

106TH CONGRESS
2D SESSION

H. R. 5527

To provide assistance for efforts to improve conservation of, recreation in, erosion control of, and maintenance of fish and wildlife habitat of the Missouri River in the State of South Dakota, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 2000

Mr. THUNE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide assistance for efforts to improve conservation of, recreation in, erosion control of, and maintenance of fish and wildlife habitat of the Missouri River in the State of South Dakota, and for other purposes.

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 shall be known as the “Missouri River Res-
5 toration Act of 2000”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) the Missouri River is—

2 (A) an invaluable economic, environmental,
3 recreational, and cultural resource to the people
4 of the United States; and

5 (B) a critical source of water for drinking
6 and irrigation;

7 (2) millions of people fish, hunt, and camp
8 along the Missouri River each year;

9 (3) thousands of sites of spiritual importance to
10 Native Americans line the shores of the Missouri
11 River;

12 (4) the Missouri River provides critical wildlife
13 habitat for threatened and endangered species;

14 (5) in 1944, Congress approved the Pick-Sloan
15 program—

16 (A) to promote the general economic devel-
17 opment of the United States;

18 (B) to provide for irrigation above Sioux
19 City, Iowa;

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

22 (D) for other purposes;

23 (6) the Oahe, Big Bend, Fort Randall, and
24 Gavins Point Dams were constructed on the Mis-

1 souri River in South Dakota under the Pick-Sloan
2 program;

3 (7) the dams referred to in paragraph (6)—

4 (A) generate low-cost electricity for mil-
5 lions of people in the United States;

6 (B) provide revenue to the Treasury; and

7 (C) provide flood control that has pre-
8 vented billions of dollars of damage;

9 (8) the Oahe, Big Bend, Fort Randall, and
10 Gavins Point Dams have reduced the ability of the
11 Missouri River to carry sediment downstream, re-
12 sulting in the accumulation of sediment in the res-
13 ervoirs known as Lake Oahe, Lake Sharpe, Lake
14 Francis Case, and Lewis and Clark Lake;

15 (9) the sediment depositions—

16 (A) cause shoreline flooding;

17 (B) destroy wildlife habitat;

18 (C) limit recreational opportunities;

19 (D) threaten the long-term ability of dams
20 to provide hydropower and flood control under
21 the Pick-Sloan program;

22 (E) reduce water quality; and

23 (F) threaten intakes for drinking water
24 and irrigation; and

1 (10) to meet the objectives established by Con-
2 gress for the Pick-Sloan program, it is necessary to
3 establish a Missouri River Restoration Trust Fund
4 to finance efforts—

5 (A) to reduce the deposition of sediment;

6 (B) to improve conservation; and

7 (C) to take other steps necessary for prop-
8 er management of the Missouri River.

9 (b) PURPOSES.—The purposes of this Act are—

10 (1) to reduce the siltation of the Missouri River
11 in the State of South Dakota in order to meet the
12 objectives of the Pick-Sloan program by developing
13 and implementing a long-term strategy—

14 (A) to improve conservation in the Mis-
15 souri River watershed;

16 (B) to protect recreation on the Missouri
17 River from sedimentation;

18 (C) to protect water quality in the Mis-
19 souri River from sedimentation;

20 (D) to improve erosion control along the
21 Missouri River; and

22 (E) to protect Indian and non-Indian his-
23 torical and cultural sites along the Missouri
24 River from sedimentation; and

1 (2) to meet the objectives described in para-
2 graph (1) by—

3 (A) developing and financing new pro-
4 grams in accordance with the plan; and

5 (B) providing a source of funds for the
6 State, Indian tribes, local governments, and pri-
7 vate entities to use as the non-Federal share re-
8 quired under Federal programs.

9 **SEC. 3. DEFINITIONS.**

10 In this Act, the following definitions apply:

11 (1) COMMITTEE.—The term “Committee”
12 means the Executive Committee appointed under
13 section 4(d).

14 (2) FUND.—The term “Fund” means the Mis-
15 souri River Restoration Trust Fund established by
16 section 5(a).

17 (3) PICK-SLOAN PROGRAM.—The term “Pick-
18 Sloan program” means the Pick-Sloan Missouri
19 River Basin Program authorized by section 9 of the
20 Act of December 22, 1944 (58 Stat. 891, chapter
21 665).

22 (4) PLAN.—The term “plan” means the plan
23 for the use of the payments to the Trust required
24 to be prepared under section 5(e).

1 (5) SECRETARY.—The term “Secretary” means
2 the Secretary of the Army.

3 (6) STATE.—The term “State” means the State
4 of South Dakota.

5 (7) TRUST.—The term “Trust” means the Mis-
6 souri River Trust established by section 4(a).

7 **SEC. 4. MISSOURI RIVER TRUST.**

8 (a) ESTABLISHMENT.—There is established a com-
9 mittee to be known as the Missouri River Trust.

10 (b) MEMBERSHIP.—The Trust shall be composed
11 of—

12 (1) 14 members appointed by the Governor of
13 South Dakota—

14 (A) that represent the various interests of
15 the public; and

16 (B) which may include representatives of—

17 (i) the South Dakota Department of
18 Environment and Natural Resources;

19 (ii) the South Dakota Department of
20 Game, Fish, and Parks;

21 (iii) environmental groups;

22 (iv) the hydroelectric power industry;

23 (v) local governments;

24 (vi) recreation user groups;

25 (vii) agricultural groups; and

1 (viii) other appropriate interests; and

2 (2) 9 members representing each of the 9 In-
3 dian tribes in the State of South Dakota, appointed
4 by each Indian tribe, respectively.

5 (c) DUTIES.—The Trust shall—

6 (1) meet at least twice each year;

7 (2) appoint, from among the members of the
8 Trust, the Committee;

9 (3) vote on approval of the plan, with approval
10 requiring votes in favor of the plan from at least $\frac{1}{2}$
11 of the members;

12 (4) review proposals to meet the goals of the
13 plan;

14 (5) recommend, from among proposals re-
15 viewed, which proposals should be funded by the
16 Committee; and

17 (6) consult, when appropriate, with—

18 (A) the Secretary of the Army;

19 (B) the Secretary of Agriculture;

20 (C) the Secretary of Energy; and

21 (D) the Secretary of the Interior.

22 (d) EXECUTIVE COMMITTEE.—

23 (1) IN GENERAL.—The Trust shall appoint an
24 Executive Committee, to be composed of—

1 (A) 4 members of the Trust elected by the
2 Trust in accordance with paragraph (2); and

3 (B) 1 member appointed by the Governor
4 of South Dakota, who shall serve as the Chair-
5 person of the Committee.

6 (2) DUTIES.—The Committee shall—

7 (A) administer the use of the fund in ac-
8 cordance with the plan; and

9 (B) award funding for projects rec-
10 ommended by the Trust under subsection (c)(5)
11 that, in the judgment of a majority of the Com-
12 mittee, will best carry out the plan.

13 **SEC. 5. MISSOURI RIVER RESTORATION TRUST FUND.**

14 (a) ESTABLISHMENT.—

15 (1) IN GENERAL.—There is established in the
16 Treasury of the United States a fund to be known
17 as the “Missouri River Restoration Trust Fund”.

18 (2) DEPOSITS.—The Fund shall consist of any
19 amounts deposited in the Fund under this Act.

20 (b) FUNDING.—On the first day of the eleventh fiscal
21 year that begins after the date of enactment of this Act,
22 the Secretary of the Treasury shall deposit \$300,000,000
23 in the Fund from the general fund of the Treasury.

24 (c) INVESTMENT OF FUND.—

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

6 (A) interest-bearing obligations of the
7 United States; or

8 (B) obligations guaranteed as to both prin-
9 cipal and interest by the United States.

10 (2) ACQUISITION OF OBLIGATIONS.—For the
11 purpose of investments under paragraph (1), obliga-
12 tions may be acquired—

13 (A) on original issue at the issue price; or

14 (B) by purchase of outstanding obligations
15 at the market price.

16 (3) SALE OF OBLIGATIONS.—Any obligation ac-
17 quired by the Fund may be sold by the Secretary of
18 the Treasury at the market price.

19 (4) CREDITS TO FUND.—The interest on, and
20 the proceeds from the sale or redemption of, any ob-
21 ligations held in the Fund shall be credited to and
22 form a part of the Fund.

23 (d) PAYMENT OF INTEREST TO MISSOURI RIVER
24 TRUST.—

25 (1) DESIGNATION OF INTEREST.—

1 (A) IN GENERAL.—On the first day of the
2 eleventh fiscal year that begins after the date of
3 enactment of this Act, and on the first day of
4 each fiscal year thereafter, the Secretary of the
5 Treasury shall designate the aggregate amount
6 of interest deposited in the Fund for the pre-
7 ceding fiscal year as available to the Trust in
8 accordance with paragraph (2).

9 (B) AVAILABILITY.—Each amount des-
10 ignated under subparagraph (A) shall be avail-
11 able for use without fiscal year limitation.

12 (2) PAYMENTS.—

13 (A) IN GENERAL.—Subject to subpara-
14 graph (B), the Secretary of the Treasury shall
15 use the amounts designated under paragraph
16 (1) only for the purpose of making payments as
17 requested by the Trust.

18 (B) LIMITATION.—Payments under sub-
19 paragraph (A) may be made by the Secretary of
20 the Treasury only after the Trust has adopted
21 a plan under subsection (e).

22 (C) USE OF PAYMENTS BY TRUST.—The
23 Trust shall use the payments made under sub-
24 paragraph (A) to carry out projects and pro-
25 grams under the plan.

1 (D) FEDERAL SHARE.—The Federal share
2 of the cost of any project carried out with a
3 payment under this paragraph shall be 80 per-
4 cent of the total cost of the project.

5 (e) PLAN FOR USE OF PAYMENTS.—

6 (1) IN GENERAL.—Not later than 18 months
7 after the date of enactment of this Act, the Trust
8 shall prepare a plan for the use of the payments to
9 the Trust under subsection (d) in consultation
10 with—

11 (A) the Secretary of the Army;

12 (B) the Secretary of Energy;

13 (C) the Secretary of the Interior; and

14 (D) the Secretary of Agriculture.

15 (2) CONTENTS OF PLAN.—The plan shall pro-
16 vide for the manner in which the Trust shall expend
17 payments under subsection (d) to promote—

18 (A) the general control and removal of
19 sediment from the Missouri River;

20 (B) conservation practices in the Missouri
21 River watershed;

22 (C) the protection of recreation on the
23 Missouri River from sedimentation;

1 (D) the protection of Indian and non-Indian
2 dian historical and cultural sites along the Missouri
3 River from sedimentation;

4 (E) the conservation of fish and wildlife
5 along the Missouri River;

6 (F) erosion control along the Missouri
7 River; or

8 (G) any combination of the activities described
9 in subparagraphs (A) through (F).

10 (3) PLAN REVIEW AND REVISION.—

11 (A) IN GENERAL.—The Trust shall make a
12 copy of the plan available for public review and
13 comment before the plan becomes final, in accordance
14 with procedures established by the
15 Trust.

16 (B) REVISION OF PLAN.—

17 (i) IN GENERAL.—The Trust may, on
18 an annual basis, revise the plan.

19 (ii) PUBLIC REVIEW AND COMMENT.—

20 In revising the plan, the Trust shall provide
21 the public the opportunity to review
22 and comment on any proposed revision to
23 the plan.

1 (iii) CONSULTATION.—In preparing
2 any revision to the plan, the Trust shall
3 consult with—

4 (I) the Secretary of the Army;

5 (II) the Secretary of Energy;

6 (III) the Secretary of the Inte-
7 rior; and

8 (IV) the Secretary of Agriculture.

9 (iv) REPORT TO CONGRESS.—Upon
10 completion of the plan, the Trust shall
11 submit a copy of the report to the Com-
12 mittee on Transportation and Infrastruc-
13 ture of the House of Representatives and
14 the Committee on Environment and Public
15 Works of the Senate.

16 (4) AUDIT.—

17 (A) IN GENERAL.—The activities of the
18 Trust in carrying out the plan shall be audited
19 under the Office of Management and Budget
20 circular number A-133.

21 (B) DETERMINATION BY AUDITORS.—The
22 auditors that conduct the audit described in
23 subparagraph (A) shall—

24 (i) determine whether funds received
25 by the Trust under this section for the pe-

1 riod covered by the audit were expended to
2 carry out the plan in a manner consistent
3 with this section; and

4 (ii) include in the written findings of
5 the audit the determination made under
6 clause (i).

7 (C) INCLUSION OF FINDINGS WITH PUBLI-
8 CATIONS OF PROCEEDINGS OF TRUST.—A copy
9 of the written findings of the audit described in
10 subparagraph (A) shall be inserted in the pub-
11 lished minutes of the Trust proceedings for the
12 session at which the audit is presented to the
13 Trust.

14 (5) CONTRACTING.—The Trust may contract
15 with Federal, State, tribal, or local agencies to pro-
16 vide services in accordance with the plan.

17 **SEC. 6. ASSESSMENT OF SEDIMENTATION IMPACTS.**

18 (a) IN GENERAL.—Not later than 1 year after the
19 date on which funding authorized under this Act initially
20 becomes available, the Secretary shall submit to the Trust
21 a report on—

22 (1) the impact of the siltation of the Missouri
23 River in the State, including the impact on—

24 (A) the Federal, State, and regional econo-
25 mies;

1 (B) recreation;

2 (C) hydropower generation;

3 (D) fish and wildlife; and

4 (E) flood control;

5 (2) the status of Indian and non-Indian histor-
6 ical and cultural sites along the Missouri River;

7 (3) the extent of erosion along the Missouri
8 River (including tributaries of the Missouri River) in
9 the State; and

10 (4) other issues, as requested by the Trust.

11 (b) CONSULTATION.—In preparing the report under
12 subsection (a), the Secretary shall consult with—

13 (1) the Secretary of Energy;

14 (2) the Secretary of the Interior;

15 (3) the Secretary of Agriculture;

16 (4) the State; and

17 (5) Indian tribes in the State.

18 **SEC. 7. ADMINISTRATION.**

19 (a) IN GENERAL.—Nothing in this Act diminishes or
20 affects—

21 (1) any water right of an Indian tribe;

22 (2) any other right of an Indian tribe, except as
23 specifically provided in another provision of this Act;

24 (3) any treaty right that is in effect on the date
25 of enactment of this Act;

1 (4) any external boundary of an Indian reserva-
2 tion of an Indian tribe;

3 (5) any authority of the State that relates to
4 the protection, regulation, or management of fish,
5 terrestrial wildlife, and cultural and archaeological
6 resources, except as specifically provided in this title;
7 or

8 (6) any authority of the Secretary, the Sec-
9 retary of the Interior, or the head of any other Fed-
10 eral agency under a law in effect on the date of en-
11 actment of this Act, including—

12 (A) the National Historic Preservation Act
13 (16 U.S.C. 470 et seq.);

14 (B) the Archaeological Resources Protec-
15 tion Act of 1979 (16 U.S.C. 470aa et seq.);

16 (C) the Fish and Wildlife Coordination Act
17 (16 U.S.C. 661 et seq.);

18 (D) the Act entitled “An Act for the pro-
19 tection of the bald eagle”, approved June 8,
20 1940 (16 U.S.C. 668 et seq.);

21 (E) the Migratory Bird Treaty Act (16
22 U.S.C. 703 et seq.);

23 (F) the Endangered Species Act of 1973
24 (16 U.S.C. 1531 et seq.);

1 (G) the Native American Graves Protec-
2 tion and Repatriation Act (25 U.S.C. 3001 et
3 seq.);

4 (H) the Federal Water Pollution Control
5 Act (33 U.S.C. 1251 et seq.);

6 (I) the Safe Drinking Water Act (42
7 U.S.C. 300f et seq.); and

8 (J) the National Environmental Policy Act
9 of 1969 (42 U.S.C. 4321 et seq.).

10 (b) FEDERAL LIABILITY FOR DAMAGE.—Nothing in
11 this Act relieves the Federal Government of liability for
12 damage to private property caused by the operation of the
13 Pick-Sloan program.

14 (c) FLOOD CONTROL.—Notwithstanding any other
15 provision of this Act, the Secretary shall retain the author-
16 ity to operate the Pick-Sloan program for the purposes
17 of meeting the requirements of the Act of December 22,
18 1944 (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et
19 seq.).

20 (d) USE OF FUNDS.—

21 (1) IN GENERAL.—The Secretary shall enter
22 into a contract with the Trust to use funds author-
23 ized under section 8(a) to carry out the plan.

24 (2) NON-FEDERAL SHARE.—Funds transferred
25 to the Trust or authorized under this Act may be

1 used to pay the non-Federal share required under
2 Federal programs.

3 **SEC. 8. FUNDING FLEXIBILITY.**

4 The Secretary may use funds appropriated after the
5 date of enactment of this Act to the operations and main-
6 tenance account of the Corps of Engineers and available
7 for use with respect to a water resources development
8 project along the Missouri River for 1 or more of the fol-
9 lowing purposes with respect to such project:

10 (1) To reduce the siltation of the Missouri
11 River in the State of South Dakota.

12 (2) To protect recreation on the Missouri River
13 from sedimentation.

14 (3) To protect water quality in the Missouri
15 River from sedimentation.

16 (4) To improve erosion control along the Mis-
17 souri River.

18 (5) To protect Indian and non-Indian historical
19 and cultural sites along the Missouri River from
20 sedimentation.

21 **SEC. 9. CONDITIONS ON ACQUISITION OF PROPERTY.**

22 No funds appropriated to carry out this Act may be
23 used to purchase or otherwise acquire property unless the
24 acquisition is from willing sellers.

1 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) INITIAL FUNDING.—There is authorized to be ap-
3 propriated to the Secretary to carry out this Act
4 \$10,000,000 for each of fiscal years 2001 through 2010,
5 to remain available until expended.

6 (b) SUBSEQUENT FUNDING.—Funding to carry out
7 this Act for fiscal years after fiscal year 2010 shall be
8 provided from deposits to the Fund under section 5(b).

9 (c) EXISTING PROGRAMS.—The Secretary shall fund
10 programs authorized under the Pick-Sloan program in ex-
11 istence on the date of enactment of this Act at levels that
12 are not less than funding levels for those programs as of
13 that date.

○