

CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

S. 964

TO PROVIDE FOR EQUITABLE COMPENSATION FOR THE CHEYENNE
RIVER SIOUX TRIBE

AUGUST 3, 1999
WASHINGTON, DC



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CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION ACT

TUESDAY, AUGUST 3, 1999

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:42 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUE. Before we proceed, I would like to extend my apologies to all of you. I was leaving my office in a timely fashion, but I was confronted suddenly with 25 constituents, and I am certain that our first witness will understand why I had to stop and have a little chit-chat and extend my Aloha to my constituents; otherwise, I would not be sitting here.

I have a prepared statement, but I would prefer to listen to the man who made this possible, Tim Johnson, working together with the leader of our party, Tom Daschle. They made this bill, S. 964, a reality, and I can assure you that on behalf of the chairman and the members of this committee, we intend to report this matter out at the soonest possible time. That means, maybe tomorrow.

[Text of S. 964 follows:]

106TH CONGRESS
1ST SESSION

S. 964

To provide for equitable compensation for the Cheyenne River Sioux Tribe,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 5, 1999

Mr. DASCHLE introduced the following bill; which was read twice and referred
to the Committee on Indian Affairs

A BILL

To provide for equitable compensation for the Cheyenne
River Sioux Tribe, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cheyenne River Sioux
5 Tribe Equitable Compensation Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) by enacting the Act of December 22, 1944,
9 (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et
10 seq.), commonly known as the “Flood Control Act of

1 1944", Congress approved the Pick-Sloan Missouri
2 River Basin program (referred to in this section as
3 the "Pick-Sloan program")—

4 (A) to promote the general economic devel-
5 opment of the United States;

6 (B) to provide for irrigation above Sioux
7 City, Iowa;

8 (C) to protect urban and rural areas from
9 devastating floods of the Missouri River; and

10 (D) for other purposes;

11 (2) the Oahe Dam and Reservoir project—

12 (A) is a major component of the Pick-
13 Sloan program, and contributes to the economy
14 of the United States by generating a substan-
15 tial amount of hydropower and impounding a
16 substantial quantity of water;

17 (B) overlies the eastern boundary of the
18 Cheyenne River Sioux Indian Reservation; and

19 (C) has not only contributed little to the
20 economy of the Tribe, but has severely damaged
21 the economy of the Tribe and members of the
22 Tribe by inundating the fertile, wooded bottom
23 lands of the Tribe along the Missouri River that
24 constituted the most productive agricultural

1 and pastoral lands of the Tribe and the home-
2 land of the members of the Tribe;

3 (3) the Secretary of the Interior appointed a
4 Joint Tribal Advisory Committee that examined the
5 Oahe Dam and Reservoir project and correctly con-
6 cluded that—

7 (A) the Federal Government did not jus-
8 tify, or fairly compensate the Tribe for, the
9 Oahe Dam and Reservoir project when the Fed-
10 eral Government acquired 104,492 acres of land
11 of the Tribe for that project; and

12 (B) the Tribe should be adequately com-
13 pensated for the land acquisition described in
14 subparagraph (A);

15 (4) after applying the same method of analysis
16 as is used for the compensation of similarly situated
17 Indian tribes, the Comptroller General of the United
18 States (referred to in this Act as the “Comptroller
19 General”) determined that the appropriate amount
20 of compensation to pay the Tribe for the land acqui-
21 sition described in paragraph (3)(A) would be
22 \$290,722,958;

23 (5) the Tribe is entitled to receive additional fi-
24 nancial compensation for the land acquisition de-
25 scribed in paragraph (3)(A) in a manner consistent

1 with the determination of the Comptroller General
2 described in paragraph (4); and

3 (6) the establishment of a trust fund to make
4 amounts available to the Tribe under this Act is con-
5 sistent with the principles of self-governance and
6 self-determination.

7 (b) PURPOSES.—The purposes of this Act are as fol-
8 lows:

9 (1) To provide for additional financial com-
10 pensation to the Tribe for the acquisition by the
11 Federal Government of 104,492 acres of land of the
12 Tribe for the Oahe Dam and Reservoir project in a
13 manner consistent with the determinations of the
14 Comptroller General described in subsection (a)(4).

15 (2) To provide for the establishment of the
16 Cheyenne River Sioux Tribal Recovery Fund, to be
17 managed by the Secretary of the Treasury in order
18 to make payments to the Tribe to carry out projects
19 under a plan prepared by the Tribe.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) **TRIBE.**—The term “Tribe” means the
23 Cheyenne River Sioux Tribe, which is comprised of
24 the Itazipco, Siha Sapa, Minniconjou, and
25 Oohenumpa bands of the Great Sioux Nation that

1 reside on the Cheyenne Reservation, located in cen-
2 tral South Dakota.

3 (2) TRIBAL COUNCIL.—The term “Tribal Coun-
4 cil” means the governing body of the Tribe.

5 **SEC. 4. CHEYENNE RIVER SIOUX TRIBAL RECOVERY TRUST**
6 **FUND.**

7 (a) CHEYENNE RIVER SIOUX TRIBAL RECOVERY
8 TRUST FUND.—There is established in the Treasury of
9 the United States a fund to be known as the “Cheyenne
10 River Sioux Tribal Recovery Trust Fund” (referred to in
11 this Act as the “Fund”). The Fund shall consist of any
12 amounts deposited into the Fund under this Act.

13 (b) FUNDING.—Out of any money in the Treasury
14 not otherwise appropriated, the Secretary of the Treasury
15 shall deposit \$290,722,958 into the Fund not later than
16 60 days after the date of enactment of this Act.

17 (c) INVESTMENT OF TRUST FUND.—It shall be the
18 duty of the Secretary of the Treasury to invest such por-
19 tion of the Fund as is not, in the Secretary of Treasury’s
20 judgment, required to meet current withdrawals. Such in-
21 vestments may be made only in interest-bearing obliga-
22 tions of the United States or in obligations guaranteed as
23 to both principal and interest by the United States. The
24 Secretary of the Treasury shall deposit interest resulting
25 from such investments into the Fund.

1 (d) PAYMENT OF INTEREST TO TRIBE.—

2 (1) IN GENERAL.—

3 (A) WITHDRAWAL OF INTEREST.—Begin-
4 ning at the end of the first fiscal year in which
5 interest is deposited into the Fund, the Sec-
6 retary of the Treasury shall withdraw the appli-
7 cable percentage amount of the aggregate
8 amount of interest deposited into the Fund for
9 that fiscal year (as determined under subpara-
10 graph (B)) and transfer that amount to the
11 Secretary of the Interior for use in accordance
12 with paragraph (2). Each amount so trans-
13 ferred shall be available without fiscal year limi-
14 tation.

15 (B) APPLICABLE PERCENTAGE
16 AMOUNTS.—The applicable percentage amount
17 referred to in subparagraph (A) shall be as fol-
18 lows:

19 (i) 10 percent for the first fiscal year
20 for which interest is deposited into the
21 Fund.

22 (ii) 20 percent for the 2d such fiscal
23 year.

24 (iii) 30 percent for the 3rd such fiscal
25 year.

1 (iv) 40 percent for the 4th such fiscal
2 year.

3 (v) 50 percent for the 5th such fiscal
4 year.

5 (vi) 60 percent for the 6th such fiscal
6 year.

7 (vii) 70 percent for the 7th such fiscal
8 year.

9 (viii) 80 percent for the 8th such fis-
10 cal year.

11 (ix) 90 percent for the 9th such fiscal
12 year.

13 (x) 100 percent for the 10th such fis-
14 cal year, and for each such fiscal year
15 thereafter.

16 (2) PAYMENTS TO TRIBE.—

17 (A) IN GENERAL.—The Secretary of the
18 Interior shall use the amounts transferred
19 under paragraph (1) only for the purpose of
20 making payments to the Tribe, as such pay-
21 ments are requested by the Tribe pursuant to
22 tribal resolution.

23 (B) LIMITATION.—Payments may be made
24 by the Secretary of the Interior under subpara-

1 graph (A) only after the Tribe has adopted a
2 plan under subsection (f).

3 (C) USE OF PAYMENTS BY TRIBE.—The
4 Tribe shall use the payments made under sub-
5 paragraph (B) only for carrying out projects
6 and programs under the plan prepared under
7 subsection (f).

8 (D) PLEDGE OF FUTURE PAYMENTS.—

9 (i) IN GENERAL.—Subject to clause
10 (ii), the Tribe may enter into an agreement
11 under which the Tribe pledges future pay-
12 ments under this paragraph as security for
13 a loan or other financial transaction.

14 (ii) LIMITATIONS.—The Tribe—

15 (I) may enter into an agreement
16 under clause (i) only in connection
17 with the purchase of land or other
18 capital assets; and

19 (II) may not pledge, for any year
20 under an agreement referred to in
21 clause (i), an amount greater than 40
22 percent of any payment under this
23 paragraph for that year.

24 (e) TRANSFERS AND WITHDRAWALS.—Except as
25 provided in subsections (c) and (d)(1), the Secretary of

1 the Treasury may not transfer or withdraw any amount
2 deposited under subsection (b).

3 (f) PLAN.—

4 (1) IN GENERAL.—Not later than 18 months
5 after the date of enactment of this Act, the govern-
6 ing body of the Tribe shall prepare a plan for the
7 use of the payments to the Tribe under subsection
8 (d) (referred to in this subsection as the “plan”).

9 (2) CONTENTS OF PLAN.—The plan shall pro-
10 vide for the manner in which the Tribe shall expend
11 payments to the Tribe under subsection (d) to pro-
12 mote—

13 (A) economic development;

14 (B) infrastructure development;

15 (C) the educational, health, recreational,
16 and social welfare objectives of the Tribe and
17 its members; or

18 (D) any combination of the activities de-
19 scribed in subparagraphs (A) through (C).

20 (3) PLAN REVIEW AND REVISION.—

21 (A) IN GENERAL.—The Tribal Council
22 shall make available for review and comment by
23 the members of the Tribe a copy of the plan be-
24 fore the plan becomes final, in accordance with
25 procedures established by the Tribal Council.

1 (B) UPDATING OF PLAN.—The Tribal
2 Council may, on an annual basis, revise the
3 plan to update the plan. In revising the plan
4 under this subparagraph, the Tribal Council
5 shall provide the members of the Tribe oppor-
6 tunity to review and comment on any proposed
7 revision to the plan.

8 (C) CONSULTATION.—In preparing the
9 plan and any revisions to update the plan, the
10 Tribal Council shall consult with the Secretary
11 of the Interior and the Secretary of Health and
12 Human Services.

13 (4) AUDIT.—

14 (A) IN GENERAL.—The activities of the
15 Tribe in carrying out the plan shall be audited
16 as part of the annual single-agency audit that
17 the Tribe is required to prepare pursuant to the
18 Office of Management and Budget circular
19 numbered A-133.

20 (B) DETERMINATION BY AUDITORS.—The
21 auditors that conduct the audit described in
22 subparagraph (A) shall—

23 (i) determine whether funds received
24 by the Tribe under this section for the pe-
25 riod covered by the audit were expended to

1 carry out the plan in a manner consistent
2 with this section; and

3 (ii) include in the written findings of
4 the audit the determination made under
5 clause (i).

6 (C) INCLUSION OF FINDINGS WITH PUBLI-
7 CATION OF PROCEEDINGS OF TRIBAL COUN-
8 CIL.—A copy of the written findings of the
9 audit described in subparagraph (A) shall be in-
10 sserted in the published minutes of the Tribal
11 Council proceedings for the session at which the
12 audit is presented to the Tribal Council.

13 (g) PROHIBITION ON PER CAPITA PAYMENTS.—No
14 portion of any payment made under this Act may be dis-
15 tributed to any member of the Tribe on a per capita basis.

16 **SEC. 5. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS**
17 **AND SERVICES.**

18 No payment made to the Tribe under this Act shall
19 result in the reduction or denial of any service or program
20 with respect to which, under Federal law—

21 (1) the Tribe is otherwise entitled because of
22 the status of the Tribe as a federally recognized In-
23 dian tribe; or

1 (2) any individual who is a member of the Tribe
2 is entitled because of the status of the individual as
3 a member of the Tribe.

4 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated such funds
6 as may be necessary to carry out this Act, including such
7 funds as may be necessary to cover the administrative ex-
8 penses of the Fund.

The CHAIRMAN. This is a story of a dark day for the United States Government in its relationship with the Cheyenne River Sioux. This is one of the tribes that suffered as a result of our desire to make lands available to the new arrivals. So if I may, without further ado, call upon our illustrious Senator, Tim Johnson.

[Prepared statement of Senator Inouye appears in appendix]

**STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM
SOUTH DAKOTA**

Senator JOHNSON. Well, thank you, Mr. Chairman. I know that with your very intensely busy schedule, we very much appreciate your finding the time, as you always do, to take up high priority matters involving Native American issues.

I would observe from the outset that our tribal leadership from Cheyenne River were here exactly on time, but I have explained to them that sometimes we operate on Senate time in Washington, which is notoriously unreliable.

Senator INOUE. And when you add Hawaiian time. [Laughter.]

Senator JOHNSON. But again, thank you for this opportunity to testify this morning, Mr. Chairman.

S. 964 is the Cheyenne River Sioux Tribal Equitable Compensation Act, and it is the highest legislative priority for the Cheyenne River Sioux Tribe. This legislation would establish a trust fund within the Department of the Treasury for the development of certain tribal infrastructure projects for the tribe, as compensation for lands lost to Federal public works projects. We have some ideas about capitalization of the trust fund, utilizing hydropower revenues, as has been the case with previous trust fund initiatives that have passed this Congress. However, we understand that there is an interest in reviewing optional funding mechanisms, and we want to work with the Ranking Member and the chairman to finalize a satisfactory approach to that issue.

As Vice Chairman Inouye and his staff appreciate, the Lower Brule Sioux Tribe Infrastructure Development Trust Fund, as well as the Crow Creek legislation, passed in the last Congress, along with the 1992 Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act. All these did utilize hydropower revenues. But again, we are open to further discussion on that issue.

Over 100,000 acres of the Cheyenne River Tribe's most fertile and productive land, the basis for its tribal economy, was inundated with the construction of the Oahe Reservoir in South Dakota, forcing the relocation of roughly 30 percent of the tribe's population, including four entire communities. Some of the most extreme poverty in America is found on South Dakota's Lakota and Dakota Reservations. The revenues generated by this trust fund would be utilized according to a development plan, based on legislation which was previously passed by Congress and prepared in conjunction with the Bureau of Indian Affairs and the Indian Health Service, so that it is our hope to have a trust fund in a range of about \$290 million, which is what independent research has indicated would be appropriate, given the magnitude and the scope of the losses suffered by the Cheyenne River Sioux Tribe dur-

ing the course of the construction of the Pick-Sloan Plan and the Oahe Reservoir in particular.

With these resources, the tribe would be in a much better position to combat the wide range of problems that they face on that reservation. I was most recently on the Cheyenne River for the opening of a youth center, and previous to that the opening of a kidney dialysis clinic facility. They are doing extraordinary things, utilizing private resources and revenues, what little resources the tribe has. This is not a gaming tribe; they have chosen not to go that route, and frankly, their geographic isolation would make that a marginal enterprise, were they to go that route. Obviously, that's a decision for the Cheyenne River to make for themselves, but up to this point they have chosen not to do that.

So the agricultural basis of their economy is largely livestock. We have done some things to restore buffalo as a significant contributor to the economy, but with the loss of their prime land base, inundated by the Oahe, there simply is no other alternative but to try to find some kind of trust fund which would allow them to go forward with the school, health care, and other infrastructure projects that are essential for Chairman Bourland and his tribal council members to develop a growing economy, both tribally-directed and private sector. They have had some success stories in terms of agricultural and retail facilities on the reservation. They have been, in my opinion, one of the better examples in South Dakota of a real bootstrap effort to try to promote both the private sector and a tribally-run level of energy in their economy. But without this kind of backup, it is going to be a very long and very difficult task.

So, Mr. Vice Chairman, I encourage your prompt action on this legislation. Senator Daschle is an enthusiastic backer in support of this legislation. I know that it was his intention to be here this morning, but, as you know, with all the things happening on the Floor here, it may or may not be possible for him to be here today. But we do have a number of members of the Cheyenne River Tribe here who are in a better position than anyone to answer any questions or to discuss the importance of this essential legislation.

Thank you.

[Prepared statement of Senator Johnson appears in appendix.]

Senator INOUYE. I thank you very much, Senator Johnson.

It would appear from the facts that you have presented that the wrong that was committed was rather deliberately committed by the Government of the United States, and this wrong has forever altered the lifestyle and the use of tribal lands, since 1948.

Would you suggest that the funding of this proposal, once agreed upon by the Congress and the administration, be appropriately treated as mandatory spending, or—if I may use a bad word—an entitlement? Because otherwise they may take away from other Interior programs.

Senator JOHNSON. I believe that's the only way we can move forward with this proposal. I think that what the tribe is in great need of is a steady and reliable continuity of revenue resource to deal with the long-term planning and construction needs of their infrastructure backlog. If it were to become a competitive situation

with other Interior Department priorities, the tug-of-war would be never-ending and the reliability would be in great doubt.

Frankly, I think that our past experience—part of the reason we are here promoting this trust fund approach is a reflection of the lack of success that we've had through alternative appropriations efforts. The backlog of school construction alone, as the vice chairman knows, is massive nationwide. We're not even appropriating enough money to keep from sliding backward in terms of school construction needs. This, along with economic development initiatives and health care and so on results in some form of committed trust fund as being really the only realistic approach to get the tribe out of this very deep financial hole that they find themselves in.

Senator INOUE. I join you in contending that if we continue the present funding programs the way it has been done, this tribe would have to wait for another 10 centuries before they receive what is due them—unless they find diamonds on their land, which I doubt very much.

Senator JOHNSON. It is very unlikely that they would find diamonds on their land. I would have to say that the Cheyenne River Sioux Tribe leadership has been progressive; they have explored every avenue, some of which have been modestly successful, trying to reduce their reliance on the whim of annual appropriations out of Washington, trying to generate more private sector and tribally-run economic success. They are in the process of establishing a tribal college. They don't have a building for it, but they are doing some wonderful things there with very limited resources. But again, unless there is some infusion of capital into their infrastructure needs, the likelihood of their turning the corner and developing an economy which will allow them to live with dignity and self-sufficiency is very slight.

Senator INOUE. I thank you very much, Senator Johnson. And as a result of your most energetic support, I can assure you that this committee will respond.

Senator JOHNSON. Thank you.

Senator INOUE. Thank you, sir.

Senator INOUE. Our next witness is the director of the Office of Trust Responsibilities of the Department of the Interior, Terry Virden.

Mr. Director, welcome, sir.

STATEMENT OF TERRY VIRDEN, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, DEPARTMENT OF THE INTERIOR

Mr. VIRDEN. Good morning, Mr. Chairman and members of the committee. I am pleased to be here today to present the views of the Department of the Interior on S. 964. I want to thank Senator Daschle for introducing this important bill that addresses impacts on the Cheyenne River Sioux Tribe resulting from the Pick-Sloan Missouri River Basin Program, and in particular the development of the Oahe Dam and Reservoir Project.

If enacted, this bill would give the tribe much-deserved benefits to compensate for those impacts.

S. 964 is a continuation of this country's efforts to correct inequities resulting from the regional Federal project which severely af-

fectured Indian tribal homelands along the Missouri River. In the early 1990's, the United States forthrightly addressed impacts to the Standing Rock Sioux Tribe, the Three Affiliated Tribes of the Fort Berthold Reservation, the Crow Creek Sioux Tribe, and the Lower Brule Sioux Tribe.

In 1944, the United States undertook the challenge to reduce flooding in the lower Missouri River Basin through the construction of monumental dams, capable of harnessing regional raging flows of the Missouri River. In addition, these dams could generate electrical power, but they needed hundreds of thousands of acres of land to serve as reservoirs for the storage of water for timed release.

The pre-project tribal economy was based on working the rich wooded bottoms along the Missouri River. These lands were flooded for the reservoir, and the tribe has never seen the former economy again. In addition, the importance of cultural treasures lost to inundation is now well known. These are impacts that bring special meaning to the word "recovery," used in purpose number 2 of S. 964.

While this is not the final chapter in addressing the compensation for all the river tribes in the region, a step taken for the Cheyenne River Sioux Tribe will bring the United States closer to providing full equity to those Missouri River tribes.

Although we support S. 964, we are still concerned about the pay as you go implications concerning the payment scheme to be used to arrive at the total figure for the Cheyenne River Sioux Tribe. Additionally, as noted in our testimony on S. 1905 during the 105th Congress, the administration is concerned that this type of off-budget financing approach appears to be without cost.

We will be happy to work with the committee on developing viable solutions.

This concludes my testimony for S. 964. I will be happy to respond to any questions.

Thank you.

[Prepared statement of Mr. Virden appears in appendix.]

Senator INOUE. Thank you very much, Mr. Director.

Naturally, the committee appreciates the administration's support of this bill, and we welcome your offer to work with us to make certain that the bill, if enacted, will be fully funded. However, I have a few questions to further clarify the situation.

Are you concerned about the identified offsets? Are you speaking of that?

Mr. VIRDEN. I believe so, yes.

Senator INOUE. In other words, is it accurate to say that the process that you are speaking of would mean that even though the administration and the Congress would approve and ratify this settlement, funding for that settlement is to be treated as discretionary spending, subject to offsets and caps?

Mr. VIRDEN. I am not sure of that answer. I would hope not.

Senator INOUE. But that is the unfortunate present system, is it not?

Mr. VIRDEN. Yes; I guess I could add, as one whose office is charged with helping the tribes manage resources, it makes it very

difficult to manage those resources effectively when we have to compete.

Senator INOUE. Then under the process that we have just described, to fund this project would mean that you would have to take moneys out of other Interior programs?

Mr. VIRDEN. I hope not. I'm not sure.

Senator INOUE. What if we came up with some legislative or legal scheme whereby this funding would be made mandatory, or an entitlement? So the funding would be over and above other Interior programs. You would not object to that, would you?

Mr. VIRDEN. No; we would not. We would prefer that.

Senator INOUE. You would support that?

Mr. VIRDEN. Yes.

Senator INOUE. Can we work toward that end?

Mr. VIRDEN. Yes.

Senator INOUE. Because I do not think the Cheyenne River Sioux Tribe would want to see their bounties resulting in losses for other tribes.

Mr. VIRDEN. I would agree with that.

Senator INOUE. So can we sit together and come up with legislative language that can bring this about? Because otherwise, it is almost a sham.

Mr. VIRDEN. Yes; we will work with you.

Senator INOUE. Because to do otherwise would be just telling the Cheyenne River Sioux Tribe, "Here is the solution; you can look at it, but do not touch it."

So I look forward to working with you, sir, to come up with language that will make this mandatory and an entitlement and not infringe upon other Interior programs and take away not a single dollar from other tribes.

Mr. VIRDEN. Thank you, Mr. Chairman.

Senator INOUE. I thank you very much, sir.

Senator INOUE. May I now call upon the vice chairman of the Cheyenne River Sioux Tribe of Eagle Butte, SD, Louis DuBray.

Chairman Dubray.

STATEMENT OF LOUIS DUBRAY, VICE CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE, EAGLE BUTTE, SD

Mr. DUBRAY. Good morning, Honorable Chairman Inouye. It is nice seeing you again.

My Lakota name is Mini Kola Kiya, which means friend of the water, and my English name is Louis DuBray. I am currently the vice chairman of the Cheyenne River Sioux Tribe. I certainly thank this committee for taking their precious time out to hear us out on this very important endeavor that we've been seeking for about 6 years now, or a little longer, more like 45 years longer.

On behalf of Chairman Gregg Bourland, I would like to submit his written testimony, along with my own, for the record, and I would like to thank you, Senator Inouye, Senator Tom Daschle, and Senator Johnson, who just got through testifying. At this time, for the record, I would like to introduce my distinguished colleagues who came along with me, tribal council members sitting just in back of me: James Chasing Hawk from district 5; Harold Frazier, in the middle, from district 4; and Juanita Young.

Senator INOUE. On behalf of the committee, I welcome all of you.

Mr. DUBRAY. Thank you, Mr. Chairman.

Senator INOUE. Before we proceed, may I assure you that your full prepared statement will be made part of the record.

Mr. DUBRAY. Thank you, Mr. Chairman.

Mr. Chairman, the Cheyenne River Sioux Tribe consists of approximately a little over 3 million acres of land within the exterior boundaries of the reservation. Along the Oahe Dam and Reservoir, there are 150 miles of shoreline that overlie the eastern boundary of the Cheyenne River Reservation.

My testimony is about 181 families that are displaced because of this, my own family being one of them. On behalf of the tribe—it is very important to me and all the rest of these people, but not only as an elected leader but on a personal basis, which is in my testimony—this was our very best land. There was timber, miles of timber, along that line that was totally destroyed. It is gone now. Back then I can remember, even as a child, that there were families that fed themselves. They didn't need Government assistance. I don't think anybody had more than 30 to 50 head of livestock, cattle, but because of that shelter that they had in the timber, and then the upper grazing in the summer, there were no fences; there was nothing. Nobody really had that much, but it was plenty to support their families. And they lived along that river and didn't need anything else. All of a sudden, it's gone.

For instance, my personal story, in 1952 I lost my mother—I was 12 years old at the time—in a car accident. Of course, then we never knew that all this stuff was coming about. I and my sister, 1 year older than me, and three younger brothers and a younger sister were left with my father for him to raise. Because of losing my mother—of course we didn't understand all this until we grew up and heard stories from our relatives—upon losing my mother, my father turned to alcohol and passed away, went to the spirit world, about 2 years later. The reason why, as we can see now, is because of this. We had about 640 acres, a section of the very best bottomland, right at the mouth of one of the tributaries, the Moreau River, which empties into the Oahe now, the Missouri then. All that went under.

Upon learning that, upon losing his wife, upon losing all that land and getting compensated only one-half of what it was really worth, my father turned to alcohol, and it killed him, leaving us more or less orphans. But because of the Lakota way, our family members took us in and raised us, and did a pretty good job of it.

This is just one story out of that 181 families, of some of the devastation. I know there are many more that are far worse than that. It's affecting families today; you can see it. I remember some of the names of some of the people who were jammed into these small communities because of it. It is still causing them devastation. Some of the young people don't understand it, don't realize that their ancestors had it made down there on that bottomland.

We need this money. We need this trust fund badly. It is really going to put Cheyenne River on its feet. As was mentioned earlier by our good Senator Johnson, we chose not to go into gaming, the Cheyenne River Sioux Tribe. I guess we have to credit our chair-

man, our tribal leadership, and a lot of the people throughout the communities on the moral issue of gaming. That's controversial, when you start talking about getting compacts.

Another thing is our jurisdiction. We feel that any tribe back home that has entered into a compact with the State has given up, even though it's a tiny bit—they have given up some jurisdiction. We are pretty set against any type of giving that up. The Cheyenne River Sioux Tribe has always stood on that.

So those are two of the reasons why we are not into gaming. We have no disrespect for the tribes that are, or the States, because it does supplement their income, we realize that, and we support them for doing that, because they badly need funding. So we have no disrespect. We want the committee to understand that we don't disrespect that.

I foresee health care—right now they're talking about a nursing home. We don't have a nursing home. Our elders have to be sent off the reservation to State-chartered nursing homes, and they don't last very long there because they are not with their own. That's one of the tribe's top priorities right now, looking into getting that, and we're getting some help from the State.

Our roads are terrible. Our lending—we don't have any lending. We are trying to establish a bank with a national bank, with a branch off of that, so that we can provide our agriculture people with a source of lending.

Like I said before, it's long overdue. It is 45 years overdue, and I really want to commend you, Senator Inouye, Senator Daschle, Senator Johnson, and our Congressmen—John Thune, our congressional people—for finally making a commitment to one of the things that Carl Mundt promised a long time ago, when this was negotiated in 1954. Because of us being undercut by that 83d Congress, Carl Mundt made a statement. Our tribe was very opposed to this at that time; they came out against it. They asked President Eisenhower to veto it. They couldn't accept this, they said, at that time. But Carl Mundt said, "Accept it, and we'll come back with an amendment next year." He talked our tribal leadership into accepting, with that in mind. That hasn't happened. That hasn't been attempted until now, 45 years later. That's why I am commending these people; 45 years later they are coming back with that amendment to make it right. They truly gained the respect of the Cheyenne River Sioux Tribe membership.

So in closing, Mr. Chairman, and with all due respect, I truly believe that you will find it in your minds and your hearts to treat us, the first Americans of this country, the same as your predecessors treated the war-torn nations of World War II when their economies were destroyed. As you recall, they came up with the marshall plan where millions and billions of dollars were sent to restore those economies. Our economy was destroyed before this, when the buffalo were taken; that was our economy. That was totally destroyed. This just helped destroy some of our resources.

So with all due respect, we ask that you do this.

In closing, I guess that kind of sums it up on behalf of my tribe. Thank you, Mr. Chairman.

[Prepared statements of Mr. DuBray and Mr. Bourland appear in appendix.]

Senator INOUYE. Mr. Vice Chairman, I thank you for your eloquent and moving statement. If I may summarize what you have just told us, in 1948 the U.S. Government decided to build the Oahe Dam and Reservoir, so they took over 104,000 acres of land, forcibly relocated about one-third of your tribe, took away your timber and your cattle, and also deprived you of your traditional hunting grounds, your gathering grounds, your sacred ceremonial grounds. And in 1954, as you put it, they passed a bill which was, at best, insulting to you, and at worst, totally inadequate. And now we have something before us that you support.

I can assure you that we will do our best to erase this black page in our history, because to do otherwise would be to continue this inequity and injustice that we have foisted upon the Cheyenne River Sioux.

I can assure you that I speak for the committee when I say that we will do our best, as you heard in my discussion with the Interior Department, to make this fund one that will be sufficient, one that will not deprive your brothers and sisters of other tribes of their funds. So I know it is late; it is 40 years, but we will do it, I assure you.

Thank you very much.

With that, the hearing will stand in recess. We will keep the record open for the next 2 weeks. If any of you would like to submit addenda or other statements or corrections, please feel free to do so. Thank you for attending. The committee stands in recess.

[Whereupon, at 11:15 a.m., the committee was recessed, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII,
VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Good morning. On behalf of Chairman Campbell and the members of the Committee on Indian Affairs, I am pleased to welcome the witnesses who are here to testify on S. 964, the Cheyenne River Sioux Tribe Equitable Compensation Act.

Introduced by Senator Daschle, S. 964 is one of a series of bills designed to provide long overdue additional compensation to those native people whose lives and cultures were forever altered by the taking of their tribal lands for the construction of dams and reservoirs as part of the Missouri River Pick-Sloan Project.

In 1948, the Corps of Engineers took 104,000 acres of prime bottomland on the Cheyenne River Sioux Reservation to construct Oahe Dam and Reservoir.

This reservoir inundated four reservation communities and required 30 percent of the tribe's population to be relocated.

The loss of river bottomland devastated the tribe's cattle, agriculture and timber industries, and deprived the tribe of access to a prime source of potable water.

Similarly, the permanent loss of access to traditional, hunting, gathering and ceremonial grounds dealt a tremendous blow to the tribe's culture and traditions.

In 1954, 6 years after the land was taken, legislation was enacted that, by any fair measure, fell far short of providing adequate compensation to the tribe for its losses.

To further compound the loss, the tribe has enjoyed little, if any, of the flood control, power, navigation, recreation or other benefits for which Oahe Dam was built.

S. 964 would provide additional, equitable compensation to the Cheyenne River Sioux Tribe in the form of a trust fund in the U.S. Treasury that would be capitalized with \$290 million dollars.

The tribe would be able to spend the interest earned on this fund to implement a plan to promote its economic and infrastructure development, as well as the educational, health, and social welfare of its members.

Since 1991, the Congress has enacted three bills providing nearly \$300 million in trust funds as additional compensation for tribes on four other reservations affected by the Missouri River Pick-Sloan Project.

The amount of compensation that the Cheyenne River Sioux Tribe would receive under S. 964 is proportionate to the compensation provided to the tribes of the Fort Berthold, Standing Rock, Crow Creek and Lower Brule Reservations.

It is our understanding that with enactment of S. 964, the Yankton and Santee Sioux Tribes will be the only remaining tribes that seek additional compensation for their losses from the Missouri River Pick-Sloan Project.

I want to commend my esteemed colleague and leader, Senator Daschle, for his diligent efforts to secure a better conclusion to what is undoubtedly a less-than-honorable chapter in recent American history.

Similarly, I commend Senator Johnson, for his support for these efforts to provide some measure of justice to the Missouri River Tribes.

PREPARED STATEMENT OF HON. TOM DASCHLE, U.S. SENATOR FROM SOUTH DAKOTA

Mr. Chairman and members of the committee, I want to thank you for agreeing to hold this hearing on S. 964, legislation that I introduced this year to compensate the Cheyenne River Sioux Tribe for losses it suffered when the Oahe dam was constructed in South Dakota nearly 40 years ago. This bill is a companion to the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996, and the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act of 1997, both of which passed Congress unanimously and currently are providing those tribes with long-overdue compensation for similar injuries suffered when the Corps of Engineers constructed the Big Bend Dam on the Missouri River in South Dakota.

The importance of enacting this legislation cannot be stated strongly enough. It has been nearly 40 years since the Oahe Dam was constructed, flooding 104,000 acres of the Cheyenne River Sioux Tribe's bottomlands and requiring the involuntary resettlement of almost 30 percent of the tribal population living there, including four entire communities. Equally as important, the tribe lost 80 percent of its fertile river bottomlands—lands that represented the basis for the tribal economy.

These losses can still be felt today. During the extreme winter of 1996-97, the tribe lost roughly 30,000 head of livestock, including 25,000 head of cattle. And without adequate natural shelter, the remaining Indian ranchers can expect to have similar difficulty scratching out a living in future years.

The Army Corps of Engineers, which constructed and operates the dams, estimates that the project's overall annual contribution to the national economy averages \$1.27 billion. However, for the Cheyenne River Sioux Tribe, the human and economic costs have far outweighed the benefits received.

It has been well documented in reports by researchers of the Robert McLaughlin Company and the General Accounting Office, the compensation requested in this legislation, \$290 million, represents a fair return for the losses the tribe incurred when its land was taken for the Pick-Sloan project—losses that profoundly affected the quality of life on the Cheyenne River Reservation.

Mr. Chairman, the damage caused by the Pick-Sloan Project has had a significant impact on every aspect of life on the Cheyenne River Sioux Reservation. We cannot, of course, role back the clock, but it is my hope that S. 964, the Cheyenne River Sioux Tribe Infrastructure Development Trust Fund Act will provide the resources necessary for the tribe to enhance economic development on the reservation, and help make it whole.

Thank you again, Mr. Chairman, for holding this hearing. Passage of this bill will fulfill a long-overdue debt to the tribe. I urge the committee to mark up this legislation this year so that we may finally end this chapter in the history of this reservation and establish a bright future for the Cheyenne River Sioux Tribe.

PREPARED STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Mr. Chairman, Vice Chairman, and members of the committee, I would like to thank you for the opportunity to address the committee on S. 964, the Cheyenne River Sioux Tribal Equitable Compensation Act. This extremely important issue is the highest priority for the Cheyenne River Sioux Tribe and will have a positive and lasting impact on the Cheyenne River Reservation community and the entire State of South Dakota. I have worked closely with the Indian Affairs Committee to insure that this legislation protects the future interests of tribal members, and I am pleased that the bill reported by the committee reflects these concerns. I am committed to seeing that the bill receive strong Senate support, and look forward to working with my colleagues to ensure that the bill moves forward for approval by the full Senate.

The Cheyenne River Sioux Tribe Equitable Compensation Act would establish a trust fund within the Department of the Treasury for the development of certain tribal infrastructure projects for the Cheyenne River Tribe as compensation for lands lost to Federal public works projects. The trust fund would be capitalized from a small percentage of hydropower revenues and would be capped at \$290 million. Independent research has concluded that the economic loss to the tribe justifies such a compensation fund. The tribe would then receive the interest from the fund to be used according to a development plan based on legislation previously passed by Congress, and prepared in conjunction with the Bureau of Indian Affairs and the Indian Health Service.

This type of funding mechanism has seen unanimous support in the Congress though recent passage of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act as well as the has Crow Creek legislation passed last Congress. Precedent for these infrastructure development trust funds capitalized though hy-

dropower revenue was established with the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act of 1992, which set up a recovery fund financed entirely from a percentage of Pick-Sloan power revenues to compensate the tribes for lands lost to Pick-Sloan.

I believe it is important for the Senate to understand the historic context of this proposed compensation. As you may know, the Flood Control Act of 1944 created five massive earthen dams along the Missouri River. Known as the Pick-Sloan Plan, this public works project has since provided much needed flood control, irrigation, and hydropower for communities along the Missouri. Four of the Pick-Sloan dams are located in South Dakota and the benefits of the project have proven indispensable to the people of my State.

Unfortunately, construction of the dams was severely detrimental to economic and agricultural development for several of South Dakota's tribes, including Cheyenne River. Over 100,000 acres of the tribe's most fertile and productive land, the basis for the tribal economy, were inundated, forcing the relocation of roughly 30 percent of the tribe's population, including four entire communities.

The Cheyenne River Sioux Tribe Equitable Compensation Act of 1999 will enable the Cheyenne River Tribe to address and improve their infrastructure and will provide the needed resources for further economic development within the Cheyenne River Reservation community. However, the damage caused by the Pick-Sloan projects touched every aspect of life in South Dakota, on and off reservation. The economic development goal targeted in this approach is a pressing issue for surrounding communities off reservation as well, because every effort toward healthy local economies in rural South Dakota resonates throughout the State.

Mr. Chairman, the tribes in my State experience some of the most extreme poverty and unemployment in this country. Under the current chairman, Gregg Bourland, the Cheyenne River Sioux Tribe has been a leader in economic development initiatives within the reservation community and I believe this bill will reinforce and further the economic development successes of the tribe. I look forward to working with my colleagues on this important piece of legislation to the Cheyenne River Sioux Tribe and I encourage swift Senate action on this bill.

PREPARED STATEMENT OF TERRY VIRDEN, DIRECTOR, OFFICE OF TRUST
RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairman and members of the committee. I am pleased to be here today to present the Department of the Interior's views on S. 964. I want to thank Senator Daschle for introducing this important bill that addresses impacts to the Cheyenne River Sioux Tribe resulting from the Pick-Sloan Missouri River Basin program and in particular the development of the Oahe Dam and Reservoir project. If enacted, this bill would give the Tribe much deserved benefits to compensate for those impacts.

S. 964 is a continuation of the United States' honorable efforts to correct inequities resulting from a regional Federal project which severely affected Indian tribal homelands along the Missouri River. In the early 1990's the United States forthrightly addressed impacts to the Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation and in 1996 and 1997, respectively, addressed the impacts to the Crow Creek Sioux Tribe and the Lower Brule Sioux Tribe.

In 1944, the United States undertook the challenge to reduce flooding in the lower Missouri River Basin through the construction of monumental dams capable of harnessing the seasonal raging flows of the Missouri River. In addition, these dams could generate electrical power and needed hundreds of thousands of acres of land to serve as reservoirs for the storage of water for timed release. So great was the water resource that a whole regional economy grew from the electric power generated by these dams.

The preproject tribal economy, however, was based on working the rich wooded bottom lands along the Missouri River. These lands were flooded for the reservoir and the tribe has never seen the former economy again. In addition, the importance of cultural treasures lost to inundation is now well known. These are impacts that bring special meaning to the word "recovery" used in Purpose Number 2 of S. 964.

While this is not the final chapter in addressing compensation for all of the river tribes in the region, a step taken for the Cheyenne River Sioux Tribe will bring the United States closer to providing full equity to these Missouri River Tribes.

Although we support S. 964, we are still concerned about the pay-as-you-go implications concerning the payment scheme to be used to arrive at the total figure for the Cheyenne River Sioux compensation. Additionally, as noted in testimony on S.

1905 during the 105th Session, the administration is concerned that this type of off-budget financing approach appears to be without cost. A more straightforward approach would be to rely on the authorization/discretionary appropriation process. We will be happy to work with the committee on developing a viable solution.

This concludes my testimony in support of S. 964. I will be happy to respond to any questions you may have. Thank you.

PREPARED STATEMENT OF LOUIS DUBRAY, VICE CHAIRMAN, CHEYENNE RIVER SIOUX
TRIBE

Honorable and distinguished Members of Congress, my name is Louis DuBray. My Lakota name is Mini Kola Kiya (Friend of the Water). I belong to the Oahe Numpa (Two Kettle) band, one of the four bands on the Cheyenne River Reservation within the State of South Dakota.

The Cheyenne River Sioux Tribe consists of approximately 3.5 million acres of land within the exterior boundaries of the Cheyenne River Indian Reservation (about the size of the State of Connecticut). The Oahe Dam and Reservoir Project overlies the eastern boundary of the Cheyenne River Indian Reservation, and approximately 150 miles of shoreline lie along the Oahe Dam and Reservoir.

I currently serve as vice chairman of the Cheyenne River Sioux Tribe and want to say it is an honor that I was selected by my colleagues to chair the committee that helped with the task of making sure this very important legislation reached this forum.

My testimony is about the devastation that was bestowed upon my family as well as 181 other families that made their living from the rich bottomlands that were sacrificed for the construction of the Oahe Dam. 181 families were forced from their homes to live elsewhere. Some of the families chose to move their cattle operations to the upper windswept lands that provided little or no shelter. They were soon wiped out, and literally gave up. This was the beginning of the high unemployment rates that plague the Cheyenne River Sioux Tribe today.

My family owned bottomland that consisted of timber and some of the richest soil along the Missouri River that was completely inundated.

I lost my mother in a car accident in 1952, 2 years before the 83d Congress enacted Public Law 83-776, the law that took our land. My father was left to raise 6 children ranging from ages 13 years to 3 months old. Upon learning in 1954 that he was going to lose all of his land and would receive less than one-half of what the land was worth, my father turned to alcohol. Three years later he passed on to the spirit world, leaving my three brothers, two sisters, and myself to be placed with relatives of the family.

My story is only one of many devastating stories that could be told, many of which are far more devastating than mine.

I respectfully urge the Members of Congress to read all the testimony that is before you, particularly the study entitled, "Analysis of Economic Loss Resulting from Lands Taken from the Cheyenne River Sioux Tribe for the Oahe Dam", prepared by Robert McLaughlin.

After reading the study and hearing all the testimony that is before you, I am positive you will realize the tribe could never be returned to its former existence. However, the \$290,722,958 will help to restore and make right some of the wrong that was bestowed upon the people of the Cheyenne River Sioux Tribe when taking the tribe's most valuable and productive lands.

I foresee economic development so as to reduce the tribe's high rate of unemployment from the interest that will be generated from the \$290 million Trust Fund that will be established.

I foresee better health care for every member of the Cheyenne River Sioux Tribe, and a much-needed nursing home so our elders can spend their last days close to their loved ones.

I foresee our roads being brought up to the standards that are consistent with other entities.

I foresee much needed housing being made available to every family that resides within the boundaries of the Cheyenne River Sioux Tribe.

I foresee the Tribe establishing a banking system so credit can be made available to our agricultural producers and be consistent with other entities.

I foresee the banks of the Missouri River *along our shoreline being stabilized, and our natural resources being managed and developed to their full potential.

I foresee the membership of the Cheyenne River Sioux Tribe becoming self sufficient from the \$290 million Trust Fund that will be established, rather than that being just a dream.

The U.S. Government has a unique legal relationship with the Cheyenne River Sioux Tribe as set forth in the Constitution of the United States, the Fort Laramie Treaty of 1868, Statutes, court decisions, and executive orders. Because of the recent cuts in the funding to the Bureau of Indian Affairs, and the Federal Government never fully living up to their trust responsibility, the economy of the Cheyenne River Sioux Tribe has always suffered.

With all due respect to the tribes and States of our Nation that help stabilize their economies with revenues from gaming, I am proud to say the Cheyenne River Sioux Tribe is the only tribe in South Dakota that does not have a casino. I am proud to say that the two main reasons our tribe does not have a casino are because of the moral issues related to gaming, along with keeping our jurisdiction intact. This tells me, as an elected leader of the Cheyenne River Sioux Tribe, that the membership chooses to stabilize our economy by means other than gambling.

Senator Karl Mundt, speaking on behalf of the South Dakota delegation, stated the following on August 30, 1954, when he wrote the Chairman of the Cheyenne River Sioux:

"If, the tribe would accept the bill as it is now before the President they would have the assurance that the South Dakota Congressional Delegation would cooperate fully to see that the necessary amendments to the law (to justly compensate the tribe) are introduced and acted upon during the next Congress (meaning the 84th Congress)."

I have great respect for and commend the Honorable Senator Tom Daschle, the Honorable Senator Tim Johnson, and the Honorable Congressman John Thune for honoring the promise that was made by Senator Karl Mundt 45 years ago.

In closing, I thank you for taking the time to read my testimony. I truly believe that after you hear and review all the testimony that is before you, you will find it in your minds and hearts that it is in the best interest of the United States to right the wrong that was bestowed upon the Cheyenne River Sioux Tribe in 1954, and vote to approve the \$290,722,958 that was determined by the Comptroller General of the United States to be the appropriate amount of compensation to pay the tribe.

With all due respect, I truly believe you will find it in your minds and hearts to treat the first Americans of this country the same as your predecessors treated the war torn nations of World War II when millions of dollars were given by the United States for the purpose of restoring the economies of those nations under the Marshall Plan.

PREPARED STATEMENT OF GREGG BOURLAND, CHAIRMAN, CHEYENNE RIVER SIOUX
TRIBE

Mr. Chairman and members of the committee. Thank you for the opportunity to submit this testimony to you today. I would also like to thank the two distinguished Senators from South Dakota for their support of S. 964. The Indian and Alaska Native people are fortunate to have an Indian Affairs Committee in the Senate that has been such a strong advocate for us over the years. Similarly, the Indian people of South Dakota are fortunate to have two Senators who have been both good friends and great advocates for my tribe and all of the other tribes in the State.

This is an emotional day for the members of the Cheyenne River Sioux Tribe. We have been waiting for this day for 45 years, for the day when Congress corrects the wrong that was done to our people in 1954. That is the year in which Congress enacted unconscionable legislation that severely underpaid the tribe for the taking of 104,492 acres of our best land so the Army Corps of Engineers could build the Oahe Dam and Reservoir.

Today is also a day when Congress has the privilege of honoring a promise made to our people 45 years ago by the venerated former Senator from South Dakota, the Honorable Karl Mundt. Within days after Congress acted on the unconscionable compensation legislation in 1954, Senator Mundt wrote to the tribe's chairman to acknowledge that the compensation was far less than it should have been. He then told the tribe that if it accepted the bill for the time being and agreed not to lobby for a Presidential veto, Senator Mundt would see that justice was done in a future Congress, stating, "We will do our best to finish the job." Unfortunately, Senator Mundt did not live to see this day, but in his memory, Congress now has the legislation in front of it that will enable it to "finish the job."

Compensation to tribes for the underpayment of tribal lands taken for the Pick-Sloan project is not a new issue for this committee. Congress has already enacted legislation providing corrective compensation to four of the tribes that were harmed by the Missouri River Basin Projects. Of all of these, Cheyenne River is the one that

probably suffered the greatest harm. The taking of those 104,492 acres destroyed our way of life that was built around the bountiful bottomlands of the Missouri River and pushed us into the inhospitable barren uplands of the Dakota plains. It undermined our economy, our culture, and our family lives. It is appropriate that we are now considering legislation that will provide us with funds that we will use to achieve economic self-sufficiency, because the taking of our lands 45 years ago set us back severely at a time when we were well on our way to such self-sufficiency.

Let me begin by focusing on the most eye-catching portion of our legislation, the price tag. The bill provides the tribe with a permanent fund of \$290,722,958, to be held in the U.S. Treasury. I would like to emphasize that the \$290,722,958 compensation amount provided for in the bill is not the tribe's number nor is it an arbitrary number. Rather, it is the number provided by the General Accounting Office (GAO), pursuant to a request from Congress, and is based on the same formula GAO and Congress had developed when the Missouri River Basin tribal settlement legislation was first being considered by Congress.

To provide a brief history on this, in 1990 Congress asked GAO to review an analysis prepared by the Fort Berthold Tribe regarding the amount of corrective compensation that tribe should receive in order to make it whole for the lands taken from that tribe in 1952 for the Garrison Dam. GAO found numerous problems with the tribe's analysis and proposed an alternative approach that would provide consistency in determining compensation as Congress enacted legislation for each of the tribes that had been unconscionably treated in the development of Pick-Sloan. GAO recommended that Congress use a two-part formula to determine the appropriate amount of compensation to provide each tribe. The first part of the formula would calculate the difference between the amount of compensation the tribes had formally requested from Congress when this issue arose in the 1950's and the amount they had actually received pursuant to the legislation adopted by Congress in the 1950's. This provides the base number. GAO's recommended second step was to compound this number using two different rates—the corporate interest rate and the cost of living rate. Congress would then decide which compound rate it wanted to use and would award the tribe the base number compounded by the rate Congress chose.

GAO argued that this approach would provide consistency among the tribes seeking corrective compensation and would allow the parties to work with objective known numbers, rather than getting enmeshed in trying to conduct evaluations of how much the land was really worth 40 years ago. Congress agreed with GAO and adopted this formula. When compensating Fort Berthold in 1992, Congress chose the corporate interest rate, pursuant to which it provided Fort Berthold with \$149 million in corrective compensation. (if the Fort Berthold bill were before Congress today, the amount of compensation that Tribe would receive under this formula would be about \$300 million, since at the corporate bond rate, an investment would have doubled between 1990 and 1999.)

In preparation for the introduction of S. 964, GAO applied this same formula to Cheyenne River's situation, and using the same corporate bond rate as was used for Fort Berthold, came up with the \$290,722,958 amount that is contained in S. 964. The tribe's economist, using standard appraisal methodology, came up with a higher amount. However, we recognize that use of the established GAO formula for the Cheyenne River Sioux Tribe legislation provides continuity and certainty. As GAO points out (at the footnote on page 25 of its 1998 report applying its formula to Cheyenne River settlement), because "the damage to each reservation was unique," it would be inappropriate to try to fashion a new formula on an ad hoc basis, using some simplistic indices, such as the number of acres each tribe lost. For example, Fort Berthold lost 150,000 acres, Cheyenne River lost 104,000 and Standing Rock lost 56,000. But Standing Rock received virtually the same amount of compensation in the 1950's legislation as Cheyenne River did, for half the land. In addition, Cheyenne River lost critical bottomland. Cheyenne River and Fort Berthold both had major communities on their reservation flooded, such that a significant portion of the population had to relocate, while this was not true for Standing Rock. Because of the difficulties involved in trying to weigh all of these variables, the only way to insure consistency among the different settlements is to use the GAO approach.

The next issue I would like to address is why should Cheyenne River receive this corrective compensation. The answer is in three parts:

1. The taking of our land for the Oahe Dam and Reservoir devastated our lives. It displaced over 30 percent of our families and it permanently changed for the worse the way we live, the way we earn our living, the way we recreate, the way we practice our culture, the world we see when we wake up each morning. To provide just one example, during the winter of 1996-97 alone, our tribal members lost

30,000 head of livestock that were stranded in the uplands during our heavy snowstorms that year. This stock would not have been lost if we still had the bottomlands that were taken for Pick-Sloan.

2. The tribe has received no benefits from the Oahe Dam and Reservoir or the other components of Pick-Sloan. While they were built to make life better for many citizens, it was done in a way that completely excluded the tribe and its members from those benefits.

3. The 1954 legislation unconscionably under-compensated the Tribe and its members for the land that was taken. Even though the land that was taken from us was much more economically valuable than the land taken from non-Indians, the non-Indians received more than twice as much per acre as did the Indians.

Each of these three issues is discussed in greater detail below.

1. The Project Severely Damaged the Economy of the Tribe and Caused Enormous Dislocation and Suffering for the Cheyenne River Sioux People

The severe economic, cultural and social dislocations the Cheyenne River Sioux Tribe suffered as a result of the taking of 104,942 acres of their lands for the Oahe Project are spelled out in great detail in historian Michael Lawson's book about the effect of the Pick-Sloan Plan on Indian tribes, "Dammed Indians". Below is a brief summary of some of the more extreme impacts:

Over 30 percent of the tribal population, 181 families, lost their homes and were forced to relocate.

Four reservation communities were flooded and had to be relocated, including the tribal and BIA headquarters town of Cheyenne Agency. Lawson concluded that this relocation "caused chaos and heartache for all tribal members." (P. 51)

The reservation lost 80 percent of its bottomlands, which were the key to the tribe's agricultural economy, its source of wood and game, relief from the cold and snow in the Winter and the 100 plus degree temperatures in the Summer. It was also the heart of the reservation cultural and social life because it offered shaded wooded areas with wild fruit, places to picnic, and access to the River for recreation. Effectively, the tribe was relocated from bountiful forest lands to the barren, harsh, semiarid upland regions which are far less hospitable to agricultural activities and in which the residents are continually battling the elements just to survive. The rest of the Missouri Valley residents improved their economic situation and the quality of their lives as a result of the Project. The tribe not only failed to receive any of these benefits, but their economy and the quality of their lives were severely diminished by the flooding of their best lands.

The most severe economic impact of the loss of the bottomlands was on our cattle industry. The tribe lost 80 percent of its bottomlands, which constituted 90,000 of the 104,000 acres taken from them. This in turn reduced the value of an additional 800,000 acres of grazing land, impacting 75 percent of the tribal ranchers. Range units that include bottomlands can be leased for twice as much as units that just offer the upper tier barren grazing areas. The problem for the ranchers caused by the loss of the bottomlands is summed up in the following quote. "But no person could come to me and get me to put any kind of price on cutting that ranch in two and selling just the bottomland, and leaving me with the breaks and upland, because I would only have a part-year operation. I would be able to run some cattle there and maybe graze them in the summer when I could water them in dams. But I would not have any place to take them in the winter. I would not have any feed, any place to put up hay, or the natural shelter or water for winter." This quote is not by a tribal member, but by the late Senator Case of South Dakota, who was a rancher and provided this testimony at the 1954 Senate Hearing on the original Settlement Bill.

The truth of his statement was starkly demonstrated during the record-setting winter snow storms of 1996-97. Cheyenne River Sioux tribal members lost 30,000 head of livestock, including 25,000 head of cattle. The reason was that the cattle had no shelter and no grass they could get to during the storms. Two-thirds of cattle that perished were in the grazing units that had been connected to bottomlands prior to the construction of the Dam. If the bottomlands had been available, the vast majority of those cattle would have survived. At a cost of \$600 a head, the tribal members suffered over \$15 million in losses just in that one winter. While other winters have not been as severe, our tribal members lose, on the average, about 500 cattle every normal winter because of the lack of shelter, at a cost to the members of \$300,000 a year. This cost will go on forever. Under the 1954 settlement agreement, the BIA was supposed to build pole shelters in the uplands for the cattle. They built only a small fraction of those that had been promised, though it probably has not made much of a difference because the shelters are of minimal benefit.

Senator Case stated that he would not sell bottomlands at any price when the effect would be to leave only uplands. Yet not only were their bottomland taken

from the tribe against its will, the Army Corps of Engineers and Congress did not include a penny in the 1954 settlement legislation to compensate the tribe for the severe impact the loss of the bottomlands had on the value of the 800,000 upland acres and the tribe's overall ranching operation.

The tribe lost 90 percent of its timber. In addition to providing for a small amount of commercial timbering, this provided tribal members with logs for houses, posts for fences, poles for corrals and other structures, and firewood for their houses. As a result, the tribal members now have to purchase wood for these purposes and will continue to have to do so forever.

The bottomlands provided good water for people and for livestock. Now that the tribal members are relegated to the barren uplands, water is scarce and what water can be found is of poor and brackish quality.

The tribal members lost the place they went to hunt, to pick wild fruit, to carry-out their ceremonies, and to engage in recreational activities. In effect, it destroyed the portion of their land that was most valuable and most important to their lives and culture, leaving them to try to carve out a new life in open wind-swept prairies that offer none of these amenities of life.

Cheyenne River Sioux Tribal Members Have Received None of the Benefits that the Dam and Reservoir Brought to all of the Other Residents of the Missouri River Basin

The Pick-Sloan Plan was approved by Congress because it promised to bring five significant benefits to the residents of the Missouri River Basin. Many of the residents have had their economic situation and the quality of their lives improved as a result of these benefits. However, the tribe and its members have not receive a single one of these benefits:

1. Low cost hydropower—The project brought low-cost hydropower to the area. Many of the communities in South Dakota received allocations which they have been able to turn into sources of revenue for their governmental activities. The tribe asked for such an allocation during the original settlement negotiations but was turned down. Nor did it even receive low-cost power for its own use. To the contrary, in the midst of all of this low-cost hydropower, the cost of electricity on the Cheyenne River Sioux Reservation has been among the highest in the entire country, burdening already impoverished tribal membership and serving as a barrier to economic development. (We will finally be receiving a small amount of the power some time in the next decade.)

2. Flood Control—None of the flood control aspects of the project benefit the Tribe, since it had never suffered flooding problems from the Missouri River.

3. Navigation—The tribe receives no benefits from the increased navigation the project provided on the river.

4. Recreation—Rather than providing increased recreational opportunities for the tribe, the project decreased them because it took away access to the river from tribal lands.

5. Irrigation—No water from the project is used to irrigate any land of that tribe or its members.

The Tribe was Grossly Under-Compensated for the Land that was Taken From It

The Army Corps of Engineers actually took possession of the Tribe's land and began construction 5 years before Congress enacted legislation taking the land from the tribe. The Corps' action was clearly illegal since only Congress has the authority to take tribal land. But by this de facto taking, the Corps created 7 enormous pressure for legislation to legitimize their illegal action. This pressure, coupled with the Corps' goal of minimizing costs in, order to show a positive cost-benefit ratio, resulted in what even neutral parties acknowledge was severe under compensation to the tribe. The tribe was not a willing seller of its land. The amount of compensation authorized by the Congress was 60 percent lower than the amount the tribe requested. Yet, compensation in such cases is generally based on what a willing buyer would pay to a willing seller.

One rough measure of the under-compensation is that non-Indians, who did not lose any communities to the reservoir, received an average of \$49.22 per acre for their agricultural land, while the tribe, which had its headquarters town and three other communities flooded and its entire way of life undercut, received only \$21.49 per acre. Another measure is the comparison with the Standing Rock settlement. As pointed out by historian Michael Lawson; "The Standing Rock Sioux received more money than the Cheyenne River Sioux for indirect damages and rehabilitation even though the latter tribe lost nearly twice as much land and underwent a much more drastic relocation....The difference between the two settlements...reflected most clearly the Federal Government's arbitrariness in arriving at an agreement with the two tribes." (Dammed Indians" p. 122)

When the final settlement bill was reported out of Congress in 1954, the tribe was shocked. The amount of compensation it provided was based on incorrect assumptions that the tribe was never given an opportunity to address, such as the failure to consider the impact of the loss of the bottomlands on the value of the 800,000 acres of upper tier lands. When the tribe learned of the minimal amount of compensation the bill provided, it began a campaign to persuade President Eisenhower to veto the bill. They were dissuaded from doing so by the late Senator Karl Mundt, who, speaking on behalf of the South Dakota Congressional Delegation, acknowledged that the settlement was less than it should have been, but promised to remedy the problem in the next session of Congress. "if, the Tribe would accept the bill as it is now before the President, they would have the assurance that the South Dakota Congressional Delegation would cooperate fully to see that the necessary amendments to the law are introduced and acted upon during the next Congress....You may be sure that we will all do our level best to finish the job." (Letter from Karl E. Mundt to Tribal Chairman Frank Ducheneaux, August 30, 1954.) No such amendments were ever acted upon. Congress now has the opportunity to keep Senator Mundt's commitment to the Tribe, by enacting the proposed legislation.

As is the case for the other Missouri River Basin settlement acts, S. 964 permits the tribe to spend the interest from the \$290,722,958, but not the principal, which becomes a permanent fund in the Treasury. However, there are several provisions of the bill that differ from the earlier legislation. I would like to share with you why we think these provisions are improvements over the earlier legislation.

I have been told by the other tribes that have already received their corrective compensation that the Treasury Department has unjustifiably delayed, for many months, transferring the tribes' interest from the fund in Treasury to the tribes' accounts in the Office of Trust Funds Management, in which account the interest earns interest and from which account the tribes withdraw the money. S. 964 therefore provides that if the funds are not transferred into the Tribe's account within 60 days after the end of the fiscal year, Treasury is required to pay interest to the Tribe, beginning on the 61st day, at Treasury's overnighter rate.

Second, like the previous settlement acts, S. 964 requires the Tribe to develop a plan describing how it will use the interest from the Fund. The monies may only be used for economic development, infrastructure development and/or educational, health, recreational and social welfare purposes. It also provides that none of the money may be used to make per capita payments.

However, unlike these other acts, S. 964 does not require the BIA to approve the tribe's plan or its withdrawals of money from the Fund. At a time when the Self-Determination Act and the Self-Governance Act authorize tribes to manage Federal dollars without BIA control, there is no justification for requiring BIA approval on how a tribe spends its own money. BIA approval is a paternalistic concept that has outlived whatever usefulness it may have had. The Tribal Council is responsible to the members of the tribe, not to the BIA. S. 964 contains provisions that insure the members are aware of activities involving the use of funds provided by this bill. For example, section 4(f) requires the Tribal Council to make a copy of the plan available to the members before the plan becomes final. It also requires the tribe's auditors, when conducting our annual audit, to opine on whether the tribe has spent the moneys it has withdrawn from the Fund in a manner that is consistent with requirements of the plan. The audit is a public document available to all tribal members.

In conclusion, I would once again like to thank the members of this Committee for considering S. 964 today. It is a bill that is consistent with the earlier settlements involving Pick-Sloan, it reflects the principles of self-determination, and it will enable the Tribe to move toward the economic self-sufficiency that was set back so severely by the heavy hand of Pick-Sloan 45 years ago. I would also like to once again thank the Senators from South Dakota, Senator Daschle and Senator Johnson, for all of the hard work they and their staffs devoted to getting this legislation before the Congress.

NATIONAL CONGRESS OF AMERICAN INDIANS



THE NATIONAL CONGRESS OF AMERICAN INDIANS

RESOLUTION # VAN-99-006

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Tametswaks S'Klallam Tribe

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Ojibwa Nation of Wisconsin

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Lummi Nation

SACRAMENTO AREA

Cheryl A. Seidner
Table Bluff Reservation/Wiyot

SOUTHEAST AREA

A. Bruce Jones
Lumbee Tribe

EXECUTIVE DIRECTOR

JoAnn K. Chase
Mandan, Hidatsa & Arikara

Title: Senate Bill 964

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, all rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, on December 3, 1993, NCAI, with Resolution No. NV-93-91, supported the Cheyenne River Sioux Tribe's pursuit of just compensation and repayment from the United States for economic losses resulting from lands taken from the tribe for the construction of the Oahe Dam; and

WHEREAS, on May 5, 1999, in the 1st session of the 106th Congress, the Honorable Senator Tom Daschle introduced Senate Bill 964 in the United States Senate; and

WHEREAS, Senate Bill 964 is to provide equitable compensation to the Cheyenne River Sioux Tribe and is cited as the Cheyenne River Sioux Tribe Equitable Compensation Act; and


WHEREAS, the United States Congress has awarded just compensation in the amount of approximately \$300 million to four tribes for similar losses incurred by those tribes; and

WHEREAS, after applying the same method of analysis as is used for the compensation of similarly situated Indian tribes, the Comptroller General of the United States has determined that appropriate amount of compensation to the Cheyenne River Sioux Tribe for land taken would be \$290,722,958; and

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby support Senate Bill 964, the Cheyenne River Sioux Tribe Equitable Compensation Act.

CERTIFICATION

The foregoing resolution was adopted at the 1999 Mid-Year Session of the National Congress of American Indians, held at the Vancouver Trade and Convention Center, in Vancouver, British Columbia, Canada on July 20-23, 1999 with a quorum present.


W. Ron Allen, President

ATTEST:


Lela Kaskalla, Recording Secretary

Adopted by the General Assembly during the 1999 Mid-Year Session held at the Vancouver Trade and Convention Center in Vancouver, British Columbia, Canada on July 20-23, 1999.

Executive Director
Edward Hal Messinger

Member Tribes
Antishishno & Stone Tribes of Fort
Pech, Poplar, Montana

Blackfoot Tribe
Browning, Montana

Cheyenne River Stone Tribe
Eagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Stone Tribe
Fort Thompson, South Dakota

Eastern Sisseton Tribe
Fort Washakie, Wyoming

Flackham Santee Stone Tribe
Flackham, South Dakota

Fort Belknap Tribe
Harlem, Montana

Kichayo Tribe in Kansas
Horton, Kansas

Lone Rock Stone Tribe
Lone Rock, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Laramie Dam, Montana

Oglala Sioux Tribe
Pine Ridge, South Dakota

Owada Tribe
Marty, Nebraska

Pawnee Tribe of Nebraska
Nebraska, Nebraska

Potawatomi Band of Potawatomi
Moyetta, Kansas

Rambold Stone Tribe
Rambold, South Dakota

Sec 8 Five Nations of Missouri
Reserve, Kansas

Santee Stone Tribe
Nebraska, Nebraska

Stanton-Walsham Stone Tribe
Agency Village, South Dakota

Spirit Lake Tribe
Fort Totten, North Dakota

Standing Rock Stone Tribe
Fort Totten, North Dakota

Three Affiliated Tribes
New Town, North Dakota

Turtle Mt. Band of Chippewa
Bakewell, North Dakota

Winnipeg Tribe of Nebraska
Winnipeg, Nebraska

Yankton Stone Tribe
Marty, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

MSC No. 99-15

A RESOLUTION OF MNI SOSE INTERTRIBAL WATER RIGHTS COALITION, INC.

A RESOLUTION IN SUPPORT FOR THE CHEYENNE RIVER SIOUX TRIBE AND THE YANKTON SIOUX TRIBE OF SOUTH DAKOTA AND THE SANTEE SIOUX TRIBE OF NEBRASKA IN SEEKING COMPENSATION FOR SOCIAL, ECONOMIC, AND CULTURAL IMPACTS OF THE CONSTRUCTION OF THE PICK-SLOAN PROJECT.

WHEREAS, Mni Sose Intertribal Water Rights Coalition, Inc., (hereinafter Mni Sose Coalition) is a non-profit corporation that is dedicated to the preservation, enhancement, and protection of the water rights of Indian Tribes in the Missouri River; and

WHEREAS, the Mni Sose Coalition member Tribes, by virtue of inherent tribal sovereignty and the acknowledgment by the U.S. Congress of tribal authority in the area of environmental protection, are the appropriate sovereigns to protect the environment on and near Missouri River Basin Reservations; and

WHEREAS, Mni Sose is composed of 27 Indian Tribes located in the Missouri River Basin with vested interests in water rights; and

WHEREAS, the Cheyenne River Sioux Tribe and the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska have been negatively impacted by the construction the Pick-Sloan Project as authorized in the Flood Control Act of 1944; and

WHEREAS, the Cheyenne River Sioux Tribe and the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska have not received compensation for negative environmental, economic, and cultural impacts of the construction of flood control facilities on tribal homelands; and

WHEREAS, the Cheyenne River Sioux Tribe and the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska are currently seeking compensation for negative environmental, economic, and cultural impacts of the construction of flood control facilities on tribal homelands from the U.S. Congress; and

THEREFORE BE IT RESOLVED, that the U.S. Federal Government provide financial compensation to the Cheyenne River Sioux Tribe and the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska.

MSC No. 99-15
June 18, 1999

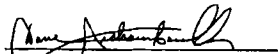
Page 2

CERTIFICATION

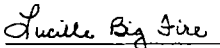
We, the undersigned President and the Secretary of the Mni Sose Intertribal Water Rights Coalition, Inc. hereby certify that the Mni Sose Coalition is comprised of 27 federally-recognized Tribes, of whom 14 constituting a quorum, were present at a meeting thereof and duly and regularly called, noticed, convened and held the 18th day of June 1999, that the foregoing resolution was duly adopted by the affirmative vote of 14 members, with 0 opposing and 1 abstaining.

ATTESTED:

Dated this 18th day of June 1999.



David Archambault, President
Mni Sose Intertribal Water Rights Coalition



Lucille Big Fire, Secretary
Mni Sose Intertribal Water Rights Coalition