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Calendar No. 335

106TH CONGRESS, *1st Session* | SENATE | REPORT 106–198

FORT PECK RESERVATION RURAL WATER SYSTEM ACT OF 1999

OCTOBER 20, 1999.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 624]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 624) to authorize construction of the Fort Peck Reservation Rural Water System in the State of Montana, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fort Peck Reservation Rural Water System Act of 1999".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) there are insufficient water supplies available to residents of the Fort Peck Indian Reservation in the State of Montana, and the water systems that are available do not meet minimum health and safety standards and therefore pose a threat to public health and safety;

(2) in carrying out its trust responsibility, the United States should ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Fort Peck Indian Reservation; and

(3) the best available, reliable, and safe rural and municipal water supply to serve the needs of the Fort Peck Indian Reservation is the Missouri River.

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

(1) to ensure a safe and adequate municipal, rural, and industrial water supply for the residents of the Fort Peck Indian Reservation in the State of Montana; and

(2) to assist the citizens of Roosevelt, Sheridan, Daniels, and Valley Counties in the State, outside the Fort Peck Indian Reservation, in developing safe and adequate municipal, rural, and industrial water supplies.

SEC. 3. DEFINITIONS.

In this Act:

(1) ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.—The term "Assiniboine and Sioux Rural Water System" means the rural water system within the Fort Peck Indian Reservation authorized by section 4.

(2) DRY PRAIRIE RURAL WATER SYSTEM.—The term "Dry Prairie Rural Water System" means the rural water system authorized by section 5 in the Roosevelt, Sheridan, Daniels, and Valley Counties of the State.

(3) FORT PECK RESERVATION RURAL WATER SYSTEM.—The term "Fort Peck Reservation Rural Water System" means the Assiniboine and Sioux Rural Water System and the Dry Prairie Rural Water System.

(4) FORT PECK TRIBES.—The term "Fort Peck Tribes" means the Assiniboine and Sioux Indian Tribes within the Fort Peck Indian Reservation.

(5) PICK-SLOAN.—The term "Pick-Sloan" means the Pick-Sloan Missouri River Basin Program (authorized by section 9 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 22, 1944 (commonly known as the "Flood Control Act of 1944") (58 Stat. 891)).

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(7) STATE.—The term "State" means the State of Montana.

SEC. 4. ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.

(a) AUTHORIZATION.—The Secretary shall plan, design, construct, operate, maintain, and replace a municipal, rural, and industrial water system, to be known as the "Assiniboine and Sioux Rural Water System", as generally described in the report required by subsection (g)(2).

(b) COMPONENTS.—The Assiniboine and Sioux Rural Water System shall consist of—

(1) pumping and treatment facilities located along the Missouri River within the boundaries of the Fort Peck Indian Reservation;

(2) pipelines extending from the water treatment plant throughout the Fort Peck Indian Reservation;

(3) distribution and treatment facilities to serve the needs of the Fort Peck Indian Reservation, including—

(A) public water systems in existence on the date of enactment of this Act that may be purchased, improved, and repaired in accordance with the cooperative agreement entered into under subsection (c); and

(B) water systems owned by individual tribal members and other residents of the Fort Peck Indian Reservation;

(4) appurtenant buildings and access roads;

(5) all property and property rights necessary for the facilities described in this subsection;

(6) electrical power transmission and distribution facilities necessary for services to Fort Peck Reservation Rural Water System facilities; and

(7) such other pipelines, pumping plants, and facilities as the Secretary determines to be appropriate to meet the water supply, economic, public health, and environmental needs of the Fort Peck Indian Reservation, including water storage tanks, water lines, and other facilities for the Fort Peck Tribes and the villages, towns, and municipalities in the Fort Peck Indian Reservation.

(c) COOPERATIVE AGREEMENT.—

(1) IN GENERAL.—The Secretary shall enter into a cooperative agreement with the Fort Peck Tribal Executive Board for planning, designing, constructing, operating, maintaining, and replacing the Assiniboine and Sioux Rural Water System.

(2) MANDATORY PROVISIONS.—The cooperative agreement under paragraph (1) shall specify, in a manner that is acceptable to the Secretary and the Fort Peck Tribal Executive Board—

(A) the responsibilities of each party to the agreement for—

(i) needs assessment, feasibility, and environmental studies;

(ii) engineering and design;

(iii) construction;

(iv) water conservation measures; and

(v) administration of contracts relating to performance of the activities described in clauses (i) through (iv);

(B) the procedures and requirements for approval and acceptance of the design and construction and for carrying out other activities described in subparagraph (A); and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(3) OPTIONAL PROVISIONS.—The cooperative agreement under paragraph (1) may include provisions relating to the purchase, improvement, and repair of water systems in existence on the date of enactment of this Act, including systems owned by individual tribal members and other residents of the Fort Peck Indian Reservation.

(4) TERMINATION.—The Secretary may terminate a cooperative agreement under paragraph (1) if the Secretary determines that—

(A) the quality of construction does not meet all standards established for similar facilities constructed by the Secretary; or

(B) the operation and maintenance of the Assiniboine and Sioux Rural Water System does not meet conditions acceptable to the Secretary that are adequate to fulfill the obligations of the United States to the Fort Peck Tribes.

(5) TRANSFER.—On execution of a cooperative agreement under paragraph (1), in accordance with the cooperative agreement, the Secretary may transfer to the Fort Peck Tribes, on a nonreimbursable basis, funds made available for the Assiniboine and Sioux Rural Water System under section 9.

(d) SERVICE AREA.—The service area of the Assiniboine and Sioux Rural Water System shall be the area within the boundaries of the Fort Peck Indian Reservation.

(e) CONSTRUCTION REQUIREMENTS.—The components of the Assiniboine and Sioux Rural Water System shall be planned and constructed to a size that is sufficient to meet the municipal, rural, and industrial water supply requirements of the service area of the Fort Peck Reservation Rural Water System.

(f) TITLE TO ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.—Title to the Assiniboine and Sioux Rural Water System shall be held in trust by the United States for the Fort Peck Tribes and shall not be transferred unless a transfer is authorized by an Act of Congress enacted after the date of enactment of this Act.

(g) LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.—The Secretary shall not obligate funds for construction of the Assiniboine and Sioux Rural Water System until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to the Assiniboine and Sioux Rural Water System;

(2) on or after the date that is 90 days after the date of submission to Congress of a final engineering report approved by the Secretary; and

(3) the Secretary publishes a written finding that the water conservation plan developed under section 7 includes prudent and reasonable water conservation measures for the operation of the Assiniboine and Sioux Rural Water System that have been shown to be economically and financially feasible.

(h) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical assistance as is necessary to enable the Fort Peck Tribes to plan, design, construct, operate, maintain, and replace the Assiniboine and Sioux Rural Water System, including operation and management training.

(i) APPLICATION OF INDIAN SELF-DETERMINATION ACT.—Planning, design, construction, operation, maintenance, and replacement of the Assiniboine and Sioux Rural Water System within the Fort Peck Indian Reservation shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

SEC. 5. DRY PRAIRIE RURAL WATER SYSTEM.

(a) PLANNING AND CONSTRUCTION.—

(1) AUTHORIZATION.—The Secretary shall enter into a cooperative agreement with Dry Prairie Rural Water Association Incorporated (or any successor non-Federal entity) to provide Federal funds for the planning, design, and construction of the Dry Prairie Rural Water System in Roosevelt, Sheridan, Daniels, and Valley Counties, Montana, outside the Fort Peck Indian Reservation.

(2) USE OF FEDERAL FUNDS.—

(A) FEDERAL SHARE.—The Federal share of the cost of planning, design, and construction of the Dry Prairie Rural Water System shall be not more than 76 percent.

(B) COOPERATIVE AGREEMENTS.—Federal funds made available to carry out this section may be obligated and expended only through a cooperative agreement entered into under subsection (c).

(b) COMPONENTS.—The components of the Dry Prairie Rural Water System facilities on which Federal funds may be obligated and expended under this section shall include—

(1) storage, pumping, interconnection, and pipeline facilities;

(2) appurtenant buildings and access roads;

(3) all property and property rights necessary for the facilities described in this subsection;

(4) electrical power transmission and distribution facilities necessary for service to Dry Prairie Rural Water System facilities; and

(5) other facilities customary to the development of rural water distribution systems in the State, including supplemental water intake, pumping, and treatment facilities.

(c) COOPERATIVE AGREEMENT.—

(1) IN GENERAL.—The Secretary, with the concurrence of the Assiniboine and Sioux Rural Water System Board, shall enter into a cooperative agreement with Dry Prairie Rural Water Association Incorporated to provide Federal assistance for the planning, design, and construction of the Dry Prairie Rural Water System.

(2) MANDATORY PROVISIONS.—The cooperative agreement under paragraph (1) shall specify, in a manner that is acceptable to the Secretary and Dry Prairie Rural Water Association Incorporated—

(A) the responsibilities of each party to the agreement for—

(i) needs assessment, feasibility, and environmental studies;

(ii) engineering and design;

(iii) construction;

(iv) water conservation measures; and

(v) administration of contracts relating to performance of the activities described in clauses (i) through (iv);

(B) the procedures and requirements for approval and acceptance of the design and construction and for carrying out other activities described in subparagraph (A); and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(d) SERVICE AREA.—

(1) IN GENERAL.—Except as provided in paragraph (2), the service area of the Dry Prairie Rural Water System shall be the area in the State—

(A) north of the Missouri River;

(B) south of the border between the United States and Canada;

(C) west of the border between the States of North Dakota and Montana; and

(D) east of the western line of range 39 east.

(2) FORT PECK INDIAN RESERVATION.—The service area shall not include the area inside the Fort Peck Indian Reservation.

(e) LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.—The Secretary shall not obligate funds for construction of the Dry Prairie Rural Water System until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to the Dry Prairie Rural Water System;

(2) on or after the date that is 90 days after the date of submission to Congress of a final engineering report approved by the Secretary; and

(3) the Secretary publishes a written finding that the water conservation plan developed under section 7 includes prudent and reasonable water conservation measures for the operation of the Dry Prairie Rural Water System that have been shown to be economically and financially feasible.

(f) INTERCONNECTION OF FACILITIES.—

(1) IN GENERAL.—The Secretary shall—

(A) interconnect the Dry Prairie Rural Water System with the Assiniboine and Sioux Rural Water System; and

(B) provide for the delivery of water to the Dry Prairie Rural Water System from the Missouri River through the Assiniboine and Sioux Rural Water System.

(2) CHARGES.—The Secretary shall not charge for of the water delivered.

(g) LIMITATION ON USE OF FEDERAL FUNDS.—

(1) IN GENERAL.—The operation, maintenance, and replacement expenses associated with water deliveries from the Assiniboine and Sioux Rural Water System to the Dry Prairie Rural Water System shall not be a Federal responsibility and shall be borne by the Dry Prairie Rural Water System.

(2) FEDERAL FUNDS.—The Secretary may not obligate or expend any Federal funds for the operation, maintenance, or replacement of the Dry Prairie Rural Water System.

(h) TITLE TO DRY PRAIRIE RURAL WATER SYSTEM.—Title to the Dry Prairie Rural Water System shall be held by Dry Prairie Rural Water Association, Incorporated.

SEC. 6. USE OF PICK-SLOAN POWER.

(a) IN GENERAL.—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri River Basin Program, the Western Area Power Administration shall make available the capacity and energy required to meet the pumping, treatment, and incidental operational requirements of the Dry Prairie Rural Water System and Assiniboine and Sioux Rural Water System, as described in sections 4 and 5.

(b) CONDITIONS.—The capacity and energy described in subsection (a) shall be made available on the following conditions:

(1) The Dry Prairie Rural Water System and Assiniboine and Sioux Rural Water Systems shall be operated on a not-for-profit basis.

(2) The Dry Prairie Rural Water System and Assiniboine and Sioux Rural Water System shall contract to purchase their entire electric service requirements, including the capacity and energy made available under subsection (a), from a qualified preference power supplier that purchases power from the Western Area Power Administration.

(3) The rate schedule applicable to the capacity and energy made available under subsection (a) shall be the wholesale firm power rate schedule of the Pick-Sloan Eastern Division of the Western Area Power Administration in effect when the power is delivered by the Administration.

(4) It shall be agreed by contract among—

(A) the Western Area Power Administration;

(B) the power supplier with which the water Dry Prairie Rural Water System and Assiniboine and Sioux Rural Water System contract under paragraph (2);

(C) the power supplier of the entity described in subparagraph (B);

(D) the Dry Prairie Rural Water Association, Inc.; and

(E) the Fort Peck Tribes;

that in the case of the capacity and energy made available under subsection (a), the benefit of the rate schedule described in paragraph (3) shall be passed through to the Dry Prairie Rural Water System and Assiniboine and Sioux Rural Water System, except that the power supplier of the Dry Prairie Rural Water System and Assiniboine and Sioux Rural Water System shall not be precluded from including, in the charges of the supplier to the water system for the electric service, the other usual and customary charges of the supplier.

(c) ADDITIONAL POWER.—If power in addition to that made available under subsection (a) is required to meet the pumping requirements of the service area of the Fort Peck Reservation Rural Water System described in sections 4 and 5, the Administrator of the Western Area Power Administration may purchase the necessary additional power under such terms and conditions as the Administrator determines to be appropriate.

(d) RECOVERY OF EXPENSES.—

(1) ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.—In the case of the Assiniboine and Sioux Rural Water System, expenses associated with power purchases under subsection (a) shall be recovered through a separate power charge, sufficient to cover expenses, applied to the Assiniboine and Sioux Rural Water System's operation and maintenance cost.

(2) DRY PRAIRIE RURAL WATER SYSTEM.—In the case of the Dry Prairie Rural Water System, expenses associated with power purchases under subsections (a) shall be recovered through a separate power charge, sufficient to cover expenses, to be paid fully by the Dry Prairie Rural Water Association, Inc.

SEC. 7. WATER CONSERVATION PLAN.

(a) IN GENERAL.—The Fort Peck Tribes and Dry Prairie Rural Water Association Incorporated shall develop a water conservation plan containing—

(1) a description of water conservation objectives;

(2) a description of appropriate water conservation measures; and

(3) a time schedule for implementing the measures and this Act to meet the water conservation objectives.

(b) PURPOSE.—The water conservation plan under subsection (a) shall be designed to ensure that users of water from the Assiniboine and Sioux Rural Water System and the Dry Prairie Rural Water System will use the best practicable technology and management techniques to conserve water.

(c) PUBLIC PARTICIPATION.—Section 210(c) of the Reclamation Reform Act of 1982 (43 U.S.C. 390jj(c)) shall apply to an activity authorized under this Act.

SEC. 8. WATER RIGHTS.

This Act does not—

(1) impair the validity of or preempt any provision of State water law or any interstate compact governing water;

(2) alter the right of any State to any appropriated share of the water of any body of surface or ground water, whether determined by any past or future interstate compact or by any past or future legislative or final judicial allocation;

(3) preempt or modify any Federal or State law or interstate compact concerning water quality or disposal;

(4) confer on any non-Federal entity the authority to exercise any Federal right to the water of any stream or to any ground water resource;

(5) affect any right of the Fort Peck Tribes to water, located within or outside the external boundaries of the Fort Peck Indian Reservation, based on a treaty, compact, executive order, agreement, Act of Congress, aboriginal title, the decision in Winters v. United States, 207 U.S. 564 (1908) (commonly known as the "Winters Doctrine"), or other law; or

(6) validate or invalidate any assertion of the existence, nonexistence, or extinguishment of any water right held or Indian water compact entered into by the Fort Peck Tribes or by any other Indian tribe or individual Indian under Federal or State law.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) ASSINIBOINE AND SIOUX RURAL WATER SYSTEM.—There are authorized to be appropriated—

(1) over a period of 10 fiscal years, $124,000,000 for the planning, design, and construction of the Assiniboine and Sioux Rural Water System in accordance with subsections (b), (d), and (e) of section 4; and

(2) such sums as are necessary for the operation, maintenance, and replacement of the Assiniboine and Sioux Rural Water System, including power costs of the Western Area Power Administration.

(b) DRY PRAIRIE RURAL WATER SYSTEM.—There is authorized to be appropriated, over a period of 10 fiscal years, $51,000,000 for the planning, design, and construction of the Dry Prairie Rural Water System.

(c) COST INDEXING.—The funds authorized to be appropriated may be increased or decreased by such amounts as are justified by reason of ordinary fluctuations in development costs incurred after October 1, 1998, as indicated by engineering cost indices applicable for the type of construction involved.

PURPOSE OF THE MEASURE

The purpose of S. 624 is to authorize an on-reservation water system to serve rural and municipal water to the Fort Peck Indian Reservation in Montana. S. 624 also authorizes the Dry Prairie Rural Water System, to be interconnected with the Fort Peck System, to provide rural and municipal water to Roosevelt, Sheridan, Daniels, and Valley counties, Montana, outside the Fort Peck Reservation.

BACKGROUND AND NEED

The Fort Peck Reservation is located in northeastern Montana and includes large parts of Roosevelt and Valley Counties. The reservation is approximately 100 miles long by 40 miles wide and lies along the Missouri River about 20 miles south of the Canadian border. The reservation is home to the Assiniboine and Sioux Tribes and about 6,000 of the 11,000 enrolled members live on the Reservation. The reservation includes slightly over two million acres, 400,413 (19 percent) of which are in Tribal ownership, 543,346 (26 percent) of which are owned by Tribal members, and 1,158,540 (55 percent) of which are held in fee by non-Indians.

The Fort Peck Reservation suffers from the same problem of inadequate quantity and quality of groundwater supplies as do most areas in the High Plains. The Bureau of Reclamation participated in a needs assessment which documented that groundwater supplies did not meet EPA requirements and that available supplies were not adequate. The Indian Health Service and the Tribal Health Office have issued several public health alerts. The Bureau also participated in a feasibility study that included review of the use of Missouri River water as a supply source for a reservation-wide distribution system. The adjacent communities have the same problems, and the legislation contemplates that the Reservation system would be sized to connect to a distribution system for the surrounding communities. The legislation is based on a cost analysis done by the engineering firm of WEinc, based on the Bureau's report and estimates. The bill authorizes $103 million over five years for the Reservation system and $60 million for the Dry Prairie system. All costs of the Reservation system, including operations and maintenance would be a federal responsibility. Federal costs for the Dry Prairie system shall not exceed 76% and the Federal government may not expend any Federal funds for operations, maintenance and replacement costs for the Dry Prairie system.

LEGISLATIVE HISTORY

S. 624 was introduced on March 16, 1999 by Senators Burns and Baucus. A hearing was held in the Water and Power Subcommittee on July 28, 1999. At the business meeting on September 22, 1999, the committee on Energy and Natural Resources ordered S. 624, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 22, 1999, by a unanimous vote of a quorum present, recommends that the Senate pass S. 624, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 624, the Committee adopted a substitute amendment that includes a number of technical corrections suggested by the Bureau of Reclamation. In addition, the substitute makes it clear that the parties do not intend to make the United States potentially liable for money damages; provides that the rate for all power made available to the System shall be at the wholesale firm power rate; changes the period of construction from five years to ten years; and provides that any cost indexing will be done in 1998 dollars, rather than 1996 dollars.

SECTION-BY-SECTION ANALYSIS

Section 1 is a short title.

Section 2 provides a series of findings and purposes.

Section 3 defines terms used in the Act.

Section 4 authorizes the Secretary of the Interior to plan, design, construct, operate, maintain and replace a municipal, rural, and industrial water system for the Fort Peck Reservation. This section

describes the components of the system, provides for a cooperative agreement between the Secretary and the Fort Peck Tribes, and provides that title to the system shall be held in trust by the United States for the Fort Peck Tribes.

Section 5 authorizes the Secretary of the Interior to enter into a cooperative agreement with the Dry Prairie Rural Water Association Incorporated to provide Federal funds for the planning, design, and construction of the Dry Prairie Rural Water System. This section limits the Federal share to not more than 76%, describes the components of the system, the cooperative agreement, the service area of the system, limitations on availability of construction funds, and interconnections between this system and the system authorized in section 4.

Section 6 provides that the Western Area Power Administration shall make available power designated for future irrigation and drainage for the Pick-Sloan Missouri River Basin for pumping, treatment, and incidental operational requirements of both water systems. This section also provides conditions for the use of such capacity and energy.

Section 7 requires that the Fort Peck Tribes and the Dry Prairie Rural Water Association Incorporated shall develop a water conservation plan and describes the components of that plan.

Section 8 addresses water rights issues.

Section 9 authorizes $124,000,000 over a period of 10 fiscal years for the planning, design, and construction of the Assiniboine and Sioux Rural Water System and such sums as necessary for OM&R and power costs. This section also authorizes $51,000,000 over a period of 10 fiscal years for the planning, design, and construction of the Dry Prairie Rural Water System. Cost indexing is permitted.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 8, 1999.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 624, the Fort Peck Reservation Rural Water System Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 624—Fort Peck Reservation Rural Water System Act of 1999

Summary: S. 624 would authorize appropriations for a water supply system serving the Fort Peck Indian Reservation and the

Dry Prairie Rural Water System in Montana. This bill would authorize a total of $175 million (in 1999 dollars) over a 10-year period for the construction of the system and would authorize such sums as may be necessary for the operation and maintenance of the facilities on the reservation. It would direct the Secretary of the Interior to enter into cooperative agreements with the Fort Peck Tribal Executive Board and the Dry Prairie Rural Water Association that would allow those entities to implement the project if they comply with certain terms and conditions in the bill. All costs associated with the tribal portion of the project would be the responsibility of the Secretary. The Dry Prairie Rural Water System would be required to pay for operations and maintenance of its portion of the system but would not be obligated to repay the federal contribution to the project.

Adjusting for inflation, CBO estimates that implementing the bill would require appropriations of $209 million over the 2000–2009 period and additional amounts thereafter. We estimate that $66 million of this total would be spent over the 2000–2004 period and $143 million over fiscal years 2005 through 2009. Outlays for operation and maintenance costs in subsequent years would average about $2 million a year (in 1999 dollars) and would continue over the life of the tribal water system, or through at least fiscal year 2050. Because S. 624 would not affect direct spending or receipts. pay-as-you-go procedures would not apply.

S. 624 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that complying with this mandate would impose no significant costs on state, local, or tribal governments, so the threshold established by that act ($50 million in 1996, adjusted annually for inflation) would not be exceeded. The bill contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 624 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2000	2001	2002	2003	2004
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization level	3	5	15	21	22
Estimated outlays	3	5	15	21	22

Basis of Estimate: For purposes of this estimate, CBO assumes that appropriations would be provided as needed to design, construct, and operate this water supply system. We also assume that the Secretary would complete the cooperative agreements with the Fort Peck Tribes and the Dry Prairie Rural Water Association in fiscal year 2000.

Our estimate of project costs is based on a preliminary construction schedule prepared by the tribes and the association that is consistent with the amounts and conditions specified in S. 624. CBO adjusted those estimates to reflect the impact of anticipated inflation during the time between the authorization and appropriation of project funding. We expect that outlays would occur as

funds are obligated, because, under the bill project implementation would be the responsibility of the tribes and the association.

Pay-as-you-go consideration: None.

Estimated impact on State, local, and tribal governments: S. 624 contains an intergovernmental mandate as defined in UMRA. CBO estimates that complying with this mandate would impose no significant costs on state, local, or tribal governments, so the threshold established by that act ($50 million in 1996, adjusted annually for inflation) would not be exceeded.

Mandates.—The bill would require the Fort Peck Tribes and the Dry Prairie Rural Water Association (a public entity) to develop a water conservation plan. This requirement would be an intergovernmental mandate as defined in UMRA. Because these organizations have already developed a plan, however, complying with this mandate would result in no significant additional costs.

Other Impact.—The Dry Prairie Rural Water Association and the state of Montana would probably incur some additional costs as a result of this bill's enactment, but these costs would be voluntary. S. 624 would require nonfederal participants to pay part of the cost of constructing the Dry Prairie system and to pay all the costs of operating and maintaining this system.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Kathleen Gramp; Impact on State, local, and tribal governments: Marjorie Miller.

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

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 624. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 624, as ordered reported.

EXECUTIVE COMMUNICATIONS

On July 19, 1999 the Committee on Energy and Natural Resources requested legislative reports form the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 624. These reports had not been received at the time the report on S. 624 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF STEVE RICHARDSON, CHIEF OF STAFF, U.S. BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

My name is Steve Richardson. I am Chief of Staff of the U.S. Bureau of Reclamation. I am pleased to be here today to provide the Administration's views on S. 624, the Fort Peck Reservation Rural Water System.

Mr. Chairman, the Department supports efforts to meet the water needs of the Fort Peck Reservation. We recognize that the project would provide a reliable and good quality drinking water supply to meet the current and future needs of the approximately 24,000 residents of northeastern Montana. However given the concerns that I will discuss in my statement, the Department opposes S. 624 as introduced. However, the Department is committed to working with the Montana delegation, the Committee and the project sponsors to try to resolve our remaining concerns.

Before I address the Department's concerns with S. 624, I would like to acknowledge and commend the proponents of S. 624 for their work to address some of the issues we raised in the past. For example: (1) S. 624 now includes a water conservation program; (2) Indexing of construction costs was appropriately included; (3) S. 624 clarifies that no Federal funds are to be used for operations, maintenance and replacement of the Dry Prairie Rural Water System; and (4) S. 624 was clarified to ensure that the provisions of the National Environmental Policy Act (NEPA) will be carried out for the entire project, including the Dry Prairie Water System.

However, Mr. Chairman, the legislation raises a number of general and specific concerns and it remains difficult to justify the non-Reservation component of S. 624 as a Federal reclamation project.

The following are our concerns regarding S. 624.

First, the Administration strongly believes the proposed cost share provisions are inadequate. At a minimum, the non-reservation component should be fully reimbursable with interest.

Second, the finding with respect to trust responsibility may have unintended legal consequences with respect to federal monetary liability. As written, the language invites litigation and unless Congress intends to make the United States potentially liable for money damages, the finding should be modified or deleted altogether.

Third, S. 624 should be revised to require the Fort Reservation Rural Water System to reimburse the Western Area Power Administration fully for the costs associated with all power purchased through it. In particular, subsection 6(c) should be revised to provide that the rate for all power made available to the System shall be at the wholesale firm power rate.

Fourth, the Department does not support the use of Pick Sloan irrigation pumping power for non-irrigation pur-

poses as is proposed in Section 6(b). The 2.5 mill/kilowatt hour rate for irrigation pumping power recovers only a fraction of the actual cost of making power available (approximately 10.29 mills). Power made available for rural water systems should be provided at the firm wholesale rate of 14.54 mills/kilowatt hour.

Fifth, the Administration is concerned about the budgetary implications of this bill. S. 624 proposes to authorize $103 million over a five year period for design and construction for the Fort Peck Reservation Rural Water System, plus "such sums as are necessary for operations and maintenance" for these features. In addition, S. 624 would authorize an additional $60 million for the Dry Prairie Rural Water System. Given the fiscal constraints that we face at the Bureau of Reclamation, the number of projects that are already under construction, those that are authorized but not underway, and those that are proposed to be developed, the Federal cost of this Project is unsustainable in the current and projected budgetary climate and will create unrealistic expectations on the part of the project beneficiaries.

Sixth, I would also like to bring to your attention a growing concern with the trend towards Reclamation being obligated for operations and maintenance (O&M) costs for MR&I projects such as these. Paying the O&M for these projects, as is proposed in S. 624 for the Assiniboine and Sioux Rural Water System, and as occurred in the case of the Mni Wiconi Project and others since, could ultimately limit Reclamation's ability to fund O&M of its infrastructure and to help Indian tribes and others to address their water resources problems throughout the West. The Administration believes that where possible, Tribes should be responsible for the operations, maintenance and replacement expenses of their MR&I projects. We would like to open a dialog with the committee on how this concern may be addressed.

In addition to these general concerns, we have a number of specific technical concerns with S. 624 as drafted.

- Section 4(a) references the May 1996 report entitled, "Technical Report for the Fort Peck Reservation Rural Water System." This report was prepared as an initial investigation to give the Tribe a sense of the possible configuration and cost of a reservation water system. The configuration and costs have been revised by the Project sponsors since the 1996 report was completed. Therefore, it is out of date and inadequate for the purposes of guiding the development of a rural water supply system. A final engineering report is appropriately the next generation of project configuration and scoping and should be the only documents on which to base future activities. As such, reference to the 1996 report should be deleted.
- S. 624 should be clarified to explicitly state that the local sponsors will hold title, or ownership, to the Dry Prairie System.

• S. 624 should address the allocation of project cost between the Reservation and the Dry Prairie systems including the upsizing of the Reservation system to supply water to the Dry Prairie water system to ensure that the counties pay the appropriate share of capital and operation, maintenance and replacement (OM&R) costs attributable to the benefits they receive from the Reservation system. Costs associated with parts of the systems used by both systems should be shared.

• Facilities to allow for future interconnections to areas outside the Fort Peck Reservation should not be included or funded through the Tribal system as is proposed in Section 4(b)(3). Instead, this interconnection should be included in the Dry Prairie Rural Water System portion of the bill and should be fully reimbursable with interest.

• Section 5(g)(1), should be clarified to ensure that it includes the replacement of facilities, which is an integral part of O&M activities. As such the phrase "operations and maintenance" should be replaced with "operations, maintenance and replacement"

• In previous versions of this legislation, the Secretary was given responsibility for approving the Project's final engineering reports. That provision has been removed in S. 624. Instead, sections 4(g)(2) and 5(e)(2) simply require that the reports be submitted to Congress. Approval of this report by the Secretary should be restored. As the responsible entity for this Project, the Secretary should be required to approve the final engineering report.

• Sections 4(b)(1) and 4(b)(2) clearly spell out where the pumping and treatment facilities and the pipeline should be located. This language unduly binds the sponsors. The final site selection should not be predetermined, but should go through the engineering review and the review process required under the National Environmental Policy Act.

• The authorized cost ceiling of $103 million needs to be further clarified to make clear how the cost estimate was developed and what it includes, i.e. rights-of-way, land purchases and existing system upgrade costs. Furthermore, it is our understanding that these estimates are based on 1996 cost indices. As it is now nearly the year 2000, the ceilings should reflect more up to date costs to give the Congress a more accurate picture of the budgetary obligation that this project represents and to avoid unexpected overruns.

In summary, Mr. Chairman, based on Reclamation's budgetary situation and the other concerns raised in my statement, it is difficult to justify S. 624, particularly the non-Reservation component, as a Reclamation project.

Reclamation remains prepared to continue to work with the project proponents to develop a proposal to meet the needs of the Fort Peck Reservation.

That concludes my testimony, I would be pleased to answer any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 624, as ordered reported.

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