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MNI WICONI PROJECT ACT AMENDMENTS

JULY 15, 2013.—and ordered to be printed

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

R E P O R T

[To accompany S. 684]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 684) to amend the Mni Wiconi Project Act of 1988 to facilitate completion of the Mni Wiconi Rural Water Supply System, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 5, line 4, insert “, as set forth in the plans for completion developed under subsection (a)” after “transfer of existing water systems”.
2. On page 8, line 10, strike “authority” and insert “authorities”.
3. On page 8, line 14, insert “also” before “be used”.
4. 7 On page 11, strike lines 5 through 16 and insert the following:

“(A) IN GENERAL.—After the date on which public or tribal water systems on the Pine Ridge Indian Reservation, the Rosebud Indian Reservation, and the Lower Brule Indian Reservation that are in existence on the date of enactment of this paragraph have been brought up to the standards for the water systems established in the plans developed under section 3C(a), but not later than 15 years after the date of enactment of this paragraph, title to each of the water systems shall be transferred to the United States, to be held in trust for the benefit of the applicable Indian tribe, on the request of the Oglala Sioux Tribes, the

Rosebud Sioux Tribe, or the Lower Brule Sioux Tribe, as applicable, and the owner of the water system.

5. On page 11, line 22, strike “proposed to be transferred” and insert “proposed, by request of the owner of the water system, to be transferred and improved”.

PURPOSE

The purpose of S. 684 is to amend the Mni Wiconi Project Act of 1988 to facilitate completion of the Mni Wiconi Rural Water Supply System.

BACKGROUND AND NEED

The Mni Wiconi Project Act of 1988 (Public Law 100–516) authorized the construction of the Mni Wiconi Rural Water Supply Project (Project) which provides drinking water for residents of three tribal water systems and one non-tribal system where previous water supplies were insufficient or of poor quality. For instance, Shannon County, South Dakota, one of the counties where part of the Project is located, is the poorest county in the United States, and the lack of water supplies restricts efforts to promote economic development on the reservation. The United States has a trust responsibility to ensure that adequate and safe water supplies are available.

The original project included the Oglala Sioux Rural Water Supply System, the West River Rural Water System, and the Lyman-Jones Rural Water System. In 1994, the West River and the Lyman-Jones Rural Water System merged. Amendments to the Project were adopted in 1994 that added the Rosebud Sioux and the Lower Brule Sioux Rural Water Systems and raised the authorized appropriation ceiling for the Project to \$263.2 million. The Project was reauthorized in 2002 (Public Law 110–367) and amended again by the Consolidated Appropriations Act, 2008 (Public Law 110–161), to extend the sunset date to 2013. Once completed, the Project is estimated to serve 52,000 people, including more than 40,000 people on the three Indian reservations.

Similar to other large Federal rural water projects, appropriations have failed to keep pace with projected timelines, and additional costs have cut into construction funding. Accordingly, project beneficiaries are asking the Congress for an increase in the cost ceiling and extension of its authorization in order to be completed and serve the designated population. Without an adjustment to the cost ceiling, project beneficiaries argue that some portions of the Oglala Sioux Rural Water Supply System and Rosebud Sioux Rural Water System will remain incomplete. S. 684 would raise the Project ceiling by \$14.3 million and push back the completion date to 2016 in order to complete the Project.

LEGISLATIVE HISTORY

S. 684 was introduced by Senator Johnson of South Dakota on April 9, 2013. The Subcommittee on Water and Power held a hearing on S. 684 on April 16, 2013. At its business meeting on May 16, 2013, the Committee ordered S. 684 favorably reported.

In the 112th Congress, Senator Johnson introduced similar legislation, S. 3464. The Subcommittee on Water and Power held a hearing on September 19, 2012 (S.Hrg. 112–624).

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on May 16, 2013, by a voice vote of a quorum present, recommends that the Senate pass S. 684, if amended as described herein. Senators Risch, Lee, and Scott requested to be recorded as voting no.

COMMITTEE AMENDMENTS

During its consideration of S. 684, the Committee adopted five amendments. The principal amendment clarifies that once the tribal water systems have been brought up to the standards as established in the plans for completion of the systems, but not later than 15 years after the date of enactment of S. 684, title to each system shall be transferred to the United States, to be held in trust for the benefit of the applicable Indian tribe.

SECTION-BY-SECTION ANALYSIS

Section 1 provides for the short title, the “Mni Wiconi Project Act Amendments of 2013.”

Section 2 amends section 3 of the Mni Wiconi Project Act of 1988 (Public Law 100–516) to plan for the completion of the Rural Water Supply System in Oglala Sioux, Rosebud Sioux, and Lower Brule Sioux. The Secretary of the Interior is directed to consult with Federal agencies and assist the Bureau of Reclamation in improving and repairing existing community water systems that are to be included within the project.

Section 3(a) amends section 10(a) of the Mni Wiconi Project Act of 1988 (Public Law 100–516) to extend the authorization date to 2016 and raises the authorized appropriation ceiling for the Project by \$14.3 million in construction funding.

Section 3(b) amends section 10(b) of the Mni Wiconi Project Act of 1988 (Public Law 100–516) to provide for the operation and maintenance of the Rural Water Supply System in Oglala Sioux, Rosebud Sioux, and Lower Brule Sioux. After the systems have been brought up to code as established by the plans set forth in the legislation by the owning entity, each public or tribal water system shall be transferred to the United States, to be held in trust for the benefit of the applicable Indian tribe.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of S. 684 has been provided by the Congressional Budget Office:

S. 684—Mni Wiconi Project Act Amendments of 2013

Summary: S. 684 would authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to develop plans to complete the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, and the Lower Brule Sioux Rural Water Supply System in southwestern South Dakota. The

bill also would authorize the bureau to enter into agreements with other federal agencies to complete those projects. Based on information from the Bureau of Reclamation, and assuming appropriation of the necessary amounts, CBO estimates that implementing S. 684 would cost \$29 million over the 2014–2018 period and an additional \$62 million after 2018.

Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

S. 684 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 684 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2014	2015	2016	2017	2018	2014–2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	0	8	12	6	6	32
Estimated Outlays	0	5	9	8	7	29

Basis of Estimate: For this estimate, CBO assumes that S. 684 will be enacted late in 2013 and that the necessary amounts will be appropriated over the next several years.

S. 684 would require the Bureau of Reclamation to develop plans to complete the three water supply systems in southwestern South Dakota within 15 years. Those plans would require the bureau to enter into agreements with other federal agencies, including the Environmental Protection Agency, the Department of Agriculture, the Department of Housing and Urban Development, and the Bureau of Indian Affairs, to upgrade those systems, connect certain rural water users to those systems, and construct a water distribution system for livestock. The bureau also would be required to complete drinking water distribution systems on two Indian reservations that are part of the affected water supply systems.

S. 684 would specifically authorize the appropriation of \$14 million for the bureau to complete the necessary activities and would authorize the appropriation of whatever sums are necessary for other agencies to assist in completion of that work. Under the bill, the bureau would be tasked with coordinating work by all federal agencies. Based on information from the Bureau of Reclamation, CBO estimates that enacting the legislation would cost \$29 million over the 2014–2018 period and an additional \$62 million after 2018.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: S. 684 contains no intergovernmental or private-sector mandates as defined in UMRA. Enacting this bill would benefit tribes in South Dakota.

Estimate prepared by: Federal Costs: Aurora Swanson; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 684.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

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

Little, if any, additional paperwork would result from the enactment of S. 684, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 684, as introduced by Senator Johnson and reported by the Committee authorizes appropriation of an additional \$14,308,000 to complete the planning, design, and construction of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Sioux Rural Water Supply System, the West River Rural Water Supply System, and the Lyman-Jones Rural Water Supply System.

EXECUTIVE COMMUNICATIONS

The testimony provided by the U.S. Department of the Interior, Bureau of Reclamation at the April 16, 2013, Subcommittee on Water and Power hearing on S. 684 follows:

STATEMENT OF ROBERT QUINT, SENIOR ADVISOR, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Chairman Schatz and members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 684, the Mni Wiconi Project Act Amendments of 2013. The Department recognizes that meaningful changes to this bill have been made since prior related legislation was heard during the 112th Congress. However, if enacted, this updated version of the bill would still expand the scope and authorization ceiling of the Mni Wiconi Rural Water Supply Project, and have significant impacts on the budgets of both Reclamation and the Bureau of Indian Affairs. For the reasons described below, the Department cannot support S. 684.

The Mni Wiconi Rural Water Supply Project is a municipal, rural and industrial project that serves both tribal and non-tribal populations of the Pine Ridge, Rosebud, and Lower Brule Indian Reservations and the West River Lyman-Jones Rural Water System in seven counties of southwestern South Dakota. Responsibilities of the Secretary under the Mni Wiconi Rural Project Act (Public Law 100-516) include the operation and maintenance of existing water systems, including the core treatment plant and pipelines, and appurtenant facilities on the Pine Ridge,

Rosebud and Lower Brule Indian Reservations. With the funding requested in the President's FY 2013 budget, the majority of the population of the project will be served. The Lower Brule and West River Lyman-Jones portions of the project will be completed. Generally those not connected to the project (approximately 2.5% of the population on Rosebud and Pine Ridge Reservation) are served by community water systems or individual wells. Reclamation would be happy to facilitate or coordinate action with other federal agencies to address the needs identified by the bill's sponsor. Reclamation has a backlog of authorized but not constructed projects. Therefore, we have concerns about adding to the scope of an existing project that is nearly complete.

Section 2 of S. 684 directs the Secretary of the Interior to develop a plan for completion of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, and the Lower Brule Sioux Rural Water System. Planning the completion of the systems is dependent on future appropriations as well as Reclamation's need for flexibility in decision-making relative to all authorized rural water projects. Reclamation must constantly assess and prioritize these kinds of projects to maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities as efficiently as possible, and to reflect the diverse needs and circumstances facing each individual project. The Department would like to work with project sponsors of the bill to discuss plans for completion, and clarifying the roles, responsibilities, and authorities of Federal agencies involved in the project. An interagency agreement, as proposed by Reclamation during the August 8, 2012 Joint Consultation Meeting with Federal Agencies, has the potential to achieve many of these objectives. Further, Reclamation is continuing to evaluate the facility improvements needed to transfer and incorporate existing community water systems.

Section 2 also directs the Director of the Bureau of Indian Affairs, through the use of existing programs and annual appropriations, to assist the Secretary in completing the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System by constructing, repairing, and upgrading plumbing fixtures, skirting, and other necessary features, such as septic tanks and drainfields, to ensure that houses within the service areas are able to meet the standards for connecting to those systems. The Bureau of Indian Affairs has no existing programs or annual appropriations for the construction, repair, or upgrading of plumbing fixtures or septic systems on private residences. Such function has usually been the responsibility of Health and Human Services or Indian Health Service.

Section 3(a) of S. 684 would increase the authorized Mni Wiconi cost ceiling by an additional \$14,308,000, based on October 1, 2011, price levels. Reclamation has worked

closely with the project sponsors to ensure completed features will be functional and provide intended benefits within the currently authorized cost ceiling. The Department continues to believe that the FY 2013 President's request of \$23 million for construction provides sufficient funding to meet the objectives of the Project as authorized. Recently enacted final appropriations for FY 2013 will determine final allocations to the project. In FY 2014, the Department is continuing to meet its longer-term obligation to fund operations and maintenance for the Mni Wiconi project's Indian sponsors features through Reclamation's request for \$12 million in new FY 2014 appropriations.

Section 3(b)(5) would transfer existing public or tribal water systems "in trust to the applicable rural water system" upon requests from the Tribes or owner of such system. This language leaves some uncertainty in ownership as it doesn't identify the nature of the "trust". Language in sections 3A(e) and 3B(e) of the current Act identifies that ownership is to be held in trust for the tribe by the United States. Section 3(b) also authorizes appropriations for operation and maintenance to be used for the improvement, repair, and replacement of existing public or tribal water systems prior to and after their transfer into the respective project system. Reclamation had previously determined that the costs of upgrading existing community facilities should be properly allocated to the construction component of the project. Since these existing systems were originally constructed using funds and authorities of other agencies, Reclamation believes any funding for improvements needed to correct deficiencies in existing systems should be discussed among the various responsible agencies before those systems are accepted into the project.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 684 as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MNI WICONI PROJECT ACT OF 1988

(Public Law 100–516; as amended)

AN ACT To authorize construction of the Mni Wiconi Rural Water Supply Project, and for other purposes.

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SEC. 3. OGLALA SIOUX RURAL WATER SUPPLY SYSTEM.

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SEC. 3A. ROSEBUD SIOUX RURAL WATER SYSTEM.

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SEC. 3B. LOWER BRULE SIOUX RURAL WATER SYSTEM.

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SEC. 3C. PLANS FOR COMPLETING THE OGLALA SIOUX RURAL WATER SUPPLY SYSTEM, ROSEBUD SIOUX RURAL WATER SYSTEM, AND LOWER BRULE SIOUX RURAL WATER SYSTEM.**(a) PLANS FOR COMPLETION.—**

(1) *IN GENERAL.*—In consultation with the Oglala Sioux Tribe, the Rosebud Sioux Tribe, and the Lower Brule Sioux Tribe, as applicable, and the Federal agency heads listed in subsection (b)(1), the Secretary shall develop plans to complete the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System.

(2) *CONTENTS.*—The plan for each water supply system described in paragraph (1) shall require—

(A) the completion of remaining components of the applicable system in accordance with the Final Engineering Report dated May 1993;

(B) the improvement, repair, and replacement of existing water systems; and

(C) the transfer of those existing water systems to the United States, to be held in trust for the Oglala Sioux Tribe, the Rosebud Sioux Tribe, or the Lower Brule Sioux Tribe, as applicable, and made part of the applicable rural water system.

(3) *SUBMISSION TO CONGRESS.*—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives—

(A) a copy of each plan developed under this subsection, including a schedule for full implementation of the plan that shall not exceed a period of 15 years after the date of enactment of this section;

(B) a report that includes—

(i) a description of the roles and responsibilities of each of the heads of the Federal agencies listed in subsection (b)(1) (including the Commissioner of the Bureau of Reclamation) relating to the completion of the water supply systems, including with respect to the improvement, repair, and replacement of the existing water systems before and after transfer;

(ii) the program authorities of each Federal agency listed in subsection (b)(1) and a description of how the heads of the Federal agencies will work together to complete and implement the plans; and

(iii) the amount of funding and any other need the Secretary determines to be necessary to complete and implement the plans; and

(C) as applicable, a description of the roles and responsibilities of the heads of other Federal agencies that have existing authorities to provide assistance to the Oglala

Sioux Tribe, the Rosebud Sioux Tribe, or the Lower Brule Sioux Tribe.

(b) *INTERAGENCY AGREEMENTS.—*

(1) *IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall enter into agreements with the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development—*

(A) to fulfill the trust responsibility of the United States; and

(B) to complete the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System in accordance with the Final Engineering Report dated May 1993, including the transfer of existing water systems as set forth in the plans for completion developed under subsection (a).

(2) *COOPERATION.—*

(A) IN GENERAL.—The heads of the Federal agencies described in paragraph (1) shall assist the Secretary in completing the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System pursuant to sections 3(a), 3A(a), and 3B(a), respectively, including by—

(i) improving, repairing, and replacing existing water systems as set forth in the plans developed under subsection (a); and

(ii) constructing new rural water facilities, service lines, and other necessary features.

(B) ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency shall assist the Secretary in meeting the environmental and safe drinking water needs of the Pine Ridge Indian Reservation, the Rosebud Indian Reservation, and the Lower Brule Indian Reservation, including through compliance with the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(C) SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary of Health and Human Services shall assist the Secretary in meeting the water supply and public health needs of the Pine Ridge Indian Reservation, the Rosebud Indian Reservation, and the Lower Brule Indian Reservation, including through compliance with the Act of August 5, 1954 (commonly known as the Indian Sanitation Facilities Act') (42 U.S.C. 2001 et seq.).

(D) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—The Secretary of Housing and Urban Development shall assist the Secretary by carrying out projects to connect houses that are eligible for funding from the Department of Housing and Urban Development on the reservations of the Oglala Sioux Tribe, the Rosebud Sioux Tribe, and the Lower Brule Sioux Tribe, through plumbing, water pipes, appurtenances, and interconnections to the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System, re-

spectively, to meet the water conservation standards of those water supply systems.

(3) **LIVESTOCK DISTRIBUTION SYSTEMS.**—

(A) **IN GENERAL.**—The Secretary and the Secretary of Agriculture shall, through the use of authorities of the Bureau of Indian Affairs and the Department of Agriculture, respectively, complete, during a period not to exceed 15 years after the date of enactment of this section, the livestock distribution system for the Oglala Sioux Rural Water Supply System and the Rosebud Sioux Rural Water System, consistent with the Final Engineering Report dated May 1993.

(B) **ADMINISTRATION.**—For each water supply system described in subparagraph (A), the Secretary shall enter into agreements with the Secretary of Agriculture and the Director of the Bureau of Indian Affairs that set forth the specific responsibilities of each agency concerning the construction of the livestock distribution systems.

(4) **LEAD AGENCY.**—The Department of the Interior, acting through the Bureau of Reclamation, shall act as the lead agency in carrying out this section.

(5) **ADMINISTRATION.**—

(A) **IN GENERAL.**—Each agency head shall carry out the duties of the agency head under this subsection out of amounts made available to the agency head under annual appropriations and existing authorities.

(B) **AUTHORIZATION OF USE OF OTHER FEDERAL AGENCY FUNDS.**—Amounts made available to agencies other than the Bureau of Reclamation may also be used to carry out this Act.

(C) **ADDITIONAL FUNDING REQUESTS.**—Nothing in this subsection prohibits the Oglala Sioux Tribe, the Rosebud Sioux Tribe, or the Lower Brule Sioux Tribe from applying for, seeking, or obtaining amounts from the Federal agencies referred to in paragraph (1) for any other purpose.

(c) **UPGRADING STANDARDS FOR CONNECTING HOMES.**—The Director of the Bureau of Indian Affairs shall, through the use of existing programs and annual appropriations, assist the Secretary in completing the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System by constructing, repairing, and upgrading plumbing fixtures, skirting, and other necessary features, such as septic tanks and drainfields, to ensure that houses within the service areas are able to meet the standards for connecting to those water systems.

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SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) **PLANNING, DESIGN, AND CONSTRUCTION.**—There are authorized to be appropriated \$263,241,000 [and \$58,800,000 (based on October 1, 1997, price levels)] \$58,800,000 (based on October 1, 1997 price levels), and \$14,308,000 (based on October 1, 2011 price levels) for the planning, design, and construction of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Sioux Rural Water Supply System, the West River Rural Water Supply System, and the Lyman-Jones Rural Water Supply System described in section 3, 3A, 3B,

and 4. Such funds are authorized to be appropriated only through the end of the year ~~2013~~ 2016. The funds authorized to be appropriated by the first sentence of this section, less any amounts previously obligated for the Systems, may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after October 1, 1992 (*with respect to the \$263,241,000*), ~~and October 1, 1997 (with respect to the \$58,800,000)]~~ \$58,800,000 (*based on October 1, 1997 price levels*), and \$14,308,000 (*based on October 1, 2011 price levels*), as indicated by engineering costs indices applicable for the type of construction involved.

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(b) OPERATION AND MAINTENANCE OF OGLALA SIOUX RURAL WATER SUPPLY SYSTEM, ROSEBUD SIOUX RURAL WATER SUPPLY SYSTEM AND LOWER BRULE SIOUX RURAL WATER SUPPLY SYSTEM.—
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(1) OPERATION AND MAINTENANCE.—

(A) *IN GENERAL*.—There are authorized to be appropriated such sums as may be necessary for the operation and maintenance of the Oglala Sioux Rural Water Supply System, Rosebud Sioux Rural Water Supply System and Lower Brule Sioux Rural Water Supply System. **The operation**

(B) *WEST RIVER AND LYMAN-JONES RURAL WATER SYSTEMS*.—

(i) *IN GENERAL*.—The operation and maintenance expenses associated with water deliveries to the West River and Lyman-Jones Rural Water Systems are a non-Federal responsibility and for such deliveries the Secretary shall enter into a contract with the West River and Lyman-Jones Systems for the payment of an annual operation and maintenance fee. **Such fee**

(ii) *FEE BASIS*.—The fee described in clause (i) shall be based on the incremental operation and maintenance costs for water actually delivered each year to the West River and Lyman-Jones Rural Water Systems. **Such operation and maintenance payments**

(iii) *ADJUSTMENT OF PAYMENTS*.—The operation and maintenance payments under this subparagraph shall be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations as indicated by indices applicable to comparable regional rural water supply systems for the type of operation and maintenance involved.

(2) COMMUNITY WATER SYSTEMS UPGRADES.—

(A) *IN GENERAL*.—*After the date on which the public or tribal water systems on the Pine Ridge Indian Reservation, the Rosebud Indian Reservation, and the Lower Brule Indian Reservation that are in existence on the date of enactment of this paragraph have been brought up to the standards for the water systems established in the plans developed under section 3C(a), but not later than 15 years after the date of enactment of this paragraph, title to each of the water systems shall be transferred to the United States, to be held in trust for the benefit of the applicable Indian*

tribe, on the request of the Oglala Sioux Tribe, the Rosebud Sioux Tribe, or the Lower Brule Sioux Tribe, as applicable, and the owner of the water system.

(B) IMPROVEMENTS AND REPAIRS AND REPLACEMENT.—The Secretary shall use amounts authorized to be appropriated under paragraph (1) for the improvement, repair, and replacement of any water system that is transferred or proposed, by request of the owner of the water system, to be transferred and improved under subparagraph (A).

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