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**Draft of a Bill to Establish the Procedure for Taking of Indian Lands and Rights for the Missouri River Development Projects; to Protect Indian Tribal and Personal Rights; to Provide for the Rehabilitation and to Secure the Economic Independence of said Indians, Undated**

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Draft of

A BILL

To establish the procedure for taking of Indian lands and rights for the Missouri River Development Projects; to protect Indian tribal and personal rights; to provide for the rehabilitation and to secure the economic independence of said Indians.

Be it enacted, etc.

When in the course of construction of public works authorized by the Act of December 22, 1944 (58 Stat. 887), entitled, "An Act authorizing the construction of certain public works on rivers and harbors for flood control and for other purposes", and Acts amendatory thereof or supplemental thereto, it is now or may become necessary in the public interest to acquire or take the title to Indian tribal lands, individual Indian lands or interests held therein by Indians by allotment, assignment, inheritance or devise, the procedure to acquire such Indian title and interests shall be as follows:-

Sec. 2. The Chief of Engineers, U. S. Army, hereinafter called "Chief of Engineers", shall determine the area of land necessary for the construction and operation of each project for which appropriations have been made or may hereafter be made under said Act of December 22, 1944, and shall prepare maps or plats which show the perimeter of each area to be taken, which is hereinafter designated as the "taking line", and the land within the perimeter is designated as the "taking area". Copies of each such map shall be furnished to the Commissioner of Indian Affairs, hereinafter called the "Commissioner", who shall thereupon designate by description and by appropriate map or plat the lands in which Indians have an interest, which interest arises out of treaty rights, allotment rights, or any other right arising out of any statutory provision relating to Indian lands.

*Sec. 3.* For each said project there shall be appointed a Board of Appraisers of three members, one to be designated by the Chief of Engineers, one by the Commissioner, and one by the Secretary of the United States Department of Agriculture, hereinafter referred to as "Agriculture."

It shall be the duty of the Board of Appraisers to prepare a schedule of the tribal lands, individual allotted lands, inherited lands, and lands passing by devise or held under assignment under the Act of June 18, 1934 (48 Stat. 984), or Acts amendatory thereof or supplemental thereto. The said schedule shall set out what is, in the opinion of the Board of Appraisers, the fair value of the lands and improvements, giving full and proper weight to the following elements of appraisal:-

The value of each tract of land<sup>and improvements</sup>, whether full interest or partial interest, including the value of standing timber, minerals, water, oil and gas, and the uses to which the lands are reasonably adapted and could be used if the particular project had not been authorized, and in addition the increased value of land held in trust and exempt from taxation, liens, judgments and alienation. Upon completion of the said schedule of appraisal, it shall be submitted to the Chief of Engineers, the Commissioner, and Agriculture.

*Sec. 4.* Upon receipt of such schedule of appraisal, the Commissioner, the Chief of Engineers and the Secretary of Agriculture shall indicate their approval or disapproval, and if disapproved shall return the schedule to the Board of Appraisers with their objections stated in writing. A majority of said Board of Appraisers shall then make the final decision.



Upon an agreement being reached, the said schedule shall be deposited with the Chief of Engineers, the Secretary of the Interior and the Secretary of Agriculture. Thereupon the Commissioner shall transmit true copies of the schedule of appraisal in its entirety to the tribal council ~~of the Indians~~ of the Indians affected thereby, which council, <sup>is</sup> ~~is~~ duly acting as such under the said Act of June 18, 1934; and if the particular tribe or group of Indians is not organized under said Act, then to whatever representative body of such unorganized tribe or group of Indians as may have been elected by the particular tribe or group of Indians, and which tribal council is recognized by the Secretary of the Interior as representative of the Indian tribe or group of Indians affected by the particular project for which the schedule of appraisal has been prepared. The individual Indians, whether holding complete or partial interest in the lands, shall likewise be notified by the Commissioner of that portion of schedule of appraisal which relates to their particular land holdings or interests in lands.

*Sec. 5* The tribal council or councils, qualified as above stated, and the individual Indians affected by the schedule of appraisal shall have ninety days from receipt of such schedule of appraisal or the indicated portion thereof in which to present to the Commissioner their objections, if any, for reconsideration by the Commissioner and action thereon by him and the Board of Appraisers.

The right of the tribe or tribes and of the allottees, devisees, heirs and assignees to accept or refuse the schedule of appraisal covering their respective property and interests is reserved to them. In the event the said tribal councils and individuals accept the schedule of appraisal as to their several interests, payment



shall be made to the said tribal council or councils and to the said individuals in accordance with said accepted schedule of appraisal, as hereinafter provided. In the event the said tribal council or councils or any individual rejects the schedule of appraisal, the Chief of Engineers shall institute proceedings in the United States District Court for the District in which the particular taking area is located for the purpose of having just compensation for such property judicially determined; and jurisdiction is hereby conferred upon said Court in each United States District to hear and determine the question presented and any judgment in each such case shall be entered against the United States and shall be paid out of the funds appropriated or hereafter appropriated for the particular project involved. In all proceedings instituted in accordance with this Section, individual members of the tribe may request the Commissioner of Indian Affairs to designate an attorney of the Bureau of Indian Affairs to represent them, the individual Indians. The tribe or tribes shall have the same rights as the individual members of the tribe.

*Sec. 6* The amount determined to be due the tribe or tribes and the individual allottees, their heirs or assignees, shall be deposited to the credit of the tribal council or councils and to the credit of individual Indians in the tribal council account or in the individual Indian money accounts, as their interest may appear in the approved schedule of appraisal and in the final judgment entered by the respective United States District Courts, whereupon title in fee to the lands as set out in said schedule of appraisal shall vest in the United States.

*Sec. 7* The tribe or tribes and the members thereof may salvage, remove, reuse, sell, or otherwise dispose of all or any part of their improvements within the taking area without any deduction therefor in the approved schedule of appraisal, subject to the condition that the

district engineer for the District in which such project is located may not enter on said lands for the purpose of clearing the said improvements until one year prior to the completion of said project; and subject further to the condition that the district engineer shall serve notice of such purpose at least three months prior to the impoundment of waters of said project.

*Sec. 8* The tribe or tribes and members thereof shall have the privilege of cutting timber and all forest products and removing sand and gravel, lignite or other minerals, and may use, sell or otherwise dispose of same until one year prior to the completion of the said project and the impoundment of the waters thereof from lands within the taking area and covered by said schedule of appraisal, without any deduction therefor in the schedule of appraisal; and subject to the further condition that the district engineer for the District in which said project is located shall serve notice at least three months prior to the impoundment of the waters of said project. Notice provided in this and the last preceding paragraph shall be by posting of signs, the publication of notice in legal news papers within the county and State wherein said project is located, and by delivering to the tribal council or councils and to each resident individual Indian affected thereby a notice in writing stating the day when waters of the project will be impounded. Upon the expiration of the period stated in the several notices hereby required, no damage for loss of life or property due solely to the impoundment of the waters of said project may be claimed, but the Chief of Engineers and the Commissioner shall extend all aid to prevent such losses as may threaten to arise by reason of the impoundment of said waters.

Sec. 9. In addition to the total sum awarded by the schedule of appraisal, a further sum to be known as the rehabilitation fund is hereby authorized to be appropriated upon the recommendation of the Commissioner to the Congress as to the amount in dollars required for each tribe falling within the provisions of this Act for the rehabilitation of each such tribe as is hereinafter set out. The Commissioner shall take into account the needs and requests of each tribe and tribal council in making his recommendation. The sum so appropriated shall be placed to the credit of the tribe as tribal money held in trust by the United States, with interest thereon at 4 per cent per annum, from the date of each such appropriation, until expended, which said sum, when appropriated by the Congress, shall be available for expenditure upon the order of the tribal council, with the approval of the Commissioner, for the general purposes of removal, relocating and re-establishing the members of the tribe who reside within each particular taking area, including the rehabilitation of said Indians and to provide for the economic welfare of the Indians so required to remove from the taking area and as well the Indians of each such tribe who reside outside the taking area, but within the residue of the original reservation as it existed under treaty, law or executive order of the United States.



The sum appropriated for each said tribe shall be dedicated to the purposes above stated to put the Indians whose lands have been taken and the tribe affected by each such project in an economic condition better than they now are in and in such condition that their complete economic independence can be reasonably expected within twenty years from and after the date of this Act. No portion of the said fund shall be expended by any agency of the government for any expense or cost incurred by it in carrying out the terms of this Act. In the event that the needs of any one or more of the said tribes or the requests made to the Commissioner involve conditions or circumstances which are not covered by the provisions of this Act, then in addition to the sum recommended by the Commissioner, he shall recommend additional legislative provisions to meet such circumstances and conditions as are peculiar to any one or more of said tribes.

Sec. 10. The cost of relocating and re-establishing government-owned building, facilities, roads and bridges affected by each such project shall be paid from appropriations made for the construction of such project, and funds for these purposes may, in the dis-

cretion of the Chief of Engineers, be transferred to the Commissioner for expenditure.

~~Sec. 11.~~ The administrative responsibility for the removal, relocation and re-establishment of the tribes and the members thereof shall be vested in the Commissioner. The Commissioner shall prepare a plan of removal for each project, together with the estimates of cost, and submit the same to the Chief of Engineers. Upon approval by the Chief of Engineers, the plan and estimates shall be transmitted to the tribal council and on approval by the tribal council, the Commissioner shall carry out such plan. The plan shall include but shall not be restricted to the cost of transporting to their new locations members of the tribe, their household goods, farming equipment, livestock and other moveable property, the cost of constructing fences and of developing domestic and livestock water supplies on the residual reservation as it may be extended, and the cost of dismantling, transporting, and re-erecting salvageable buildings and improvements.

~~Sec. 12~~ The Commissioner shall prepare a plan for each project, together with cost estimates, for the relocation and re-establishment of tribal monuments, shrines and other tribal facilities, and for the disinterment and reinterment of all Indian bodies within the taking area, as may be designated by the tribal council, allottees, heirs, and churches, and submit the same to the Chief of Engineers. Upon approval of the plan and cost estimates by the Chief of Engineers, the Commissioner shall transmit the same to the tribal council, and upon approval by it, the Commissioner shall carry out such plan.

*Sec. 13.* The amount determined to be due each tribe for tribal lands and interests under the terms and conditions of this Act shall be held in trust by the United States for said tribe and may be used to acquire such other lands or other tribal property, or for such other purposes, as may be determined by the tribal council, with the approval of the Commissioner. All lands thus acquired shall be held by the United States in trust for the benefit of the tribe as tribal lands and shall be inalienable and non-taxable until otherwise provided by Congress, notwithstanding any other restrictions on the purchase of land under any other law.

Title to new lands acquired with the proceeds deposited to the credit of the allottees or heirs shall be taken in the name of the United States in trust for the individual Indians entitled thereto, and shall be non-alienable and non-taxable until otherwise provided by Congress.

*Sec. 14.* Within two years from the date of this Act the Commissioner, with the approval of each tribal council, shall transmit to the Chief of Engineers a plan for the use of the land between the taking line and the actual water line of each such project. The said plan shall be based upon the fullest development of the residual reservation for the purposes to which the land is best adapted, and shall be accompanied by one or more maps upon which the areas required for such use shall be delimited. Upon approval of the plan by the Chief of Engineers, the areas delimited for the said use shall be permanently reserved to each tribe and the members thereof, and may not be reduced or changed thereafter except with the consent of the Commissioner and approval of the tribal council. The council may promulgate rules and regulations for the utilization of the areas so reserved.



In the preparation of the said use plan, the Commissioner shall, upon the advice of the Chief of Engineers, eliminate any feature which would interfere with the operation of each such project, but no reservation of land below the taking line of each such project for park, recreational, or wildlife conservation within the reservation shall operate to interfere with the prior right of the tribe and the members thereof to the areas delimited by the Commissioner and approved by the Chief of Engineers, notwithstanding the provisions of Section 4 of the Flood Control Act of December 22, 1944 (58 Stat. 887; Public Law no. 534, 78th Congress) as amended or supplemented by Section 4 of the Flood Control Act of July 24, 1946 (Public Law No. 526, 79th Congress).

~~Sec. 15~~ Each tribal council shall cooperate with the government and with the State or States in the conservation, development, and utilization of the wildlife resources within the taking area. The hunting and trapping rights of each tribe and the members thereof, as presently established, are expressly reserved to them, and each tribal council shall have the right to issue <sup>hunting and trapping</sup> licenses in accordance with tribal regulations. Each tribe and the members thereof shall be entitled to fish in each such project under such rules and regulations as the Chief of Engineers may establish, but they shall not be required to pay any license fee therefor.

~~Sec. 16~~ The right is reserved to each tribe for use by its members, under such terms and conditions as shall be determined upon by the tribal council and in accordance with plans approved by the Chief of Engineers, to establish boat harbors, wharfs and recreational areas on Indian lands within the taking area, provided that service and dock privileges

shall not be made available to non-members of the tribe within the taking area of the said project located within the exterior boundaries of the reservation except in accordance with regulations and schedules of rates approved by the tribe with the concurrence or approval of the Chief of Engineers.

*Sec. 17* When electric power is available from the public works authorized by the said Act of December 22, 1944, there is hereby reserved and set aside a block of power amounting to at least 5 kilowatts per capita of the enrolled members of each tribe, which falls within the provisions of this Act, to be delivered at a point or points on each reservation and at a voltage to be determined by the Commissioner for use or sale by the tribe on the residual reservation as it may be extended, and each tribe shall pay for the amount of power used or sold at a rate not to exceed the lowest rate paid by any purchaser of power from said public works. Until such time as the tribe shall require for use on the reservation for tribal enterprises and other enterprises, and for individual members and for sale within the exterior boundaries of the reservation, as it may be extended, the amount of the reserved unit of power, the residual power not actually being used or sold by each such tribe may be used or sold by the United States or its agency as may be required off the reservation. This electric energy may be used or sold for any and all purposes as may be determined upon by each tribal council, with the approval of the Commissioner, at rates approved by the Commissioner.

*Sec. 18.* If, in the future, sub-surface values are discovered within each or any taking area, which if known at this time would increase the value of said area, and said values are reduced to money, then

each tribe shall be entitled to have paid to it a royalty of one-eighth of the money received for such values. Said royalties shall be deposited to the tribal funds, or paid to allottees or heirs as their interests may appear.

**Sec. 19.** That, under the direction of the Secretary of the Interior there shall be made complete investigations on each project as to the feasibility of providing irrigation for any Indian individual or tribal trust lands within the residual reservation as it may be extended, including any such lands acquired in the future. Any irrigation works and related facilities which, on the basis of such investigations, the Secretary of the Interior determines to be feasible are hereby authorized to be constructed, maintained, and operated under his direction. The facilities thus provided for the irrigation of Indian lands shall not be less favorable to the Indian lands than for non-Indian lands provided with such irrigation facilities, and the cost assessable against the land properly chargeable as an irrigation cost shall be not more than the cost of providing similar facilities to other lands receiving benefits from each such project. The repayment of the share of the cost to be borne by the Indian lands shall be subject to the terms and conditions of other laws applicable to Indian lands, including the Act of July 1, 1932 (47 Stat. 564-565).

**Sec. 20.** In no event shall any portion of any or all funds appropriated under the authority of this Act become liable, payable, or subject to any debt or debts of the tribe or tribes and the members thereof contracted prior to the passage of this Act, except debts to the United States or the tribe or tribes.



Sec. 21. The foregoing conditions, requirements and funds made available and those authorized to be appropriated in this Act, when accepted by the tribal council or councils and appropriated by Congress, shall be in complete and final settlement of all the right, interests, and claims whatsoever of the tribe or tribes and the members thereof against the United States by reason of the construction of each such project: Provided, That no funds authorized in this Act shall be made available to the tribe or tribes or their members until the Secretary of the Interior has received an appropriate resolution adopted by the tribal council or councils and approved in writing by a majority of the adult members of said tribe or tribes as accepting the payment authorized by this Act as full, complete, and final settlement of all rights, interests, and claims whatsoever of the tribe or tribes and the members thereof against the United States by reason of the construction of each such project.

Sec. 22. The acceptance of this Act by the tribes and the members thereof affected thereby, as herein required, shall be made within nine months from the date of the Act making appropriation for the rehabilitation fund provided in Section 9 hereof, and shall be made known to the Secretary of the Interior by filing proof of such acceptance with the Secretary of the Interior in form satisfactory to him and he shall thereupon declare this Act to be in full force and effect, as to each tribe accepting this Act as herein provided.

Sec. 23. The provisions of this Act shall, for the purposes of this Act, supersede the provisions of each and every other Act which are in conflict with the provisions of this Act: Provided, however, That the Act of October 29, 1949, Public Law 437, 41st Congress, shall remain in full force and effect, but said Act shall be supplemented by Sections 14, 15, 16, 17, 18, and 19 of this Act.