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SENATE

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

JULY 20, 2004.—Ordered to be printed

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

R E P O R T

[To accompany S. 1996]

The Committee on Indian Affairs, to which was referred the bill (S. 1996) to enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 1996, 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 Bureau of Reclamation, U.S. Department of the Interior, 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. §§ 701-1 et seq., the Unit includes the 193-foot Angostura Dam, which impounds up to 130,000 acre-feet 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 acre-feet 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. 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.

A 40-year water service contract between the U.S. 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. 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%.

Title I of S. 1996 authorizes the appropriation of \$4,660,000 to carry out the modernization and improvement of the Angostura Unit and associated facilities as set forth in the Improved Efficiencies Alternative in the Final EIS, with the funding to remain available until expended and activities to be carried out on a non-reimbursable basis. It 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.

Title II of S. 1996 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. S. 1996 provides that, on 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, together with the interest that would have accrued on that sum if it had been invested in interest-bearing obligations of the United States on the first day of the fiscal year beginning after the date of enactment of S. 1996, with the interest being compounded annually thereafter. Nothing in S. 1996 shall be interpreted or construed to affect any rights, privileges, or claims, including water rights or claims thereto, of the Oglala Sioux Tribe, whether located within or without the external boundaries of the Pine Ridge Indian Reservation, and whether based on treaty, Executive Order, agreement, Act of Congress, aboriginal title, the Winters Doctrine, or other authority.

LEGISLATIVE HISTORY

S. 1996 was introduced by Senator Daschle on December 9, 2003, and was referred to the Committee on Indian Affairs. Senator Johnson became a cosponsor on February 12, 2004, and Senator Inouye became a cosponsor on June 16, 2004. The Committee held a legislative hearing on S. 1996 on June 16, 2004.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on June 23, 2004, approved an amendment in the form of a substitute to S. 1996 by voice vote and ordered the bill reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

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

Section 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. §§ 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 ir-

rigation 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 determined 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 and is in need of economic development; (6) the national economic development benefits of the Angostura Unit do not extend to the Reservation; (7) the Angostura Unit may negatively affect water quality and riparian vegetation along the Cheyenne River on the Reservation; (8) modernization of the irrigation facilities at the Angostura Unit would enhance the national economic development benefits of the Angostura Unit and would achieve improved water efficiency and environmental restoration benefits on the Reservation; and (9) 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.

Section 3—Definitions

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

TITLE I—MODERNIZATION

Section 101—Modernization of facilities at Angostura Unit

Section 101 directs the Secretary to conduct the 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 nonreimbursable basis.

Section 102—Delivery of water to Pine Ridge Indian Reservation

Section 102 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 to be used for fish and wildlife purposes and environmental restoration on the Reservation.

Section 103—Authorization of appropriations

Section 103 authorizes the appropriation of \$4,660,000 to carry out the modernization and improvement of facilities as provided for in section 101, and provides that these funds are to remain available until expended.

TITLE II—DEVELOPMENT

Section 201—Oglala Sioux Tribal Development Trust Fund

Subsection 201(a) 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 201(b) 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 (a) the sum of \$92,500,000 plus an amount equal to the amount of interest that would have accrued on \$92,500,000 if that amount had been invested in interest-bearing obligations of the United States on the first day of the fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

Subsection 201(c) 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 the Secretary of the Treasury shall deposit interest resulting from the investments into the Fund.

Subsection 201(d) provides that, beginning on 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 (d)(3). The section provides that the Secretary of the Interior is to use the amounts transferred under subsection (d)(1) 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 (f). The section provides that the funds so transferred may be expended only to carry out projects and programs under that Plan.

Subsection 201(e) bars the Secretary of the Treasury from transferring or withdrawing any amount deposited under subsection (b) of this section except as provided in subsections (c) and (d)(1) of this section.

Subsection 201(f) 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 and update 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 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 covered 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 201(g) 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 202—Eligibility of Tribe for certain programs and services

Section 202 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 203—Authorization of appropriations

Section 203 authorizes the appropriation of such sums as are necessary to pay the administrative expenses of the Fund.

Section 204—Water rights

Section 204 states that nothing in this Act shall be interpreted or construed to affect any rights, privileges, or claims, including water rights or claims thereto, of the Oglala Sioux Tribe, whether located within or without the external boundaries of the Pine Ridge Indian Reservation, and whether based on treaty, Executive Order, agreement, Act of Congress, aboriginal title, the Winters Doctrine, or other authority, or to validate or invalidate any assertion of the existence, nonexistence, or extinguishment of any water rights, or claims thereto, held by the Oglala Sioux Tribe, or any other Indian tribe or individual Indian under Federal or State law, or any other water rights in existence on the date of enactment of this Act held by any person or entity.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1996, as provided by the Congressional Budget Office, is set forth below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 8, 2004.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1996, the Oglala Sioux Tribe Angostura Irrigation Project Modernization and Development Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 1996—Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act

Summary: S. 1996 would authorize the appropriation of \$4.66 million for the Bureau of Reclamation to modernize the irrigation facilities of the Angostura Unit, which is a part of the Pick-Sloan Missouri River Basin Program. 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. CBO estimates that modernizing the irrigation facilities would cost about \$5 million over the 2005–2007 period, assuming appropriation of the authorized funds.

S. 1996 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 significant impact on the federal budget over the 2004–2014 period; however, it would increase direct spending by an estimated \$158 million in 2015. Enacting the bill would not affect revenues.

S. 1996 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. The funds authorized by this bill would benefit the Oglala Sioux Tribe, and any costs to fulfill the requirements associated with those funds would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1996 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—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
Authorization level	5	0	0	0	0
Estimated outlays	3	1	1	0	0

¹ Enactment of S. 1996 also would increase direct spending by \$158 million in 2015.

Basis of estimate: For this estimate, CBO assumes that S. 1996 will be enacted near the end of fiscal year 2004 and that the authorized amount will be appropriated in fiscal year 2005.

Spending subject to appropriation

This bill would authorize the appropriation of \$4.66 million to modernize the irrigation facilities of the Angostura Unit. Based on historical spending of similar projects, CBO estimates that implementing the modernization project authorized by S. 1996 would cost about \$5 million over the 2005–2007 period, assuming appropriation of the authorized funds.

Direct spending

S. 1996 would 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 establish the Oglala Sioux Tribe Development Trust Fund and would direct the Secretary of the Treasury to deposit a total of \$92.5 million into interest-bearing accounts to benefit the tribes on the first day of the 11th fiscal year that begins after the date of enactment. An additional deposit equal to the amount of interest that the fund would have earned if the fund had been capitalized and invested in 2005 would be made at the same time. CBO estimates that this additional payment would be \$65 million, for a total deposit of \$158 million in 2015. Starting in 2015, the bill would allow the tribes to spend earnings on amounts in the fund pursuant to a tribal spending plan.

Payments to certain trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited to the fund in 2015 would be recorded as budget authority and outlays in that year. Because the trust funds would be nonbudgetary, the subsequent use of such funds by the tribe would not affect federal outlays.

Intergovernmental and private-sector impact: S. 1996 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The funds authorized by this bill would benefit the Oglala Sioux Tribe, and any costs to fulfill the requirements associated with those funds would be incurred voluntarily.

Estimate prepared by: Federal Costs: Lanette J. Walker and Julie Middleton. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Selena Caldera.

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

EXECUTIVE COMMUNICATIONS

The views of the Administration on S. 1996 as introduced are set forth in the Statement of David Anderson, Assistant Secretary of the Interior—Indian Affairs, United States Department of the Interior, dated July 8, 2004, and are set forth below:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, July 8, 2004.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The following sets forth the views of the Department of the Interior on S. 1996, the "Oglala Sioux Tribe Angostura Irrigation Project Modernization and Development Act." S. 1996 would enhance and provide certain project benefits for the Oglala Sioux Tribe in connection with water conservation improvements on the Angostura Irrigation Project. The Department cannot support the bill.

Title I of S. 1996 would authorize the Secretary to rehabilitate and improve the facilities of the Angostura Project, a component of the multi-state Pick-Sloan Missouri Basin Program. Furthermore, Title I would provide that the Secretary shall, to the maximum extent practicable, deliver water saved through the rehabilitation and improvement of the facilities of the Angostura Project to the Pine Ridge Indian Reservation, and provide that the use of that water be used for environmental restoration.

Title II of 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.

In addition, Title II establishes a Trust Fund consisting of \$92.5 million to be deposited in the Fund in the 11th year following enactment of S. 1996 and requires a retroactive annual interest payment on this amount. If a stream of payments to the Tribe is found to be warranted, such benefits should be provided by authorizing appropriations for this purpose.

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;
- U.S. 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 Title I 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 Pine Ridge Indian 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 101 to carry out rehabilitation and improvement at the Angostura Project, Reclamation already has authority to undertake such work.

While the Department cannot support S. 1996, we share the sponsor's goal of finding innovative solutions for economic, education, health, recreational, and social welfare improvements on the Reservation. Indeed, the Department has already committed significant resources to the ongoing construction of the Mni Wiconi rural water project, which addresses many of the needs identified in this legislation. The Department stands ready to work with the Tribe, the Committee, and the South Dakota delegation on these activities including examining if there are quantifiable impacts caused by the Pick-Sloan project.

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,

DAVID ANDERSON,
Assistant Secretary—Indian Affairs.

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. 1996 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. 1996 will not effect any changes in existing law.