

110TH CONGRESS
1ST SESSION

S. 2489

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2007

Mr. JOHNSON (for himself and Mr. THUNE) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

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”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

9 (1) Congress approved the Pick-Sloan Missouri
10 River Basin Program by passing the Act of Decem-

1 ber 22, 1944 (commonly known as the “Flood Con-
2 trol Act of 1944”) (33 U.S.C. 701–1 et seq.)—

3 (A) to promote the economic development
4 of the United States;

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

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

9 (D) for other purposes;

10 (2) the Angostura Unit—

11 (A) is a component of the Pick-Sloan pro-
12 gram; and

13 (B) provides for—

14 (i) irrigation of approximately 12,218
15 acres of productive farm land in South Da-
16 kota; and

17 (ii) substantial recreation and fish
18 and wildlife benefits;

19 (3) the Commissioner of Reclamation has deter-
20 mined that—

21 (A) the national economic development
22 benefits from irrigation at the Angostura Unit
23 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) the Reservation experiences extremely high
8 rates of unemployment and poverty;

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

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

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

17 (9) 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 (10) 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 (33 U.S.C. 701–1 et seq.) (com-
20 monly known as the “Flood Control Act of 1944”).

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

24 (5) **RESERVATION.**—The term “Reservation”
25 means the Pine Ridge Indian Reservation.

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior.

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

5 (8) TRIBE.—The term “Tribe” means the Og-
6 lala Sioux Tribe of the Pine Ridge Indian Reserva-
7 tion.

8 **SEC. 4. MODERNIZATION.**

9 (a) MODERNIZATION OF FACILITIES AT ANGOSTURA
10 UNIT.—

11 (1) IN GENERAL.—The Secretary shall carry
12 out the modernization and improvement of the facili-
13 ties at the Angostura Unit as described in the Im-
14 proved Efficiencies Alternative included in the report
15 entitled “Final Environmental Impact Statement,
16 Angostura Unit Contract Negotiation and Water
17 Management (August 2002)”.

18 (2) NONREIMBURSABILITY.—The cost of the
19 modernization and improvement of the facilities at
20 the Angostura Unit shall be carried out on a non-
21 reimbursable basis.

22 (b) DELIVERY OF WATER TO PINE RIDGE INDIAN
23 RESERVATION.—The Secretary shall provide for the deliv-
24 ery of the water saved through the modernization and im-
25 provement of the facilities of the Angostura Unit as an

1 instream flow of the Cheyenne River to be used for fish
2 and wildlife purposes and environmental restoration on the
3 Reservation.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to carry out subsection (a)
6 \$4,660,000, to remain available until expended.

7 **SEC. 5. DEVELOPMENT.**

8 (a) OGLALA SIOUX TRIBAL DEVELOPMENT TRUST
9 FUND.—

10 (1) OGLALA SIOUX TRIBAL DEVELOPMENT
11 TRUST FUND.—There is established in the Treasury
12 of the United States a fund to be known as the “Og-
13 lala Sioux Tribal Development Trust Fund”, con-
14 sisting of any amounts deposited in the Fund under
15 this Act.

16 (2) FUNDING.—Not later than the first day of
17 the 11th fiscal year that begins after the date of en-
18 actment of this Act, the Secretary of the Treasury
19 shall deposit in the Fund, from the general fund of
20 the Treasury, \$92,500,000.

21 (3) INVESTMENT OF TRUST FUND.—

22 (A) IN GENERAL.—The Secretary of the
23 Treasury shall invest such portion of the Fund
24 as is not, in the judgment of the Secretary of

1 the Treasury, required to meet current with-
2 drawals.

3 (B) ELIGIBLE OBLIGATIONS.—Notwith-
4 standing any other provision of law, the Sec-
5 retary of the Treasury shall invest the amounts
6 deposited under paragraph (2) and the interest
7 earned on those amounts only in interest-bear-
8 ing obligations of the United States issued di-
9 rectly to the Fund.

10 (C) INTEREST.—The Secretary of the
11 Treasury shall deposit interest resulting from
12 such investments into the Fund.

13 (4) PAYMENT OF INTEREST TO TRIBE.—

14 (A) WITHDRAWAL OF INTEREST.—On Oc-
15 tober 1st of each year, the Secretary of the
16 Treasury shall transfer the aggregate amount
17 of interest deposited into the Fund for the fis-
18 cal year to the Secretary for use in accordance
19 with subparagraph (C).

20 (B) AVAILABILITY.—Each amount trans-
21 ferred under subparagraph (A) shall be avail-
22 able without fiscal year limitation.

23 (C) PAYMENTS TO TRIBE.—

24 (i) IN GENERAL.—The Secretary shall
25 use the amounts transferred under sub-

1 paragraph (A) only for the purpose of
2 making payments to the Tribe, as such
3 payments are requested by the Tribe pur-
4 suant to tribal resolution.

5 (ii) LIMITATION.—Payments may be
6 made by the Secretary under clause (i)
7 only after the Tribe has adopted a plan
8 under paragraph (6).

9 (iii) USE OF PAYMENTS BY TRIBE.—
10 The Tribe shall use the payments made
11 under this subparagraph only for carrying
12 out projects and programs under the plan
13 prepared under paragraph (6).

14 (5) LIMITATION ON TRANSFERS AND WITH-
15 DRAWALS.—Except as provided in paragraphs (3)
16 and (4)(A), the Secretary of the Treasury shall not
17 transfer or withdraw any amount deposited into the
18 Fund under paragraph (2).

19 (6) DEVELOPMENT PLAN.—

20 (A) IN GENERAL.—Not later than 18
21 months after the date of enactment of this Act,
22 the Tribal Council shall prepare a plan for the
23 use of the payments to the Tribe under para-
24 graph (4).

1 (B) CONTENTS.—The plan shall provide
 2 for the manner in which the Tribe shall expend
 3 payments to the Tribe under paragraph (4) to
 4 promote—

5 (i) economic development;

6 (ii) infrastructure development;

7 (iii) the educational, health, rec-
 8 reational, and social welfare objectives of
 9 the Tribe and members of the Tribe; or

10 (iv) any combination of the activities
 11 described in clauses (i) through (iii).

12 (C) PLAN REVIEW AND REVISION.—

13 (i) IN GENERAL.—The Tribal Council
 14 shall make available for review and com-
 15 ment by the members of the Tribe a copy
 16 of the plan before the plan becomes final,
 17 in accordance with procedures established
 18 by the Tribal Council.

19 (ii) UPDATING OF PLAN.—

20 (I) IN GENERAL.—The Tribal
 21 Council may, on an annual basis, re-
 22 vise the plan.

23 (II) REVIEW AND COMMENT.—In
 24 revising the plan, the Tribal Council
 25 shall provide the members of the

1 Tribe opportunity to review and com-
2 ment on any proposed revision to the
3 plan.

4 (iii) CONSULTATION.—In preparing
5 the plan and any revisions to the plan, the
6 Tribal Council shall consult with the Sec-
7 retary and the Secretary of Health and
8 Human Services.

9 (D) AUDIT.—

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

16 (ii) DETERMINATION BY AUDITORS.—
17 The auditors that conduct the audit under
18 this subparagraph shall—

19 (I) determine whether funds re-
20 ceived by the Tribe under this section
21 for the period covered by the audit
22 were expended to carry out the plan
23 in a manner consistent with this sec-
24 tion; and

1 (II) include in the written find-
2 ings of the audit the determination
3 made under clause (i).

4 (iii) INCLUSION OF FINDINGS WITH
5 PUBLICATION OF PROCEEDINGS OF TRIBAL
6 COUNCIL.—A copy of the written findings
7 of the audit described in this subparagraph
8 shall be inserted in the published minutes
9 of the Tribal Council proceedings for the
10 session at which the audit is presented to
11 the Tribal Council.

12 (7) PROHIBITION OF PER CAPITA PAYMENTS.—
13 No portion of any payment made under this Act
14 may be distributed to any member of the Tribe on
15 a per capita basis.

16 (b) ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS
17 AND SERVICES.—No payment made to the Tribe under
18 this Act shall result in the reduction or denial of any serv-
19 ice or program with respect to which, under Federal law—

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

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

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as are nec-
3 essary to pay the administrative expenses of the Fund.

4 (d) DISCLAIMER OF EFFECTS.—Nothing in this Act
5 affects—

6 (1) any right or claim of the Tribe under the
7 Treaty of Fort Laramie of September 17, 1851 (11
8 Stat. 749);

9 (2) any right or claim of the Tribe under the
10 Treaty of Fort Laramie of April 29, 1868 (15 Stat.
11 635); or

12 (3) the reserved water rights of the Tribe under
13 the principles of *Winters v. United States* (207 U.S.
14 564 (1908)).

○