

## Calendar No. 680

111TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 111-357

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ESTABLISHING A COMMISSION TO CONDUCT A STUDY AND PROVIDE RECOMMENDATIONS ON A COMPREHENSIVE RESOLUTION OF IMPACTS CAUSED TO CERTAIN INDIAN TRIBES BY THE PICK-SLOAN PROGRAM

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DECEMBER 8, 2010.—Ordered to be printed

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

### R E P O R T

[To accompany S. 3648]

The Committee on Indian Affairs, to which was referred the bill, S. 3648, to establish a commission to conduct a study and provide recommendations on a comprehensive resolution of impacts caused to certain Indian tribes by the Pick-Sloan Program, having considered the same, reports favorably thereon, and recommends that the bill, as amended, do pass.

#### PURPOSE

The purpose of S. 3648 is to establish a commission to conduct a study and provide recommendations to the President and the Congress for a comprehensive resolution of impacts to seven Indian tribes caused by the Pick-Sloan Missouri River Basin Program (Pick-Sloan Program),<sup>1</sup> and to authorize all actions and provide funding necessary for the commission to perform its duties under this Act.

#### BACKGROUND

##### *Establishment of Indian reservations along the Missouri River*

From 1851 to 1889, the United States entered into treaties and agreements with the tribes and bands of the Three Affiliated Tribes of the Fort Berthold Reservation and the Sioux Nation.<sup>2</sup> In these treaties and agreements, the United States recognized the Indians' territories, and the tribes and bands reserved lands for their per-

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<sup>1</sup>Act of December 22, 1944, § 9, 58 Stat. 891 (commonly known as the "Flood Control Act of 1944").

<sup>2</sup>*See, e.g.*, Treaty of Fort Laramie, Sept. 17, 1851, 11 Stat. 749; Treaty with Sioux Indians, April 29, 1868, 15 Stat. 635; Act of March 2, 1889, 25 Stat. 888.

manent homelands. Seven of these reservations are along the Missouri River in the states of North Dakota, South Dakota, and Nebraska: the Fort Berthold Reservation, the Standing Rock Sioux Reservation, Cheyenne River Sioux Reservation, Lower Brule Sioux Reservation, Crow Creek Sioux Reservation, Yankton Sioux Reservation, and the Santee Sioux Reservation.

Although these reservations were significantly smaller than the tribes' former territories, the seven reservations were strategically located along the resource rich Missouri River. The Missouri River's wooded bottomlands provided the tribes' reservation economies with fertile agricultural lands, timber for lumber and fuel, coal deposits, seasonal fruits, habitat for wild game, medicines, shelter for domestic animals, and plentiful supplies of clean water. These lands were also an important part of the tribes' social, cultural, and spiritual lives. Much of the tribes' community infrastructure was located along the river, including, tribal homes, schools, hospitals, government buildings, churches, graveyards, and roads.

#### *Plans for dam development*

As a part of the Flood Control Act of 1944, Congress authorized significant dam development on the Missouri River through the Pick-Sloan Program. The Pick-Sloan Program was a joint water development program of the Army Corps of Engineers and the Bureau of Reclamation. The Army Corps of Engineers plan was primarily concerned with flood control and navigation, while the Bureau of Reclamation plan was focused on developing large irrigation projects in the upper basin, and providing for domestic water supply and hydroelectric power.

The Pick-Sloan Program included development of six mainstem dams on the Missouri River in Montana, North Dakota, South Dakota, and Nebraska. Five of these dams flooded the seven Indian reservations previously established along the Missouri River: the Garrison, Oahe, Big Bend, Fort Randall, and Gavin's Point dams. These dams created large reservoirs called Lake Sakakawea, Lake Oahe, Lake Sharpe, Lake Francis Case, and Lewis and Clark Lake. Mainstem dam construction began in the mid-1940's and was completed in 1966.

The Pick-Sloan Program resulted in the flooding of hundreds of thousands of acres of the tribes' reservation lands, including rich bottomlands, uplands, as well as in the displacement of entire tribal communities. Ultimately, the Pick-Sloan Program dams and reservoirs flooded about 356,254 acres of tribal lands and forced the relocation of more than 900 Indian families.

#### *Impacts to the seven Indian tribes*

Although each of the seven tribes suffered severely and in different ways from the Pick-Sloan Program, the experience of the Three Affiliated Tribes (Tribes) provides an overview of the kinds of impacts common to all seven tribes and their reservations. In 1946, the Army Corps of Engineers entered the Fort Berthold Reservation, without notice, and began construction of the 212 foot-high Garrison dam with a storage capacity of 24.2 million acre

feet.<sup>3</sup> The federal government's message to the Tribes was that the construction of the dam and the displacement of the Tribes were inevitable.<sup>4</sup> The Tribes offered other sites for the dam, but the Army Corps surveyors selected the site that would flood the greatest amount of the Tribes' land.<sup>5</sup> At the same time, upstream impacts to a non-Indian city and a federal irrigation project were avoided by adjustments to the specifications of the project.<sup>6</sup>

Once completed, the dam flooded one-fourth of the reservation, separated the reservation into five segments that were isolated by the reservoir, and flooded 94 percent of the Tribes' agricultural lands.<sup>7</sup> In total, the dam flooded about 156,000 acres of the Tribes' lands and forced the relocation of 480 families, or about 90 percent of the Tribes' membership.<sup>8</sup> The reservoir also flooded the economic base that had sustained the Tribes.<sup>9</sup> The flooded bottomlands included fertile alluvial soils, natural shelter for livestock, coal deposits, standing timber, seasonal fruits, juneberries, choke cherries, habitat for wild game, and clean water supplies.<sup>10</sup> Community infrastructure, including homes, a hospital, and churches, were also flooded.<sup>11</sup>

By 1947, although the Pick-Sloan Program has already been authorized and construction of Garrison dam was underway, the Tribes, which had been given little to no notice of these actions, did not willingly leave their lands. Instead, though in a severely disadvantaged position, the Tribes entered into negotiations with the federal government for a replacement reservation.<sup>12</sup> The Tribes initially secured an agreement with the U.S. for a replacement reservation, but no other reservation with suitable bottomlands could be found.<sup>13</sup> With no opportunity for suitable replacement lands, the Tribes accepted a Congressional offer of approximately \$5 million in compensation.<sup>14</sup> The legislation providing this compensation also allowed the Tribes to pursue further compensation. After the Tribes' obtained a private appraisal showing a much greater value for the taken lands, Congress provided approximately \$7 million in

<sup>3</sup>Michael L. Lawson, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944–1980* 59 (1994).

<sup>4</sup>*Final Report and Recommendations of the Garrison Unit Joint Tribal Advisory Committee: Joint Hearing Before the S. Comm. On Indian Affairs, the S. Comm. On Energy and Natural Resources, and the H. Comm. On Interior and Insular Affairs*, 100th Cong. 11 and 89 (1987) (statement of Hans Walker Jr., Former Member, Joint Tribal Advisory Committee, and written statement of Edward Lone Fight, Chairman, Three Affiliated Tribes).

<sup>5</sup>Michael L. Lawson, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944–1980* 60 (1994).

<sup>6</sup>*Id.* at 59.

<sup>7</sup>*Id.*

<sup>8</sup>*Final Report and Recommendations of the Garrison Unit Joint Tribal Advisory Committee: Joint Hearing Before the S. Comm. On Indian Affairs, the S. Comm. On Energy and Natural Resources, and the H. Comm. On Interior and Insular Affairs*, 100th Cong. 88 (1987) (written statement of Edward Lone Fight, Chairman, Three Affiliated Tribes).

<sup>9</sup>*Id.* at 89.

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>Michael L. Lawson, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944–1980* 60 (1994).

<sup>13</sup>*Final Report and Recommendations of the Garrison Unit Joint Tribal Advisory Committee: Joint Hearing Before the S. Comm. On Indian Affairs, the S. Comm. On Energy and Natural Resources, and the H. Comm. On Interior and Insular Affairs*, 100th Cong. 90–91 (1987) (written statement of Edward Lone Fight, Chairman, Three Affiliated Tribes); Michael L. Lawson, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944–1980* 60 (1994).

<sup>14</sup>Michael L. Lawson, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944–1980* 60 (1994).

additional compensation.<sup>15</sup> While a total of about \$12 million was provided, it was anticipated that this amount would compensate the Tribes for their flooded lands, fund relocation and reconstruction expenses, and also be used to promote the economic recovery of the Tribes.<sup>16</sup> However, in the end, most of the funding was needed to meet the basic needs of tribal members.<sup>17</sup>

Relocated to the upland plains, the Tribes were supposed to carry on as they had before. However, the remaining reservation lands were less suitable for sustaining the Tribes' economic base, including ranching and agriculture, due to poor soil and water quality, and a lack of infrastructure investments.<sup>18</sup> The upland plains also provided less shelter from the weather of the Great Plains. In the bottomlands there was natural shelter and logs for home construction, but in the uplands frame homes were exposed to the weather and had electricity costs ranging from \$600 to \$800 a month.<sup>19</sup> Even with these new high electric costs, promises to compensate the Tribes, in part, with discounted electricity went unfulfilled.<sup>20</sup>

*No plan for just or adequate compensation*

The Flood Control Act of 1944 did not set out a plan for compensating the seven Indian tribes or a process for acquiring the tribal lands needed to develop the Pick-Sloan Program. Federal compensation ultimately came in two phases. First, from the late 1940's to 1962, the tribes individually negotiated with various representatives of the Federal government and Congress for compensation from the impacts of the Pick-Sloan Program.<sup>21</sup> During this phase, individual Indian landowners also received some compensation for their lands that were flooded. However, similar to the tribes, negotiations were often undertaken after dam construction had already begun, and compensation varied, was inadequate, or lacked records of actual disbursement.

In the second phase, from 1985 until 2002, the tribes individually, and sometimes in groups, sought additional compensation from Congress. Additional compensation was obtained for a variety of reasons, but the primary reason was the inadequacy of the original negotiations and compensation. For example, in most cases, negotiations regarding compensation for the taking of lands, relocation, reconstruction, and rehabilitation did not take place until after the Army Corps of Engineers had already begun construction on the dams.

The second round of compensation began in 1985 with the establishment of the Joint Tribal Advisory Commission (JTAC). The

<sup>15</sup>*Id.* at 61.

<sup>16</sup>*Id.* at 60–61.

<sup>17</sup>*Final Report and Recommendations of the Garrison Unit Joint Tribal Advisory Committee: Joint Hearing Before the S. Comm. On Indian Affairs, the S. Comm. On Energy and Natural Resources, and the H. Comm. On Interior and Insular Affairs*, 100th Cong. 94–95 (1987) (written statement of Edward Lone Fight, Chairman, Three Affiliated Tribes).

<sup>18</sup>*Id.* at 11 and 93 (statement of Hans Walker Jr., Former Member, Joint Tribal Advisory Committee, and written statement of Edward Lone Fight, Chairman, Three Affiliated Tribes).

<sup>19</sup>*Id.* at 11 (statement of Hans Walker Jr., Former Member, Joint Tribal Advisory Committee).

<sup>20</sup>*Id.*

<sup>21</sup>Act of July 31, 1947, Pub. L. No. 80–296, 61 Stat. 686, 690; H.R.J. Res. 33, Pub. L. No. 81–437, 63 Stat. 1026 (1949); Act of July 6, 1954, Pub. L. No. 83–478, 68 Stat. 452; Act of Sept. 3, 1954, Pub. L. No. 83–776, 68 Stat. 1191; Act of Sept. 2, 1958, Pub. L. No. 85–915, 72 Stat. 1762; Act of Sept. 2, 1958, Pub. L. No. 85–916, 72 Stat. 1766 (1958); Act of Sept. 2, 1958, Pub. L. No. 85–923, 72 Stat. 1773; Act of Oct. 3, 1962, Pub. L. No. 87–734, 76 Stat. 698; Act of Oct. 3, 1962, Pub. L. No. 87–735, 76 Stat. 704.

JTAC was developed based on the recommendation of the Garrison Diversion Unit Commission established by the Energy and Water Development Appropriation Act of 1985.<sup>22</sup> JTAC was formed to examine and make recommendations with respect to the effects of the impoundment of water behind the Garrison and Oahe Dams on the Three Affiliated Tribes and the Standing Rock Sioux Tribe. Ultimately, the JTAC recommendations resulted in Congressional acts providing additional compensation to these two tribes.<sup>23</sup> In subsequent years, Congress passed acts providing additional compensation to the other five tribes whose lands were flooded by the Pick-Sloan Program.<sup>24</sup> In total, fourteen acts of Congress were passed in an attempt to provide the tribes with adequate compensation over almost 60 years. Unfortunately, each negotiation and act of Congress varied according to the historical time period, different valuation methods, and the ability of individual tribes to obtain legislation or pursue litigation.

#### *Comprehensive resolution*

Despite efforts to compensate the tribes for the flooding of their lands by the Pick-Sloan Program, questions remain about the adequacy, fairness, and completeness of the compensation.<sup>25</sup> Some tribes have been compensated at different per acre rates than other tribes; some tribes received “rehabilitation funds” while others did not; some tribes assert that their lands were not properly valued; and some promises of compensation remain unfulfilled.<sup>26</sup>

In her written testimony provided to the Committee on November 2007, Robin Nazzaro, Director of Natural Resources and Environment for the Government Accountability Office, stated that, “more than 45 years after the last original compensation bill was enacted and almost 5 years after the last additional compensation bill was enacted, lingering questions remain about various aspects of the tribes’ compensation.”<sup>27</sup> The Pick-Sloan Tribal Commission Act is intended to resolve these questions by establishing a Commission to study the past compensation and make recommendations for full and final compensation for all seven Indian tribes.

#### LEGISLATIVE HISTORY

In the 110th Congress, on November 1, 2007, the Senate Committee on Indian Affairs held a hearing regarding the ongoing impacts from the Pick-Sloan Program on the Indian tribes whose lands were flooded by the Pick-Sloan Program. In the 111th Congress, on July 26, 2010, Senator Dorgan introduced S. 3648, the

<sup>22</sup> Act of July 16, 1985, § 207, Pub. L. No. 98–360, 98 Stat. 411.

<sup>23</sup> Fort Berthold and Standing Rock Equitable Compensation Program, North Dakota, Pub. L. No. 102–575, title XXXV, 106 Stat. 4600, 4731 (1992);

<sup>24</sup> Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996, Pub. L. No. 104–223, 110 Stat. 3026 (1996); Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act, Pub. L. No. 105–132, 111 Stat. 2563 (1997); Cheyenne River Sioux Tribe Equitable Compensation Act, Pub. L. No. 106–511, title I, 114 Stat. 2365 (2000); and Yankton Sioux and Santee Sioux Tribes Equitable Compensation Act, Pub. L. No. 107–331, title II, 116 Stat. 2834, 2838 (2002).

<sup>25</sup> *Impact of the Flood Control Act of 1944 on Indians Tribes Along the Missouri River: Hearing Before the S. Comm. On Indian Affairs*, 110th Cong. 3–4 (1987) (statement of Robin M. Nazzaro, Director, Natural Resources and Environment, Government Accountability Office); See also U.S. Gov’t Accountability Office, GAO–08–249T, *Damages and Compensation for Tribes at Seven Reservations Affected by Dams on the Missouri River* (2007).

<sup>26</sup> *Id.* at 13–14, 17–18 (written statement of Robin M. Nazzaro, Director, Natural Resources and Environment, Government Accountability Office).

<sup>27</sup> *Id.* at 7.

Pick-Sloan Tribal Commission Act of 2010. Senators Thune, Conrad, and Johnson are original cosponsors. S. 3648 was referred to the Committee on Indian Affairs. On November 18, 2010, the Committee approved S. 3648 with a substitute amendment offered by Senator Dorgan.

A companion bill, H.R. 6100, was introduced in the House of Representatives on August 10, 2010, by Congressman Pomeroy. Congresswoman Herseth Sandlin is an original cosponsor. H.R. 6100 was referred to the House Committee on Natural Resources.

#### SUMMARY OF SUBSTITUTE AMENDMENT

During an open business meeting on November 18, 2010, the Committee considered and approved an amendment in the nature of a substitute to S. 3648. Like the original bill, the amendment in the nature of the substitute would establish a commission to conduct a study and provide recommendations to the President and the Congress for a comprehensive resolution of impacts to seven Indian tribes caused by the Pick-Sloan Program on the Missouri River. As in the original bill, the substitute amendment outlines the functions and requirements of the Commission, including: the manner in which Commission members are to be appointed; the structure of the Commission; the requirement for individual Commission members to have certain expertise; the minimum number of hearings the Commission must hold; the requirement for a Commission website; the issues that are to be studied by the Commission; the requirements for the report that the Commission is to issue; the timeframe in which the report is to be submitted; and the administrative functions of the Commission.

The substitute amendment includes two new subsections regarding impacts to individual landowners, clarifications regarding how the Commission will be funded, and a variety of technical changes. Technical changes include clarifying that the Commission may make rules to govern its proceedings, providing travel reimbursement for witnesses who appear before the Commission, clarifying the quorum requirements of the Commission, and renumbering of the bill's sections.

The two new provisions regarding impacts to individual landowners are sections 4(b)(3) and (b)(5)(B)(ii). These new provisions would allow the Commission, if it chooses, to study and make recommendations regarding reservation lands owned by individual tribal members that were impacted by the Pick-Sloan Program. Individual landowners were provided compensation originally, but, similar to the compensation provided to the tribes, the amounts provided to individuals varied, was inadequate, or lacked records of actual disbursement. The Commission is not required to study and make recommendations regarding individual landowners, because the Commission may find that these issues need separate study.

The substitute also clarifies how the Commission will be funded by deleting text in the introduced bill that allowed the Commission to be funded by "such sums as are necessary" and through transfers of funding from the Secretary of the Interior and Army. The substitute amendment provides new text for the funding section that simply allows the Secretary of Interior to fund the Commission with up to \$2.5 million of unobligated amounts already made available to the Secretary.

## SECTION-BY-SECTION ANALYSIS OF S. 3642 AS AMENDED

*Section 1. Short title*

Section 1 provides the short title of S. 3648 as the “Pick-Sloan Tribal Commission Act of 2010.”

*Section 2. Findings*

Section 2 provides ten Congressional findings and provides historical background to S. 3648. In summary, the ten findings and background are as follows:

(1) The Pick-Sloan Program was originally authorized by the Flood Control Act of 1944. It was approved to promote the general economic development of the United States; to provide for irrigation above Sioux City, Iowa; to protect urban and rural areas from devastating floods of the Missouri River; and for other purposes.

(2) The United States acquired approximately 1,422,000 acres of land in North Dakota, South Dakota, and Nebraska to build mainstem Missouri River dams at Garrison, Oahe, Big Bend, Fort Randall, and Gavin’s Point, and to create reservoirs behind the dams named Lake Sakakawea, Lake Oahe, Lake Sharpe, Lake Francis Case, and Lewis and Clark Lake.

(3) To create the dams and reservoirs described in paragraph (2), the United States took title to land located on the reservations of 7 Indian tribes (but did not diminish the reservations), including the taking of approximately—

- (A) 156,000 acres from the Fort Berthold Reservation;
- (B) 55,994 acres from the Standing Rock Sioux Reservation;
- (C) 104,420 acres from the Cheyenne River Sioux Reservation;
- (D) 22,955 acres from the Lower Brule Sioux Reservation;
- (E) 15,565 acres from the Crow Creek Sioux Reservation;
- (F) 3,252 acres from the Yankton Sioux Reservation; and
- (G) 1,007 acres from the Santee Sioux Reservation.

(4) The water impounded by the Garrison, Oahe, Big Bend, Fort Randall, and Gavin’s Point dams of the Pick-Sloan Program flooded the most fertile and wooded bottom land of the 7 Indian tribes and their reservations. That land constituted the most productive agricultural, hunting, and collecting land of those Indian tribes, and the majority of the community infrastructure of each Indian tribe was also located on the land.

(5) The flooding of the tribes’ productive land greatly damaged the economy and cultural resources of the 7 Indian tribes.

(6) Although the 7 Indian tribes reside on the Missouri River, the economic benefits of the Pick-Sloan Program have not been passed on to those Indian tribes. Instead, the dams have created disproportionate hardships for the 7 Indian tribes, including poor water quality; increased trespassing and theft or damage to cultural resources; artificial sediment deposits that impact water infrastructure and contain unknown contaminants; harming fisheries, including loss of reservoir retention time; damage to riparian habitat; and increased recreational traffic and impacts, but with few opportunities to regulate or benefit from recreational uses.

(7) Congress held a number of hearings and promoted studies of the impacts to the 7 Indian tribes, pursuant to which representa-

tives of the 7 Indian tribes testified on impacts to tribal economies, health, and welfare from the flooding of that land.

(8) Congress has established prior commissions to study and make recommendations regarding impacts of the Pick-Sloan Program, including the Garrison Diversion Unit Commission established under section 207(c)(1) of the Energy and Water Development Appropriation Act, 1985 (Public Law 98-360; 98 Stat. 411), which recommended that a Joint Tribal Advisory Committee be formed to examine and make recommendations with respect to the effects of the impoundment of water behind the Garrison and Oahe Dams. The Joint Tribal Advisory Committee was established by the Secretary of the Interior on May 10, 1985, for the purpose of assessing the impacts of the Garrison and Oahe Dams on the Three Affiliated Tribes and the Standing Rock Sioux Tribe. The Committee delivered a final report to the Secretary on May 23, 1986. In 1992, Congress passed the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act (title XXXV of Public Law 102-575; 106 Stat. 4731) to address certain findings of the Committee. A number of the findings of the Committee still have not been addressed as of enactment of this Act.

(9) Before enactment of this Act, Congress provided compensation to the 7 Indian tribes for the land taken from the 7 Indian tribes over a 55-year period. On 17 different occasions, as part of 14 different Acts of Congress, compensation was authorized for the 7 Indian tribes, and at least 1 of the 7 Indian tribes also received compensation through a court case.

(10) A single comprehensive bill is needed to resolve and finally settle the claims of the 7 Indian tribes because past compensation: was provided at different levels and was based on different compensation methods, depending on the historical time period during which the compensation was provided; and resulted in each of the 7 Indian tribes being compensated differently.

### *Section 3. Definitions*

Section 3 lists pertinent definitions used throughout the bill.

### *Section 4. Pick-Sloan Tribal Commission for Comprehensive Resolution*

Section 4(a)(1) establishes the Pick-Sloan Tribal Commission for Comprehensive Resolution.

Section 4(a)(2) describes the membership of the Commission. The membership must be composed of 7 members, of whom 1 must be the Chairperson of the Commission; at least 1 must have expertise in the field of Indian law and policy; at least 1 must have expertise in the operation and history of Federal water projects; at least 1 must have expertise in the area of environmental justice; at least 1 must be an economist; and at least 1 must be an authority in cultural preservation.

Section 4(a)(2) also provides that of the 7 members selected for the Commission, at least 3 must be members of federally recognized Indian tribes. The Chairperson and Vice Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson and Ranking Member of the Committee on Natural Resources of the House of Representatives must select the 7 Commission mem-



bers and appoint 1 of the members to serve as Chairperson of the Commission.

Section 4(a)(2) also provides that the affected Indian tribes may make recommendations to the Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson of the Committee on Natural Resources of the House of Representatives regarding members of the Commission. All members of the Commission must be appointed not later than 60 days after the date of enactment of this Act.

Section 4(a)(3) describes the term and vacancy provisions of the Commission. A member is appointed for the life of the Commission. A vacancy on the Commission must not affect the powers of the Commission and must be filled in the same manner as the original appointment was made.

Section 4(a)(4) provides that no later than 30 days after the date on which all members of the Commission have been appointed, the Commission must hold the initial meeting of the Commission.

Section 4(a)(5) states that the Commission must meet at the call of the Chairperson.

Section 4(a)(6) provides the quorum requirements for the Commission. A majority of the members of the Commission constitute a quorum. A quorum must be necessary for the Commission to carry out any of the duties or responsibilities of the Commission under this Act.

Section 4(a)(7) allows the Commission to establish, by majority vote, rules for the conduct of Commission business, in accordance with this Act and other applicable law.

Section 4(a)(8) clarifies that the Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Commission.

Section 4(b) sets forth the duties of the Commission. Section 4(b)(1) requires that in carrying out this section, the Commission must consult with the affected Indian tribes.

Section 4(b)(2) describes a study to be conducted by the Commission. With respect to the period beginning on the date of commencement of the Pick-Sloan Program and ending on the date on which the study is initiated, the study must examine the impacts on the affected Indian tribes, directly or indirectly, caused by the Pick-Sloan Program and measures implemented by the Federal Government to attempt to address those impacts; other measures that have been proposed to address the impacts on the affected Indian tribes caused by the Pick-Sloan Program; the results of any other studies regarding those impacts and potential solutions to the impacts, including any studies conducted by the Joint Tribal Advisory Committee relating to the Pick-Sloan Program; and comparisons involving other situations in which Federal hydroelectric projects or federally licensed hydroelectric projects have resulted in the taking or occupation of Indian land and the compensation, or other measures, Indian tribes have been or are being provided in those situations.

Section 4(b)(3) allows the Commission to also study the impacts caused by the Pick-Sloan Program to land (including land allotted under any Federal law) that is: owned by members of an affected Indian tribe (or the heirs of those members); and is on the reservation of the affected Indian tribe.

Section 4(b)(4) states that in carrying out paragraph (b)(2) and, if applicable, paragraph (b)(3), the Commission must hold at least 3 hearings to receive information from Federal agencies, Indian tribes, and other interested parties regarding the resolution of Pick-Sloan Program impacts. A witness requested to appear before the Commission must be paid the same fees and allowances as are paid to witnesses under section 1821 of title 28, United States Code. The per diem and mileage allowances for a witness under clause (i) must be paid from funds made available to the Commission. A hearing under this paragraph must be open to the public. For each hearing under this paragraph, the Commission must compile a record consisting of transcripts, written testimony, studies, and other information presented at the hearing and include the record in the report of the Commission required under paragraph (b)(6), as an appendix in electronic format.

Section 4(b)(5) provides that based on the results of the study under paragraph (b)(2), any study under paragraph (b)(3), and hearings under paragraph (b)(4), the Commission must develop a proposal to comprehensively resolve the impacts resulting from the Pick-Sloan Program. The proposal must include: a comprehensive proposal to provide full and final compensation to the affected Indian tribes; a description of the measures referred to in paragraph (2) that have not been implemented; could be implemented; or should be implemented in a more effective manner; measures that could be accomplished administratively; measures that would require legislation to be implemented; and any other measures necessary to comprehensively resolve the impacts of the Pick-Sloan Program on the affected Indian tribes.

Section 4(b)(5) also provides that the proposal may also include measures to resolve the impacts to land (including land allotted under any Federal law) that is owned by members of an affected Indian tribe (or the heirs of those members); and is on the reservation of the affected Indian tribe.

Section 4(b)(6) provides the deadline and required contents for the Commission's Report. It states that subject to subparagraph (b)(6)(B), not later than 18 months after the date on which the first meeting of the Commission takes place, the Commission must submit to the President and Congress a report that contains: (i) a detailed statement of the study findings and conclusions of the Commission; and (ii) the proposal of the Commission developed under paragraph (b)(5) for legislation and administrative actions that the Commission considers to be appropriate to comprehensively resolve the impacts caused by the Pick-Sloan Program.

Section 4(b)(6) also provides that this deadline may be extended for a period of not more than 180 days if the Commission submits to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives a request for the extension that is received by the Committees before the deadline described above and includes a description of the reasons why the extension is needed.

Section 4(b)(7) requires that the Commission maintain a website for the period beginning on the date on which the first meeting of the Commission takes place and ending on the termination date of the Commission. The Commission must use the website: (i) to describe the activities of the Commission; (ii) to provide access to in-

formation studied by the Commission; (iii) to provide notice of, and make available all information presented at, hearings of the Commission; and (iv) to post the report (including all appendices to that report) of the Commission required under paragraph (b)(6). All content on the website must be collected on compact disk, digital video disk, or other appropriate digital media; and included in the report to be submitted under paragraph (b)(6).

Section 4(c) permits the Commission to hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers to be advisable to carry out this Act. The Commission may also secure directly from a Federal agency such information as the Commission considers to be necessary to carry out this Act. On request of the Chairperson of the Commission, the head of an applicable Federal agency must provide the information to the Commission. The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government. The Commission may accept, use, and dispose of gifts or donations of services or property.

Section 4(d) describes Commission personnel matters. Section (d)(1) provides that each member of the Commission be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission.

Section 4(d)(2) states that each member of the Commission must be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

Section 4(d)(3) provides that the Chairperson of the Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission. Also, the employment of an executive director must be subject to confirmation by a quorum of the Commission. Except as provided in subparagraph (d)(3)(B), the Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates. The rate of pay for the executive director and other personnel cannot exceed the rate payable for level IV of the Executive Schedule under section 5316 of title 5, United States Code. Also, an employee of the Federal Government may be detailed to serve as staff for the Commission without reimbursement. The detail of the employee must be without interruption or loss of civil service status or privilege.

Section 4(d)(4) allows the Commission to request the Secretary of Defense to provide, and the Secretary of Defense must provide, through human resource departments under the jurisdiction of the Secretary of Defense, on a reimbursable basis, operational support for activities of the Commission.

Section 4(d)(5) gives the Commission the option, to such extent and using such amounts as are provided in appropriation Acts, to enter into contracts to enable the Commission to discharge the duties of the Commission under this Act.

Section 4(d)(6) notes that notwithstanding section 1342 of title 31, United States Code, the Commission may accept and use such voluntary and uncompensated services as the Commission determines to be necessary.

Section 4(d)(7) allows the Chairperson of the Commission to procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

Section 4(e) requires that the Commission terminate 90 days after the date on which the Commission submits the report of the Commission under subsection (b)(6).

#### *Section 5. Funding*

Section 5 provides that subject to the approval of the appropriate committees of Congress, out of any unobligated amounts made available to the Secretary of the Interior, the Secretary may use to carry out this Act not more than \$2,500,000.

#### *Section 6. Savings clause*

Section 6 provides that nothing in this Act diminishes, changes, or otherwise affects (1) the water rights of the affected Indian tribes; (2) any other right (including treaty rights) of the affected Indian tribes; (3) the status of Indian reservation land or the boundaries of any reservation of an Indian tribe; or (4) any Congressional authorization of appropriations for the benefit of the affected Indian tribes.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business meeting on November 18, 2010, the Committee on Indian Affairs, by voice vote, adopted S. 3648, with an amendment in the nature of a substitute, and ordered the bill reported to the Senate, with the recommendation that the Senate do pass S. 3648, as amended.

#### COST AND BUDGETARY CONSIDERATIONS

##### *S. 3648—Pick-Sloan Tribal Commission Act of 2010*

S. 3648 would authorize the Department of the Interior (DOI) to spend \$2.5 million of unobligated balances from funds already appropriated to the department to establish the Pick-Sloan Tribal Commission. The commission would recommend actions to resolve certain disputes between the federal government and several Indian tribes. Enacting S. 3648 would affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that there would be no net effect on direct spending over the 2011–2020 period. Enacting the legislation would not affect revenues.

Because the legislation would authorize the Secretary to use funds already appropriated for other activities to establish the commission, CBO estimates that implementing S. 3648 would increase

direct spending by \$2.5 million over the 2011–2012 period and reduce such spending by that amount in 2015 when those funds would have otherwise been spent. If DOI still carries out the activities for which those funds were originally appropriated, implementing the bill would require an appropriation of \$2.5 million in 2015 to replace the funds used to establish the commission.

S. 3648 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 3648 would increase direct spending over the 2011–2012 period and decrease it in 2015, resulting in no net effect on direct spending over the 2011–2020 period. The net budgetary changes that are subject to pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR S. 3648, THE PICK-SLOAN TRIBAL COMMISSION ACT OF 2010, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON INDIAN AFFAIRS ON NOVEMBER 18, 2010

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
NET INCREASE OR DECREASE (-) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact .....	2	1	0	0	-3	0	0	0	0	0	0	0

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has not received any Executive Communications regarding S. 3648.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that the regulatory and paperwork impact of S. 3648 will be minimal.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 3648 will not make any changes in existing law.