

108TH CONGRESS
2D SESSION

S. 1996

AN ACT

To enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Oglala Sioux Tribe
5 Angostura Irrigation Project Modernization and Develop-
6 ment Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) Congress approved the Pick-Sloan Missouri
4 River basin program by passing the Act of Decem-
5 ber 22, 1944 (commonly known as the “Flood Con-
6 trol Act of 1944”) (33 U.S.C. 701–1 et seq.)—

7 (A) to promote the economic development
8 of the United States;

9 (B) to provide for irrigation in regions
10 north of Sioux City, Iowa;

11 (C) to protect urban and rural areas from
12 devastating floods of the Missouri River; and

13 (D) for other purposes;

14 (2) the Angostura Unit—

15 (A) is a component of the Pick-Sloan pro-
16 gram; and

17 (B) provides for—

18 (i) irrigation of 12,218 acres of pro-
19 ductive farm land in South Dakota; and

20 (ii) substantial recreation and fish
21 and wildlife benefits;

22 (3) the Commissioner of Reclamation has deter-
23 mined that—

24 (A) the national economic development
25 benefits from irrigation at the Angostura Unit
26 total approximately \$3,410,000 annually; and

1 (B) the national economic development
2 benefits of recreation at Angostura Reservoir
3 total approximately \$7,100,000 annually;

4 (4) the Angostura Unit impounds the Cheyenne
5 River 20 miles upstream of the Pine Ridge Indian
6 Reservation in South Dakota;

7 (5)(A) the Reservation experiences extremely
8 high rates of unemployment and poverty; and

9 (B) there is a need for economic development
10 on the Reservation;

11 (6) the national economic development benefits
12 of the Angostura Unit do not extend to the Reserva-
13 tion;

14 (7) the Angostura Unit may be associated with
15 negative affects on water quality and riparian vege-
16 tation in the Cheyenne River on the Reservation;

17 (8) modernization of the irrigation facilities at
18 the Angostura Unit would—

19 (A) enhance the national economic develop-
20 ment benefits of the Angostura Unit; and

21 (B) result in improved water efficiency and
22 environmental restoration benefits on the Res-
23 ervation; and

24 (9) the establishment of a trust fund for the
25 Oglala Sioux Tribe would—

1 (A) produce economic development benefits
2 for the Reservation comparable to the benefits
3 produced at the Angostura Unit; and

4 (B) provide resources that are necessary
5 for restoration of the Cheyenne River corridor
6 on the Reservation.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) **ANGOSTURA UNIT.**—The term “Angostura
10 Unit” means the irrigation unit of the Angostura ir-
11 rigation project developed under the Act of August
12 11, 1939 (16 U.S.C. 590y et seq.).

13 (2) **FUND.**—The term “Fund” means the Og-
14 lala Sioux Tribal Development Trust Fund estab-
15 lished by section 201(a).

16 (3) **PICK-SLOAN PROGRAM.**—The term “Pick-
17 Sloan program” means the Pick-Sloan Missouri
18 River basin program approved under the Act of De-
19 cember 22, 1944 (commonly known as the “Flood
20 Control Act of 1944”) (33 U.S.C. 701–1 et seq.).

21 (4) **PLAN.**—The term “plan” means the devel-
22 opment plan developed by the Tribe under section
23 201(f).

1 (5) RESERVATION.—The term “Reservation”
2 means the Pine Ridge Indian Reservation in the
3 State.

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

6 (7) TRIBE.—The term “Tribe” means the Og-
7 lala Sioux Tribe of South Dakota.

8 (8) TRIBAL COUNCIL.—The term “Tribal Coun-
9 cil” means the governing body of the Tribe.

10 **TITLE I—MODERNIZATION**

11 **SEC. 101. MODERNIZATION OF FACILITIES AT ANGOSTURA**

12 **UNIT.**

13 (a) IN GENERAL.—The Secretary shall carry out the
14 modernization and improvement of the facilities at the An-
15 gostura Unit as described in the Improved Efficiencies Al-
16 ternative included in the report entitled “Final Environ-
17 mental Impact Statement, Angostura Unit Contract Nego-
18 tiation and Water Management (August 2002)”.

19 (b) NONREIMBURSABILITY.—The cost of the mod-
20 ernization and improvement of the facilities at the Angos-
21 tura Unit shall be carried out on a nonreimbursable basis.

22 **SEC. 102. DELIVERY OF WATER TO PINE RIDGE INDIAN** 23 **RESERVATION.**

24 The Secretary shall provide for the delivery of the
25 water saved through the modernization and improvement

1 of the facilities of the Angostura Unit to be used for fish
 2 and wildlife purposes and environmental restoration on the
 3 Reservation.

4 **SEC. 103. AUTHORIZATION OF APPROPRIATIONS.**

5 There is authorized to be appropriated to carry out
 6 section 101 \$4,660,000, to remain available until ex-
 7 pended.

8 **TITLE II—DEVELOPMENT**

9 **SEC. 201. OGLALA SIOUX TRIBAL DEVELOPMENT TRUST**
 10 **FUND.**

11 (a) OGLALA SIOUX TRIBAL DEVELOPMENT TRUST
 12 FUND.—There is established in the Treasury of the
 13 United States a fund to be known as the “Oglala Sioux
 14 Tribal Development Trust Fund”, consisting of any
 15 amounts deposited in the Fund under this title.

16 (b) FUNDING.—On the first day of the 11th fiscal
 17 year that begins after the date of enactment of this Act,
 18 the Secretary of the Treasury shall, from the General
 19 Fund of the Treasury, deposit in the Fund—

20 (1) \$92,500,000; and

21 (2) the amount that equals the amount of inter-
 22 est that would have accrued on the amount de-
 23 scribed in paragraph (1) if that amount had been in-
 24 vested in interest-bearing obligations of the United
 25 States on the first day of the first fiscal year that

1 begins after the date of enactment of this Act and
2 compounded annually thereafter.

3 (c) INVESTMENT OF TRUST FUND.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury shall invest such portion of the Fund as is not,
6 in the judgment of the Secretary of the Treasury,
7 required to meet current withdrawals.

8 (2) ELIGIBLE OBLIGATIONS.—Notwithstanding
9 any other provision of law, the Secretary of the
10 Treasury shall invest the amounts deposited under
11 subsection (b) and the interest earned on those
12 amounts only in interest-bearing obligations of the
13 United States issued directly to the Fund.

14 (3) INTEREST.—The Secretary of the Treasury
15 shall deposit interest resulting from such invest-
16 ments into the Fund.

17 (d) PAYMENT OF INTEREST TO TRIBE.—

18 (1) WITHDRAWAL OF INTEREST.—Beginning on
19 the first day of the 11th fiscal year after the date
20 of enactment of this Act and, on the first day of
21 each fiscal year thereafter, the Secretary of the
22 Treasury shall transfer the aggregate amount of in-
23 terest deposited into the Fund for the fiscal year to
24 the Secretary for use in accordance with paragraph
25 (3).

1 (2) AVAILABILITY.—Each amount transferred
2 under paragraph (1) shall be available without fiscal
3 year limitation.

4 (3) PAYMENTS TO TRIBE.—

5 (A) IN GENERAL.—The Secretary shall use
6 the amounts transferred under paragraph (1)
7 only for the purpose of making payments to the
8 Tribe, as such payments are requested by the
9 Tribe pursuant to tribal resolution.

10 (B) LIMITATION.—Payments may be made
11 by the Secretary of the Interior under subpara-
12 graph (A) only after the Tribe has adopted a
13 plan under subsection (f).

14 (C) USE OF PAYMENTS BY TRIBE.—The
15 Tribe shall use the payments made under sub-
16 paragraph (B) only for carrying out projects
17 and programs under the plan prepared under
18 subsection (f).

19 (e) LIMITATION ON TRANSFERS AND WITH-
20 DRAWALS.—Except as provided in subsections (c) and
21 (d)(1), the Secretary of the Treasury shall not transfer
22 or withdraw any amount deposited under subsection (b).

23 (f) DEVELOPMENT PLAN.—

24 (1) IN GENERAL.—Not later than 18 months
25 after the date of enactment of this Act, the gov-

1 erning body of the Tribe shall prepare a plan for the
 2 use of the payments to the Tribe under subsection
 3 (d).

4 (2) CONTENTS.—The plan shall provide for the
 5 manner in which the Tribe shall expend payments to
 6 the Tribe under subsection (d) to promote—

7 (A) economic development;

8 (B) infrastructure development;

9 (C) the educational, health, recreational,
 10 and social welfare objectives of the Tribe and
 11 members of the Tribe; or

12 (D) any combination of the activities de-
 13 scribed in subparagraphs (A) through (C).

14 (3) PLAN REVIEW AND REVISION.—

15 (A) IN GENERAL.—The Tribal Council
 16 shall make available for review and comment by
 17 the members of the Tribe a copy of the plan be-
 18 fore the plan becomes final, in accordance with
 19 procedures established by the Tribal Council.

20 (B) UPDATING OF PLAN.—

21 (i) IN GENERAL.—The Tribal Council
 22 may, on an annual basis, revise the plan to
 23 update the plan.

24 (ii) REVIEW AND COMMENT.—In re-
 25 vising the plan, the Tribal Council shall

1 provide the members of the Tribe oppor-
2 tunity to review and comment on any pro-
3 posed revision to the plan.

4 (C) CONSULTATION.—In preparing the
5 plan and any revisions to update the plan, the
6 Tribal Council shall consult with the Secretary
7 and the Secretary of Health and Human Serv-
8 ices.

9 (4) AUDIT.—

10 (A) IN GENERAL.—The activities of the
11 Tribe in carrying out the plan shall be audited
12 as part of the annual single-agency audit that
13 the Tribe is required to prepare pursuant to the
14 Office of Management and Budget circular
15 numbered A-133.

16 (B) DETERMINATION BY AUDITORS.—The
17 auditors that conduct the audit under subpara-
18 graph (A) shall—

19 (i) determine whether funds received
20 by the Tribe under this section for the pe-
21 riod covered by the audit were expended to
22 carry out the plan in a manner consistent
23 with this section; and

1 (ii) include in the written findings of
 2 the audit the determination made under
 3 clause (i).

4 (C) INCLUSION OF FINDINGS WITH PUBLI-
 5 CATION OF PROCEEDINGS OF TRIBAL COUN-
 6 CIL.—A copy of the written findings of the
 7 audit described in subparagraph (A) shall be in-
 8 serted in the published minutes of the Tribal
 9 Council proceedings for the session at which the
 10 audit is presented to the Tribal Council.

11 (g) PROHIBITION OF PER CAPITA PAYMENTS.—No
 12 portion of any payment made under this title may be dis-
 13 tributed to any member of the Tribe on a per capita basis.

14 **SEC. 202. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS**
 15 **AND SERVICES.**

16 No payment made to the Tribe under this title shall
 17 result in the reduction or denial of any service or program
 18 with respect to which, under Federal law—

19 (1) the Tribe is otherwise entitled because of
 20 the status of the Tribe as a federally recognized In-
 21 dian tribe; or

22 (2) any individual who is a member of the Tribe
 23 is entitled because of the status of the individual as
 24 a member of the Tribe.

1 **SEC. 203. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as are necessary to pay the administrative expenses of the
4 Fund.

5 **SEC. 204. WATER RIGHTS.**

6 Nothing in this Act—

7 (1)(A) affects any rights, benefits, privileges or
8 claims (including water rights or claims to water
9 rights) of the Tribe, whether located within or with-
10 out the external boundaries of the Reservation,
11 based on treaty, Executive order, agreement, Act of
12 Congress, aboriginal title, the Winters doctrine
13 (Winters v. United States, 207 U.S. 564 (1908)), or
14 otherwise; or

15 (B) validates or invalidates any assertion of the
16 existence, nonexistence or extinguishment of any
17 water rights, or claims to water rights, held by the
18 Tribe or any other Indian tribe or individual Indian
19 under Federal or State law; or

1 (2) affects any other water rights in existence
2 on the date of enactment of this Act held by any
3 person or entity.

Passed the Senate November 19, 2004.

Attest:

Secretary.

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