IMPACT OF FLOOD CONTROL ACT OF 1944 ON INDIAN TRIBES
ALONG THE MISSOURI RIVER

TESTIMONY OF THE STANDING ROCK SIOUX TRIBE
RON HIS HORSE IS THUNDER, CHAIRMAN

November 1, 2007

The Standing Rock Sioux Tribe welcomes the opportunity to present testimony at this most important hearing of the Senate Indian Affairs Committee on the impact of the 1944 Flood Control Act on Indian tribes along the Missouri River. The act and the Pick Sloan Missouri River Basin Project (Project) were intended to provide employment for soldiers returning from World War II and to develop the economy of the Northern Great Plains and downstream navigation states. Irrigation and the hydropower development would be the hallmarks of the Project in the states of Montana, North Dakota and South Dakota, and the 9 foot navigation channel would be the hallmark of the Project in Nebraska, Iowa, Missouri and Kansas. Irrigation projects, tributary storage and the use of hydropower for irrigation pumping were identified purposes of the Project on the Indian reservations.

The plans for development on the Indian reservations were largely unfulfilled, although the Congress is commended for the 1986 Garrison Diversion Unit Reformulation Act and the 2000 Dakota Water Resources Act provisions that provided for 2,380 acres of irrigation on Standing Rock Indian Reservation (now under development) and the ongoing development of water supply for municipal, rural and industrial purposes across the reservation.

The principal impact of the Project was the devastating inundation of our ancestral lands along the Missouri River in the creation of Lake Oahe, the largest of the mainstem Missouri River reservoirs. The Corps of Engineers took 56,000 acres of land on the Standing Rock Indian Reservation for project purposes and continues to maintain 19,000 acres of lands surplus to project needs. The Equitable Compensation Act, resulting from recommendations of the Joint Tribal Action Committee established by the Garrison Diversion Unit Reformulation Act, partially offset the damages of taking the Tribe's lands. A $90.6 million fund was established that assists the Tribe through the generation of annual returns that may be invested in in the economic development of the Tribe. The compensation was less than the value of the land to the United States for hydropower purposes, , which was determined based on 1990 conditions as follows:

COMPUTATIONS OF VALUE OF TAKING AREAS BASED ON HYDRPOWER

Indian Reservation Downstream Order	Reservoir	Acres Taken	Maximum Operating Pool Acres	Percent Taking	50% Net Power Value	1990 Annual Megawatt Hours x 1,000	Net Electrical Power Benefit (mills/kwh)	Net Annual Value	4% Discount Net Present Value
Fort Berthold	Garrison	154,912	380,000	40.8%	20.4%	2,318.3	32.44	15,328,342	$ 383,208,543
Standing Rock	Oahe	55,994	374,000	13.2%	6.6%	2,647.5	32.44	5,648,931	141,223,266
Cheyenne River	Oahe	99,548	374,000	26.6%	13.3%	2,647.5	32.44	11,429,335	285,733,386
Lower Brule	Big Bend	14,958	61,000	24.5%	12.3%	995.5	32.44	3,959,215	98,980,363
Lower Brule	Fort Randall	7,997	102,000	7.8%	3.9%	1,701.6	32.44	2,163,757	54,093,924
Crow Creek	Big Bend	6,416	61,000	10.5%	5.3%	995.5	32.44	1,698,243	42,456,077
Crow Creek	Fort Randall	9,149	102,000	9.0%	4.5%	1,701.6	32.44	2,475,455	61,886,371
Santee	Gavins Point	593	31,000	1.9%	1.0%	686.9	32.44	213,113	5,327,833
		349,567	1,485,000	23.5%				$ 42,916,391	$ 1,072,909,763

The formula was based on principles established by the former Federal Power Commission for determining the value of tribal lands used by private utilities for hydropower purposes.

The foregoing provides a brief historical perspective. Our current problem is the considerable damage to our drinking water and irrigation intakes on the Standing Rock Indian Reservation by the operation of Lake Oahe by the Corps of Engineers primarily for downstream navigation. The Review and Update of the Master Manual, completed by the Corps of Engineers a few short years ago is obsolete and based on a false hydrology that does not recognize the impacts of climate change and the absence of significant economic value in the release of vast quantities of water for navigation in the lower Missouri River.

The Standing Rock Sioux Tribe has taken the initiative to find a remedy for the inequities of the current operating procedures. We have joined with the states of North Dakota, South Dakota and Montana to develop legislation that will better balance the economies of the upper and lower basins. One of the principles in our work with the upper basin states is that, with changing times since 1944 when irrigation was the predominant national thrust, the national need at present is alternative energy. We are also seeking sensibility in the operation of the Missouri River reservoirs with climate change. The Standing Rock Sioux Tribe feels that navigation in the lower Missouri River is uneconomic but that the Missouri River reservoirs have the potential to enhance navigation flows of the Mississippi River over short time frames on the order of weeks rather than months. New planning is needed to accommodate climate change and to define the best use of more limited releases for navigation.

An adverse impact of the 1944 Flood Control Act that goes unnoticed is the failure of the United States, whether the secretary of the interior or the secretary of the Army, to plan for, preserve and protect our and valuable rights to the use of water in the Missouri River.

The Corps of Engineers makes the following statement describing how the Corps fails to recognize or consider Indian water rights in its Master Water Control Manual for the future operation of the Missouri River, thereby committing Missouri River water to operational priorities and creating an insurmountable burden for the future exercise of the rights to the use of water by the Standing Rock Sioux Tribe as reserved from time immemorial:

> *The Missouri River basin Indian tribes are currently in various stages of quantifying their potential future uses of Mainstem System water. It is recognized that these Indian tribes may be entitled to certain reserve or aboriginal Indian water rights in streams running through and along reservations. Currently, such reserved or aboriginal rights of tribal reservations have not been quantified in an appropriate legal forum or by compact with three exceptions.... The Study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights were considered. Future modifications to system operation, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use. Thus, while existing depletions are being considered, the Study process does not prejudice any reserved or aboriginal Indian water rights of the Missouri River basin Tribes.* (PDEIS 3-64)

The Secretary of Interior's former Working Group on the Endangered Species Act and Indian Water Rights, published recommendations for consideration of Indian water rights in Section 7 Consultation, in national guidance for undertakings such as the Master Manual, as follows, but this guidance has not been followed:

> *The environmental baseline used in ESA Section 7 consultations on agency actions affecting riparian ecosystems should include for those consultations the full quantum of: (a) adjudicated (decreed) Indian water rights; (b) Indian water rights settlement act; and (c) Indian water rights otherwise partially or fully quantified by an act of Congress... Biological opinions on proposed or existing water projects that may affect the future exercise of senior water rights, including*

unadjudicated Indian water rights, should include a statement that project proponents assume the risk that the future development of senior water rights may result in a physical or legal shortage of water. Such shortage may be due to the operation of the priority system or the ESA. This statement should also clarify that the FWS can request reinitiation of consultation on junior water projects when an agency requests consultation on federal actions that may affect senior Indian water rights.

The Standing Rock Sioux Tribe claims rights to irrigate not less than 303,650 arable acres with an annual diversion duty of 4 acre feet per acre, to supply municipalities, commercial and industrial purposes and rural homes with water for not less than 30,000 future persons having an annual water requirement of 10,000 acre feet annually and to supply 50,000 head of livestock of every kind on the ranges having an annual water requirement of 1,500 acre feet annually, subject to change. This is a considerable reserved water right that is weakened by the failure of the agencies of the United States to recognize. This failure forces future courts to undo investments, undertakings, mortgages and economies that build on the basis of the Master Manual conclusions as the Tribe develops its water rights.

The Standing Rock Sioux Tribe initiated an effort in the 1985 marketing plan of the Western Area Power Administration (Western) to obtain an allocation of Pick Sloan the hydropower, but we were denied on the basis that the Tribe was not a utility. When the 2000 marketing plan was announced by Western, we requested a congressional hearing chaired by Congressman George Miller, and direction was given to Western to allocate Missouri River hydropower to the Tribes. The concept was subsequently extended to the Colorado River Basin. The Tribes were enthusiastic that low cost federal hydropower would be available. Power has now been allocated from Western, and the Tribes receive a "credit" to reflect the difference between energy costs from the Basin Electric and Western. The problem is that the credit has been systematically diminished by Western rate increases that will total over 35% in 2008. The concept of the credit needs reevaluation.

The balance of our remarks are dedicated to the effort of the Standing Rock Sioux Tribe with the upper basin states. In addition to the description of that effort, draft legislation is attached that further defines the concepts of an Upper Missouri River Development Fund and changes in the operation of the Missouri River reservoirs. These concepts are preliminary and are being refined in cooperation with the states. The States and the Tribe have agreed to work together but have not agreed on the concepts to be advanced. Proposals to implement a Western rate increase are not supported by the Governors of the states or the Tribe but have been explored as an alternative funding mechanism.

1) <u>Upper Missouri River Development Fund</u>

The following relates to the establishment by Congress of a development fund in the upper Missouri River basin (upper basin tribes, North Dakota, South Dakota and Montana) to mitigate the impact of releases from mainstem Missouri River dams for downstream navigation and other purposes. The overriding context of the fund is the continuing damage to the Upper Basin of releases from the mainstem Missouri River reservoirs for downstream navigation. The fund is a logical *sequitur* in response to operation of the Missouri River by the Corps of Engineers with an obsolete Master Plan. Climate change with potential the reduced, long-term streamflows, not addressed in the Master Plan, and continue support for navigation releases with limited economic value argue for a development fund to mitigate damages and balance equities.

The US Supreme Court did not accept the petition for *certiorari* from the upper basin states to resolve the relative priority of navigation and upper basin purposes of the Missouri River Basin Pick Sloan Project, and the Corps of Engineers is operating the Missouri River mainstem reservoirs in the

upper basin states for navigation in the downstream states with minimal economic value as a primary purpose. Other purposes important to the Upper Missouri Basin States and Tribes are secondary.

The development fund would assist in resolving inequities in the allocation of water between the upper and lower basins and is intended to further nonrenewable energy development in the northern Great Plains, consistent with national energy policy, and finance authorized (but underfunded) and future water projects.

In addition to the development fund, draft provisions call for a re-examination of the operation of the Missouri River mainstem reservoirs and the establishment of minimum storage levels that reflect current hydrology based on climate change. The operation of the reservoirs is based by the Corps of Engineers on the hydrology from 1898 through 1997, but climate change has made the historic streamflow records obsolete. The historic streamflow records are not a sound basis for decision-making on reservoir operations.

a) Pick Sloan provisions were intended to create equitable development of the Missouri River, balancing navigation with other appropriate and economic uses of water, which the development fund will help resolve

The 1944 Flood Control Act (58 stat 665) adopted Senate Report 247 and the Joint Engineering Report for the Missouri River. The report recommended the construction of the mainstream dams:

> "*… to more fully utilize the water resources of the basin and to most effectively serve the present and ultimate requirements of flood control, irrigation, navigation, hydroelectric power, and other uses… provide the desired degree of flood control, supply the needs of irrigation as well as furnish cyclic storage for navigation during prolonged drought periods…. to facilitate the consideration of projects on the basis of comprehensive and coordinated development; and to limit the authorization and construction of navigation works to those in which a substantial benefit to navigation will be realized therefrom and which can be operated consistently with appropriate and economic use of the waters of such rivers by other users*."

The development fund is intended to address, among other things, the impact in the upstream states of downstream navigation releases that adversely impact upstream states and Indian reservations.

b) Sources of Deposit to Upper Missouri Development Fund

The development fund would rely on two separate or complimentary contributions: (a) the Reclamation Fund established by the 1902 Reclamation Act and (b) revenues collected by the Western Area Power Administration (Western) from hydropower sales at the mainstem dams at a rate to be decided (say 2 mills per kilowatt hour).

(1) Reclamation Fund as Source of Deposit

The Reclamation Fund is described as follows:

> The Reclamation Fund was established by the Reclamation Act of 1902 (32 Stat. 388). It is a restricted, unavailable receipt fund into which a substantial portion of Reclamation's revenues (mostly repayment of capital investment costs, associated interest, and O&M reimbursements from water and power users) and receipts from other Federal agencies (primarily revenues from certain Federal mineral royalties and hydropower transmission) are deposited. No expenditures are made directly from the Reclamation Fund; however, funds are transferred from the Reclamation Fund into Reclamation's appropriated expenditure funds or to other Federal agencies pursuant to congressional appropriation acts to invest and reinvest in the reclamation of arid lands in the Western United States.
>
> *(US Bureau of Reclamation Annual Report 2006)*

The amount in the Reclamation Fund is increasing according to the Bureau of Reclamation, and the balance at the end of FY 2007 is estimated at $7.2 billion: *(US Bureau of Reclamation, Slide Show, Sacramento, California, November 2006.*

The Reclamation Fund is the principle source of appropriations for water and related resource projects of the Bureau of Reclamation: *(US Bureau of Reclamation, Presentation by Bob Wolff, Sacramento, California, November 2006)*

> The Reclamation Fund was established by The Reclamation Act of 1902 (43 U.S.C. 391) and is derived from repayments and other revenues from water resource development; certain receipts from sales, leases, and rentals of Federal lands in the 17 Western States. Receipts deposited in the Reclamation Fund are made available by Congress through annual appropriation acts. Receipts and balances that are not appropriated remain in the Reclamation Fund as unappropriated receipts. Beginning in Fiscal Year 1984, the annual appropriation acts for Reclamation have provided, "That of the total appropriated, the amount of program activities which can be financed by the Reclamation Fund shall be derived from that fund."

Projects receiving appropriations from the General Fund, rather than the Reclamation Fund, in the Water and Related Resources construction account include the Central Arizona Project, Animas La Plata Project, Colorado River Salinity Control Project, Columbia and Snake River Salmon Recovery and a portion of the Mni Wiconi Project. *(US Bureau of Reclamation, Slide Show, Sacramento, California, November 2006).*

The "Northwestern New Mexico Rural Water Projects Act" (S.1171, current Congress, current session) proposes that the Secretary of the Treasury shall deposit in a "Reclamation Water Settlements Fund" for the project amounts that would otherwise have been deposited in the Reclamation Fund at a rate of $100 million annually, if available. Amounts deposited by the Secretary of the Treasury in the "Settlements Fund" shall be available without further appropriation. This latter provision seems to avoid the issue of an increase in the Reclamation budget and competition with other projects for appropriations. Funds to be deposited in the Reclamation Fund are diverted and deposited in the Settlements Fund. and

(b) DEPOSITS TO FUND.—

(1) IN GENERAL.—For each of fiscal years 2018 through 2028, the Secretary of the Treasury shall deposit in the Fund, if available, $100,000,000 of the revenues that would otherwise be deposited for the fiscal year in the fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(2) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Fund under paragraph (1) shall be made available pursuant to this section—

(A) without further appropriation; and

(B) in addition to amounts appropriated pursuant to any authorization contained in any other provision of law.

S. 1171, described above, clearly raises issues with regard to equity among the other 16 states outside New Mexico with regard to the magnitude of diversions from the Reclamation Fund. Nevertheless, New Mexico has taken necessarysteps for authorization of the project and use of the Reclamation Fund before the end of the current session of Congress. Both the House (HR 1970) version and Senate version of the bill have been introduced and the Energy and Natural Resource Committee (Senate) and Water and Power Subcommittee (House) have held hearings.

The share of the Reclamation Fund created by the Pick Sloan Project (primarily hydropower revenues) could be determined and could become an equitable basis for the Reclamation Fund as a source of financing the Upper Missouri River Basin Fund. Clearly, recent significant deposits to the Reclamation Fund have been from offshore drilling, which apparently cannot be used by some states, except Texas and California. The deposits are generally available to the 17 Western states. After equity has been achieved, the New Mexico model seems to provide a mechanism for making funds available for deposit without appropriation and without competition for appropriations within the congressional budget ceiling for Reclamation.

(2) Power Marketing Administration (Western) Revenues as Source of Deposit

The Central Arizona Project serves as an example of a project built from a river basin development fund (Lower Colorado River Development Fund), which relied on a Western rate contribution of 4.5 mills per kilowatt hour from users in Arizona and 2.5 mills per kilowatt hour from users in California (see below).

(2) any Federal revenues from the Boulder Canyon and Parker-Davis projects which, after completion of repayment requirements of the said Boulder Canyon and Parker-Davis projects, are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of those projects: Provided, however, That for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 1521(a) of this title, the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4 1/2 mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 2 1/2 mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: Provided further, That after the repayment period for said Central Arizona project, the equivalent of 2 1/2 mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section: Provided, however, That the Secretary is authorized and

(25 USC 1543)

The Western contributions to the fund were supplemented with Congressional appropriations. Several billion dollars from the two sources have been used in developing the Central Arizona Project since the fund was authorized in 1968. The fund in the Colorado River Basin will be exhausted by year 2050. About $250 million in the fund will generate interest over the next 30 years to finance up to $340 million in projects. Future expenditures will focus on water projects on Indian reservations in Arizona.

The Lower Colorado River Basin Fund receives funding from multiple sources for specific purposes as provided under P.L. 90-537 and amended by P.L. 108-451. Funding sources include appropriations, Federal revenues from the Central Arizona Project, Federal revenues from the Boulder Canyon and Parker-Davis Projects, the Western Area Power Administration, Federal revenues from the Northwest-Pacific Southwest intertie in the States of Nevada and Arizona, and revenues earned from investing in Treasury securities. Funding sources may be retained and are available without further appropriation. The fund provides for irrigation development and management activities within the Lower Colorado River Basin including operation, maintenance, replacements, and emergency expenditures for facilities of the Colorado River Storage Project and participating projects.

(US Bureau of Reclamation Annual Report 2006, Note 16)

The Upper Colorado River Basin Development fund is less specific with respect to amounts of rate increases, but the Secretary of Interior is authorized to adjust electrical rates of the Western Area Power Administration upward for the limited purposes of salinity control, fish and wildlife and on-farm measures as summarized below.

(c) Costs payable from Upper Colorado River Basin Fund
Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 1592(a) of this title, costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 1592(c) of this title allocated for repayment by the upper basin under subsection (a)(2) of this section shall be paid in accordance with section 620d(d)(5) of this title from the Upper Colorado River Basin Fund within the limit of the funds made available under subsection (e) of this section.
(d) Omitted
(e) Upward adjustment of rates for electrical energy
The Secretary is authorized to make upward adjustments in rates

(25 USC 1595)

The Northwest Power Act also provides rate increases within the Bonneville Power Administration (BPA) for fish and wildlife (salmon recovery) efforts.

> Notwithstanding any other provision of this section, rates established by the Administrator, under this section shall recover costs for protection, mitigation and enhancement of fish and wildlife, whether under the Pacific Northwest Electric Power Planning and Conservation Act or any other Act, not to exceed such amounts the Administrator forecasts will be expended during the fiscal year 2002-2006 rate period, while preserving the Administrator's ability to establish appropriate reserves and maintain a high Treasury payment probability for the subsequent rate period.

and

(16 USC 839e)

c) Impact of Western Rate Increase

Figure 1 and Table 1 present the history and proposed rates of the Western Area Power Administration for the Eastern Division of Pick Sloan. The projection for FY 2007 in 2003 was a rate of 17.86 mills per kilowatt hour compared with the actual rate for FY 2007 of 19.83 mills per kilowatt hour or 2 mills per kilowatt hour higher than projected four years earlier. The 2003 projection for FY 2008 was 18.38 mills per kilowatt hour, and the proposed rate for FY 2008 is 24.78 mills per kilowatt hour or 6.4 mills higher than projected five years earlier. The customer base is capable of absorbing the significant increases attributed to drought but likely due, in part, to continuing climate change.

FIGURE 1

HISTORY OF WESTERN RATES

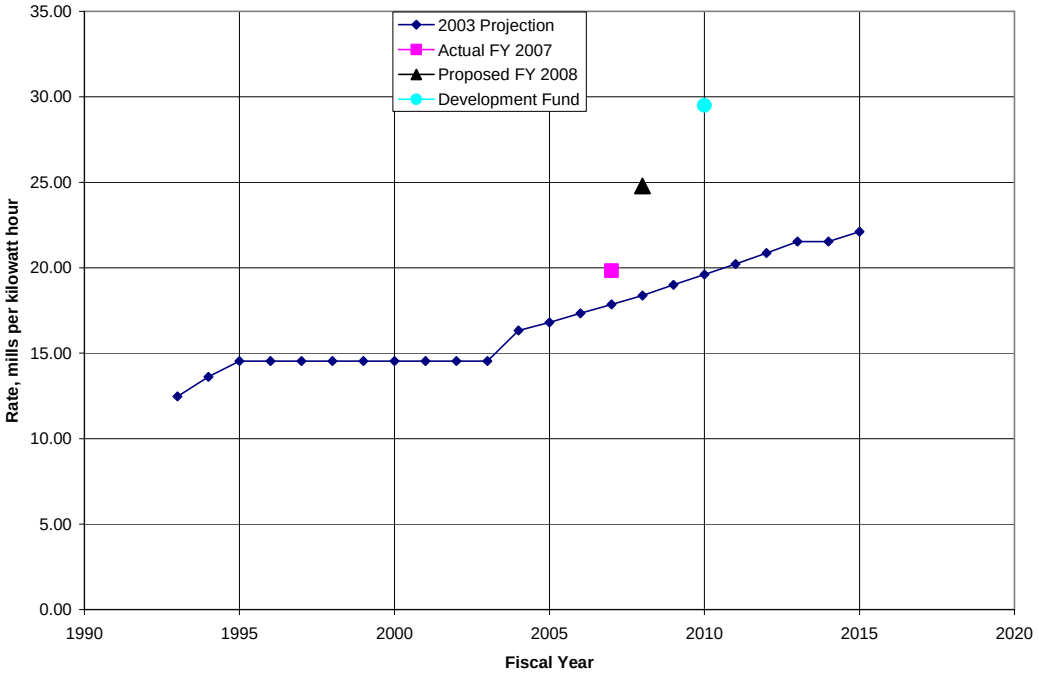


TABLE 1

HISTORIC, CURRENT AND PROPOSED RATES
WESTERN AREA POWER ADMINISTRATION
EASTERN DIVISION OF PICK SLOAN

Fiscal Year	2003 Projected Composite Rate	Current Composite Rate	Proposed Composite Rate	Development Fund Rate
1993	12.47			
1994	13.62			
1995	14.54			
1996	14.54			
1997	14.54			
1998	14.54			
1999	14.54			
2000	14.54			
2001	14.54			
2002	14.54			
2003	14.54			
2004	16.33			
2005	16.80			
2006	17.33			
2007	17.86	19.83		
2008	18.38		24.78	
2009	19.00			
2010	19.60			29.50
2011	20.22			
2012	20.86			
2013	21.53			
2014	21.53			
2015	22.11			

Table 2 shows the recent and proposed Western rate increases and a rate increase of 4.72 mills per kilowatt hour ($0.00472 /kwh) necessary to generate deposits to a development fund with a present value of about $1 billion. Since 2003 Western has raised rates by 36% and proposes an

TABLE 2
INCREASES IN WESTERN POWER RATES
TO FINANCE DEVELOPMENT FUND

Project	Western Increases 2003	2007 Current	2008 Proposed	Proposed Development Fund
Rate, mills/kwh	$0.01454	$0.01983	$0.02478	$0.02950
Rate Increase, mills/kwh	--	$0.00529	$0.00495	$0.00472
% Increase	--	36.38%	24.96%	19.05%
Annual Revenue Increase				
Western Rate	--	--	$53,200,000	--
Develoment Fund	--	--	--	$50,648,000
Present Value, 40 years, 4%	--	--	--	$1,002,464,412
Sources of Revenue				
Montana				
Canyon Ferry	$5,927,436	$8,083,979	$10,105,924	$13,835,500
Fort Peck	15,696,962	21,407,893	26,762,382	36,639,000
Yellowtail	6,963,789	9,497,382	11,872,844	16,254,500
Subtotal	$28,588,188	$38,989,254	$48,741,151	66,729,000
North Dakota				
Garrison	33,416,078	45,573,647	56,972,415	77,998,000
South Dakota				
Oahe	42,705,343	58,242,569	72,810,057	99,680,500
Big Bend	15,507,386	21,149,344	26,439,165	36,196,500
Fort Randall	25,238,997	34,421,548	43,030,981	58,911,500
Gavins Point	10,502,557	14,323,639	17,906,232	24,514,500
Subtotal	$93,954,282	$128,137,099	$160,186,434	$219,303,000
Annual Eastern Division Revenue	$155,958,548	$212,700,000	$265,900,000	$316,548,000
Impact on Consumer Receiving Western Power				
% From Western	30.00%	30.00%	30.00%	30.00%
Alternative Energy Cost	$0.04000	$0.04000	$0.04000	$0.04000
Composite Energy Cost	$0.03236	$0.03395	$0.03543	$0.03685
Transmission/Dist Cost, $/kwh	$0.04000	$0.04000	$0.04000	$0.04000
Monthly Power Rate, $/kwh	$0.07236	$0.07395	$0.07543	$0.07685
Percent Consumer Increase	--	2.19%	2.01%	1.88%
Average Monthly Residential kwh	1,000	1,000	1,000	1,000
Average Monthly				
Total	72.36	73.95	75.43	76.85
Increase	--	1.59	1.49	1.42
Annual Cost				
Total	868.34	887.39	905.21	922.20
Increase	--	19.04	17.82	16.99

additional 25% rate increase in 2008. The development fund proposal would add an additional 19% and increase Western revenues by $50,648,000. In 2003, annual revenues average to $156 million. The rate increase through FY 2007 increased revenues to $213 million. The proposed rate increase in FY 2008 would increase revenues to $266 million, and the development fund would increase revenues to $316

million. With or without the development fund, Western has significantly increased rates and revenues (Table 2).

Table 2 is based on a typical Western customer that receives 30% of power needs from federal hydropower marketed by Western. It was assumed that alternative power would be available to this customer at a cost of 4¢ per kilowatt hour ($0.0400 /kwh). It was also assumed that transmission and distribution costs (powerline costs separate from energy) would have a typical cost of 4¢ per kilowatt hour. Finally, it was assumed that average monthly residential power use is 1000 kWh.

Throughout Western's customer base in the Eastern Division of Pick Sloan, customers may receive anywhere from 10% to 100% of their total energy needs from Western (some municipalities and Tribes are at the upper end of the range). Transmission and distribution costs may range from 3 ¢ to 5 ¢ per kilowatt hour. Monthly residential power use may typically range from 500 to 1,500 kilowatt hours with some users falling outside the range, particularly in more expensive homes.

Continuing with the example and the assumptions, the monthly residential electrical bill in 2003 would average $72.36 and would increase to $75.43 with the rate increases proposed by Western through 2008. Monthly electrical bills would increase to $76.85 with the proposal for the development fund. Annual costs would increase from 2003 at $868.34 to $922.20 with the Western rate increases and the development fund. The development fund would add $16.99 to the annual electrical bill relative to Western increases through 2008.

Similar analyses (to Table 2) were conducted for Western customers with shares of federal hydropower at 50%, 75% and 100% as presented in Table 3 and Figure 2. Western Customers with 100% Western power would see increases in annual costs from $654.48 in FY 2003 to $777.36 in 2008, an increase of $122.88. The development fund would increase annual costs to $834, an addition of $56.64. The $213.86 advantage of customers with 100% Western allocation over customers with 30% allocation in FY 2003 would fall to $88.20 annually with all rate increases through the development fund.

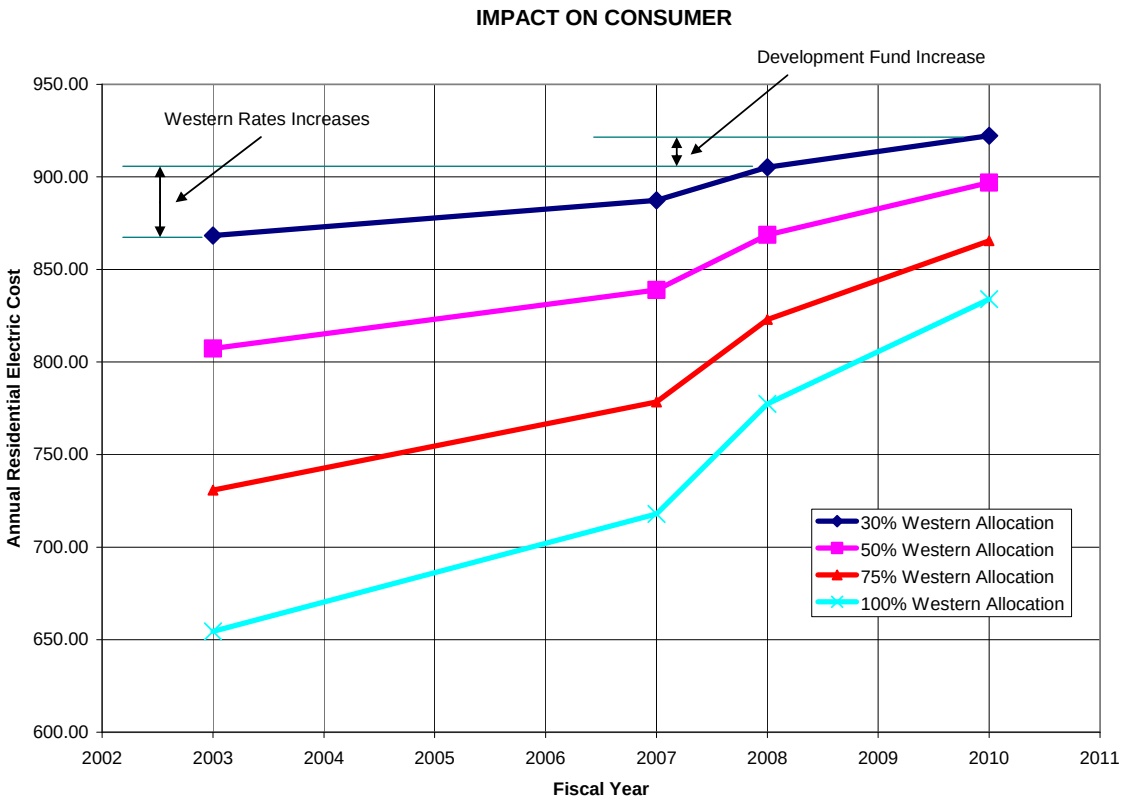
With the development fund, consumer rates would increase to $0.07685 per kilowatt hour for the customer with 30% Western allocation and to $0.06950 per kilowatt hour for the customer with 100% Western allocation. Compare these values with regional costs given in Table 3 from the Energy Information Administration for 2007. Retail rates in Montana, for example, averaged $0.0939 per kilowatt hour, the Rocky Mountain region averaged $0.0974 per kilowatt hour, and the Pacific region, including Bonneville, averaged $0.12280 per kilowatt hour. Western customers would continue to hold advantage of at least 1.5 ¢ to 2 ¢ per kilowatt hour.

TABLE 3

SUMMARY OF IMPACTS OF WESTERN RATE INCREASES
AND PROPOSED DEVELPOMENT FUND INCREASE

		2003	2007	2008	Development Fund
Western Rate per kwh		$0.01454	$0.01983	$0.02478	$0.02950
Rate Change per kwh		--	$0.00529	$0.00495	$0.00472
% Increase		--	36.38%	24.96%	19.05%
Annual Revenue		$155,958,548	$212,700,000	$265,900,000	$316,548,000
Annual Increase		--	$56,741,452	$53,200,000	$50,648,000
Present Value, 40 years, 4%					$1,002,464,000
	% Western Allocation				
Impact on Consumer					
Monthly Consumption, kwh		1,000	1,000	1,000	1,000
Assumed Trans/Dist Rate		$0.04000	$0.04000	$0.04000	$0.04000
Assumed Non-WAPA Rate		$0.04000	$0.04000	$0.04000	$0.04000
Consumer Rate per kwh					
	30%	$0.07236	$0.07395	$0.07543	$0.07685
	50%	0.06727	0.06992	0.07239	0.07475
	75%	0.06091	0.06487	0.06859	0.07213
	100%	0.05454	0.05983	0.06478	0.06950
State Average Retail Rate, 2007, EIA					
Montana		--	$0.09390	--	--
North Dakota		--	0.08370	--	--
South Dakota		--	0.08700	--	--
Minnesota		--	0.09720	--	--
West North Central			0.09200	--	--
Mountain		--	0.09740	--	--
Pacific		--	0.12280	--	--
Annual Increase					
	30%	--	$19.04	$17.82	$16.99
	50%	--	31.74	29.70	28.32
	75%	--	47.61	44.55	42.48
	100%	--	63.48	59.40	56.64
Monthly Bill					
	30%	$72.36	$73.95	$75.43	$76.85
	50%	67.27	69.92	72.39	74.75
	75%	60.91	64.87	68.59	72.13
	100%	54.54	59.83	64.78	69.50
Monthly Increase					
	30%	--	1.59	1.49	1.42
	50%	--	2.65	2.48	2.36
	75%	--	3.97	3.71	3.54
	100%	--	5.29	4.95	4.72
% Increase					
	30%	--	2.19%	2.01%	1.88%
	50%	--	3.93%	3.54%	3.26%
	75%	--	6.51%	5.72%	5.16%
	100%	--	9.70%	8.27%	7.29%

FIGURE 2



d) Projects Benefiting

The classes of projects benefiting from the development fund include, among others, the following:

- Re-construction of upper basin intakes for municipal, rural, industrial and irrigation purposes with provisions for permanency given recent and historic low reservoir levels;
- Advance funding for currently authorized rural water projects not receiving adequate appropriations for timely completion;
- Rural water projects not authorized;
- New irrigation of woody biomass crops suitable for ethanol production;
- Regional electrical transmission improvements to transport new wind energy;
- Regional wind energy projects with distribution to improved transmission grid;
- Other renewable and non-renewable energy projects.

With reduction of downstream flows for navigation on the Missouri River, additional purposes of the development fund outside the Upper Basin, might include structures on the lower Missouri River to maintain river stage at levels necessary for municipal, power plant and other intakes. The current Master

Plan of the Corps of Engineers relies on maintaining river flows at levels necessary to maintain intake capacity, but the same purpose could be accomplished by structures to regulate river stage.

(1) Intake Reconstruction

Examples of intakes needing rehabilitation and improvements for permanent operation include MRI intakes at Fort Yates and Wakpala and irrigation intakes at Cannonball, Fort Yates and on the Grand River arm. A complete inventory of intakes affected by historic low reservoir levels is needed in Montana, North Dakota and South Dakota.

(2) Advance Funding for Authorized Rural Water Projects

Authorized rural water projects and Montana, North Dakota and South Dakota are not receiving sufficient funds to complete the projects on schedules approved by the Secretary of Interior or the authorizing legislation. The development fund, whether financed by Western rate increases or the Reclamation Fund (without the need for appropriation), may be used to supplement appropriations and build projects in a more timely manner.

Table 4 summarizes the status of authorized rural water projects in Montana, North Dakota and South Dakota. At the end of fiscal year 2007, six projects, funded through appropriations to the Bureau of Reclamation, had spent $478.85 million and needed $1.01 billion to complete. With five-year extensions in the authorized completion dates, the projects will collectively average about 20 years to complete or at least double the time expected. Low levels of appropriations and inflation are extending the completion dates.

The President's budget for FY 2008 was $64.22 million, project capability was $191.11 million, and $116.4 million is needed annually to complete the projects with a five-year extension in the respective construction schedules (not counting North Central, which is unknown). The development fund could be used to advance construction funds to complete these rural water projects in a more timely manner.

TABLE 4

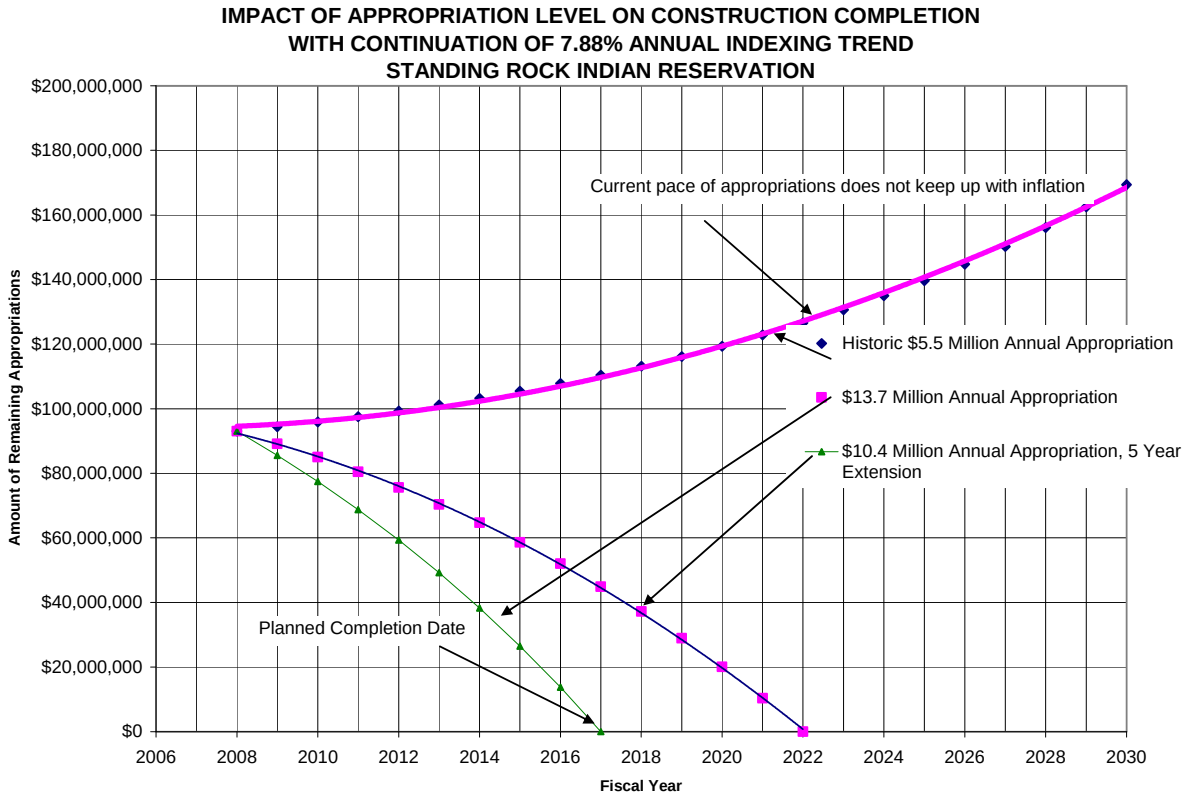
SUMMARY OF RURAL WATER PROGRAM STATUS

		FY 2008, Million $, Federal Share					Year of Completion			Ave. Approps Needed, Mill $ (Inflation Adjusted, 7.88%)	
Project	Date Authorized	Total Funds Spent	Total Funds to Complete	% Complete	President's Budget	Project Capability	Plan or Statutory	Current Pace	5-Year Extension	Plan or Statutory	5-Year Extension
Garrison	2000	$71.20	$344.94	17.11%	$15.17	$46.68	2,017	Inflation Controlled	2,022	$54.94	$41.55
Standing Rock	2000	17.80	86.23	17.11%	5.06	11.67	2,017	Inflation Controlled	2,022	13.74	10.39
Lewis and Clark	2000	--	--	--	15.00	35.00	--	--	--		
Mni Wiconi	1994	326.53	119.18	73.26%	29.00	30.91	2,008	2,018	2,013	Not Workable	33.41
Perkins County	--	--	--	--	0.00	--	--	--	--		
Fort Peck/Dry Prairie	2000	48.32	210.66	18.66%	0.00	36.85	2,013	Inflation Controlled	2,018	52.32	31.06
North Central	2002	15.00	251.54	5.63%	0.00	30.00	--	Inflation Controlled	--		
Total		$478.85	$1,012.55	32.11%	$64.22	$191.11				$121.00	$116.41

Figure 3 is an illustrative example of the impact of the current rate of appropriations on a component of the Garrison Project on the Standing Rock Indian Reservation. The entire Garrison Project is affected similarly. Inflation is outpacing the current rate of appropriations ($5.5 million annually), and

the project cannot be completed without increased funding. If annual appropriations were increased to $10.4 million, the project could be completed in 2022, or 22 years after the authorization of the Dakotas Water Resources Act. If annual appropriations were increased to $13.7 million, the project could be finished on the scheduled completion date. Similar analysis can be shown for all rural projects in the three state area. The Mni Wiconi project is furthest along at 73% completion, and a finish in FY 2013 is realistic.

FIGURE 3



(3) Rural Water Projects Not Authorized

Additional water projects are being proposed in the three state area. These include Central Montana, Dry Redwater (Montana), Red River Valley (North Dakota) and Fall River (South Dakota) among others. Investment in these projects may fall in the range of $1 billion to $1.5 billion. The development fund might be used to supplement appropriations for this future class of projects.

(4) New Irrigation for Ethanol and Woody Biomass Methanol

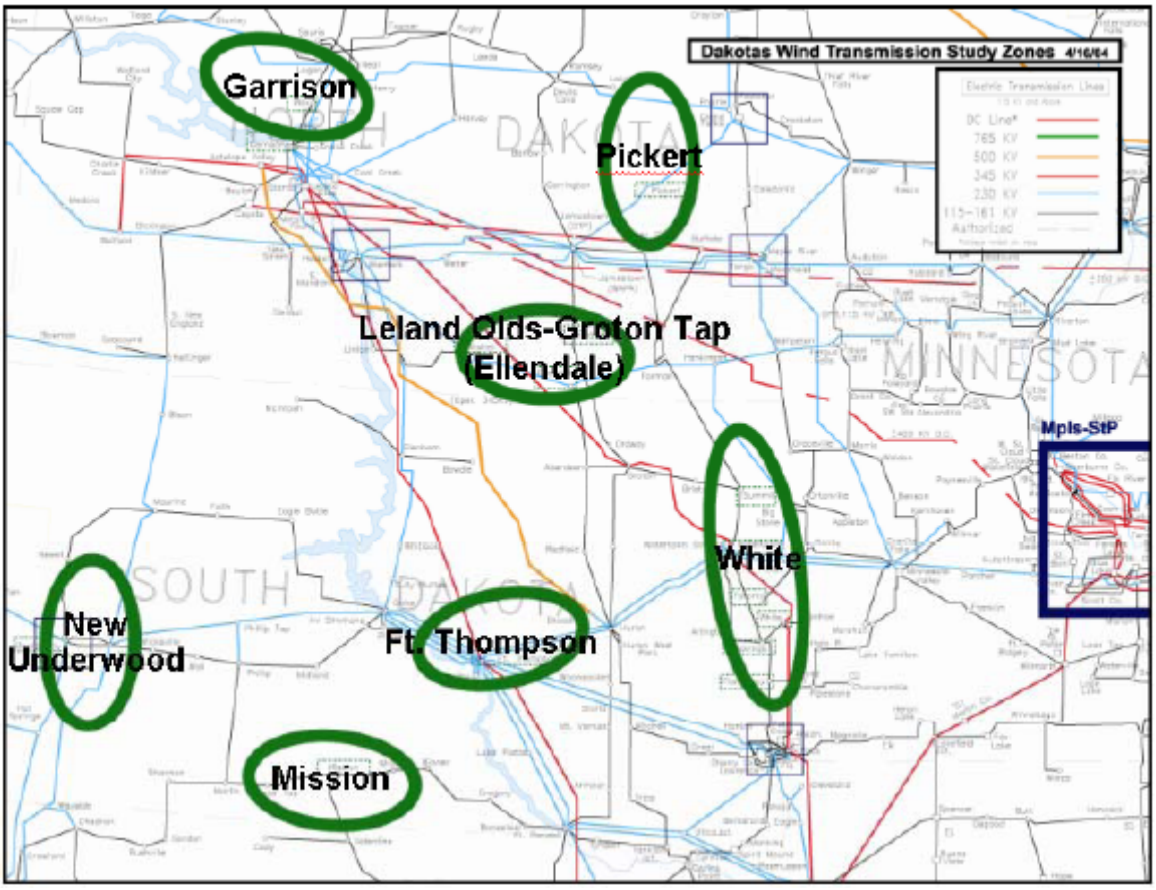
Irrigation of corn, poplar or sawgrass along the Missouri River in the three state area may supply product for future ethanol projects. Irrigation development for a single plant might require development of 10,000 acres of irrigation at an investment of $1 billion. These values are illustrative and not based upon analysis.

(5) Regional Electrical Transmission Improvements and New Wind Energy

Western has examined wind generation projects in the areas shown on Figure 4. [1] Alternative costs for transmission range from $119 million to $430 million.[2] The Western investigations are limited and do not include other potential projects in Montana, North Dakota and South Dakota.

Each project or group of projects of 500 MW potential would require an investment of approximately $.5 billion for installation of generation equipment.

FIGURE 4
Seven Wind Sites Considered in the Western/ABB Study



[1] ABB Inc., Electric Systems Consulting, Revised October 19, 2005, *Dakotas Wind Transmission Study, Study Summary*, REPORT NO. 2005-10977-4 R1, Western Area Power Administration, Billings, Montana.
[2] Table 2-6, ABB Inc., Electric Systems Consulting, July 26, 2002, *Montana-Dakotas Regional Study, East Side (MAPP) Studies, Phase 1*, Report No. 2002-10215-2.R02a, Western Area Power Administration, Billings, Montana.

ATTACHMENT A

DRAFT PROPOSAL

109th CONGRESS
2nd Session
S._____

IN THE SENATE OF THE UNITED STATES

August____, 2008

A BILL

To mitigate damages in the Upper Missouri River Basin, develop future generation and transmission capacity in the Eastern Division of the Pick Sloan Missouri River Basin Program and for other purposes.

SEC 1. FINDINGS AND PURPOSES

(a) The Congress of the United States finds that:

(1) the 1994 Flood Control Act (58 Stat 665) adopted Senate Report 247 and the joint engineering report for the operation of the Missouri River, which report provided, among other things, that Garrison, Oahe, Big Bend, Fort Randall, and Gavins Point Dams and reservoirs were recommended to'… *more fully utilize the water resources of the basin and to most effectively serve the present and ultimate requirements of flood control, irrigation, navigation, hydroelectric power, and other uses… provide the desired degree of flood control, supply the needs of irrigation as well as furnish cyclic storage for navigation during prolonged drought periods'*;

(2) the 1994 Flood Control Act was conceived *'…to facilitate the consideration of projects on a basis of comprehensive and coordinated development; and to limit the authorization and construction of navigation works to those in which a substantial benefit to navigation will be realized therefrom and which can be operated consistently with appropriate and economic use of the waters of such rivers by other users.'*

(3) 1944 Flood Control Act established the duty of the Secretary of Defense to prescribe discretionary regulations for the use of storage allocated to navigation, which duty is addressed by (a) the March 2004 Missouri River Master Manual Review and Update (hereinafter 2004 Master Manual) by the Corps of Engineers and (b) annual operating plans consistent with the framework of the 2004 Master Manual for the operation of the Missouri River mainstem dams for specific purposes, including:

i. navigation,

ii. hydropower,

iii. water supply,

iv. recreation,

v. threatened and endangered species, among other purposes;

(4) the operation of the mainstem dams in accordance with the Master Manual during prolonged drought periods does not balance the benefits of navigation with other economic uses of the waters of the Missouri River and creates hardships in the Upper Missouri River Basin impacting the States of Montana, North Dakota and South Dakota and impacting the Fort Peck, Fort Berthold, Standing Rock, Cheyenne River, Lower Brule, Yankton and Crow Creek Indian Reservations by:

i. lowering of water levels in reservoirs behind Fort Peck, Sakakawea, Oahe, Big Bend and Fort Randall Dams in;

ii. filling of portions of the reservoirs with artificially created sediment with unknown contaminants concentration,

iii. destruction of domestic water supply intakes,

iv. destruction of irrigation intakes,

v. damage to fisheries, including loss of reservoir retention time,

vi. damage to riparian habitat,

vi. loss of irrigated crop revenues,

vii. loss of the water-based recreation revenues and

viii. loss of multiplier effects in the economy, among other things;

(5) An Upper Missouri River Basin Development Fund will:

i. more equitably balance the benefits of navigation with appropriate and economic use of the waters by Upper Missouri River Basin users.

ii. assist the United States in its goal to recover $454 million for that part of the dam costs allocated to irrigation and authorized by the 1944 Flood Control Act;

iii. permit the recovery of damages along the Missouri River and reservoirs authorized by the 1944 Flood Control Act during prolonged periods of drought;

iv. develop future renewable and nonrenewable generation and transmission projects in North Dakota and the Standing Rock Indian

Reservation, consistent with federal objectives, for export of electricity to the Midwest and Rocky Mountain regions.

(b) The purposes of this act are to:

(1) mitigate and compensate for the adverse impacts in Montana, North Dakota and South Dakota and on the Fort Peck, Fort Berthold, Standing Rock, Cheyenne River, Lower Brule, Yanton and Crow Creek Indian Reservations caused by the operation of the Missouri River mainstem dams in accordance with the 2004 Master Manual;

(2) create a fund with deposits from (a) hydropower revenues produced in the Eastern Division of Pick Sloan and (b) appropriations necessary to enable the United States to recover costs of the Missouri River mainstem dams allocated to irrigation,

(3) enable Montana, North Dakota and South Dakota and the Fort Peck, Fort Berthold, Standing Rock, Spirit Lake, Cheyenne River, Lower Brule, Rosebud, Pine Ridge, Crow Creek and Yankton Indian Reservations, to invest in future renewable and non-renewable energy projects in the aforesaid States and on the aforesaid Indian Reservations for the benefit of the region and the nation.

SEC 3. DEVELOPMENT FUND

There is hereby established a separate fund in the Treasury of the United States to be known as the Upper Missouri Basin Development Fund (hereafter called the "development fund") which shall remain available until expended as hereinafter provided.

(a) Deposits -- There are authorized to be deposited in the development fund:

(1) any federal revenues from the hydropower operations of the Eastern Division of Pick Sloan which, after completion of repayment requirements of Missouri River Basin Projects, are surplus, as determined by the Secretary of Energy, to the operation, maintenance, and replacement of those projects shall be credited to the development fund beginning January 1, 2006;

(2) the increase in the firm wholesale hydropower rate determined by the Western Area Power Administration necessary to recover not more than $454 million in costs of the Missouri River mainstem dams allocated to irrigation in the Upper Missouri River Basin and not recovered by irrigation due to lack of development and de-authorization of irrigation projects in the Upper Missouri River Basin and the Eastern Division of Pick Sloan;

(3) two (2) mills per kilowatt hour from firm wholesale hydropower revenues collected by the Western Area Power Administration in the Eastern Division Pick Sloan shall be deposited in the development fund beginning January 1, 2006;

(4) For each of fiscal years 2009 through 2018, the Secretary of the Treasury shall deposit in the fund $100,000, 000 from the fund established by the first section of the Reclamation Act, (Act of June 17, 1902, (32 Stat 388, Chapter 1093).

(5) The Secretaries of Army and Interior shall report to Congress annually their joint findings of the difference between benefits to downstream navigation and damages to resources and facilities at the six mainstem Missouri River reservoirs attributable to release of water for navigation, and the difference shall be deposited in the development fund from authorized appropriations specified in Sec. 7;

i. the Secretary of the Army is authorized and directed to provide an annual report to Congress on the tonnage and economic value of navigation using the Missouri River at Kansas City and Omaha;

ii. the Secretary of the Army is authorized and directed to provide an annual report to Congress on the tonnage and economic value of navigation using the Mississippi River when releases from the Missouri River mainstem dams are necessary to maintain navigation on the Mississippi River;

iii. the Secretary of the Interior is authorized and directed to provide an annual report to Congress on the economic loss of recreation, water supply, fishery and riparian habitat caused by the lowering of water levels in the six mainstem dams of the Missouri River by release of water for navigation on the Missouri and Mississippi Rivers, such economic loss to be counted as Upper Missouri Basin damages;

(6) Deposits shall not to exceed $3 billion.

(b) Withdrawals — There are authorized to be withdrawn amounts from the development fund, in order of priority, necessary to:

(1) mitigate damages from erosion and siltation to intake facilities for domestic, irrigation and other purposes along the Missouri River and the shoreline of the six Missouri River mainstem reservoirs from Fort Peck Lake to Gavin's Point Dam in site-specific instances;

(2) mitigate damages to cultural and historic resources;

(3) mitigate other damages;

(4) develop renewable and non-renewable energy resources to be marketed in the Eastern Division of Pick Sloan according to the priorities established in Sec 4; provided, however, that all amounts withdrawn from the development fund shall be matched by a 25% non-federal share for projects developed in the States of Montana, North

Dakota and South Dakota and shall be matched by 10% non-federal share for projects developed on the Indian Reservations listed in Sec 1. (b) (3) (ii); and provided, however, that not less than 50% of withdrawals from the fund shall be for projects within the States of Montana, North Dakota and South Dakota and not less than 50% all of withdrawals from the fund shall be for projects within the Indian Reservations listed in Sec 1. (b) (3);

(5) develop renewable and non-renewable energy resources to be marketed outside the Eastern Division of Pick Sloan according to the principles established in the foregoing Sec 3. (b) (4);

(6) supplement appropriations for development of authorized rural water projects in Montana, North Dakota and South Dakota within the authorized construction schedule; provided, however, that appropriations shall continue to the limit of the authorized construction amount after construction is completed, and supplemental funding withdrawn from the development fund shall be restored

SEC 4. ENERGY INVESTIGATION AND PROJECT PRIORITY

(a) Not later than three years following the date of enactment, the Secretary of Energy is authorized and directed, through cooperative agreements with three States separately and the Indian Reservations listed in Sec 1. (b) (3) separately, to complete a plan for renewable and non-renewable energy development in the Upper Missouri River Basin and to:

(1) provide a priority list for the development and marketing of energy in the three States outside the Indian Reservations listed in Sec 1. (b) (3) based on projects determined feasible with identification of net benefits to the three States, the Region and the Nation;

(2) provide a priority list for the development and marketing of energy on the Indian Reservations listed in Sec 1. (b) (3) based on projects determined feasible with identification of net benefits to the Indian Reservations, the Region and the Nation;

(3) develop cooperative agreements between the Secretary and the Indian Reservations listed in Sec 1. (b) (3) containing provisions, rules and regulations for Indian Tribes through the Indian Self-Determination Act, as amended, (PL 93-638).

(b) The Secretary of Energy is authorized and directed, through cooperative agreements, to implement feasible renewable and nonrenewable power projects in Montana, North Dakota and South Dakota and within Indian Reservations listed in Sec 1. (b) (3) through grants from the development fund based on the provisions in Sec 3 (b) (4) and (5) ;

(c) The Secretary is authorized and directed, through cooperative agreements, to permit Montana, North Dakota and South Dakota and Indian Reservations listed in Sec 1. (b) (3) Reservations to implement feasible hydropower upgrades at Fort Peck, Garrison, Oahe, Big Band, Fort Randall, Gavin's Point and federal tributary dams through grants from the development fund based on the provisions in Sec 3 (b) (4) and (5) and based upon a mutually agreeable plan between the States and Tribes on the sharing of costs and revenues;

(d) Title to all facilities and property financed from the development fund for the Indian Tribes shall be held in trust by the United States on behalf of the Tribe.

SEC 6. WATER RIGHTS.

(a) IN GENERAL.—This Act does not—

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

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

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

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

SEC 7 – APPROPRIATIONS

(a) There are authorized to be appropriated amounts equal to the sum of the economic losses and navigation benefits determined according to the provisions of Sec 3 (b) (3) by the Secretaries of Interior and Army to the States of Montana, North Dakota and South Dakota and the Indian Reservations listed in Sec 1. (a) (4), such amounts to be deposited in the development fund.