

## Union Calendar No. 475

107<sup>TH</sup> CONGRESS  
2D SESSION**H. R. 2202****[Report No. 107-760]**

To convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2001

Mr. REHBERG introduced the following bill; which was referred to the Committee on Resources

OCTOBER 16, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on June 14, 2001]

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**A BILL**

To convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       *This Act may be cited as the “Lower Yellowstone Rec-*  
 3 *lamation Projects Conveyance Act”.*

4 **SEC. 2. DEFINITIONS.**

5       *In this Act:*

6           (1) *INTAKE IRRIGATION DISTRICT.*—*The term*  
 7 *“Intake Irrigation District” means the Irrigation*  
 8 *District by that name that is organized under the*  
 9 *laws of the State of Montana and operates the Intake*  
 10 *Project.*

11           (2) *INTAKE PROJECT.*—*The term “Intake*  
 12 *Project” means the Federal irrigation development*  
 13 *operated by the Intake Irrigation District and au-*  
 14 *thorized under the terms of the Act of August 11, 1939*  
 15 *(chapter 717; 53 Stat. 1418).*

16           (3) *IRRIGATION DISTRICTS.*—*The term “Irriga-*  
 17 *tion Districts” means—*

18                   (A) *the Intake Irrigation District;*

19                   (B) *the Lower Yellowstone Irrigation Dis-*  
 20 *trict No. 1;*

21                   (C) *the Lower Yellowstone Irrigation Dis-*  
 22 *trict No. 2; and*

23                   (D) *the Savage Irrigation District.*

24           (4) *LOWER YELLOWSTONE IRRIGATION DISTRICT*  
 25 *NO. 1.*—*The term “Lower Yellowstone Irrigation Dis-*  
 26 *trict No. 1” means the irrigation district by that*

1        *name that is organized under the laws of the State of*  
 2        *Montana and operates the part of the Lower Yellow-*  
 3        *stone Irrigation Project located in the State of Mon-*  
 4        *tana.*

5            (5) *LOWER YELLOWSTONE IRRIGATION DISTRICT*  
 6        *NO. 2.—The term “Lower Yellowstone Irrigation Dis-*  
 7        *trict No. 2” means the irrigation district by that*  
 8        *name organized under the laws of the State of North*  
 9        *Dakota and operates the part of the Lower Yellow-*  
 10       *stone Irrigation Project located in the State of North*  
 11       *Dakota.*

12           (6)        *LOWER        YELLOWSTONE        IRRIGATION*  
 13        *PROJECT.—The term “Lower Yellowstone Irrigation*  
 14        *Project” means the Federal irrigation development*  
 15        *operated by Lower Yellowstone Irrigation District No.*  
 16        *1 and Lower Yellowstone Irrigation District No. 2*  
 17        *and authorized by the Act of June 17, 1902 (chapter*  
 18        *1093; 32 Stat. 388).*

19           (7) *MEMORANDUM OF UNDERSTANDING.—The*  
 20        *term “Memorandum of Understanding” means the*  
 21        *memorandum of understanding dated November 16,*  
 22        *1999, and any subsequent replacements or amend-*  
 23        *ments between the Districts and the Montana Area*  
 24        *Office, Great Plains Region, Bureau of Reclamation,*  
 25        *for the purpose of defining certain principles by*

1       *which the title to the projects will be transferred from*  
 2       *the United States to the districts.*

3           (8) *PICK-SLOAN MISSOURI BASIN PROGRAM.—*  
 4       *The term “Pick-Sloan Missouri Basin Program”*  
 5       *means the comprehensive Federal program for multi-*  
 6       *purpose benefits within the Missouri River Basin in-*  
 7       *cluding irrigation authorized by section 9 of the Act*  
 8       *of December 22, 1944, commonly known as the “Flood*  
 9       *Control Act of 1944” (chapter 665; 58 Stat. 891).*

10          (9) *PICK-SLOAN MISSOURI BASIN PROGRAM*  
 11       *PROJECT USE POWER.—The term “Pick-Sloan Mis-*  
 12       *souri Basin Program Project Use Power” means*  
 13       *power available for establishing and maintaining the*  
 14       *irrigation developments of the Pick-Sloan Missouri*  
 15       *Basin Program.*

16          (10) *PROJECTS.—The term “Projects” means—*

17               (A) *the Lower Yellowstone Irrigation*  
 18       *Project;*

19               (B) *the Intake Project; and*

20               (C) *the Savage Unit.*

21          (11) *SAVAGE IRRIGATION DISTRICT.—The term*  
 22       *“Savage Irrigation District” means the irrigation*  
 23       *district by that name that is organized under the*  
 24       *laws of the State of Montana and operates the Savage*  
 25       *Unit.*

1           (12) *SAVAGE UNIT*.—*The term “Savage Unit”*  
2           *means the Savage Unit of the Pick-Sloan Missouri*  
3           *Basin Program, a Federal irrigation development au-*  
4           *thorized by the Act of December 22, 1944, commonly*  
5           *known as the “Flood Control Act of 1944” (chapter*  
6           *665; 58 Stat. 891).*

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

9   **SEC. 3. CONVEYANCE OF PROJECTS.**

10          (a) *CONVEYANCES*.—

11               (1) *GENERAL*.—*The Secretary shall convey*  
12               *works, facilities, and lands of the Projects to the Irri-*  
13               *gation Districts in accordance with all applicable*  
14               *laws and pursuant to the terms of the Memorandum*  
15               *of Understanding.*

16               (2) *LANDS*.—

17                       (A) *GENERAL*.—*All lands, easements, and*  
18                       *rights-of-way the United States possesses that are*  
19                       *to be conveyed by the Secretary to the respective*  
20                       *irrigation districts shall be conveyed by quit-*  
21                       *claim deed. Conveyance of such lands, easements,*  
22                       *and rights-of-way is subject to permits, licenses,*  
23                       *leases, rights-of-use, or right-of-way of record*  
24                       *outstanding in third parties on, over, or across*  
25                       *such lands, easements, and rights-of-way.*

1                   (B) *MINERAL RIGHTS.*—Conveyance of all  
2                   lands herein described shall be subject to a res-  
3                   ervation by the United States reserving all min-  
4                   erals of a nature whatsoever, excluding sand and  
5                   gravel, and subject to oil, gas, and other mineral  
6                   rights heretofore reserved of record by or in favor  
7                   of third parties.

8                   (3) *WATER RIGHTS.*—The Secretary shall trans-  
9                   fer to the respective Irrigation Districts in accordance  
10                  with and subject to the law of the State of Montana,  
11                  all natural flow, wastewater, seepage, return flow, do-  
12                  mestic water, stock water, and groundwater rights  
13                  held in part or wholly in the name of the United  
14                  States that are used to serve the lands within the Irri-  
15                  gation Districts.

16                (4) *COSTS.*—

17                   (A) *RECLAMATION WITHDRAWN LANDS.*—  
18                   The Irrigation Districts shall purchase Reclama-  
19                   tion withdrawn lands as identified in the Memo-  
20                   randum of Understanding for their value in pro-  
21                   viding operation and maintenance benefits to the  
22                   Irrigation Districts.

23                   (B) *SAVAGE UNIT REPAYMENT OBLIGA-*  
24                   *TIONS.*—

1           (i) *SAVAGE IRRIGATION DISTRICT.*—As  
2           a condition of transfer, the Secretary shall  
3           receive an amount from the Savage Irriga-  
4           tion District equal to the present value of  
5           the remaining water supply repayment obli-  
6           gation of \$60,480 that shall be treated as  
7           full payment under Contract Number I1r-  
8           1525, as amended and as extended by Con-  
9           tract No. 9-07-60-W0770.

10          (ii) *PICK-SLOAN MISSOURI BASIN PRO-*  
11          *GRAM CONSTRUCTION OBLIGATION.*—As a  
12          condition of transfer, the Secretary shall ac-  
13          cept \$94,727 as payment from the Pick-  
14          Sloan Missouri Basin Program (Eastern  
15          Division) power customers under the terms  
16          specified in this section, as consideration for  
17          the conveyance under this subsection. This  
18          payment shall be out of the receipts from  
19          the sale of power from the Pick-Sloan Mis-  
20          souri Basin Program (Eastern Division)  
21          collected by the Western Area Power Admin-  
22          istration and deposited into the Reclama-  
23          tion fund of the Treasury in fiscal year  
24          2003. This payment shall be treated as full  
25          and complete payment by the power cus-

1                    *tomers of the construction aid-to-irrigation*  
 2                    *associated with the facilities of the Savage*  
 3                    *Unit.*

4            *(b) REVOCATION OF RECLAMATION WITHDRAWALS*  
 5    *AND ORDERS.—*

6            *(1) The Reclamation withdrawal established by*  
 7            *Public Land Order 4711 dated October 6, 1969, for*  
 8            *the Lower Yellowstone Irrigation Project in lots 1 and*  
 9            *2, section 3, T.23N., R. 59 E., is hereby revoked in*  
 10           *its entirety.*

11           *(2) The Secretarial Order of March 22, 1906,*  
 12           *which was issued for irrigation works on lots 3 and*  
 13           *4 section 2, T. 23N., R. 59E., and Secretarial Order*  
 14           *of August 8, 1905, which was issued for irrigation*  
 15           *works in section 2, T. 17 N., R. 56 E. and section*  
 16           *6, T. 17 N., R. 57 E., are hereby revoked in their en-*  
 17           *tirety.*

18           *(3) The Secretarial Order of August 24, 1903,*  
 19           *and July 27, 1908, which were issued in connection*  
 20           *with the Lower Yellowstone Irrigation Project, are re-*  
 21           *voked insofar as they affect the following lands:*

22                    *(A) Lot 9 of Sec. 2 and lot 2 of Sec. 30,*  
 23                    *T.18N., R.57E.; lot 3 of Sec. 4, T.19N., R.58E.;*  
 24                    *lots 2 and 3 and 6 and 7 of Sec. 12, T.21N.,*  
 25                    *R.58E.; SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Sec. 26, T.22N., R.58E.;*



1            *lots 1 and 4 and 7 and NW<sup>1/4</sup>SW<sup>1/4</sup> of Sec. 20,*  
 2            *T.22N., R.59E.; SE<sup>1/4</sup>NE<sup>1/4</sup> of Sec. 13, T.23N.,*  
 3            *R.59E.; and lot 2 of Sec. 18, T.24N., R.60E.; all*  
 4            *in the Principal Meridian, Montana.—*

5            *(B) Lot 8 of Sec. 2 and lot 1 and lot 2 and*  
 6            *lot 3 and NE<sup>1/4</sup>NE<sup>1/4</sup> of Sec. 10 and lot 2 of Sec.*  
 7            *11 and lot 6 of Sec. 18 and lot 3 of Sec. 35,*  
 8            *T.151N., R.104W.; and lot 7 of Sec. 28, T.152N.,*  
 9            *R.104W.; all in the Fifth Principal Meridian,*  
 10           *North Dakota.*

11    **SEC. 4. REPORT.**

12           *If the conveyance under this Act has not occurred with-*  
 13           *in 2 years after the date of the enactment of this Act, the*  
 14           *Secretary shall submit to the Congress a status report.*

15    **SEC. 5. RECREATION MANAGEMENT.**

16           *As a condition of the conveyance of lands under section*  
 17           *3, the Secretary shall require that Lower Yellowstone Irri-*  
 18           *gation District No. 1 and Lower Yellowstone Irrigation*  
 19           *District No. 2 convey a perpetual conservation easement to*  
 20           *the State of Montana, at no cost to the State, for the pur-*  
 21           *poses of protecting, preserving, and enhancing the conserva-*  
 22           *tion values and permitting recreation on Federal lands in*  
 23           *part to be conveyed under this Act. Lower Yellowstone Irri-*  
 24           *gation District No. 1, Lower Yellowstone Irrigation District*

1 *No. 2, and the State of Montana have mutually agreed upon*  
 2 *such conservation easement.*

3 **SEC. 6. PROJECT PUMPING POWER.**

4 *The Secretary shall sustain the irrigation develop-*  
 5 *ments established by the Lower Yellowstone and Intake*  
 6 *Projects and the Savage Unit as components of the irriga-*  
 7 *tion plan under the Pick-Sloan Missouri River Basin Pro-*  
 8 *gram and shall continue to provide the Irrigation Districts*  
 9 *with Pick-Sloan Missouri River Basin Project Use power*  
 10 *at the Irrigation Districts' pumping plants, except that the*  
 11 *rate shall be at the preference power rate and there shall*  
 12 *be no ability-to-pay adjustment.*

13 **SEC. 7. YELLOWSTONE RIVER FISHERIES PROTECTION.**

14 *(a) GENERAL.—As a condition of transfer, the Sec-*  
 15 *retary, prior to the conveyances under section 3 and in co-*  
 16 *operation with the Irrigation Districts, shall provide fish*  
 17 *protection devices to prevent juvenile and adult fish from*  
 18 *entering the Main Canal of the Lower Yellowstone Irriga-*  
 19 *tion Project and allow bottom dwelling fish species to mi-*  
 20 *grate above the Project's Intake Diversion Dam.*

21 *(b) PARTICIPATION.—The Secretary and the Irrigation*  
 22 *District shall work cooperatively in planning, engineering,*  
 23 *and constructing the fish protection devices.*

24 *(c) MONITORING.—The Secretary, acting through the*  
 25 *Commissioner of the Bureau of Reclamation and the Direc-*

1 *tor of the United States Fish and Wildlife Service, shall*  
 2 *establish and conduct a monitoring plan to measure the ef-*  
 3 *fectiveness of the devices for a minimum of 2 years after*  
 4 *construction is completed. The Commissioner of the Bureau*  
 5 *of Reclamation shall be responsible to modify the devices*  
 6 *as necessary to ensure proper functioning.*

7       (d) *YELLOWSTONE RIVER FISHERIES PROTECTION*  
 8 *DEVICES COSTS.*—*The cost incurred in planning, engineer-*  
 9 *ing, constructing, monitoring, and modifying all fish pro-*  
 10 *tection devices shall be deemed non-reimbursable.*

11       (e) *OPERATION, MAINTENANCE AND REPLACE-*  
 12 *MENTS.*—*Following completion of the construction period*  
 13 *and the two-year monitoring period, the Districts shall op-*  
 14 *erate, maintain, and replace the fisheries protection devices*  
 15 *in a manner to ensure proper functioning.*

16       (f) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
 17 *authorized to be appropriated such sums as may be nec-*  
 18 *essary to implement this section.*

19 **SEC. 8. RELATIONSHIP WITH OTHER LAWS AND FUTURE**  
 20 **BENEFITS.**

21       *Upon conveyance of the projects under this Act, the*  
 22 *Irrigation Districts shall not be subject to the Reclamation*  
 23 *laws or entitled to receive any Reclamation benefits under*  
 24 *those laws except as provided in section 6.*

1 **SEC. 9. LIABILITY.**

2       *Effective on the date of conveyance of a project under*  
3 *this Act, the United States shall not be liable under any*  
4 *State or Federal law for damages of any kind arising out*  
5 *of any act, omission, or occurrence relating to the projects,*  
6 *except for damages caused by acts of negligence committed*  
7 *by the United States or by its employees, agents, or contrac-*  
8 *tors prior to the date of this conveyance. Nothing in this*  
9 *section shall be considered to increase the liability of the*  
10 *United States beyond that currently provided in chapter*  
11 *171 of title 28, United States Code, popularly known as*  
12 *the Federal Tort Act.*

13 **SEC. 10. COMPLIANCE WITH LAWS.**

14       *As a condition of the conveyances under section 3, the*  
15 *Secretary shall by no later than the date on which the con-*  
16 *veyances occur complete appropriate analyses of the trans-*  
17 *fer in compliance with the requirements of the National En-*  
18 *vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),*  
19 *the Endangered Species Act of 1973 (16 U.S.C. 1531 et*  
20 *seq.), and other applicable laws.*



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