) to carry out section 8(a)(1), \$40,500,000; and*



(ii) to carry out section 7(d), \$20,500,000.

(B) *ADDITIONAL AMOUNT.*—

(I) *IN GENERAL.*—In addition to the amount under subparagraph (A), there is authorized to be appropriated to carry out section 7(d) \$200,000,000.

(ii) *ALLOCATION.*—The amount under clause (i) shall be allocated as follows:

(I) \$30,000,000 to the Fort Totten Indian Reservation.

(II) \$70,000,000 to the Fort Berthold Indian Reservation.

(III) \$80,000,000 to the Standing Rock Indian Reservation.

(IV) \$20,000,000 to the Turtle Mountain Indian Reservation.

(C) *AVAILABILITY.*—Such sums [Such sums] shall remain available until expended.

(c) *RESOURCES TRUST AND OTHER PROVISIONS.*—

(1) *INITIAL AMOUNT.*—There is [There is] authorized to be appropriated for carrying out the remaining provisions of this Act \$80,535,000. [No funds are authorized for the construction of the Lonetree Dam and Reservoir. There are also authorized to be appropriated such additional funds as may be necessary for operation and maintenance of the unit.]

(2) *ADDITIONAL AMOUNT.*—In addition to the amount under paragraph (1), there are authorized to be appropriated—

(A) \$6,500,000 to carry out recreational projects; and

(B) an additional \$25,000,000 to carry out section 11; to remain available until expended.

(3) *RECREATIONAL PROJECTS.*—Of the funds authorized under paragraph (2) for recreational projects, up to \$1,500,000 may be used to fund a wetland interpretive center in the State of North Dakota.

(4) *OPERATION AND MAINTENANCE.*—

(A) *IN GENERAL.*—There are authorized to be appropriated such sums as are necessary for operation and maintenance of the unit (including the mitigation and enhancement features).

(B) *AUTHORIZATION LIMITS.*—Expenditures for operation and maintenance of features substantially completed and features constructed before the date of enactment of the Dakota Water Resources Act of 1999, including funds expended for such purposes since the date of enactment of Public Law 99–294, shall not be counted against the authorization limits in this section.

(5) *MITIGATION AND ENHANCEMENT LAND.*—On or about the date on which the features authorized by section 8(a) are operational, a separate account in the Natural Resources Trust authorized by section 11 shall be established for operation and maintenance of the mitigation and enhancement land associated with the unit.

(d) Any funds previously appropriated for the Garrison Diversion Unit may be expended to carry out any of the provisions of this Act.

[(e) The portion of the \$61,000,000 authorized for Indian municipal, rural, and industrial water features shall be indexed as necessary to allow for ordinary fluctuations of construction costs incurred after October 1, 1986, as indicated by engineering costs indices applicable for the type of construction involved. All other authorized cost ceilings shall remain unchanged.]

(e) *INEXING.*—*The \$200,000,000 amount under subsection (b)(1)(B), the \$200,000,000 amount under subsection (a)(1)(B), and the funds authorized under subsection (b)(2) shall be indexed as necessary to allow for ordinary fluctuations of construction costs incurred after the date of enactment of the Dakota Water Resources Act of 1999 as indicated by engineering cost indices applicable for the type of construction involved. All other authorized cost ceilings shall remain unchanged.*

#### SEC. 11.

[(a) **FEDERAL CONTRIBUTIONS.**—From the sums appropriated under section 10 of this Act for the Garrison Diversion Unit, the Secretary of the Interior shall make an annual Federal contribution to a Wetlands Trust established by non-Federal interests in accordance with subsection (b), and operated in accordance with subsection (c), of this section. The amount of each such annual contribution shall be as follows:

[(1) For fiscal year 1986: \$2,000,000.

[(2) For each of the fiscal years 1987 through 1990: 3 percent of the total amount appropriated under section 10 of this Act, but not to exceed \$500,000 for each such fiscal year.

[(3) For each fiscal year after 1990: 5 percent of the total amount appropriated under section 10 of this Act, but only if a contribution to the Trust equal to 10 percent of all Federal contributions is provided or contracted for by the State of North Dakota from non-Federal funds. The contributions of the State of North Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary.

[(4) The total Federal contributions pursuant to the Act shall not exceed \$12,000,000.]

#### (a) **CONTRIBUTION.**—

##### (1) **INITIAL AUTHORIZATION.**—

(A) *IN GENERAL.*—*From the sums appropriated under section 10 for the Garrison Diversion Unit, the Secretary shall make an annual Federal contribution to a Natural Resources Trust established by non-Federal interests in accordance with subsection (b) and operated in accordance with subsection (c).*

(B) *AMOUNT.*—*The total amount of Federal contribution under subparagraph (A) shall not exceed \$12,000,000.*

##### (2) **ADDITIONAL AUTHORIZATION.**—

(A) *IN GENERAL.*—*In addition to the amounts authorized in paragraph 1, the Secretary shall make annual Federal contributions to the Natural Resources Trust until the amount authorized by section 10(c)(2)(B) is reached, in the manner stated in subparagraph (B).*

(B) *ANNUAL AMOUNT.*—*The amount of the contribution under subparagraph (A) for each fiscal year shall be the*

*amount that is equal to 5 percent of the total amount that is appropriated for the fiscal year under subsections (a)(1)(B) and (b)(1)(B) of section 10.*

(b) STRUCTURE OF THE TRUST.—A **Wetlands Trust** *Natural Resources Trust* shall be eligible to receive Federal contributions pursuant to subsection (a) if it complies with each of the following requirements:

(1) The Trust is established by non-Federal interests as a non-profit corporation under the laws of North Dakota with its principal office in North Dakota.

(2) The Trust is under the direction of a Board of Directors which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

(3) The Board of Directors of the Trust is comprised of 6 persons appointed as follows, each for a term of 2 years:

(A) 3 persons appointed by the Governor of North Dakota.

(B) 1 person appointed by the National Audubon Society.

(C) 1 person appointed by the National Wildlife Federation.

(D) 1 person appointed by the North Dakota Chapter of the Wildlife Society.

Vacancies on the board are filled in the manner in which the original appointments were made. Any member of the Board of Directors is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office.

(4) Members of the Board of Directors serve without compensation.

(5) The corporate purposes of the Trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of North Dakota.

(c) OPERATIONS OF THE TRUST.—A **Wetland Trust** *Natural Resources Trust* established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements **are met** *is met*:

(1) The Trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat, *grassland conservation and riparian areas* in the State of North Dakota in accordance with its corporate purpose as provided in subsection (b)(5).

(2) Pursuant to its corporate charter, the Trust has the authority to exercise each of the following powers:

(A) The power to acquire lands and interests in land and power to acquire water rights. Lands or interests in lands may be acquired by the Trust only with the consent of the owner thereof and with the approval of the Governor of North Dakota.

(B) The power to finance wetland preservation, enhancement, restoration, and management of wetland habitat programs.

(C) *The power to fund incentives for conservation practices by landowners.*

(3) All funds received by the Trust under subsection (a) are invested in accordance with the requirements of subsection (d). No part of the principal amount of such funds may be expended for any purpose. The income received by the Trust from the investment of such funds shall be used by the Trust exclusively for its purposes and operations in accordance with this subsection or, to the extent not required for current operations, reinvested in accordance with subsection (d).

(4) The Trust agrees to provide such reports as may be required by the Secretary or the Governor of North Dakota and makes its records available for audit by Federal and State agencies.

(d) INVESTMENT OF TRUST FUNDS.—The Secretary of the Interior, in consultation with the Secretary of the Treasury and the Governor of North Dakota, shall establish requirements for the investment of all amounts received by the Trust under subsection (a) or reinvested under subsection (c)(3). Such requirements shall ensure that such amounts are invested in accordance with sound investment principles and shall ensure that persons managing such investments will exercise their fiduciary responsibilities in appropriate manner.