

107TH CONGRESS  
1ST SESSION

# S. 1148

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 29, 2001

Mr. BURNS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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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 appurtenant irrigation districts.

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 “Lower Yellowstone  
5       Reclamation Projects Conveyance Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1           (1) INTAKE IRRIGATION DISTRICT.—The term  
2 “Intake Irrigation District” means the irrigation  
3 district by that name that—

4           (A) is organized under the laws of the  
5 State of Montana; and

6           (B) operates the Intake Project.

7           (2) INTAKE PROJECT.—The term “Intake  
8 Project” means the Federal irrigation feature au-  
9 thorized under the Act of August 11, 1939 (53 Stat.  
10 1418, chapter 717).

11           (3) IRRIGATION DISTRICT.—The term “irriga-  
12 tion district” means—

13           (A) the Intake Irrigation District;

14           (B) the Lower Yellowstone Irrigation Dis-  
15 trict No. 1;

16           (C) the Lower Yellowstone Irrigation Dis-  
17 trict No. 2; and

18           (D) the Savage Irrigation District.

19           (4) LOWER YELLOWSTONE IRRIGATION DIS-  
20 TRICT NO. 1.—The term “Lower Yellowstone Irriga-  
21 tion District No. 1” means the irrigation district by  
22 that name that—

23           (A) is organized under the laws of the  
24 State of Montana; and

1           (B) operates the part of the Lower Yellow-  
2           stone Irrigation Project located in the State of  
3           Montana.

4           (5) LOWER YELLOWSTONE IRRIGATION DIS-  
5           TRICT NO. 2.—The term “Lower Yellowstone Irriga-  
6           tion District No. 2” means the irrigation district by  
7           that name that—

8           (A) is organized under the laws of the  
9           State of North Dakota; and

10           (B) operates the part of the Lower Yellow-  
11           stone Irrigation Project located in the State of  
12           North Dakota.

13           (6) LOWER YELLOWSTONE IRRIGATION  
14           PROJECT.—The term “Lower Yellowstone Irrigation  
15           Project” means the Federal irrigation feature au-  
16           thorized by the Act of June 17, 1902 (32 Stat. 388,  
17           chapter 1093).

18           (7) MEMORANDUM OF UNDERSTANDING.—The  
19           term “memorandum of understanding” means the  
20           memorandum of understanding dated November 16,  
21           1999, between the irrigation districts and the Mon-  
22           tana Area Office, Great Plains Region, of the Bu-  
23           reau of Reclamation, for the purpose of defining cer-  
24           tain principles by which title to the projects will be

1 conveyed from the United States to the irrigation  
2 districts.

3 (8) PICK-SLOAN MISSOURI BASIN PROGRAM.—  
4 The term “Pick-Sloan Missouri Basin Program”  
5 means the comprehensive Federal program for mul-  
6 tipurpose benefits within the Missouri River Basin  
7 (including irrigation), authorized by section 9 of the  
8 Act of December 22, 1944 (commonly known as the  
9 “Flood Control Act of 1944”) (58 Stat. 891, chapter  
10 665).

11 (9) PICK-SLOAN MISSOURI BASIN PROGRAM  
12 PROJECT USE POWER.—The term “Pick-Sloan Mis-  
13 souri Basin Program project use power” means  
14 power generated and transmitted at a rate covering  
15 operation, maintenance, and replacement expenses of  
16 the Pick-Sloan power system for maintaining the ir-  
17 rigation features of the Pick-Sloan Missouri Basin  
18 Program.

19 (10) PROJECT.—The term “project” means—

20 (A) the Lower Yellowstone Irrigation  
21 Project;

22 (B) the Intake Irrigation Project; and

23 (C) the Savage Unit.

1           (11) SAVAGE IRRIGATION DISTRICT.—The term  
2           “Savage Irrigation District” means the irrigation  
3           district by that name that—

4                   (A) is organized under the laws of the  
5           State of Montana; and

6                   (B) operates the Savage Unit.

7           (12) SAVAGE UNIT.—The term “Savage Unit”  
8           means the Savage Unit of the Pick-Sloan Missouri  
9           Basin Program, a Federal irrigation feature author-  
10          ized by the Act of December 22, 1944 (commonly  
11          known as the “Flood Control Act of 1944”) (58  
12          Stat. 891, chapter 665).

13          (13) SECRETARY.—The term “Secretary”  
14          means the Secretary of the Interior.

15 **SEC. 3. CONVEYANCE OF PROJECTS.**

16          (a) CONVEYANCES.—

17                  (1) RECLAMATION WITHDRAWALS.—

18                          (A) CONVEYANCE TO RICHLAND COUN-  
19                  TY.—The Secretary shall convey to the govern-  
20                  ment of Richland County, Montana, without  
21                  consideration, all right, title, and interest of the  
22                  United States in and to the property in Rich-  
23                  land County described as SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, sec. 13,  
24                  T. 23 N., R. 59 E.

1 (B) CONVEYANCE TO LOWER YELLOW-  
 2 STONE IRRIGATION DISTRICTS NO. 1 AND 2.—  
 3 The Secretary shall convey to the Lower Yel-  
 4 lowstone Irrigation District No. 1 and the  
 5 Lower Yellowstone Irrigation District No. 2,  
 6 without consideration, all right, title, and inter-  
 7 est of the United States in and to property in  
 8 the principal meridian, in Dawson and Richland  
 9 Counties, Montana, described as—

10 (i) lots 1 through 6 of sec. 2, T. 17  
 11 N., R. 56 E.; NW<sup>1</sup>/<sub>4</sub> of sec. 6, T. 17 N.,  
 12 R. 57 E.; SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of sec. 26, T. 22  
 13 N., R. 58. E.;

14 (ii) lots 4 through 7 of sec. 2; and

15 (iii) lot 1 and lot 2 of sec. 3, T. 23  
 16 N., R. 59 E.; and lot 2 of sec. 18, T. 24  
 17 N., R. 60 E.

18 (2) FEE OWNERSHIP LAND, EASEMENTS,  
 19 RIGHTS-OF-WAY, FEATURES, AND WATER RIGHTS.—  
 20 In conveying the projects under paragraph (1)(B),  
 21 the Secretary shall convey to the irrigation districts,  
 22 by quitclaim deed—

23 (A) all fee ownership land, easements, and  
 24 rights-of-way in connection with the projects;

1 (B) all right, title, and interest of the  
 2 United States in and to all diversion, carriage,  
 3 distribution, drainage, and appurtenant physical  
 4 features used to serve the land within the irri-  
 5 gation districts; and

6 (C) all natural flow, wastewater, seepage,  
 7 return flow, domestic water, stock water, and  
 8 groundwater rights held in part or wholly in the  
 9 name of the United States that are used to  
 10 serve the land.

11 (b) REVOCATION OF RECLAMATION WITHDRAWALS  
 12 AND ORDERS.—

13 (1) RECLAMATION WITHDRAWAL.—The rec-  
 14 lamation withdrawal established for the Lower Yel-  
 15 lowstone Irrigation Project in lots 1 and 2, section  
 16 3, T. 23 N., R. 59 E., by Public Land Order 4711,  
 17 dated October 6, 1969, is revoked.

18 (2) SECRETARIAL ORDERS.—

19 (A) IN GENERAL.—The following Secre-  
 20 tarial Orders are revoked:

21 (i) The Secretarial Order of March  
 22 22, 1906, issued for irrigation works on lot  
 23 3 (lots 5, 6, and 7 as of the date of enact-  
 24 ment of this Act) and lot 4, section 2, T.  
 25 23 N., R. 59 E.

1 (ii) The Secretarial Order of August  
2 8, 1905, issued for irrigation works in sec-  
3 tion 2, T. 17 N., R. 56 E. and section 6,  
4 T. 17 N., R. 57 E.

5 (B) PARTIAL REVOCATION.—The Secre-  
6 tarial Order of August 24, 1903, issued in con-  
7 nection with the Lower Yellowstone Irrigation  
8 Project, is revoked insofar as the order applies  
9 to the following land:

10 (i) In the principal meridian, Mon-  
11 tana:

12 (I) Lot 9 of sec. 2, lot 2 of sec.  
13 30, T. 18 N., R. 57 E.

14 (II) Lot 3 of sec. 4, T. 19 N., R.  
15 58 E.

16 (III) Lots 2, 3, 6, and 7 of sec.  
17 4, T. 21 N., R. 58 E.

18 (IV) SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of sec. 26, T.  
19 22 N., R. 58 E.

20 (V) Lots 1, 4, 7 and NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>  
21 of sec. 20, T. 22 N., R. 59 E.

22 (VI) SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of sec. 13, T. 23  
23 N., R. 59 E.

24 (VII) Lot 2 of sec. 18, T. 24 N.,  
25 R. 60 E.

1 (ii) In the fifth principal meridian,  
2 North Dakota:

3 (I) Lot 8 of sec. 2.

4 (II) Lots 1, 2, 3, and  
5 NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of sec. 10.

6 (III) Lot 2 of sec. 11.

7 (IV) Lot 6 of sec. 18.

8 (V) Lot 3 of sec. 35, T. 151 N.,  
9 R. 104 W.

10 (VI) Lot 7 of sec. 28, T. 152 N.,  
11 R. 104 W.

12 (c) DELIVERY OF DOCUMENTS.—The Secretary shall  
13 deliver to the irrigation districts all patents, land deeds,  
14 court proceedings, water right abstracts, contracts, special  
15 use permits, licenses, permits, and any other documents  
16 relating to the projects executed on behalf of the Sec-  
17 retary.

18 (d) SAVAGE UNIT FINANCIAL OBLIGATIONS.—

19 (1) SAVAGE IRRIGATION DISTRICT OBLIGA-  
20 TION.—The Secretary shall accept from the Savage  
21 Irrigation District an amount equal to the value, as  
22 of the date of enactment of this Act, of the remain-  
23 ing water supply payment obligation of \$68,280  
24 under contract number Ilr-1525, as extended by  
25 contract number 9-07-60-W0770, as full payment

1 of the Savage Irrigation District's share of the con-  
2 struction of the Savage Unit.

3 (2) PICK-SLOAN MISSOURI BASIN PROGRAM  
4 BENEFICIARIES OBLIGATION.—The Secretary shall  
5 accept from the Pick-Sloan Missouri Basin Program  
6 power beneficiaries an amount equal to the value, as  
7 of the date of enactment of this Act, of the aid-to-  
8 irrigation payment obligation of \$667,702 as full  
9 payment of aid-to-irrigation associated with the con-  
10 struction of the Savage Unit.

11 (e) REPORT.—If any conveyance required under sub-  
12 section (a) has not occurred within 2 years after the date  
13 of enactment of this Act, the Secretary shall submit to  
14 Congress a report on the status of the conveyance.

15 **SEC. 4. RELATIONSHIP TO EXISTING OPERATIONS.**

16 (a) IN GENERAL.—Nothing in this Act expands or  
17 otherwise affects the use or operation of the projects as  
18 used and operated as of the date of enactment of this Act.

19 (b) RECREATION MANAGEMENT.—As a condition of  
20 the conveyance of the land under section 3(a)(1)(B), the  
21 Secretary shall require that Lower Yellowstone Irrigation  
22 District No. 1 and Lower Yellowstone Irrigation District  
23 No. 2 convey a perpetual conservation easement to the  
24 State of Montana, at no cost to the State, for the purposes  
25 of protecting, preserving, and enhancing the conservation

1 values of, and permitting recreation on land to be con-  
 2 veyed under that section, as jointly agreed to by Lower  
 3 Yellowstone Irrigation District No. 1, Lower Yellowstone  
 4 Irrigation District No. 2, and the State of Montana.

5 (c) PICK-SLOAN MISSOURI BASIN PROGRAM  
 6 PROJECT PUMPING POWER SERVICE.—The Secretary—

7 (1) shall sustain the irrigation developments es-  
 8 tablished by the projects as components of the irri-  
 9 gation plan under the Pick-Sloan Missouri River  
 10 Basin Program; and

11 (2)(A) shall continue to provide the irrigation  
 12 districts with Pick-Sloan Missouri Basin project use  
 13 power at the pumping plants of the irrigation dis-  
 14 tricts (subject to section 5(a)); but

15 (B) shall prohibit any ability-to-pay adjustment  
 16 for the power rate.

17 **SEC. 5. YELLOWSTONE RIVER FISHERIES PROTECTION.**

18 (a) IN GENERAL.—The Secretary, in cooperation  
 19 with the irrigation districts, shall provide fish protection  
 20 devices to—

21 (1) prevent juvenile and adult fish from enter-  
 22 ing the main canal of the Lower Yellowstone Irriga-  
 23 tion Project; and

1           (2) allow bottom-dwelling fish species to mi-  
2           grate above the intake diversion dam on the Yellow-  
3           stone River for that project.

4           (b) PARTICIPATION.—The Secretary and the irriga-  
5           tion districts cooperate in planning, engineering, and con-  
6           structing the fish protection devices.

7           (c) MONITORING.—

8           (1) IN GENERAL.—For a period of at least 2  
9           years after the date of completion of construction of  
10          the fish protection devices, the Secretary, acting  
11          through the Commissioner of Reclamation and the  
12          Director of the United States Fish and Wildlife  
13          Service, shall establish and conduct a monitoring  
14          plan to measure the effectiveness of the devices.

15          (2) MAINTENANCE.—The Commissioner of Rec-  
16          lamation shall be responsible for modifying the fish  
17          protection devices as necessary to ensure proper  
18          functioning.

19 **SEC. 6. RELATIONSHIP WITH OTHER LAWS AND FUTURE**  
20 **BENEFITS.**

21          On conveyance of the projects under this Act, the irri-  
22          gation districts shall not be—

23               (1) subject to Federal reclamation law (the Act  
24               of June 17, 1902 (32 Stat. 388, chapter 1093), and

1 Acts supplemental to and amendatory of that Act  
2 (43 U.S.C. 371 et seq.); or

3 (2) except as provided in section 4(c), entitled  
4 to receive any reclamation benefits under that law.

5 **SEC. 7. LIABILITY.**

6 (a) IN GENERAL.—Effective on the date of convey-  
7 ance of a project under this Act, the United States shall  
8 not be liable under any Federal or State law for damages  
9 of any kind arising out of any act, omission, or occurrence  
10 relating to the project, except for damages caused by acts  
11 of negligence committed by the United States or by an  
12 employee, agent, or contractor of the United States, before  
13 the date of the conveyance.

14 (b) FEDERAL TORT CLAIMS.—Nothing in this section  
15 increases the liability of the United States beyond that  
16 provided as of the date of enactment of this Act under  
17 chapter 171 of title 28, United States Code (commonly  
18 known as the “Federal Tort Claims Act”).

19 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated such sums  
21 as are necessary to carry out this Act.

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