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SENATE

{ REPORT
110-506

A BILL TO ENHANCE AND PROVIDE TO THE OGLALA SIOUX TRIBE AND
ANGOSTURA IRRIGATION PROJECT CERTAIN BENEFITS TO THE PICK-
SLOAN MISSOURI RIVER BASIN PROGRAM

SEPTEMBER 25 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mr. DORGAN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 2489]

The Committee on Indian Affairs to which was referred the bill (S. 2489) to enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation Project certain benefits to the Pick-Sloan Missouri River basin program, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 2489, the Oglala Sioux Tribe Angostura Irrigation Project Modernization and Development Act, is to provide funds for the modernization and development of the Angostura Unit of the Pick-Sloan Missouri River basin program in the State of South Dakota and to establish a trust fund benefitting the Oglala Sioux Tribe of the Pine Ridge Indian Reservation.

BACKGROUND

The Angostura Unit is an irrigation project operated by the Department of the Interior's Bureau of Reclamation and is located on the Cheyenne River in southwestern South Dakota. Part of the Pick-Sloan Missouri River Basin Project authorized under the Flood Control Act of 1944, 33 U.S.C. Sec. 701-1 et seq., the Unit includes the 193-foot Angostura Dam, which impounds up to 130,000 acre-feet (AF) of water in the Angostura Reservoir, and associated irrigation works. This reservoir, with a surface area of 4,612 acres, provides water for irrigation of up to 12,218 acres of farmland in the Angostura Irrigation District through a 30-mile main canal, 39 miles of lateral canals, and 21 miles of drains serving individual farms. Up to 48,000 AF of water are diverted annu-

ally for irrigation purposes. Alfalfa and corn are the principal crops, along with wheat, barley, oats, pasture, and forage. Construction of the Angostura Dam began in 1946 and was completed in 1949. The first delivery of irrigation water was made in 1953. The Bureau of Reclamation estimates that its operation provides \$7.1 million of national economic development benefits annually in recreation on the reservoir and an additional \$3.41 million in agriculture.

The Angostura Unit is located about twenty miles upstream of the Pine Ridge Indian Reservation, home of the Oglala Sioux Tribe. Notwithstanding the economic benefits provided by the Angostura Unit to the people of southwestern South Dakota, the operation of the Unit provides no economic development benefit to the Oglala Sioux Tribe, which experiences extremely high rates of unemployment and poverty.¹ Additionally, the operation of the Angostura Unit has an adverse impact on water quality and on fish and wildlife resources within the Oglala Sioux Tribe's Reservation.²

A 40-year water service contract between the Bureau of Reclamation and the Angostura Irrigation District expired in 1996. The Final Environmental Impact Statement, Angostura Unit Contract Negotiation and Water Management (August 2002) (Final EIS) prepared by the Bureau of Reclamation in connection with the proposed renewal of that water service contract identified four alternatives: (1) The No Action Alternative, continuing essentially unchanged the expiring water service contract and the management regime of water in the reservoir; (2) the Reestablishment of Natural Flows Below the Dam Alternative, reestablishing natural flows in the Cheyenne River downstream of the dam to the extent possible; (3) the Improved Efficiencies Alternative, instituting measures to save irrigation water and a public process to determine the use of the saved water, and (4) the Reservoir Recreation and Fisheries Alternative, giving priority to recreational use and fisheries at the reservoir. The Final EIS identified the Improved Efficiencies Alternative as the Preferred Alternative.

The Improved Efficiencies Alternative would increase both efficiency of the Angostura Irrigation District's water delivery system and on-farm efficiencies.³ The measures proposed in the Improved Efficiencies Alternative would include the lining of canals and laterals, putting laterals into pipes, improving water measuring systems, leveling fields, irrigating by gated pipe or sprinkler, installing automated turnouts, providing education on irrigation practices, and instituting Best Management Practices. The water saved by these proposed increases in efficiency could be used for recreation, fisheries, downstream flows, or other uses. The Improved Efficiencies Alternative would save an estimated 1,870–3,200 AF of water by improving delivery system efficiencies by approximately 5% and another 4,320–6,160 AF by increasing on-farm efficiencies by approximately 10%.

Section 4 of S. 2489 authorizes the appropriation of \$4,660,000 to carry out the modernization and improvement of the Angostura

¹Testimony of Oglala Sioux Tribal Councilwoman Valerie Janis, Senate Committee on Indian Affairs, June 16, 2004, p. 22.

²Testimony of Oglala Sioux Tribal President John Yellowbird Steele, Senate Committee on Indian Affairs, June 16, 2004, p. 20.

³Id. at p. 23.

Unit and associated facilities as set forth in the Improved Efficiencies Alternative in the Final EIS, with the funding to remain available until expended. It also provides that these activities are to be carried out on a non-reimbursable basis. Finally, section 4 directs the Secretary of the Interior to provide for the delivery of the water saved as a result of the proposed increased efficiencies to be used for fish and wildlife purposes and environmental restoration on the Pine Ridge Indian Reservation.

Section 5 of S. 2489 establishes the Oglala Sioux Tribal Development Trust Fund in the Treasury of the United States and provides that income from the Fund shall be transferred to the Oglala Sioux Tribe and expended pursuant to a Development Plan to be developed by the Tribe in consultation with the Secretary of the Interior and the Secretary of Health and Human Services for the purposes of economic development, infrastructure development, the educational, health, recreational, and social welfare objectives of the Tribe and its members, or any combination of these activities. Section 5 provides that, not later than the first day of the 11th fiscal year that begins after the date of its enactment, the Secretary of the Treasury shall deposit the sum of \$92,500,000 from the General Fund of the Treasury into the Fund. Section 5 also provides that nothing in S. 2489 shall be interpreted or construed to affect any right or claim of the Oglala Sioux Tribe, under the Treaty of Fort Laramie of September 17, 1851, the Treaty of Fort Laramie of April 29, 1868, or under the principles of the Winters Doctrine. Finally, section 5 provides that no funds distributed to the Tribe pursuant to this act may be distributed to any individual member of the tribe on a per capita basis.

LEGISLATIVE HISTORY

S. 2489 was introduced by Senator Johnson on December 14, 2007, with Senator Thune as an original cosponsor, and was referred to the Committee on Indian Affairs. The Committee heard testimony on the issues addressed by S. 2489 in an oversight hearing on November 1, 2007.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Section 1 states that this Act may be cited as the “Oglala Sioux Tribe Angostura Irrigation Project Modernization and Development Act.”

Sec. 2. Findings

Section 2 states the findings of Congress that: (1) Congress approved the Pick-Sloan Missouri River Basin Program with the December 22, 1944, enactment of the Flood Control Act of 1944, codified at 33 U.S.C. Sec. 701–1 et seq., to promote the economic development of the United States, to provide for irrigation in regions north of Sioux City, Iowa, to protect urban and rural areas from floods of the Missouri River, and for other purposes; (2) the Angostura Unit is a component of the Pick-Sloan Program and provides for irrigation of 12,218 acres of productive farm land in South Dakota, as well as substantial recreation and fish and wildlife benefits; (3) the Commissioner of the Bureau of Reclamation has deter-

mined that the national economic development benefits of irrigation at the Angostura Unit total approximately \$3,410,000 annually and the national economic development benefits of recreation at Angostura Reservoir total approximately \$7,100,000 annually; (4) the Angostura Unit impounds the Cheyenne River twenty miles upstream of the Pine Ridge Indian Reservation in South Dakota; (5) the Reservation experiences extremely high rates of unemployment and poverty; (6) there is a need for economic development on the Reservation; (7) the national economic development benefits of the Angostura Unit do not extend to the Reservation; (8) the Angostura Unit may negatively affect water quality and riparian vegetation in the Cheyenne River on the Reservation; (9) modernization of the irrigation facilities at the Angostura Unit would enhance the national economic development benefits of the Angostura Unit and would result in improved water efficiency and environmental restoration benefits on the Reservation; and (10) the establishment of a trust fund for the Oglala Sioux Tribe would produce economic development benefits for the Reservation comparable to the benefits produced at the Angostura Unit and would provide resources necessary for the restoration of the Cheyenne River corridor on the Reservation.

Sec. 3. Definitions

Section 3 provides definitions for the terms “Angostura Unit,” “Fund,” “Pick-Sloan Program,” “Plan,” “Reservation,” “Secretary,” “Tribal Council,” and “Tribe.”

Sec. 4. Modernizations

Section 4(a)—Modernization of facilities at Angostura Unit

Section 4(a) directs the Secretary to conduct modernization and improvement of the facilities of the Angostura Unit as described in the report entitled “Final Environmental Impact Statement, Angostura Unit Contract Negotiation and Water Management (August 2002).” The cost of this modernization and improvement is to be carried out on a non-reimbursable basis.

Section 4(b)—Delivery of water to Pine Ridge Indian Reservation

Section 4(b) states that the Secretary shall provide for the delivery of the water saved through the modernization and improvement of the facilities of the Angostura Unit as an instream flow of the Cheyenne River to be used for fish and wildlife purposes and environmental restoration on the Reservation.

Section 4(c)—Authorization of appropriations

Section 4(c) authorizes the appropriation of \$4,660,000 to carry out the modernization and improvement of facilities as provided for in section 4(a), and provides that these funds are to remain available until expended.

Sec. 5. Development

Section 5(a)—Oglala Sioux Tribal Development Trust Fund

Subsection 5(a)(1) provides for the establishment in the United States Treasury of a fund to be known as the “Oglala Sioux Tribal

Development Trust Fund” that shall consist of any amounts deposited into the Fund pursuant to this Title.

Subsection 5(a)(2) provides that, on the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (1) the sum of \$92,500,000.

Subsection 5(a)(3) requires the Secretary of the Treasury to invest that portion of the Fund that in his judgment is not required to meet current withdrawals, and provides that the investments are to be made only in interest-bearing obligations of the United States. The section further directs that the Secretary of the Treasury shall deposit interest resulting from the investments into the Fund.

Subsection 5(a)(4) provides that, not later than the first day of the 11th fiscal year after the date of enactment of this Act, and on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into the Fund for that fiscal year and shall transfer that amount to the Secretary of the Interior for use, without fiscal year limitation, in accordance with paragraph (a)(4)(C). The section provides that the Secretary of the Interior is to use the amounts transferred under subsection (a)(4)(A) only for the purpose of making payments to the Oglala Sioux Tribe as such payments are requested by the Tribe by tribal resolution, but only after the Tribe has adopted a tribal development plan (“Plan”) under subsection (a)(6). The section provides that the funds so transferred may be expended only to carry out projects and programs under that Plan.

Subsection 5(a)(5) bars the Secretary of the Treasury from transferring or withdrawing any amount deposited under subsection (a)(2) of this section except as provided in subsections (a)(3) and (a)(4)(1) of this section.

Subsection 5(a)(6) sets forth the requirements for the tribal development plan and provides that, not later than 18 months after the date of enactment of this Act, the governing body of the Tribe shall prepare a Plan for the use of the payments made to the Tribe under this section. The Plan shall provide for the manner in which the Tribe shall expend payments made to it under this section to promote economic development, infrastructure development, and the educational, health, recreational, and social welfare objectives of the Tribe and its members, or any combination of these activities. The Tribal Council shall make copies of the proposed Plan available to tribal members for review and comment before the Plan becomes final, in accordance with procedures established by the Tribal Council, and may, on an annual basis, revise the Plan. In revising the Plan, the Tribal Council shall provide the members of the Tribe opportunity to review and comment on any proposed revision. The Tribal Council shall consult with the Secretary of the Interior and the Secretary of Health and Human Services in preparing the Plan and on any revisions to update the Plan. The activities of the Tribe in carrying out the Plan shall be audited as part of the annual single-agency audit that the Tribe is required to prepare pursuant to the Office of Management and Budget circular numbered A-133. The auditors that conduct this audit shall determine whether funds received by the Tribe for the period cov-

ered by the audit were expended to carry out the Plan in a manner consistent with this section, and shall include this determination in the written findings of the audit. A copy of the written findings of the audit shall be inserted in the published minutes of the Tribal Council's proceedings for the session at which the audit is presented to the Tribal Council.

Subsection 5(a)(7) prohibits any portion of any payment made under this Act from being distributed to any member of the Tribe on a per capita basis.

Section 5(b)—Eligibility of Tribe for certain programs and services

Section 5(b) provides that no payment made to the Tribe pursuant to this Act shall result in the reduction or denial of any service or program to which, pursuant to Federal law, the Tribe is otherwise entitled because of its status as a Federally recognized Indian tribe, or to which any individual tribal member is otherwise entitled because of that individual's status as a tribal member.

Section 5(c)—Authorization of appropriations

Section 5(c) authorizes the appropriation of such sums as are necessary to pay the administrative expenses of the Fund.

Section 5(d)—Water rights

Section 5(d) states that nothing in this Act shall be interpreted or construed to affect any rights or claim of the Oglala Sioux Tribe under the Treaty of Fort Laramie of September 17, 1851, the Treaty of Fort Laramie of April 29, 1868, or under the principles of the Winters Doctrine.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On June 19, 2008, the Committee on Indian Affairs convened a business meeting to consider S. 2489, and other measures. During the business meeting, the Committee voted, by a voice vote, to report S. 2489 favorably, with an amendment, to the full Senate with a recommendation that it do pass.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 2489, as provided by the Congressional Budget Office, is set forth below:

S. 2489—Oglala Sioux Tribe Angostura Irrigation Project Modernization and Development Act

Summary: S. 2489 would authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to modernize the irrigation facilities of the Angostura Unit in South Dakota. In addition, the bill would allow the Oglala Sioux Tribe to use any water saved through the modernization effort for environmental restoration purposes on the tribe's reservation. CBO estimates that modernizing the irrigation facilities would cost about \$5 million over the 2009–2011 period, assuming appropriation of the authorized amounts.

S. 2489 also would compensate the Oglala Sioux Tribe for the damage caused by the Angostura Dam operated by the Bureau of Reclamation on the Cheyenne River. CBO estimates that enacting

this provision would have no impact on the federal budget over the 2009–2018 period; however, it would increase direct spending by \$92.5 million in 2020. Enacting the bill would not affect revenues.

S. 2489 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2489 is shown in the following table. The costs of this legislation fall within budget functions 450 (community and regional development) and 300 (natural resources and environment).

	By fiscal year in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹						
Authorization Level	5	0	0	0	0	5
Estimated Outlays	1	2	2	0	0	5

¹ Enactment of S. 2489 also would increase direct spending by \$92.5 million in 2020.

Basis of estimate: For this estimate, CBO assumes that S. 2489 will be enacted at the beginning of 2009 and that the authorized amount will be appropriated near the beginning of 2009.

This bill would authorize the appropriation of \$4.66 million to modernize the irrigation facilities of the Angostura Unit in South Dakota. In addition, the bill would allow the Oglala Sioux Tribe to use any water saved through the modernization effort for environmental restoration on the tribe's reservation. Based on historical spending rates for similar projects, CBO estimates that implementing the modernization project would cost about \$5 million over the 2009–2011 period, assuming appropriation of the authorized funds.

S. 2489 also would create the Oglala Sioux Tribe Development Trust Fund to provide compensation to the Oglala Sioux Tribe for the damage caused by the Angostura Dam on the Cheyenne River, 20 miles upstream from the tribe's reservation. The bill would direct the Secretary of the Treasury to deposit a total of \$92.5 million into an interest-bearing account to benefit the tribes on the first day of the 11th fiscal year that begins after the date of enactment. Additional deposits equaling the interest earnings on the amounts in the fund would be made on October 1st of each year. Depending on when the bill is enacted, the initial amount of \$92.5 million would not be deposited until 2019 or 2020, and deposits of interest would not begin until 2020 or 2021. The bill would allow the tribes to spend the interest earnings on amounts in the fund pursuant to a tribal spending plan.

Trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as nonfederal funds. CBO expects that the entire amount deposited to the fund in 2019 or 2020 would be recorded as budget authority and outlays in that year. Accordingly, CBO estimates that enacting S. 2489 would increase direct spending by \$92.5 million in 2019 or 2020. Subsequently, the fund would be considered nonbudgetary, and any future interest earnings and payments would not be considered part of the federal budget.

Intergovernmental and private-sector impact: S. 2489 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The Oglala Sioux tribe would benefit from access to additional water and from the trust fund authorized in this bill. Any costs to that tribe would be incurred voluntarily.

Estimate prepared by: Federal Costs: Leigh Angres and Tyler Kruzich; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Corey T. Ponder.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The views of the Administration on S. 2489 as introduced are set forth in the Statement of George Skibine, Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs, United States Department of the Interior, dated June 18, 2008, and are set forth below:



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 18 2008



The Honorable Byron L. Dorgan
Chairman, Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The following sets forth the views of the Department of the Interior on S. 2489, the "Oglala Sioux Tribe Angostura Irrigation Project Modernization and Development Act." S. 2489 would enhance and provide certain project benefits for the Oglala Sioux Tribe (Tribe) in connection with water conservation improvements on the Angostura Irrigation Project. The Department cannot support the bill.

S. 2489 requires the Secretary to modernize and improve the facilities of the Angostura Project, a component of the multi-state Pick-Sloan Missouri Basin Program. The bill provides that the Federal government would be responsible for all of the costs associated with these infrastructure improvements. Furthermore, it would provide that the Secretary shall provide for the delivery of the water saved through the modernization and improvement of the facilities of the Angostura Unit as an instream flow of the Cheyenne River to be used for fish and wildlife purposes and environmental restoration on the Pine Ridge Indian Reservation (Reservation).

In addition, the bill would create a Tribal Development Trust Fund to promote economic development, infrastructure development, and the education, health, recreational, and social welfare objectives of the Tribe and members of the Tribe.

While the Department recognizes the economic challenges that many Tribes in Indian Country face, the establishment of a Trust Fund to address these issues does not seem warranted at this time. The bill infers there "may" be impacts caused by the development of the Angostura Unit of the Pick-Sloan Project, yet we are not aware of what those specific impacts are. Unlike other legislative propositions regarding compensation for land impacted by the Pick-Sloan Project, no specific impacts have been cited here nor any evaluation of appropriate compensation completed. The Department shares the concern of the Tribes about the need to improve economic, educational, and health systems on the reservation and will continue to work with the Tribe to seek solutions to promote these reforms.

The Department is also concerned that the proposal would exclude all the stakeholders, other than the Oglala Sioux Tribe, from the ongoing public process collaboratively developed during the Environmental Impact Statement (EIS) process to recommend the most beneficial use of saved water.

In August 2002, the Bureau of Reclamation (Reclamation), in collaboration with a host of stakeholders, completed and published the Final Environmental Impact Statement (FEIS) for Contract

Negotiation and Water Management of the Angostura Unit. The EIS was prepared in cooperation with the:

- Angostura Irrigation District;
- Oglala Sioux Tribe;
- Cheyenne River Sioux Tribe;
- Lower Brule Sioux Tribe;
- South Dakota Department of Game, Fish, and Parks;
- US. Geological Survey;
- U.S. Natural Resources Conservation Service;
- U.S. Bureau of Indian Affairs; and
- The South Dakota Department of Environment and Natural Resources.

In January 2003, the Record of Decision (ROD) was signed for renewal of a long-term water service contract for the Angostura Unit, Cheyenne River Basin, South Dakota. Reclamation is concerned that provisions of S. 2489 are inconsistent with understandings spelled out in the ROD that involved input from many key stakeholders. These provisions include the requirement that the Secretary deliver saved water for the purposes of environmental restoration on the Reservation, and the finding that the Angostura Unit may be associated with negative effects on water quality and riparian vegetation in the Cheyenne River on the Reservation.

With regard to the authority in Section 4 to carry out rehabilitation and improvement at the Angostura Project, Reclamation already has authority to undertake such work. The Bureau of Reclamation allocates funding for its rural water projects based on objective criteria, which gives priority to projects 1) nearest to completion; and 2) that serve tribal needs. As with all projects, we attempt to balance the many competing priorities for funding.

While we share the sponsors goal of finding innovative solutions for economic, education, health, recreational, and social welfare improvements on the Reservation, the Department cannot support S. 2489.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,



George T. Skibine
Deputy Assistant Secretary for Policy and
Economic Development – Indian Affairs

cc: Honorable Lisa Murkowski
Vice Chairman

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that the regulatory and paperwork impact of S. 2489 will be minimal.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 2489 will not affect any changes in existing law.

