S. 637

IN THE SENATE OF THE UNITED STATES

March 18, 2009

Mr. BAUCUS (for himself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the construction of the Dry-Redwater Regional Water Authority System in the State of Montana and a portion of McKenzie County, North Dakota, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Dry-Redwater Regional Water Authority System Act of 2009'.

SEC. 2. FINDINGS; PURPOSE.

(a) Findings- Congress finds that--

(1) there are insufficient available supplies of safe water to meet the minimum health and safety standards of the citizens of--

(A) Dawson, Garfield, McCon, Prairie, and Richland Counties of the State; and

(B) McKenzie County, North Dakota;

(2) McCon and Garfield Counties of the State were--

(A) directly and physically impacted when the Fort Peck Dam was constructed; and

(B) to receive certain impact benefits as a result of the Pick-Sloan program; and

(3) the water that is contained in the Fort Peck Dam reservoir is managed for purposes relating to--
(A) flood control;

(B) the production of hydroelectric power;

(C) irrigation;

(D) the maintenance of a public water supply;

(E) the conservation of fish and wildlife;

(F) recreation; and

(G) the improvement of water quality.

(b) Purpose- The purpose of this Act is to ensure a safe and adequate municipal, rural, and industrial water supply for the citizens of--

(1) Dawson, Garfield, McConne, Prairie, and Richland Counties of the State; and

(2) McKenzie County, North Dakota.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) ADMINISTRATOR- The term `Administrator' means the Administrator of the Western Area Power Administration.

(2) AUTHORITY- The term `Authority' means--

(A) the Dry-Redwater Regional Water Authority, which is a publicly owned nonprofit water authority formed in accordance with Mont. Code Ann. 75-6-302 (2007); and

(B) any nonprofit successor entity.

(3) FIRM POWER RATE- The term `firm power rate' means the rate charged by the Administrator for the Pick-Sloan Missouri Basin Program--Eastern Division.

(4) PICK-SLOAN PROGRAM- The term `Pick-Sloan program' means the Pick-Sloan Missouri River Basin Program (authorized by section 9 of the Act of December 22, 1944 (commonly known as the `Flood Control Act of 1944') (58 Stat. 891, chapter 665)).

(5) SECRETARY- The term `Secretary' means the Secretary of the Interior.

(6) STATE- The term `State' means the State of Montana.

(7) WATER SYSTEM- The term `Water System' means the Dry-Redwater Regional Water Authority System authorized under section 4 for--
(A) Dawson, Garfield, McCone, Prairie, and Richland Counties of the State; and

(B) McKenzie County, North Dakota.

SEC. 4. DRY-REDWATER REGIONAL WATER AUTHORITY SYSTEM.

(a) Cooperative Agreement-

(1) IN GENERAL- The Secretary shall enter into a cooperative agreement with the Authority to provide Federal assistance for the planning, design, and construction of the Water System.

(2) REQUIREMENTS- A cooperative agreement entered into under paragraph (1) shall specify, in a manner that is acceptable to the Secretary and the Authority--

(A) the responsibilities of each party to the cooperative agreement relating to the Water System, including--

(i) the final engineering report;

(ii) an environmental and cultural resource study;

(iii) engineering and design;

(iv) construction;

(v) water conservation measures; and

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

(B) any procedure or requirement relating to--

(i) the carrying out of each activity described in subparagraph (A); and

(ii) the approval and acceptance of the design and construction of the Water System; and

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

(b) Use of Federal Funds-

(1) FEDERAL SHARE-

(A) IN GENERAL- The Federal share of the costs relating to the planning, design, and construction of the Water System shall not exceed 75 percent of the total cost of the Water System.

(B) LIMITATION- Amounts made available under subparagraph (A) shall not be returnable or reimbursable under the reclamation laws.
(2) COMPLIANCE WITH COOPERATIVE AGREEMENT- Federal funds made available to carry out this section shall be obligated and expended in accordance with a cooperative agreement entered into by the Secretary under subsection (a)(1).

(c) Components- Components of the Water System facilities for which Federal funds may be obligated and expended under this section shall include--

(1) facilities relating to--

(A) water intake;

(B) water pumping;

(C) water treatment; and

(D) water storage;

(2) transmission pipelines and pumping stations;

(3) appurtenant buildings, maintenance equipment, and access roads;

(4) any interconnection facility that connects a pipeline of the Water System to a pipeline of a public water system;

(5) distribution, pumping, and storage facilities that--

(A) serve the needs of citizens who use public water systems;

(B) are in existence on the date of enactment of this Act; and

(C) may be purchased, improved, and repaired in accordance with a cooperative agreement entered into by the Secretary under subsection (a)(1);

(6) electrical power transmission and distribution facilities required for the operation and maintenance of the Water System;

(7) any other facility or service required for the development of a rural water distribution system, as determined by the Secretary; and

(8) any property or property right required for the construction or operation of a facility described in this subsection.

(d) Service Area- The service area of the Water System shall be--

(1) the area of Garfield and McCone Counties in the State;

(2) the area west of the Yellowstone River in Dawson and Richland Counties in the State;

(3) the area including, and north of, Township 15N in Prairie County in the State; and
(4) the portion of McKenzie County, North Dakota, that includes all land that is located west of the Yellowstone River in the State of North Dakota.

(e) Limitation on Availability of Construction Funds- The Secretary shall not obligate funds for construction of the Water System until the date--

(1) on which the Water System complies with each requirement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) that is 90 days after the date of receipt by Congress of the final engineering report described in subsection (a)(2)(A)(i) that is approved by the Secretary; and

(3) on which the Secretary publishes a written finding that the water conservation plan developed pursuant to section 6 contains water conservation measures for the operation of the Water System that are--

(A) prudent;

(B) reasonable; and

(C) economically and financially feasible.

(f) Limitation on Use of Federal Funds-

(1) IN GENERAL- Any cost relating to the operation, maintenance, or replacement of the Water System--

(A) shall not be a Federal responsibility; and

(B) shall be paid by the Water System.

(2) FEDERAL FUNDS- The Secretary shall not obligate or expend Federal funds for the operation, maintenance, or replacement of the Water System.

(g) Title to the Water System- Title to the Water System shall be held by the Authority.

SEC. 5. USE OF POWER FROM PICK-SLOAN PROGRAM.

(a) Findings- Congress finds that McCona and Garfield Counties in the State were designated--

(1) as impact counties during the period in which the Fort Peck Dam was constructed; and

(2) to receive impact mitigation benefits in accordance with the Pick-Sloan program.

(b) Availability of Power-

(1) IN GENERAL- Subject to paragraph (2), the Administrator shall make available to the Water System a quantity of power required to meet the pumping and incidental operation requirements of the Water System--
(A) from the water intake facilities; and

(B) through--

(i) the water treatment facilities; and

(ii) all first water distribution pumping facilities.

(2) ELIGIBILITY- The Water System shall be eligible to receive power under paragraph (1) if the Water System--

(A) operates on a not-for-profit basis; and

(B) is constructed pursuant to a cooperative agreement entered into by the Secretary under section 4(a)(1).

(3) RATE- The Administrator shall establish the cost of the power described in paragraph (1) at the firm power rate.

(4) RECOVERY OF EXPENSES- The Administrator shall recover the costs associated with the quantity of power used by the Authority under paragraph (1).

(5) RESPONSIBILITY FOR EXPENSES- The Authority shall be responsible for the payment of the costs described in paragraph (4).

SEC. 6. WATER CONSERVATION PLAN.

(a) In General- The Authority 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 carrying out the measures described in paragraph (2) and this Act to meet the water conservation objectives described in paragraph (1).

(b) Design Requirement- The water conservation plan developed under subsection (a) shall be designed to ensure that users of water provided by the Water System will use the best practical 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 each activity carried out under this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) Water System- There is authorized to be appropriated to carry out the planning, design, and construction of the Water System $115,116,000 for the period of fiscal years 2010 through 2020.
(b) Cost Indexing- The amount authorized to be appropriated under subsection (a) may be increased or decreased in accordance with ordinary fluctuations in development costs incurred after January 1, 2008, as indicated by any available engineering cost indices applicable to construction activities that are similar to the construction of the Water System.

END