

[Note: S.623, the Dakota Water Resources Act of 2000 as passed by the U.S. House and Senate (incorporated in H.R. 4577), has been incorporated into the text of P.L. 89-108, as amended, to illustrate the changes contained in the bill. Additions are indicated by underlining and deletions are indicated by ~~overstrikes~~.]

The Act of August 5, 1965
(Public Law 89-108, 79 Stat. 443)
as amended by §§1-9 of the
The Garrison Diversion Reformulation Act of 1986
(Public Law 99-294, 100 Stat. 418)
and as further amended by §§3510 and 1701 of the
Reclamation Projects Authorization and Adjustment Act of 1992
(Public Law 102-575, 106 Stat. 4600)

and as further modified by S.623, the Dakota Water Resources Act of 2000

SEC. 1.

(a) The Congress declares that the purposes of this Act are to:

(1) implement the recommendations of the Garrison Diversion Unit Commission Final Report (dated December 20, 1984) in the manner specified by this Act;

(2) meet the water needs of within the State of North Dakota, including municipal, rural and industrial water needs, as identified in the Garrison Diversion Unit Commission Final Report;

(3) minimize the environmental impacts associated with the construction and operation of the Garrison Diversion Unit;

(4) assist the United States in meeting its responsibilities under the Boundary Waters Treaty of 1909;

(5) assure ~~more timely~~ appropriate repayment of Federal funds expended for the Garrison Diversion Unit;

(6) preserve any existing rights of the State of North Dakota to use water from the Missouri River; and

(7) offset the loss of farmland within the State of North Dakota resulting from the

1 construction of major features of the Pick-Sloan Missouri Basin Program, by means of a
2 ~~federally-assisted water resource development project providing irrigation for 130,940~~
3 ~~acres of land~~ multipurpose federally assisted water resource project providing irrigation,
4 municipal, rural, and industrial water systems, fish, wildlife and other natural resource
5 conservation and development, recreation, flood control, ground water recharge, and
6 augmented stream flows.

7 (b) The Secretary of the Interior (hereafter referred to as "the Secretary") is
8 authorized to plan and construct, jointly with the State of North Dakota, a multi-purpose
9 water resource development project within the State of North Dakota providing for ~~the~~
10 ~~irrigation of 130,940 acres~~ irrigation, municipal, rural, and industrial water, ~~fish and wildlife~~
11 ~~conservation~~ fish, wildlife, and other natural resource conservation and development,
12 recreation, flood control, augmented stream flows, ground water recharge, and other
13 project purposes in accordance with the Federal reclamation laws (Act of June 17, 1902,
14 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and substantially in
15 accordance with the plans set out in the Garrison Diversion Unit Commission Final Report
16 dated December 20, 1984 (as modified by the Dakota Water Resources Act of 2000).

17 (c) Nothing in this Act is intended, nor shall be construed, to preclude the State
18 of North Dakota from seeking Congressional authorization to plan, design, and construct
19 additional Federally-assisted water resource development projects in the future.

20 (d) Nothing in this Act shall be deemed to diminish the quantity of water from the
21 Missouri River which the State of North Dakota may beneficially use, pursuant to any right
22 or rights it may have under Federal law existing immediately before the date of enactment
23 of this Act and consistent with the treaty obligations of the United States.

24 (e) The authorization for all features of the Missouri-Souris Unit of the Pick-
25 Sloan Missouri Basin Program located in the State of North Dakota, heretofore authorized
26 in section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 891), for which no
27 funds have been appropriated for construction, and which are not authorized for
28 construction by this Act, is hereby ~~terminated, and sections 1 and 6 of the Act of August 5,~~
29 ~~1965 (Public Law 89-108, 79 Stat. 433) are hereby repealed~~ terminated.

1 ~~—— (f) —— In implementing the provisions of this Act, the Secretary is directed to~~
2 ~~construct all supply works to the capacity identified in the Garrison Diversion Unit~~
3 ~~Commission Final Report, except that the Secretary is directed to construct the James~~
4 ~~River Feeder Canal to a capacity of no more than 450 cubic feet per second, and the~~
5 ~~Sykeston Canal to the capacity specified in section 8(a)(1) of this Act.~~

6 ~~—— (g) —— Where features constructed by the Secretary are no longer used to full~~
7 ~~capacity pursuant to the recommendations of the Garrison Diversion Unit Commission~~
8 ~~Final Report, that portion of the Secretary's investment attributable to the construction of~~
9 ~~such unused capacity shall be nonreimbursable.~~

10 (f) COSTS. —

11 (1) ESTIMATE. — The Secretary shall estimate —

12 (A) the actual construction costs of the facilities (including mitigation facilities) in
13 existence as of the date of enactment of the Dakota Water Resources Act of 2000; and

14 (B) the annual operation, maintenance, and replacement costs associated with
15 the used and unused capacity of the features in existence as of that date.

16 (2) REPAYMENT CONTRACT. — An appropriate repayment contract shall be
17 negotiated that provides for the making of a payment for each payment period in an
18 amount that is commensurate with the percentage of the total capacity of the project that is
19 in actual use during the payment period.

20 (3) OPERATION AND MAINTENANCE COSTS. — Except as otherwise
21 provided in this Act or in Reclamation law —

22 (i) The Secretary shall be responsible for the costs of operation and
23 maintenance of the proportionate share of unit facilities in existence on the date of
24 enactment of the Dakota Water Resources Act of 2000 attributable to the capacity of the
25 facilities (including mitigation facilities) that remain unused;

26 (ii) The State of North Dakota shall be responsible for costs of operation and
27 maintenance of the proportionate share of existing unit facilities that are used and shall be
28 responsible for the full costs of operation and maintenance of any facility constructed after
29 the date of enactment of the Dakota Water Resources Act of 2000;

1 (iii) The State of North Dakota shall be responsible for the costs of providing
2 energy to authorized unit facilities.

3 (g) AGREEMENT BETWEEN THE SECRETARY AND THE STATE. — The
4 Secretary shall enter into 1 or more agreements with the State of North Dakota to carry out
5 this Act, including operation and maintenance of the completed unit facilities and the
6 design and construction of authorized new unit facilities by the State.

7 (h) BOUNDARY WATERS TREATY OF 1909. —

8 (A) DELIVERY OF WATER INTO THE HUDSON BAY BASIN. — Prior to
9 construction of any water systems authorized under this Act to deliver Missouri River water
10 into the Hudson Bay basin, the Secretary, in consultation with the Secretary of State and
11 the Administrator of the Environmental Protection Agency, must determine that adequate
12 treatment can be provided to meet the requirements of the Treaty between the United
13 States and Great Britain relating to Boundary Waters Between the United States and
14 Canada, signed at Washington January 11, 1909 (26 Stat. 2448; TS 548) (commonly
15 known as the Boundary Waters Treaty of 1909).

16 (2) COSTS — All costs of construction, operation, maintenance, and
17 replacement of water treatment and related facilities authorized by this Act and attributable
18 to meeting the requirements of the treaty referred to in paragraph (1) shall be
19 nonreimbursable.

20
21 **SEC. 2.**

22 (a) Subject to the provision of subsections (b), (c), (d), and (e) of this section, the
23 Secretary is authorized in connection with the Garrison diversion unit (i) to construct,
24 operate, and maintain or provide for the construction, operation, and maintenance of public
25 outdoor recreation and fish and wildlife enhancement facilities, (ii) to acquire or otherwise
26 to include within the unit area such adjacent lands or interest in land as are necessary for
27 present or future public recreation or fish and wildlife use, (iii) to allocate water and
28 reservoir capacity to recreation and fish and wildlife enhancement, and (iv) to provide for
29 the public use and enjoyment of unit lands, facilities, and water areas in a manner

1 coordinated with other unit purposes. The Secretary is further authorized to enter into
2 agreements with Federal agencies or State or local public bodies for the operation,
3 maintenance, and replacement of unit facilities, and to transfer unit lands or facilities to
4 Federal agencies or State or local public bodies by lease or exchange, upon such terms
5 and conditions as will best promote the development and operation of such lands or
6 facilities in the public interest for recreation and fish and wildlife enhancement purposes.

7 ~~(b) All costs allocated to fish and wildlife enhancement and incurred in~~
8 ~~connection with waterfowl refuges and waterfowl production areas proposed for Federal~~
9 ~~administration shall be nonreimbursable.~~

10 ~~——(c)(1) If, before commencement of construction of the unit, non-Federal public~~
11 ~~bodies agree to administer for recreation or fish and wildlife enhancement or for both of~~
12 ~~these purposes pursuant to the plan for the development of the unit approved by the~~
13 ~~Secretary land and water areas which are not included within Federal waterfowl refuges~~
14 ~~and waterfowl production areas and to bear not less than one-half the separable costs of~~
15 ~~the unit allocated to either or both of said purposes, as the case may be, and attributable~~
16 ~~to such areas and all the costs of operation, maintenance, and replacement incurred in~~
17 ~~connection therewith, the remainder of the separable capital costs so allocated and~~
18 ~~attributed shall be nonreimbursable.~~

19 ~~——(2) In the absence of such a preconstruction agreement recreation and fish and~~
20 ~~wildlife enhancement facilities (other than minimum facilities for the public health and safety~~
21 ~~at reservoir access points and facilities related to Federal waterfowl refuges and waterfowl~~
22 ~~production areas) shall not be provided, and the allocation of unit costs shall reflect only the~~
23 ~~number of visitor days and the value per visitor day estimated to result from such~~
24 ~~diminished recreation development without reference to lands which may be provided~~
25 ~~pursuant to subsection (e) of this section.~~

26 ~~——(d) The non-Federal share of the separable capital costs of unit allocated to~~
27 ~~recreation and fish and wildlife enhancement shall be borne by non-Federal interests,~~
28 ~~under either or both of the following methods as may be determined appropriate by the~~
29 ~~Secretary: (i) payment, or provision of lands, interests therein, or facilities for the unit; or (ii)~~

1 repayment, with interest, within fifty years of first use of unit recreation or fish and wildlife
2 enhancement facilities: ~~Provided, That the source of repayment may be limited to~~
3 ~~entrance and user fees for charges collected at the unit by non-Federal interests if the fee~~
4 ~~schedule and the portion of fees dedicated to repayment are established on a basis~~
5 ~~calculated to achieve repayment as aforesaid and are made subject to review and~~
6 ~~renegotiation at intervals of not more than five years.~~

7 (b) FISH AND WILDLIFE COSTS. — All fish and wildlife enhancement costs
8 incurred in connection with waterfowl refuges, waterfowl production areas, and wildlife
9 conservation areas proposed for Federal or State administration shall be
10 nonreimbursable.

11 (c) RECREATION AREAS. —

12 (1) COSTS. — If non-Federal public bodies continue to agree to administer land
13 and water areas approved for recreation and agree to bear not less than 50 percent of the
14 separable costs of the unit allocated to recreation and attributable to those areas and all
15 the costs of operation, maintenance, and replacement incurred in connection therewith, the
16 remainder of the separable capital costs so allocated and attributed shall be
17 nonreimbursable.

18 (2) APPROVAL. — The recreation areas shall be approved by the Secretary in
19 consultation and coordination with the State of North Dakota.

20 (d) NON-FEDERAL SHARE. — The non-Federal share of the separable capital
21 costs of the unit allocated to recreation shall be borne by non-Federal interests, using the
22 following methods, as the Secretary may determine to be appropriate:

23 (1) Services in kind.

24 (2) Payment, or provision of lands, interests therein, or facilities for the unit.

25 (3) Repayment, with interest, within 50 years of first use of the unit recreation
26 facilities.

27 (e)(1) Notwithstanding the absence of preconstruction agreements as specified in
28 subsection (c) of this section lands may be acquired in connection with construction of the
29 unit to preserve the recreation and fish and wildlife enhancement potential of the unit.

1 ~~(1)~~(2) If non-Federal public bodies agree ~~within ten years after the initial unit~~
2 ~~operation to administer for recreation and fish and wildlife enhancement~~ to administer for
3 recreation pursuant to the plan for development of the unit approved by the Secretary land
4 and water areas ~~which are not included within Federal waterfowl refuges and waterfowl~~
5 ~~production areas~~ and to bear not less than one-half the costs of lands acquired therefor
6 pursuant to this subsection and facilities and project modifications provided for those
7 purposes and all costs of operation, maintenance, and replacement incurred therefor, the
8 remainder of the costs of such lands, facilities, and project modifications shall be
9 nonreimbursable. Such agreement and subsequent development shall not be the basis for
10 any allocation of joint costs of the unit to recreation ~~or fish and wildlife enhancement~~.

11 ~~(2)~~(3) If, ~~within ten years after initial operation of the unit~~, there is not an executed
12 agreement as specified in ~~paragraph (1) of this subsection~~ paragraph (2), the Secretary
13 may utilize the lands for any lawful purpose within the jurisdiction of the Department of the
14 Interior, or may transfer custody of the land to another Federal agency for use for any lawful
15 purpose within the jurisdiction of that agency, or may lease the lands to a non-Federal
16 public body, or may transfer the lands to the Administrator of General Services for
17 disposition in accordance with the surplus property laws of the United States. In no case
18 shall the lands be used or made available for use for any purpose in conflict with the
19 purposes for which the project was constructed, and in every case preference shall be
20 given to uses which will preserve and promote the recreation and fish and wildlife
21 enhancement potential of the project or, in the absence thereof, will not detract from that
22 potential.

23 (f) Subject to the limitations hereinbefore stated, joint capital costs allocated to
24 recreation ~~and fish and wildlife enhancement~~ shall be nonreimbursable.

25 (g) Costs of means and measures to prevent loss of and damage to fish and
26 wildlife shall be treated as unit costs and allocated among all unit purposes.

27 (h) As used in this Act, the term "nonreimbursable" shall not be construed to
28 prohibit the imposition of entrance, admission, and other recreation user fees or charges.

29 (i) Notwithstanding any other provisions of this section, the mitigation for fish

1 and wildlife losses incurred as a result of construction of the project shall be on an acre-for-
2 acre basis, based on ecological equivalency, concurrent with project construction.

3 (j) The Secretary is directed to implement the provisions of the Garrison
4 Diversion Unit Commission Final Report with respect to fish and wildlife conservation,
5 including habitat impacts, mitigation procedures, and enhancement, except for the
6 following:

7 (1) The Secretary shall take no action to alter the status of Sheyenne Lake
8 National Wildlife Refuge ~~prior to the completion of construction of Lonetree Dam and~~
9 ~~Reservoir.~~

10 (2) Development and implementation of the mitigation and enhancement plan
11 for fish and wildlife resources impacted by construction and operation of the Garrison
12 Diversion Unit shall not be limited by the cost constraints based on estimates contained in
13 the Garrison Diversion Unit Commission Final Report.

14 (3) Credit toward mitigation recommended by the Garrison Diversion Unit
15 Commission Final Report for reservoir sites is not authorized.

16 (4) TAAZER RESERVOIR. — Taayer Reservoir is deauthorized as a project
17 feature. The Secretary acting through the Commissioner of Reclamation shall acquire
18 (including acquisition through donation or exchange) up to 5,000 acres in the Kraft and
19 Pickell Slough areas and to manage the area as a component of the National Wildlife
20 Refuge System giving consideration to the unique wildlife values of the area. In acquiring
21 the lands which comprise the Kraft and Pickell Slough complex, the Secretary shall acquire
22 wetlands in the immediate vicinity which may be hydrologically related and nearby uplands
23 as may be necessary to provide for proper management of the complex. The Secretary
24 shall provide for appropriate visitor access and control at the refuge.

25 (5) DEAUTHORIZATION OF LONETREE DAM AND RESERVOIR. — The
26 Lonetree Dam and Reservoir is deauthorized, and the Secretary shall designate the lands
27 acquired for the former reservoir site a wildlife conservation area. The Secretary shall
28 enter into an agreement with the State of North Dakota providing for the operation and
29 maintenance of the wildlife conservation area as an enhancement feature, the costs of

1 which shall be paid by the Secretary.

2
3 **SEC. 3.**

4 The Garrison diversion unit shall be integrated physically and financially with the
5 other Federal works constructed or authorized to be constructed under the comprehensive
6 plan approved by Section 9 of the Act of December 22, 1944, as amended and
7 supplemented. The Secretary shall give consideration to returning to the Missouri River to
8 the fullest extent practicable such of the return flows as are not required for beneficial
9 purposes. (79 Stat. 434)

10
11 **SEC. 4.**

12 (a) The interest rate used for computing interest during construction and interest on
13 the unpaid balance of the capital costs allocated to interest-bearing features of the
14 Garrison diversion unit as authorized in this Act shall be determined by the Secretary of the
15 Treasury as of the beginning of the fiscal year in which construction is initiated, on the
16 basis of the computed average interest rate payable by the Treasury upon its outstanding
17 marketable public obligations, which are neither due nor callable for redemption for fifteen
18 years from date of issue. Interest during construction shall be calculated only until such
19 date as the Secretary declares any particular feature to be substantially complete,
20 regardless of whether the feature is placed into service.

21 (b) From and after July 1, 1965, the interest rate on the unamortized balance of the
22 investment allocated to commercial power in facilities construction or under construction
23 on June 30, 1965, by the Department of the Army in the Missouri River Basin, the
24 commercial power from which is marketed by the Department of the Interior, and in the
25 transmission and marketing facilities associated therewith, shall be 2½ per centum per
26 annum. (79 Stat. 435)

27
28 **SECTION 5.**

29 ~~—(a)(1) Subject to the provisions of subsection (a)(2) of this section, the Secretary is~~

1 authorized to develop irrigation in the following project service areas: Turtle Lake (13,700
2 acres), McClusky Canal (4,000 acres), Lincoln Valley (6,515 acres), Harvey Pumping
3 (2,000 acres), New Rockford (20,935 acres), New Rockford Canal (1,200 acres),
4 LaMoure (13,350 acres), West Oakes Extension (4,000 acres), and West Oakes (19,660
5 acres). The Secretary is prohibited from developing irrigation in these areas in excess of
6 the acreage specified herein, except that the Secretary is authorized and directed to
7 develop up to 28,000 acres of irrigation in other areas of North Dakota, not located in the
8 Hudson Bay, Devils Lake, or James River drainage basins.

9 ~~——(2)——~~ The Secretary is prohibited from obligating any funds for construction of
10 irrigation service facilities in the areas listed in subsection (a)(1) of this section prior to
11 September 30, 1990. After that date, the Secretary may obligate funds only after
12 completing and submitting to the Congress, the report required by section 5(c) of this Act.

13 ~~——(b)(1)——~~ The Secretary may not commence construction of the Sykeston Canal, the
14 James River Feeder Canal, and James River channel improvements until 60 days after the
15 report required by section 5(c) of this Act has been completed and submitted to the
16 Congress.

17 ~~——(2)——~~ The Secretary is directed to proceed immediately with the construction of -

18 ~~——(A)——~~ the New Rockford Canal;

19 ~~——(B)——~~ the Oakes Test Area; and

20 ~~——(C)——~~ project features authorized in section 7 of this Act.

21 ~~——(c)(1)——~~ The Secretary is directed to submit a comprehensive report to the Congress
22 as soon as practicable, but not later than the end of fiscal year 1988 on the effects on the
23 James River in North Dakota and South Dakota of water resource development proposals
24 recommended by the Garrison Diversion Unit Commission and authorized in this Act. The
25 report shall include the findings of the Secretary with regard to:

26 ~~——(A)——~~ the feasibility of using the Oakes Aquifer as a water storage and recharge
27 facility, and an evaluation of the need for offstream regulatory storage in the lower James
28 River basin;

29 ~~——(B)——~~ the capability of the river to handle irrigation return flows, project water

1 supplies, and natural runoff without causing flooding, property damage, or damage to
2 wildlife areas, and mechanisms or procedures for compensation or reimbursement of
3 affected landowners for damages from project operation;

4 ~~—— (C) —— the impacts of Garrison Diversion Unit irrigation return flows on the river and
5 on adjacent riverine wetland areas and components of the National Wildlife Refuge
6 System, with regard to water quality, and fish and wildlife values;~~

7 ~~—— (D) —— the need to channelization of the James River under the irrigation and
8 municipal, rural, and industrial water development programs authorized by this Act;~~

9 ~~—— (E) —— the cost and efficiency of measures required to guarantee that irrigation
10 return flows from the New Rockford (Robinson Coulee) irrigation service areas will not
11 enter the Hudson Bay drainage and the impact these return flows will have on the James
12 River;~~

13 ~~—— (F) —— the feasibility of conveying project flows into the lower James River via
14 Pipestem Creek; and~~

15 ~~—— (G) —— alternative management plans for operation of Jamestown and Pipestem
16 Reservoirs to minimize impacts on the lower James River.~~

17 ~~—— (2) —— The costs of the study authorized by this subsection shall be
18 nonreimbursable.~~

19 ~~—— (3) —— The study authorized by this subsection shall be carried out in accordance
20 with the requirements of the National Environmental Policy Act.~~

21 **SEC. 5. IRRIGATION FACILITIES.**

22 (a) IN GENERAL. —

23 (1) AUTHORIZED DEVELOPMENT. — In addition to the 5,000-acre Oakes
24 Test Area in existence on the date of enactment of the Dakota Water Resources Act of
25 2000, the Secretary may develop irrigation in —

26 (A) the Turtle Lake service area (13,700 acres);

27 (B) the McClusky Canal service area (10,000 acres); and

28 (C) if the investment costs are fully reimbursed without aid to irrigation from the
29 Pick-Sloan Missouri Basin Program, the New Rockford Canal service area (1,200 acres).

1 (2) DEVELOPMENT NOT AUTHORIZED. — None of the irrigation authorized
2 by this section may be developed in the Hudson Bay/Devils Lake Basin.

3 (3) NO EXCESS DEVELOPMENT. — The Secretary shall not develop
4 irrigation in the service areas described in paragraph (1) in excess of the acreage
5 specified in that paragraph, except that the Secretary shall develop up to 28,000 acres of
6 irrigation in other areas of North Dakota (such as the Elk/Charbonneau, Mon-Dak, Nesson
7 Valley, Horsehead Flats, and Olivier-Mercer areas) that are not located in the Hudson
8 Bay/Devils Lake drainage basin or James River drainage basin.

9 (4) PUMPING POWER. — Irrigation development authorized by this section
10 shall be considered authorized units of the Pick-Sloan Missouri Basin Program and
11 eligible to receive project pumping power.

12 (5) PRINCIPAL SUPPLY WORKS. – The Secretary shall maintain the Snake
13 Creek Pumping Plant, New Rockford Canal, and McClusky Canal features of the principal
14 supply works. Subject to the provisions of Section 8 of this Act, the Secretary shall select a
15 preferred alternative to implement the Dakota Water Resources Act of-2000. In making
16 this selection, one of the alternatives the Secretary shall consider is whether to connect the
17 principal supply works in existence on the date of enactment.

18 ~~(d)~~ (b) The Secretary is prohibited from obligating funds to construct irrigation
19 facilities in the service areas listed in subsection ~~(a)(1)~~ (a) until a contract or contracts, in a
20 form approved by the Secretary, providing for the appropriate payment of the costs
21 allocated to irrigation have been properly executed by a district or districts organized
22 under State law. Such contract or contracts shall be consistent with the requirements of the
23 Reclamation Reform Act of 1982 (title II, Public Law 97-293, 96 Stat. 1263).

24 ~~(e)~~ (c) The Secretary is authorized to develop irrigation in the following project
25 service areas within the boundaries of the Fort Berthold and Standing Rock Indian
26 Reservations: ~~Lucky Mound (7,700 acres), Upper Six Mile Creek (7,500 acres)~~ Lucky
27 Mound (7,700 acres) and Upper Six Mile Creek (7,500 acres), or such other lands at Fort
28 Berthold of equal acreage as may be selected by the tribe and approved by the Secretary,
29 and one or more locations within the Standing Rock Indian Reservation (2,380 acres),

1 except that, no funds are authorized to be appropriated for construction of these projects
2 until the Secretary has made a finding of irrigability of the lands to receive water as
3 required by the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. 390a). Repayment for the
4 units authorized under this subsection shall be made pursuant to the Leavitt act (25 U.S.C.
5 386a).

6 (f) (d) The Secretary shall not permit the use of project facilities for non-project
7 drainage not included in project design or required for project operations.

8 (e) IRRIGATION REPORT TO CONGRESS. —

9 (1) IN GENERAL. — The Secretary shall investigate and prepare a detailed
10 report on the undesignated 28,000 acres in subsection (a)(3) as to costs and benefits for
11 any irrigation units to be developed under Reclamation law.

12 (2) FINDING. — The report shall include a finding on the economic, financial and
13 engineering feasibility of the proposed irrigation unit, but shall be limited to the
14 undesignated 28,000 acres.

15 (3) AUTHORIZATION. — If the Secretary finds that the proposed construction is
16 feasible, such irrigation units are authorized without further Act of Congress.

17 (4) DOCUMENTATION. — No expenditure for the construction of facilities
18 authorized under this section shall be made until after the Secretary, in cooperation with
19 the State of North Dakota, has prepared the appropriate documentation in accordance
20 with section 1 and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C.
21 4321 et seq.) analyzing the direct and indirect impacts of implementing the report.

22 23 **SEC. 6.**

24 (a) Municipal, rural, and industrial water systems constructed with funds authorized
25 by section 7 of this Act shall utilize power from the Pick-Sloan Missouri Basin Program, as
26 established by section 9 of the Flood Control Act of 1944 (Act of December 22, 1944), for
27 the operation of such systems.

28 (b) ~~Notwithstanding the provisions of~~ Pursuant to the provisions of section
29 302(a)(3) of the Department of Energy Organization Act (42 U.S.C. 7152(a)(3)), any

1 portion of the costs properly chargeable to irrigation for the Garrison Diversion Unit which
2 are beyond the ability of water users to repay as authorized by Reclamation law may be
3 repaid from power revenues, ~~except repayment of investment in irrigation for the Garrison~~
4 ~~Diversion Unit made after the date of enactment of this Act may not exceed forty years~~
5 ~~from the year in which irrigation water is first delivered for use by the contracting party and~~
6 ~~shall be made in equal annual installments. revenues.~~

7 (c) — Pursuant to the provisions of the last sentence of section 302(a)(3) of the
8 Department of Energy Organization Act of 1978 (42 U.S.C. 7152(a)(3)), any reallocation of
9 costs to project purposes other than irrigation as a result of section 1(e) of this Act shall not
10 result in increased rates to Pick-Sloan Missouri Basin Program customers unless: (1) full
11 use has been made of the current development method of ratesetting in analyzing the
12 repayment status and cost allocations for the Garrison Diversion Unit and (2) the resulting
13 rate increase, if any, is made in equal amounts over the ten year period beginning on the
14 date of any such reallocation pursuant to this Act. Costs reallocated to project purposes
15 other than irrigation as a result of section 1(e) of this Act shall be repaid, if reimbursable,
16 with interest at the rate specified in section 4(b) of this Act beginning on the date of any
17 such reallocation without retroactive interest. Nothing in this Act shall alter or affect in any
18 way the current repayment methodology for other features of the Pick-Sloan Missouri
19 Basin Program.

20 (c) NO INCREASE IN RATES OR AFFECT ON REPAYMENT
21 METHODOLOGY. — In accordance with the last sentence of section 302(a)(3) of the
22 Department of Energy Organization Act (42 U.S.C. 7152(a)(3)), section 1(e) shall not result
23 in any reallocation of project costs and shall not result in increased rates to Pick-Sloan
24 Missouri Basin Program customers. Nothing in the Dakota Water Resources Act of 2000
25 alters or affects in any way the repayment methodology in effect as of the date of
26 enactment of that Act for other features of the Pick-Sloan Missouri Basin Program.

27
28 **SEC. 7.**

29 (a)(1) The Secretary of the Interior is authorized to construct municipal, rural, and

1 industrial water systems to serve areas throughout the State of North Dakota.

2 (2) All planning, design, construction and operation of the municipal, rural, and
3 industrial water systems authorized by this section shall be undertaken in accordance with
4 a cooperative agreement between the Secretary and the State of North Dakota. Such
5 cooperative agreement shall set forth in a manner acceptable to the Secretary the
6 responsibilities of the State for:

- 7 (A) needs assessment;
- 8 (B) feasibility studies;
- 9 (C) engineering and design;
- 10 (D) construction;
- 11 (E) operation and maintenance; and
- 12 (F) the administration of contracts pertaining to any of the foregoing.

13 (3) Upon execution of the cooperative agreement required under this
14 subsection, the Secretary is authorized to convey to the State of North Dakota, on a
15 nonreimbursable basis, the funds authorized in section 10(b)(1) of this Act. ~~The non-~~
16 ~~Federal share~~ Unless otherwise provided in this Act, the non-Federal share of the total
17 cost of construction of ~~each water system~~ water systems for which the State of North
18 Dakota receives funding pursuant to this section shall be 25 percent, committed prior to
19 the initiation of construction. The State may use the Federal and non-Federal funds to
20 provide grants or loans for municipal, rural, and industrial water systems. The State shall
21 use the proceeds of repaid loans for municipal, rural, and industrial water systems.
22 Proceeds from loan repayments and any interest thereon shall be treated as federal funds.
23 The non-Federal share of the cost of operation, maintenance, and replacement of each
24 municipal, rural, and industrial water system funded by this section shall be 100 percent.
25 ~~The Southwest Pipeline Project shall be deemed to be eligible for funding under the terms~~
26 ~~of this section.~~ The Southwest Pipeline Project, the Northwest Area Water Supply Project,
27 the Red River Valley Water Supply Project, and other municipal, industrial, and rural water
28 systems in the State of North Dakota shall be eligible for funding under the terms of this
29 section. Funding provided under this section for the Red River Valley Water Supply

1 Project shall be in addition to funding for that project under section 10(a)(1)(B). The
2 amount of non-Federal contributions after May 12, 1986 that exceeds the 25 percent
3 requirement shall be credited to the State for future use in municipal, rural, and industrial
4 projects under this section.

5 ~~(b) — The Secretary is authorized and directed to construct, operate, and maintain~~
6 ~~a Shyenne River water supply and release feature (including a water treatment plant)~~
7 ~~capable of delivering 100 cubic feet per second of water for the cities of Fargo and Grand~~
8 ~~Forks and surrounding communities. The costs of the construction, operation,~~
9 ~~maintenance, and replacement of this feature, exclusive of conveyance shall be~~
10 ~~nonreimbursable and deemed attributable to meeting the requirements of the Boundary~~
11 ~~Waters Treaty of 1909.~~

12 ~~— (c) The Secretary is authorized and directed to construct, operate, and maintain~~
13 ~~such municipal, rural, and industrial water systems as he deems necessary to meet the~~
14 ~~economic, public health and environmental needs of the Fort Berthold, Standing Rock, and~~
15 ~~Fort Totten Indian Reservations and Fort Totten Indian Reservations.~~

16 ~~— (d) — Municipal, rural, and industrial water systems constructed with funds~~
17 ~~authorized under this Act may deliver Missouri River water into the Hudson Bay drainage~~
18 ~~only after the Secretary of the Interior, in consultation with the Secretary of State and the~~
19 ~~Administrator of the Environmental Protection Agency, has determined that adequate~~
20 ~~treatment has been provided to meet the requirements of the Boundary Waters Treaty of~~
21 ~~1909.~~

22 (b) WATER CONSERVATION PROGRAM. — The State of North Dakota may
23 use funds provided under subsection (a) and (b)(1)(A) of section 10 to develop and
24 implement a water conservation program. The Secretary and the State shall jointly
25 establish water conservation goals to meet the purposes of the State program and to
26 improve the availability of water supplies to meet the purposes of this Act. If the state
27 achieves the established water conservation goals, the non-Federal cost share for future
28 projects under subsection (a)(3) shall be reduced to 24.5 percent.

29 (c) NONREIMBURSABILITY OF COSTS.— With respect to the Southwest

1 Pipeline Project, the Northwest Area Water Supply Project, the Red River Valley Water
2 Supply Project, and other municipal, industrial, and rural water systems in North Dakota,
3 the costs of the features constructed on the Missouri River by the Secretary of the Army
4 before the date of enactment of the Dakota Water Resources Act of 2000 shall be
5 nonreimbursable.

6 (d) INDIAN MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY. — The
7 Secretary shall construct, operate, and maintain such municipal, rural, and industrial water
8 systems as the Secretary determines to be necessary to meet the economic, public health
9 and environmental needs of the Fort Berthold, Standing Rock, Turtle Mountain (including
10 the Trenton Indian Service Area), and Fort Totten Indian Reservations, and adjacent areas.

11
12 **SEC. 8.**

13 ~~——(a)(1) In accordance with the recommendations of the Garrison Diversion Unit~~
14 ~~Commission Final Report and section 1 of this Act, the Sykeston Canal shall be~~
15 ~~constructed as a functional replacement for the Lonetree Dam and Reservoir. The~~
16 ~~Sykeston Canal shall be designed and constructed to meet only the water delivery~~
17 ~~requirements of the irrigation areas and municipal, rural, and industrial water supply needs~~
18 ~~authorized in this Act. The Sykeston Canal shall be located, constructed, and operated so~~
19 ~~that, in the opinion of the Secretaries of the Interior and State, no violation of the Boundary~~
20 ~~Waters Treaty of 1909 would result. The Secretary may not commence construction on the~~
21 ~~Sykeston Canal until a master repayment contract consistent with the provisions of this Act~~
22 ~~between the Secretary and the appropriate non-Federal entity has been executed.~~

23 ~~——(2)—— The Lonetree Dam and Reservoir shall remain an authorized feature of the~~
24 ~~Garrison Diversion Unit; however, construction funds may be requested by the Secretary~~
25 ~~for Lonetree Dam and Reservoir only after:~~

26 ~~——(A)—— the Secretary has determined that there is a need for the dam and reservoir~~
27 ~~based on a contemporary appraisal using procedures such as those employed in the~~
28 ~~preparation of feasibility studies for water resources development projects submitted to~~
29 ~~Congress;~~

1 ~~——(B)—— consultations with the Government of Canada have reached a conclusion~~
2 ~~satisfactory to the Secretary of State, after consultation with the Administrator of the~~
3 ~~Environmental Protection Agency, that no violation of the Boundary Waters Treaty of 1909~~
4 ~~would result from the construction and operation of the dam and reservoir; and~~

5 ~~——(C)—— the Secretaries of the Interior and State have submitted the determinations~~
6 ~~required by subparagraphs (A) and (B) above to the Congress and 90 calendar days~~
7 ~~have elapsed.~~

8 ~~(b) Taayer Reservoir is deauthorized as a project feature. The Secretary is~~
9 ~~directed to acquire up to 5,000 acres in the Kraft and Pickell Slough areas and to manage~~
10 ~~the area as a component of the National Wildlife Refuge System giving consideration to~~
11 ~~the unique wildlife values of the area. In acquiring the lands which comprise the Kraft and~~
12 ~~Pickell Slough complex, the Secretary is authorized to acquire wetlands in the immediate~~
13 ~~vicinity which may be hydrologically related and nearby uplands as may be necessary to~~
14 ~~provide for proper management of the complex. The Secretary is also authorized to~~
15 ~~provide for appropriate visitor access and control at the refuge.~~

16 **SEC. 8. SPECIFIC FEATURES.**

17 **(a) RED RIVER VALLEY WATER SUPPLY PROJECT. —**

18 (1) In General. — Subject to the requirements of this section, the Secretary shall
19 construct a feature or features to provide water to the Sheyenne River water supply and
20 release facility or such other feature or features as are selected under subsection (d).

21 (2) Design and Construction. - The feature or features shall be designed and
22 constructed to meet only the following water supply requirements as identified in the report
23 prepared pursuant to subsection (b) of this section: Municipal, rural, and industrial water
24 supply needs; ground water recharge; and streamflow augmentation.

25 (3) Commencement of Construction.

26 (A) If the Secretary selects a project feature under this section that would
27 provide water from the Missouri River or its tributaries to the Sheyenne River
28 water supply and release facility or from the Missouri River or its tributaries
29 to such other conveyance facility as the Secretary selects under this section,

1 no later than 90 days after the completion of the final environmental impact
2 statement, the Secretary shall transmit to Congress a comprehensive report
3 which provides -

4 (i) a detailed description of the proposed project feature;

5 (ii) a summary of major issues addressed in the environmental impact
6 statement;

7 (iii) likely effects, if any, on other States bordering the Missouri River
8 and on the State of Minnesota; and

9 (iv) a description of how the project feature complies with the
10 requirements of section 1(h)(1) of this Act (relating to the Boundary
11 Waters Treaty of 1909).

12 (B) No project feature or features that would provide water from the Missouri
13 River or its tributaries to the Sheyenne River water supply and release facility
14 or from the Missouri River or its tributaries to such other conveyance facility
15 as the Secretary selects under this section shall be constructed unless such
16 feature is specifically authorized by an Act of Congress approved
17 subsequent to the Secretary's transmittal of the report required in
18 subparagraph (A). If, after complying with subsections (b) through (d) of this
19 section, the Secretary selects a feature or features using only in-basin
20 sources of water to meet the water needs of the Red River Valley identified
21 in subsection (b), such features are authorized without further Act of
22 Congress. The Act of Congress referred to in this subparagraph must be an
23 authorization bill, and shall not be a bill making appropriations.

24 (C) The Secretary may not commence construction on the feature until a
25 master repayment contract or water service agreement consistent with this
26 Act between the Secretary and the appropriate non-Federal entity has been
27 executed.

28 (b) REPORT ON RED RIVER VALLEY WATER NEEDS AND OPTIONS.—

29 (1) IN GENERAL. -- The Secretary of the Interior shall conduct a comprehensive

1 study of the water quality and quantity needs of the Red River Valley in North Dakota and
2 possible options for meeting those needs.

3 (2) NEEDS.— The needs addressed in the report shall include such needs as—

4 (A) municipal, rural, and industrial water supplies;

5 (B) water quality;

6 (C) aquatic environment;

7 (D) recreation; and

8 (E) water conservation measures.

9 (3) PROCESS. —In conducting the study, the Secretary through an open and
10 public process shall solicit input from gubernatorial designees from states that may be
11 affected by possible options to meet such needs as well as designees from other federal
12 agencies with relevant expertise. For any option that includes an out-of-basin solution, the
13 Secretary shall consider the effect of the option on other states that may be affected by
14 such option, as well as other appropriate considerations. Upon completion, a draft of the
15 study shall be provided by the Secretary to such states and federal agencies. Such states
16 and agencies shall be given not less than 120 days to review and comment on the study
17 method, findings and conclusions leading to any alternative that may have an impact on
18 such states or on resources subject to such federal agencies' jurisdiction. The Secretary
19 shall receive and take into consideration any such comments and produce a final report
20 and transmit the final report to Congress.

21 (4) LIMITATION.—No design or construction of any feature or features that
22 facilitate an out-of-basin transfer from the Missouri River drainage basin shall be
23 authorized under the provisions of this subsection.

24 (c) ENVIRONMENTAL IMPACT STATEMENT. —

25 (1) IN GENERAL. — Nothing in this section shall be construed to supersede any
26 requirements under the National Environmental Policy Act or the Administrative
27 Procedures Act.

28 (2) DRAFT. —

29 (A) DEADLINE. -- Pursuant to an agreement between the Secretary and State

1 of North Dakota as authorized under section 1(g), not later than 1 year after the date of
2 enactment of the Dakota Water Resources Act of 2000, the Secretary and the State of
3 North Dakota shall jointly prepare and complete a draft environmental impact statement
4 concerning all feasible options to meet the comprehensive water quality and quantity
5 needs of the Red River Valley and the options for meeting those needs, including the
6 delivery of Missouri River water to the Red River Valley.

7 (B) REPORT ON STATUS. — If the Secretary and State of North Dakota cannot
8 prepare and complete the draft environmental impact statement within 1 year after the date
9 of enactment of the Dakota Water Resources Act of 2000, the Secretary, in consultation
10 and coordination with the State of North Dakota, shall report to Congress on the status of
11 this activity, including an estimate of the date of completion.

12 (3) FINAL. —

13 (A) DEADLINE. — Not later than 1 year after filing the draft environmental
14 impact statement, a final environmental impact statement shall be prepared and published.

15 (B) REPORT ON STATUS. — If the Secretary and State of North Dakota cannot
16 prepare and complete a final environmental impact statement within 1 year of the
17 completion of the draft environmental impact statement, the Secretary, in consultation and
18 coordination with the State of North Dakota, shall report to Congress on the status of this
19 activity, including an estimate of the date of completion.

20 (d) PROCESS FOR SELECTION. —

21 (1) IN GENERAL. — After reviewing the final report required by subsection
22 (b)(1) and complying with subsection (c), the Secretary, in consultation and coordination
23 with the State of North Dakota in coordination with affected local communities, shall select
24 1 or more project features described in subsection (a) that will meet the comprehensive
25 water quality and quantity needs of the Red River Valley. The Secretary's selection of an
26 alternative shall be subject to judicial review.

27 (2) AGREEMENTS. — If the Secretary selects an option under subparagraph
28 (1) that uses only in-basin sources of water, not later than 180 days after the record of
29 decision has been executed, the Secretary shall enter into a cooperative agreement with

1 the State of North Dakota to construct the feature or features selected. If the Secretary
2 selects an option under subparagraph (1) that would require a further act of Congress
3 under the provisions of subsection (a), not later than 180 days after the date of enactment
4 of legislation required under subsection (a) the Secretary shall enter into a cooperative
5 agreement with the State of North Dakota to construct the feature or features authorized by
6 that legislation.

7 (e) SHEYENNE RIVER WATER SUPPLY AND RELEASE OR ALTERNATE
8 FEATURES. — The Secretary shall construct, operate, and maintain a Sheyenne River
9 water supply and release feature (including a water treatment plant) capable of delivering
10 100 cubic feet per second of water or any other amount determined in the reports under
11 this section, for the cities of Fargo and Grand Forks and surrounding communities, or such
12 other feature or features as may be selected under subsection (d).

13 (f) DEVILS LAKE. — No funds authorized under this Act may be used to carry
14 out the portion of the feasibility study of the Devils Lake basin, North Dakota, authorized
15 under the Energy and Water Development Appropriations Act of 1993 (Public Law 102-
16 377), that addresses the needs of the area for stabilized lake levels through inlet controls,
17 or to otherwise study any facility or carry out any activity that would permit the transfer of
18 water from the Missouri River drainage basin into Devils Lake, North Dakota.

19
20 **SEC. 9:**

21 ~~—Until the construction costs of the facilities authorized in section 5 are repaid, the~~
22 ~~Secretary is directed to charge a "surplus crop production charge" equal to 10 percent of~~
23 ~~full cost, as defined in section 202(3) (A)-(C) of the Reclamation Reform Act of 1982~~
24 ~~(Public Law 97-293, 96 Stat. 1263), for the delivery of project water used in the production~~
25 ~~of any basic agricultural commodity if the total supply of such commodity for the marketing~~
26 ~~years in which the bulk of the crop would normally be marketed is in excess of the normal~~
27 ~~supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall~~
28 ~~announce the amount of the surplus crop production charge for the succeeding year on or~~
29 ~~before July 1 of each year. The surplus crop production charge shall not apply to crops~~

1 produced in the 5,000-acre Oakes Test Area for research purposes under the direction of
2 the Secretaries of the Interior or Agriculture.

3 **SEC. 9. OAKES TEST AREA TITLE TRANSFER.**

4 (a) IN GENERAL. — Not later than 2 years after the execution of a record of
5 decision under section 8(d) on whether to use the New Rockford Canal as a means of
6 delivering water to the Red River Basin as described in section 8, the Secretary shall enter
7 into an agreement with the State of North Dakota, or its designee, to convey title and all or
8 any rights, interests, and obligations of the United States in and to the Oakes Test Area as
9 constructed and operated under Public Law 99-294 (100 Stat. 418) under such terms and
10 conditions as the Secretary believes would fully protect the public interest.

11 (b) TERMS AND CONDITIONS. — The agreement shall define the terms and
12 conditions of the transfer of the facilities, lands, mineral estate, easements, rights-of-way
13 and water rights including the avoidance of costs that the Federal Government would
14 otherwise incur in the case of a failure to agree under subsection (d).

15 (c) COMPLIANCE. — The action of the Secretary under this section shall
16 comply with all applicable requirements of Federal, State, and local law.

17 (d) FAILURE TO AGREE. — If an agreement is not reached within the time limit
18 specified in subsection (a), the Secretary shall dispose of the Oakes Test Area facilities
19 under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et
20 seq.).

21
22 **SEC. 10.**

23 ~~(a)(1) There are authorized~~

24 (a) WATER DISTRIBUTION FEATURES. —

25 (1) IN GENERAL. —

26 (A) MAIN STEM SUPPLY WORKS. — There is authorized to be appropriated
27 \$270,395,000 for carrying out the provisions of section 5(a) through section 5(c) and
28 section 8(a)(1) of this Act \$164,000,000 to carry out section 5(a).

29 (B) RED RIVER VALLEY WATER SUPPLY PROJECT. -- There is authorized to

1 be appropriated to carry out section 8(a)(1) \$200,000,000.

2 Such sums (C) AVAILABILITY. -- Such sums shall remain available until
3 expended.

4 ~~(2) There is (2)~~ INDIAN IRRIGATION. —

5 (A) IN GENERAL. — There is authorized to be appropriated \$12,570,000 for
6 carrying out the provisions of section 5(e) of this Act to carry out section 5(c).

7 Such sums (B) AVAILABILITY. -- Such sums shall remain available until
8 expended.

9 ~~(b)(1) There is (b)~~ MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY.

10 —

11 (1) STATEWIDE. —

12 (A) INITIAL AMOUNT. — There is authorized to be appropriated \$200,000,000
13 to carry out the provisions of section 7(a) of this Act.

14 (B) ADDITIONAL AMOUNT. — In addition to the amount under subparagraph
15 (A), there is authorized to be appropriated to carry out section 7(a) \$200,000,000.

16 Such sums (C) AVAILABILITY. — Such sums shall remain available until
17 expended.

18 ~~(2) — There are authorized to be appropriated \$61,000,000 to carry out the~~
19 ~~provisions of section 7(b) through section 7(d) of this Act.~~

20 (2) INDIAN MUNICIPAL, RURAL, AND INDUSTRIAL WATER AND OTHER
21 DELIVERY FEATURES. —

22 (A) INITIAL AMOUNT. — There is authorized to be appropriated —

23 (i) to carry out section 8(a)(1), \$40,500,000; and

24 (ii) to carry out section 7(d), \$20,500,000.

25 (B) ADDITIONAL AMOUNT. --

26 (i) IN GENERAL. — In addition to the amount under subparagraph (A), there is
27 authorized to be appropriated to carry out section 7(d) \$200,000,000.

28 (ii) ALLOCATION. — The amount under clause (i) shall be allocated as follows:

29 (I) \$30,000,000 to the Fort Totten Indian Reservation.

- 1 (II) \$70,000,000 to the Fort Berthold Indian Reservation.
2 (III) \$80,000,000 to the Standing Rock Indian Reservation.
3 (IV) \$20,000,000 to the Turtle Mountain Indian Reservation.

4 Such sums (C) AVAILABILITY. -- Such Sums shall remain available until
5 expended.

6 ~~There is (c)~~ RESOURCES TRUST AND OTHER PROVISIONS. —

7 (1) INITIAL AMOUNT. — There is authorized to be appropriated for carrying out
8 the remaining provisions of this Act \$80,535,000. No funds are authorized for the
9 construction of the Lonetree Dam and Reservoir. There are also authorized to be
10 appropriated such additional funds as may be necessary for operation and maintenance of
11 the unit.

12 (2) ADDITIONAL AMOUNT. — In addition to the amount under paragraph (1),
13 there are authorized to be appropriated—

14 (A) \$6,500,000 to carry out recreational projects; and

15 (B) an additional \$25,000,000 to carry out section 11;
16 to remain available until expended.

17 (3) RECREATIONAL PROJECTS. — Of the funds authorized under paragraph
18 (2) for recreational projects, up to \$1,500,000 may be used to fund a wetland interpretive
19 center in the State of North Dakota.

20 (4) OPERATION AND MAINTENANCE. —

21 (A) IN GENERAL. — There are authorized to be appropriated such sums as are
22 necessary for operation and maintenance of the unit (including the mitigation and
23 enhancement features).

24 (B) AUTHORIZATION LIMITS. — Expenditures for operation and maintenance of
25 features substantially completed and features constructed before the date of enactment of
26 the Dakota Water Resources Act of 2000, including funds expended for such purposes
27 since the date of enactment of Public Law 99-294, shall not be counted against the
28 authorization limits in this section.

29 (5) MITIGATION AND ENHANCEMENT LAND. — On or about the date on

1 which the features authorized by section 8(a) are operational, a separate account in the
2 Natural Resources Trust authorized by section 11 shall be established for operation and
3 maintenance of the mitigation and enhancement land associated with the unit.

4 (d) Any funds previously appropriated for the Garrison Diversion Unit may be
5 expended to carry out any of the provisions of this Act.

6 (e) ~~—The portion of the \$61,000,000 authorized for Indian municipal, rural, and~~
7 ~~industrial water features shall be indexed as necessary to allow for ordinary fluctuations of~~
8 ~~construction costs incurred after October 1, 1986, as indicated by engineering costs~~
9 ~~indices applicable for the type of construction involved. All other authorized cost ceilings~~
10 ~~shall remain unchanged.~~

11 (e) INDEXING. — The \$200,000,000 amount under subsection (b)(1)(B), the
12 \$200,000,000 amount under subsection (a)(1)(B), and the funds authorized under
13 subsection (b)(2) shall be indexed as necessary to allow for ordinary fluctuations of
14 construction costs incurred after the date of enactment of the Dakota Water Resources Act
15 of 2000 as indicated by engineering cost indices applicable for the type of construction
16 involved. All other authorized cost ceilings shall remain unchanged.

17
18 **SEC. 11.**

19 (a) ~~FEDERAL CONTRIBUTIONS. — From the sums appropriated under section 10~~
20 ~~of this Act for the Garrison Diversion Unit, the Secretary of the Interior shall make an annual~~
21 ~~Federal contribution to a Wetlands Trust established by non-Federal interests in~~
22 ~~accordance with subsection (b), and operated in accordance with subsection (c), of this~~
23 ~~section. The amount of each such annual contribution shall be as follows:~~

24 (1) ~~For fiscal year 1986: — \$2,000,000~~

25 ~~—(2) For each of the fiscal years 1987 through 1990: 3 percent of the total~~
26 ~~amount appropriated under section 10 of this Act, but not to exceed \$500,000 for each~~
27 ~~such fiscal year.~~

28 ~~—(3) For each fiscal year after 1990: 5 percent of the total amount appropriated~~
29 ~~under section 10 of this Act, but only if a contribution to the Trust equal to 10 percent of all~~

1 Federal contributions is provided or contracted for by the State of North Dakota from non-
2 Federal funds. The contributions of the State of North Dakota may be paid to the Trust in
3 such amounts and in such manner as may be agreed upon by the Governor and the
4 Secretary:

5 (4) The total Federal contributions pursuant to the Act shall not exceed \$12,000,00.

6 (a) CONTRIBUTION. —

7 (1) INITIAL AUTHORIZATION —

8 (A) IN GENERAL. — From the sums appropriated under section 10 for the
9 Garrison Diversion Unit, the Secretary shall make an annual Federal contribution to a
10 Natural Resources Trust established by non-Federal interests in accordance with
11 subsection (b) and operated in accordance with subsection (c).

12 (B) AMOUNT. — The total amount of Federal contributions under subparagraph
13 (A) shall not exceed \$12,000,000.

14 (2) ADDITIONAL AUTHORIZATION. —

15 (A) IN GENERAL. — In addition to the amounts authorized in paragraph (1), the
16 Secretary shall make annual Federal contributions to the Natural Resources Trust until the
17 amount authorized by section 10(c)(2)(B) is reached, in the manner stated in
18 subparagraph (B).

19 (B) ANNUAL AMOUNT. — The amount of the contribution under subparagraph
20 (A) for each fiscal year shall be the amount that is equal to 5 percent of the total amount
21 that is appropriated for the fiscal year under subsections (a)(1)(B) and (b)(1)(B) of section
22 10.

23 (b) STRUCTURE OF THE TRUST--~~A Wetlands Trust~~ Natural Resources Trust
24 shall be eligible to receive Federal contributions pursuant to subsection (a) if it complies
25 with each of the following requirements:

26 (1) The Trust is established by non-Federal interests as a non-profit corporation
27 under the laws of North Dakota with its principal office in North Dakota.

28 (2) The Trust is under the direction of a Board of Directors which has the power
29 to manage all affairs of the corporation, including administration, data collection, and

1 implementation of the purposes of the Trust.

2 (3) The Board of Directors of the Trust is comprised of 6 persons appointed as
3 follows, each for a term of 2 years:

4 (A) 3 persons appointed by the Governor of North Dakota.

5 (B) 1 person appointed by the National Audubon Society.

6 (C) 1 person appointed by the National Wildlife Federation.

7 (D) 1 person appointed by the North Dakota Chapter of the Wildlife Society.

8 Vacancies on the board are filled in the manner in which the original appointments were
9 made. Any member of the Board of Directors is eligible for reappointment for successive
10 terms. Any member appointed to fill a vacancy occurring before the expiration of the term
11 for which his or her predecessor was appointed is appointed only for the remainder of
12 such term. A member may serve after the expiration of his or her term until his or her
13 successor has taken office.

14 (4) Members of the Board of Directors serve without compensation.

15 (5) The corporate purposes of the Trust are to preserve, enhance, restore, and
16 manage wetland and associated wildlife habitat in the State of North Dakota.

17 (c) OPERATIONS OF THE TRUST--~~A Wetland Trust~~ Natural Resources Trust
18 established by non-Federal interests as provided in subsection (b) shall be deemed to be
19 operating in accordance with this subsection if, in the opinion of the Secretary, each of the
20 following requirements ~~are met~~ is met:

21 (1) The Trust is operated to preserve, enhance, restore, and manage wetlands
22 and associated wildlife habitat, grassland conservation and riparian areas in the State of
23 North Dakota in accordance with its corporate purpose as provided in subsection (b)(5).

24 (2) Pursuant to its corporate charter, the Trust has the authority to exercise each
25 of the following powers:

26 (A) The power to acquire lands and interests in land and power to acquire water
27 rights. Lands or interests in lands may be acquired by the Trust only with the consent of the
28 owner of thereof and with the approval of the Governor of North Dakota.

29 (B) The power to finance wetland preservation, enhancement, restoration, and

1 management of wetland habitat programs.

2 (C) The power to fund incentives for conservation practices by landowners.

3 (3) All funds received by the Trust under subsection (a) are invested in
4 accordance with the requirements of subsection (d). No part of the principal amount of
5 such funds may be expended for any purpose. The income received by the Trust from the
6 investment of such funds shall be used by the Trust exclusively for its purposes and
7 operations in accordance with this subsection or, to the extent not required for current
8 operations, reinvested in accordance with subsection (d).

9 (4) The Trust agrees to provide such reports as may be required by the
10 Secretary or the Governor of North Dakota and makes its records available for audit by
11 Federal and State agencies.

12 (d) INVESTMENT OF TRUST FUNDS.--The Secretary of the Interior, in
13 consultation with the Secretary of the Treasury and the Governor of North Dakota, shall
14 establish requirements for the investment of all amounts received by the Trust under
15 subsection (a) or reinvested under subsection (c)(3). Such requirements shall ensure that
16 such amounts are invested in accordance with sound investment principles and shall
17 ensure that persons managing such investments will exercise their fiduciary
18 responsibilities in appropriate manner.