Public Law 99-294
99th Congress

An Act

May 12, 1986
[H.R. 1116]

To implement certain recommendations made pursuant to Public Law 98-360.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Garrison Diversion Unit Reformulation Act of 1986.
Water.
North Dakota.
Research and development.

SECTION 1. PURPOSE AND AUTHORIZATION.

The first section of the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by striking out "That" and all that follows down through the period at the end of such section and substituting:

"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 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;

36 Stat. 2448.

"(5) assure more timely 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

Agriculture and agricultural commodities.

"(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.

"(b) The Secretary of the Interior (hereafter referred to as "the Secretary") is authorized to plan and construct a multi-purpose water resource development project within the State of North Dakota providing for the irrigation of 130,940 acres, municipal, rural, and industrial water, fish and wildlife conservation and development, recreation, flood control, and other project purposes in accordance with the 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.

43 USC 371 notes.

"(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

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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.

"(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.

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"(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.".

SEC. 2. FISH AND WILDLIFE.

Section 2 of the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by adding the following new subsections at the end thereof:

"(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.

Conservation.

"(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.".

SEC. 3. IRRIGATION FACILITIES.

Section 5 of the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended to read as follows:

"SEC. 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 in 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.

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Reports.
South Dakota.

"(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 storage 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;

National Wildlife Refuge System.

"(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 quantity, water quality, and fish and wildlife values;

"(D) the need for 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.

42 USC 4321 note.

"(d) The Secretary is prohibited from obligating funds to construct irrigation facilities in the service areas listed in subsection (a)(1) 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).

Contracts.

43 USC 390aa.

"(e) 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), and Fort Yates (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) The Secretary shall not permit the use of project facilities for non-project drainage not included in project design or required for project operations.".

SEC. 4. POWER.

Section 6 of the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended to read as follows:

"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.

58 Stat. 891.

"(b) Notwithstanding 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.

"(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.".

SEC. 5. MUNICIPAL, RURAL, AND INDUSTRIAL WATER SERVICE.

Contracts.

The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

"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 assessments;

"(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 of the total cost of construction of each water system 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 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.

"(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 requirements of the Boundary Waters Treaty of 1909.

36 Stat. 2448.

"(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.

"(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.".

SEC. 6. SPECIFIC FEATURES.

The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 443) is amended by adding the following new section at the end thereof: 79 Stat. 433.

"SEC. 8. (a)(1) 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. 36 Stat. 2448.

"(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 Canada.

"(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.". National Wildlife Refuge System.

SEC. 7. EXCESS CROPS.

The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433), is amended by adding the following new section at the end thereof: Marketing.

"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 43 USC 390bb.

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. 8. AUTHORIZATION OF APPROPRIATIONS.

The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

"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. Such sums shall remain available until expended.

"(2) There is authorized to be appropriated $67,910,000 for carrying out the provisions of section 5(e) of this Act. Such sums shall remain available until expended.

"(b)(1) There is authorized to be appropriated $200,000,000 to carry out the provisions of section 7(a) of this Act. 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. Such sums shall remain available until expended.

"(c) 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.

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

SEC. 9. WETLANDS TRUST.

The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

"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 contribution pursuant to this Act shall not exceed $12,000,000.

"(b) STRUCTURE OF THE TRUST.—A Wetlands 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 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:

"(1) The Trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat 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 or wetland habitat programs.

"(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).

Reports.

"(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 an appropriate manner.".

SEC. 10. SOIL SURVEYS.

Hazardous materials.

Section 1 of the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. 390a) is amended by inserting at the end thereof the following: "Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows.".

SEC. 11. SHORT TITLE.

This Act may be referred to as the "Garrison Diversion Unit Reformulation Act of 1986".

SEC. 12. COMPLIANCE WITH APPROPRIATIONS ACT.

This Act to reformulate the Garrison Diversion Unit shall be deemed to meet all the time and substance requirements specified in the Fiscal Year 1986 Energy and Water Development Appropriations Act (Public Law 99-141).

99 Stat. 564.

Approved May 12, 1986.

LEGISLATIVE HISTORY—H.R. 1116:

HOUSE REPORTS: No. 99-525 and Pt. 2 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 132 (1986):
Apr. 21, 23, considered and passed House.
Apr. 28, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22 (1986):
May 12, Presidential statement.