S. HRG. 108–620

TRIBAL PARITY ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

S. 1530

TO PROVIDE COMPENSATION TO THE LOWER BRULE AND CROW CREEK SIOUX TRIBES OF SOUTH DAKOTA FOR DAMAGE TO TRIBAL LAND CAUSED BY PICK-SLOAN PROJECTS ALONG THE MISSOURI RIVER

JUNE 15, 2004
WASHINGTON, DC

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CONTENTS

	Page
S. 1530, text of	3
Statements:	
Big Eagle, Sr., Duane, chairman, Crow Creek Sioux Tribe	10
Daschle, Hon. Tom, U.S. Senator from South Dakota	6
Jandreau, Michael, chairman, Lower Brule Sioux Tribe	10
Johnson, Hon. Tim, U.S. Senator from South Dakota	1
Lawson, Michael L., senior associate, Morgan, Angel and Associates, Public Policy Consultants	8
Mooney, Ross, acting director of Trust Services, BIA, Department of the Interior	7

APPENDIX

Prepared statements:	
Big Eagle, Sr., Duane	19
Jandreau, Michael	21
Lawson, Michael L. (with attachments)	25
Mooney, Ross	113
Additional material submitted for the record:	
Letter from M. Michaels Rounds, Governor, State of South Dakota	114

TRIBAL PARITY ACT

TUESDAY, JUNE 15, 2004

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

The committee met, pursuant to notice, at 11:08 a.m. in room 485, Senate Russell Building, Hon. Tim Johnson, (acting chairman of the committee), presiding.

Present: Senator Johnson.

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

Senator JOHNSON. I will bring the Senate Committee on Indian Affairs to order.

Today, the Committee on Indian Affairs will conduct a hearing regarding S. 1530, a bill to provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River.

Before we begin, I want to thank Chairman Campbell and Vice Chairman Inouye for permitting this hearing to take place. I also want to thank their staffs for their assistance in making this happen.

I want to especially thank Senator Daschle for his leadership on Missouri River issues in general. Senator Daschle was instrumental in getting the Crow Creek Sioux Tribe and Lower Brule Sioux Tribe Infrastructure Development Trust Fund Acts passed to begin with. Senator Daschle's leadership on Indian issues is a blessing to our tribes throughout South Dakota, and truly our tribes have no better friend in Washington than my friend and colleague, Senator Tom Daschle.

I want to welcome our South Dakota witnesses to the committee. Chairman Jandreau of the Lower Brule Tribe is truly the Dean of our tribal leaders. As a tribal leader for over 30 years, I rely on his experience and perspective and I appreciate the wisdom that he has so kindly provided my office throughout the years.

I also want to extend a big welcome to Chairman Big Eagle of the Crow Creek Tribe. This past year has presented Duane with many challenges. Chairman Big Eagle has been a tireless advocate for the children of Crow Creek, whether it has been advocating for better educational facilities or for real solutions for the youth suicide crisis on his reservation. During these challenging times, I appreciate the leadership that Chairman Big Eagle has dem-

onstrated. Thank you for your friendship and I am pleased that Diane could join you here for the hearing today.

I want to welcome Norm Thompson and Crystal Kirkie of the Crow Creek Tribal Council, as well as Chairman Frazier of the Cheyenne River Sioux Tribe to this committee, and thank them for being part of this important hearing, and for all that they do for their constituents, for their people.

The Lower Brule Sioux Tribe and the Crow Creek Tribe were both impacted by two significant dam projects located on the Missouri River, the Fort Randall Dam and the Big Bend Dam. Both projects resulted in the inundation of several thousands of acres of land on the reservations of these two Indian tribes. In 1962, Congress attempted to mitigate the impacts of these two projects on the two reservations and the Indian people who were living on them by enacting the Big Bend Recovery Act. This Act was insufficient. Thus, Congress felt it was necessary to enact the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996, and then one year later, the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act.

Both these Acts created an infrastructure development trust fund for the respective tribes. Last year, Senator Daschle sponsored, and I cosponsored, S. 1530. This bill recognizes the need to amend the Acts, compensating these tribes at a more appropriate level. It is with great pleasure that I recognize first Leader Daschle, followed by four witnesses, Ross Mooney, Chairman Michael Jandreau, Chairman Duane Big Eagle, and Dr. Mike Lawson.

[Text of S. 1530 folows:]

II

108TH CONGRESS
1ST SESSION

S. 1530

To provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

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

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A BILL

To provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tribal Parity Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Pick-Sloan Missouri River Basin Program (authorized by section 9 of the Act of December 22, 1944 (commonly known as the ''Flood Con-

trol Act of 1944'') (58 Stat. 891)), was approved to promote the general economic development of the United States;

(2) the Fort Randall and Big Bend dam and reservoir projects in South Dakota—

(A) are major components of the Pick-Sloan Missouri River Basin Program; and

(B) contribute to the national economy;

(3) the Fort Randall and Big Bend projects inundated the fertile bottom land of the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribes;

(4) Congress has provided compensation to several Indian tribes, including the Lower Brule and Crow Creek Sioux Tribes, that border the Missouri River and suffered injury as a result of 1 or more Pick-Sloan Projects;

(5) the compensation provided to those Indian tribes has not been consistent;

(6) Missouri River Indian tribes that suffered injury as a result of 1 or more Pick-Sloan Projects should be adequately compensated for those injuries, and that compensation should be consistent among the Tribes; and

(7) the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe, based on methodology determined appropriate by the General Accounting Office, are entitled to receive additional compensation for injuries described in paragraph (6), so as to provide parity among compensation received by all Missouri River Indian tribes.

SEC. 3. LOWER BRULE SIOUX TRIBE.

Section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (Public Law 105–132; 111 Stat. 2565) is amended by striking ''$39,300,000'' and inserting ''$176,398,012''.

SEC. 4. CROW CREEK SIOUX TRIBE.

Section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (Public Law 104–223; 110 Stat. 3027) is amended by striking ''$27,500,000'' and inserting ''$100,244,040''.

○

Senator JOHNSON. I know that we are anticipating a vote sometime around 12:10 this afternoon so I am going to do what I can to expedite the testimony here. Before we go to the first panel, I defer to South Dakota's Senior Senator, the Democratic Leader, Senator Tom Daschle.

Welcome, Tom.

STATEMENT OF HON. THOMAS A. DASCHLE, U.S. SENATOR FROM SOUTH DAKOTA

Senator DASCHLE. Thank you very much, Tim, first for chairing this important hearing and for cosponsoring S. 1530. Your leadership and commitment to Native Americans and the incredible work that you invest on a daily basis on their behalf is widely recognized. Once again, your presence here this morning is yet the latest illustration of your commitment to these issues.

I, like you, would like to thank Chairman Campbell and Vice Chairman Inouye and their remarkable staffs for their cooperation and the effort that they have made to allow us to have this hearing today. Like you, I also want to welcome our chairs, Mike Jandreau and Duane Big Eagle, remarkable chairs that have done so much on behalf of their people; and recognize as well Chairman Harold Frazier of Cheyenne River who certainly knows the consequences of damming the Missouri River as well as anybody in our State.

Because of the interest that you noted in finishing our hearing within an hour, I want to be very brief this morning. Let me simply say that the consequences of the dams and the construction of those dams was devastating for people who lived and generated their livelihoods all along the Missouri River. Land, homes, local economies, entire communities were actually destroyed. Families who lived along the river were forced into housing, oftentimes inadequate and poorly constructed. Many lost their whole way of life.

The compensation from the Federal Government could never possibly be sufficient to deal with the loss that many of these people experienced. We can never erase the damage that has been done. But if we have an obligation, we have an obligation to do the best we can to rebuild what some have lost in the best way we know how. That really is what the Joint Tribal-Federal Advisory Committee, or so-called JTAC legislation passed over the last few years has been designed to do.

Chairmen Jandreau and Big Eagle can tell you how they have used that compensation for the benefit of their people. But in the various JTAC bills, different methodologies for calculating compensation have now been used. S. 1530 is an attempt to level the playing field for all the affected tribes. Knowing there is confusion about what truly constitutes parity, it is a complicated equation and I am very pleased that Mike Lawson, who is a real expert, can be here to explain how we might define it in policy terms, hoping this hearing will move us one step forward and closer to achieving a final and most importantly the just compensation to all tribes that were so devastated by the Pick-Sloan flooding and all of the experiences that came as a result of it.

So Mr. Chairman, I thank you again for your commitment to this legislation. I thank our tribal leaders for their willingness to come to express again the need for early passage of this bill. My hope

is that once and for all we can make the commitment on behalf of the Federal Government that needs to be made in support of the many, many thousands of Native Americans who lost so much with the construction of the dams, now some 50 years ago.

I thank you for your chairing this hearing this morning, and I will turn the dais over to my colleagues from South Dakota.

Senator JOHNSON. Thank you, Senator Daschle, for your extraordinary leadership. I think it is fair to say that Congress would not even be to the point of debating this issue were it not for your leadership and your guidance on this matter.

I appreciate that you have ongoing obligations on the floor, and certainly understand if you felt a need to return to the Capitol. Thank you again for your statement this morning, and I look forward to working very closely with you and with our tribal leaders in South Dakota on this issue.

Senator DASCHLE. Thank you, Mr. Chairman.

Senator JOHNSON. Our first panel this morning consists of Ross Mooney who is acting director of Trust Services, Bureau of Indian Affairs [BIA], Department of the Interior here in Washington, DC. Welcome, Mr. Mooney. Your entire written statement will be received in the record, so if you so choose to summarize in an oral fashion, that is very acceptable to the Chair.

STATEMENT OF ROSS MOONEY, ACTING DEPUTY DIRECTOR, OFFICE OF TRUST SERVICES, BIA, DEPARTMENT OF THE INTERIOR.

Mr. MOONEY. Thank you.

Good morning, Mr. Chairman and members of the committee. I am pleased to be here today to present the views of the Administration on S. 1530, the Tribal Parity Act.

If enacted, S. 1530 would increase the compensation to the Lower Brule and Crow Creek Tribes for their loss of lands and cultural resources as a result of the Pick-Sloan project. The intent of this legislation is to put the compensation on par with that provided to similarly situated tribes in the region that have already received compensation for losses resulting from Pick-Sloan.

Section 2 of S. 1530 references a methodology determined appropriate by the General Accounting Office. We are under the assumption the sponsors are referring to the GAO reports of May 1991 concerning the Fort Berthold and Standing Rock Sioux Tribes; and January 1998 concerning the Cheyenne River Sioux, in which questions were raised about the calculations used to determine the amounts of the compensation provided.

Within appendix 3 of the January 1998 GAO report, there is a table which states in the footnotes that dollar amounts shown are not comparable. The original payments authorized and the additional compensation authorized are not comparable across the five reservations or with each other. In 1991, testimony provided on behalf of GAO stated the question of whether additional compensation should be provided to the tribes is a policy decision for the Congress.

To summarize, the Department is not in a position to comment on whether these two tribes were equitably compensated that at this time. However, we will be happy to work with the sponsor of

the bill, this committee, and the tribes to determine if, in fact, there was an inequitable calculation regarding the original principal amounts.

This concludes my testimony and I will be happy to respond to any questions you may have.

Thank you.

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

Senator JOHNSON. Thank you for your testimony today, Mr. Mooney. We on the committee, I think it is fair to say, recognize that this is a policy determination that ultimately needs to be made. On the other hand, it is important that that determination not be made on some random basis and that there be a sense of fairness and uniformity to however it is we do approach the resolution of the compensation package.

I would simply say, I would hope that, as you indicated in your statement, that you would be willing to work with us in a constructive fashion to create an equitable compensation package for the Lower Brule and the Crow Creek Tribes.

Mr. MOONEY. Surely.

Senator JOHNSON. We very much appreciate that and we recognize your expertise in this area, and we will be working closely with you, Mr. Mooney. Thank you for your testimony.

Mr. MOONEY. Thank you.

Senator JOHNSON. The second panel this morning consists of Michael Lawson, Ph.D., senior associate, Morgan, Angel and Associates, Public Policy Consultants of Washington, DC; also Michael Jandreau, chairman, Lower Brule Sioux Tribe of Lower Brule, SD; and Duane Big Eagle, Sr., chairman, Crow Creek Sioux Tribe of Fort Thompson, SD.

Would you please join us at the witness table?

Mr. Lawson, welcome to the hearing this morning. We will begin this panel with your testimony. As I indicated earlier, your full statement is received for the record. If you choose to summarize in oral fashion, that is acceptable to the committee.

STATEMENT OF MICHAEL L. LAWSON, SENIOR ASSOCIATE, MORGAN, ANGEL AND ASSOCIATES, PUBLIC POLICY CONSULTANTS

Mr. LAWSON. Thank you.

Mr. Chairman and members of the committee, I am Mike Lawson, a historian with Morgan, Angel and Associates, a public policy consulting firm here in Washington. I am grateful to have the opportunity to testify today in regard to S. 1530, the Tribal Parity Act. With your permission, Mr. Chairman, I would like to provide my written statement for the hearing record, along with my report entitled, Parity Compensation for Losses from Missouri River Pick-Sloan Dam Projects, and then summarize my findings.

Senator JOHNSON. Without objection, these documents are received into the record.

[Referenced documents appears in appendix.]

Mr. LAWSON. I was asked to review the proposed Tribal Parity Act in light of previous compensation that Congress has provided to tribes impacted by the Pick-Sloan Dam projects, based on a methodology approved by the General Accounting Office. The bot-

tom line, Mr. Chairman, is that both the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe are due additional compensation from the United States if parity is to be maintained among the Missouri River tribes.

Please allow me to elaborate. On two prior occasions, Congress has provided final settlements to Missouri River tribes based on a methodology for determining fair compensation recommended by the GAO in 1991. The 102d Congress enacted Public Law 575 in 1992 which authorized the establishment of a recovery trust fund capitalized at $149.2 million for the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota. The 106th Congress approved Public Law 511 in 2000, which appropriated $290.7 million for the establishment of a recovery trust fund for the Cheyenne River Sioux Tribe of South Dakota.

The method for determining additional compensation approved by Congress in these two prior statutes was based on a calculation of the difference between the amounts determined by the tribes to be warranted at the time of taking, and the amounts that Congress eventually provided to them as compensation. The compensation recommended by the GAO in 1991 and reiterated in a 1998-GAO report on the Cheyenne River compensation, was to take the difference between the amounts requested by the tribes and the amounts appropriated by Congress and add to that difference the average annual rate of interest that would have accrued over time had the amount of difference been invested in AAA-rated corporate bonds. AAA is the highest grade of corporate bonds as determined by bond rating services such as Moody's Investment Services.

In accordance with this method of determining fair compensation, the Lower Brule Sioux Tribe is entitled to a parity payment and additional final compensation of $147,082,140, and the Crow Creek Sioux Tribe to $78,417,853, for their Pick-Sloan damages. The calculations on which these amounts are based are summarized in the table I have provided to the committee entitled, Basis for Parity Compensation. I would be happy to walk the committee through these numbers, either now or at any time in the future.

The damages suffered by the Lower Brule and Crow Creek Sioux Tribes as a result of the Fort Randall and Big Bend Dam projects are comparable to the impacts of the Garrison Dam on the Three Affiliated Tribes at Fort Berthold and of the Oahe Dam on the Cheyenne River Sioux Tribe. This is especially true in regard to the loss of natural resources and reservation infrastructure, and the forced relocation of tribal members.

I have concluded based on my review that additional compensation for the Lower Brule and Crow Creek Sioux Tribes is warranted and required if the United States is to treat all of the Missouri tribes equally. I therefore support S. 1530 as being a consistent, accurate and a fair method by which the Federal Government can provide parity to all of the Missouri River Tribes.

This concludes my remarks. I would be happy to answer any questions that you may have.

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

Senator JOHNSON. Thank you, Dr. Lawson. I think what we will do is conclude the testimony of this panel and then reserve questions for after that testimony has been provided.

The committee also welcomes Marshall Matz to the table as well, a highly respected counsel here in Washington on these kinds of issues.

Second on our panel today we will turn to Chairman Jandreau for your statement, and again your full statement is received for the record.

STATEMENT OF MICHAEL JANDREAU, CHAIRMAN, LOWER BRULE SIOUX TRIBE

Mr. JANDREAU. First I would like to thank the committee. I would like to thank Senator Daschle and yourself for cosponsoring this bill.

I would like to state that the amount of dollars that are to be received have been a long time coming. We are very grateful for the initial trust fund that was given to us. We have been able to accomplish a tremendous amount on our reservation with that. We are grateful also to you and to Senator Daschle and to Congress for allowing us that opportunity.

However, in spite of the fact that we have used these dollars to impact positively the growth and development of our tribe, we still suffer the same issues of poverty, of joblessness, not to as large an extent as it was previously, but we have a long way to go for the entire development. We need to be able to leverage more with private industry to make our dollars effectively work for our tribes.

We need this opportunity and I guess I feel a little ill at ease because the last time I was here I had the elders of our tribe, many of them, here supporting this actively. We could not afford to do it this time. However, they are in support of the expansion of this.

I thank you for the opportunity to come and testify before you today.

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

Senator JOHNSON. Thank you, Mr. Chairman, for your testimony, and most of all for your longstanding extraordinary leadership of the Lower Brule Tribe.

Last on this panel, Chairman Duane Big Eagle, Sr. Duane, welcome to the committee and again, as with the others, your full statement is received for the record.

STATEMENT OF DUANE BIG EAGLE, SR., CHAIRMAN, CROW CREEK SIOUX TRIBE

Mr. BIG EAGLE. Thank you.

Mr. Chairman and members of the committee, I am Duane Big Eagle, chairman of the Crow Creek Sioux Tribe. I thank you very much for the opportunity to testify in support of the Tribal Parity Act, S. 1530.

I would like to thank Senator Daschle for the introduction of legislation and you, Senator Johnson, for cosponsoring. The legislation before you this morning is of great importance to the Crow Creek Sioux Tribe. We support it and urge its favorable consideration by the committee and the Congress.

The Crow Creek Sioux Tribe, like Lower Brule, is a Band of the Great Sioux Nation and a signatory of the Fort Laramie Treaty of 1851 and the Fort Sully Treaty of 1865. The Missouri River established our western boundaries directly across the river from Lower

Brule. The Big Bend Dam connects our two reservations and its construction affected our two reservations in a similar manner. It flooded our best bottomlands and required us to relocate our town. For us, that is Fort Thompson. In 1996, the Congress enacted Public Law 104–223, creating the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act. It established a trust fund of $27.5 million for the benefit of the tribe. The legislation before you today, S. 1530, the Tribal Parity Act, would complement that earlier law.

We are not seeking any advantage over any other tribe, just parity. The additional compensation called for in the Tribal Parity Act was computed by Dr. Lawson based on methodology used by the GAO for our other tribes. The amount included in the legislation was not computed by either the Crow Creek Sioux Tribe or the Lower Brule Sioux Tribe. It is the amount that Dr. Lawson has computed. It would bring us up to the standard used by the Congress for the Cheyenne River.

Candidly, Mr. Chairman, our tribe needs every dollar that is fairly owed to us. Our unemployment rate is high. Our health problems are a significant barrier to progress, and our education and infrastructure systems are in need of great improvement. With the interest on the trust fund, we could much more effectively meet the challenges we face on our reservation, and these challenges cannot be overstated. We are a small tribe with great human needs. The Tribal Parity Act is vital to the progress and the future of the Crow Creek Sioux Tribe.

Mr. Chairman, we all know painfully the history of the reservations in the United States and the history of the Great Sioux Nation tribes in particular. We are not near any major population centers. We have a casino, as does Lower Brule, that will never be a major source of income. For us to stand a chance, we must at a minimum be fairly compensated for the land that was taken by the Pick–Sloan. The $78 million in the parity bill for Crow Creek, if added to our current trust fund, would give us a trust fund of $105 million. The interest on this trust fund would provide Crow Creek with resources necessary to make a significant difference in the lives of our people, in the lives of our children and grandchildren. It would, in short, give our tribe a second chance.

Thank you for your consideration. I would be pleased to answer any questions.

[Prepared statement of Mr. Big Eagle appears in appendix.]

Senator JOHNSON. Thank you, Mr. Chairman.

Let me begin some questions for Dr. Lawson. As I understand from your testimony, the Cheyenne River and the Three Affiliated settlements which were approved by Congress were based on the damages claimed by the tribes at the time of taking. Is that a correct observation?

Mr. LAWSON. That is correct.

Senator JOHNSON. By comparison, the Lower Brule and Crow Creek trust funds were not based on the damages claimed by the tribes at the time, but were based on a per-acre calculation. Is it fair to say that that discrepancy is at the heart of this debate and of the parity bill?

Mr. LAWSON. Yes; what this legislation seeks to do is to resolve this discrepancy between two different methodologies of determining the fair compensation.

Senator JOHNSON. As a historian, it would be interesting to me and to the committee to go back just a few years. Why wasn't the Fort Berthold, Standing Rock, and Cheyenne River Sioux formula used in 1996?

Mr. LAWSON. We have not completely found all the documentation on that, but it seems to be that these two tribes were not aware of that formula in 1996 and 1997, and surprisingly neither the GAO nor the Congress made them aware that this methodology had been applied in the previous legislation.

Senator JOHNSON. The amount called for in your testimony today is somewhat higher than the parity bill as it was originally introduced. I gather that this is simply the effect of additional interest in the intervening years. Is that correct?

Mr. LAWSON. Yes; that is correct. The original bill as introduced reflected the calculation of interest through calendar year 2002. The revised numbers reflect the calculation that includes the interest through calendar year 2003.

Senator JOHNSON. If you could put together a written analysis of the difference between the Fort Berthold, Standing Rock, Cheyenne River formula versus the 1996 approach, that would be very helpful. We could put that in the record.

Mr. LAWSON. I would be happy to do that.

Senator JOHNSON. That would be very helpful. Thank you.

I appreciate that the final assessment about whether the reconciliation process is complete or not is a question that only the members of the Lower Brule and the Crow Creek Tribes themselves can answer. But from your perspective, would this parity in approach be a significant step toward reconciliation between the Indian and non-Indian communities along the Missouri River?

Mr. LAWSON. From my perspective, I view this legislation as being a final settlement for all of the damages that these tribes have suffered as a result of the Pick-Sloan dam projects.

Senator JOHNSON. Very good.

For Chairmen Jandreau and Big Eagle, again I thank you both for your testimony and for coming all the way to Washington to testify on this important legislation. I wonder if you could summarize for me in a brief fashion what the existing trust funds that you have under current law have allowed you to do on your respective reservations. Chairman Jandreau, what has that money been used for?

Mr. JANDREAU. The dollars that received through the trust fund have been leveraged to develop approximately $15 million worth of buildings that were sorely needed, a new tribal headquarters, a community center, a new office for the Wildlife Department. It contributed to the expansion of our rural water storage facilities. It helped us and solely was used for the construction of an ambulance office and garage.

It has also been used to set up a fund for burial of our people that meets standards that are much higher than were allowed before. It has allowed us to provide a substantial increase in our educational dollars for the youth. It has allowed us to do some things

with economic development, and as far as it was able, to expand a loan program on the reservation for individual members of the tribe.

Totally, those dollars have been a significant part of helping to reduce and level the employment processes on the reservation. Those things roughly are what we have done up to this point.

Senator JOHNSON. As you know, thanks to your hospitality, I have had an opportunity to tour those facilities on the Lower Brule. I can attest myself to what a wonderful improvement in the quality of life and the public health and safety and welfare of the people these projects have created. I am appreciative of your leadership in very innovatively using the dollars available in a way that maximizes their impact.

Can you imagine any way that these projects would have been built, completed, or these programs put underway, without the resources from the trust fund?

Mr. JANDREAU. I guess knowing South Dakota and the inability to access with the limited resources that we had prior to this, it may have been able to be done, but it would have taken a long, long time to make it happen.

Senator JOHNSON. The revenue from the trust fund, that is going to be required for some years to come now to pay off this indebtedness. So there is not a lot of additional room for still new initiatives or projects, given the revenue that you have. Is that correct?

Mr. JANDREAU. Yes; many of the plans that we laid out, or many of the developments that we have laid out in our plan are not going to be able to be accomplished for a long time, even under the old trust fund. With the new trust fund, should it be capitalized efficiently, will allow us the opportunity to meet the plan that we submitted to Congress.

Senator JOHNSON. Can you give us some examples of things that you would be able to do if we were able to pass this legislation and improve the size of the trust fund?

Mr. JANDREAU. I sincerely believe that we would be able to complete our detention facility, holistically, that we are now in the process of constructing; that we could in all probability reduce unemployment to zero simply because of the outlaying plans that there are to employ not only adults, but youth; that we would expand our educational opportunity capital by at least 50 percent to 75 percent greater than we are providing today; that we could develop some of the economic opportunities such as tourism development and other activities that would stabilize the long-term growth of the reservation more effectively. We have the plans, but not the dollars.

Senator JOHNSON. Thank you for that.

On the Lower Brule, is there broad support for this legislation among the people on the Council with the Elders?

Mr. JANDREAU. I guess, you know, you have been around reservations for a long time, Senator.

Senator JOHNSON. Unanimity is never possible, but a large consensus.

Mr. JANDREAU. If there is anything that there is any unanimity on, it would be in support of this.

Senator JOHNSON. Very good.

I would note as well that the Lower Brule sits astride very historic land related to the Lewis and Clark trip up the Missouri River.

Chairman Big Eagle, I would ask you the same questions that I did to Mike. Could you give us a general picture of how have you used the resources from your existing trust fund up until now?

Mr. BIG EAGLE. Senator, after a series of meetings with the three districts that we have on the Crow Creek Reservation and much consultation with the Elders and the tribal members asking them what they felt their wants and needs are, in our Big Bend District we purchased a school building that now provides educational facilities for over 40 children and 16 Head Start children. In our Fort Thompson and Crow Creek Districts, we have put up community buildings; the Crow Creek District in particular, with a gymnasium, so that children that are out there literally in the middle of nowhere can now have recreational activities in the evenings, which offsets what we like to feel is the ongoing suicide rate in our teenagers on the reservation.

Senator JOHNSON. Share with us, have you had a recent spate of youth suicide?

Mr. BIG EAGLE. Yes; we have. I believe it was addressed to me by one of Senator Daschle's staff at one point in time that a township of 2,200 people had an average of 22 suicide attempts or successes a month.

Senator JOHNSON. A month.

Mr. BIG EAGLE. A month.

Senator JOHNSON. That is remarkable.

Mr. BIG EAGLE. We have also purchased a tract of land at the insistence of a local rancher that would refuse to sell his land to anybody else but the tribe, that sits adjacent to the substation or the grid that is located north of Fort Thompson there, and have been working with South Dakota public utilities and other outside investment firms on developing wind energy. I believe in last week's Sioux Falls Argus Leader, Senator Daschle commented that South Dakota could produce 276,000 megawatts with wind energy. We are at present hoping that we will someday establish at least 150 wind turbines on that tract of land for a start.

Senator JOHNSON. You have the circumstance where you are located in an area where there is a lot of wind potential, but also you are next to the Big Bend Dam and the electricity grid that runs through there. So both you and Lower Brule have some potential in that regard, I would think.

Mr. BIG EAGLE. We have set aside $100,000 annually for a student scholarship program for those that want to continue school and further their education. Like Lower Brule, I think Chairman Jandreau has kind of summed up a lot of the other useful purposes that the infrastructure has provided, the doorways that it has opened. We are grateful for that at this time.

Senator JOHNSON. If you were to have a significantly enhanced trust fund, any thoughts about the kinds of things that you would use that revenue for?

Mr. BIG EAGLE. At the present time, some of the issues that I work on, as you are aware of, is our educational facilities that are collapsing as we speak. I meet with the elderly who live in an out-

dated 1969 elderly center and have asked the tribe for help in setting up some kind of assisted living quarters because the houses that they live in have so many other relatives living in them.

We have a large variety of contact with the elderly people in our community and they provide a lot of support in things that we want to do. So other than major road repair, probably we had to pass up the opportunity to work with a company out of Colorado that had contracts with the military to develop decontamination devices in this state of terrorism that we go through. We would have liked to have been able to put up a building that would have been suitable for such a factory and probably would have created somewhere in the area of 50 to whatever jobs.

Senator JOHNSON. I have had an opportunity to tour the school at Stefan. In fact, Kevin Gover was with us those years ago. It was in deplorable condition then. Since then, things have only become worse. Thanks to your work and working with Senator Daschle, we have made some improvements on the gymnasium there, but there is much that remains to be done.

Let me ask both the Chairmen here, either one of you can take this, to describe the planning process in place on your reservations that will assure the committee that the trust funds will be utilized in accordance with the wishes of the tribal people themselves; that there is a thoughtful public and organized utilization of the money. That this is not just free cash lying around someplace; that there is in fact a very systematic way of utilizing the trust fund.

Mr. JANDREAU. Senator, at Lower Brule presently we have an Infrastructure Development Committee that consists of approximately 16 people who are in various parts of the tribe, program directors, individuals of the community. Also in addition to that, we have representatives from the Bureau of Indian Affairs and from Indian Health Service who we utilized in an ongoing process to deal with any way that these dollars are programmed to be funded; any way that they will affect a plan into the future. Those activities after hearing by this particular committee, after being vetted to the public, are then provided to the Tribal Council for enactment. That is how we move this process forward at Lower Brule.

Senator JOHNSON. Does the BIA have a role in this?

Mr. JANDREAU. Yes; their role is primarily advisory, the same way with Indian Health Service. Their role is primarily advisory. But the strength of personality that is there, if it is something that is not being conducted in a proper way, they are there to help with a guiding hand also.

Senator JOHNSON. And there is an audit process that is involved?

Mr. JANDREAU. We have a yearly audit that is accomplished on all funds that are received by our tribe.

Senator JOHNSON. Chairman Big Eagle, what is the process on your reservation?

Mr. BIG EAGLE. Although we lack a committee, we meet with the people in our Tribal Council chambers and listen to their ideas and suggestions as to what they want done. We try to do this in a manner that we include all three districts. Like I say, we get a lot of advice from our tribal membership, our elderly and our young, and we try to follow at any point their direction. As I say, if anybody knows best what they need, it is them.

So at some point in time, based on the unemployment ratio on the Crow Creek Reservation——

Senator JOHNSON. What would you estimate that to be?

Mr. BIG EAGLE. I would probably guess at this point somewhere in the high 80's, 85 percent.

Senator JOHNSON. High 80's of unemployment?

Mr. BIG EAGLE. Yes, sir; people have the opportunity to work on farms and ranches and travel to surrounding towns to commute for work. We try to employ as many as we can on a full-time or part-time basis. The Corps of Engineers recently now has started employing tribal members from both Lower Brule and Crow Creek, which has been very helpful.

So I think whether it is a committee or whether it is just a general community meeting with the people, we both look at going in the same direction. That is what is best for the benefit of our tribes.

Senator JOHNSON. Again, as I asked Chairman Jandreau, in your view there is pretty broad-based support on your Council and among your people for this legislation?

Mr. BIG EAGLE. Yes; at our last Tuesday council meeting, we had a large turnout of different Bands of our people and the Districts. And on this day, I think that they are all offering up prayer at this point in time for the success of our trip.

Senator JOHNSON. Thank you, and I know that neither of you are particularly fond of a lot of travel back and forth from South Dakota to Washington, but your presence here is critically important, and your insights are very valuable to the committee.

We of course will share this with the committee and staff, and as was noted at the outset that the goal here is not simply to augment the trust fund for the sake of augmenting the trust fund. What is at work here is trying to arrive at a systematic, equitable, fair way of determining what a fair trust fund compensation amount might be. That is what we are attempting to do here.

It would be interesting to know a little more about the dynamic of why some trust funds are arrived at in a far different fashion than these trust funds were, but in any event these are two tribes with enormously urgent needs, high levels of unemployment and poverty. Great progress has been made thanks to the leadership of these two Chair, but much, much more needs to be done.

It seems critically important to me if we are going to draw this whole debate to a closure that all the tribes up and down the Missouri River who have been negatively impacted by the flooding of their historic land base should know that they have been treated fairly and equitably. Otherwise, there can never be very much satisfaction about any of this.

So thank you for your leadership, what you have done here. Dr. Lawson, thank you for your insights. We look forward to some written response to that one point that we raised with you.

Mr. LAWSON. Mr. Chairman, I wonder if I might add a personal note for the record?

Senator JOHNSON. Certainly.

Mr. LAWSON. This whole endeavor of studying the impact of the Pick-Sloan dams on the Missouri River tribes began for me more than 30 years ago when I needed to find a subject to write a doc-

toral dissertation about. Okay? Over the years, all of the tribes that received additional compensation have used in part or in whole my research. I just wanted to say what an enormous good feeling it gives to me that these Indian people have received a very practical application of that research and that they have been able to enjoy the additional compensation that Congress has provided them over the years.

Senator JOHNSON. We are very appreciative of your work. I think it is fair to say that it is rare that academic work has such very real-life applications as yours has. We have more work to do here, but we will fall back on your study and your examination in large measure in the course of doing this.

Keep it in mind again that the revenue for the creation of these trust funds is not out of the general fund, but rather comes from the electricity production on these earthen dams that in fact flooded these tribes. So there is a certain justice at the end of the day in that regard as well.

Thank you for your testimony. We will have ongoing communications with all of you as we move this legislation forward in a constructive bipartisan fashion. I most simply say thank you for your presence here today. I think the fact that the Chairman and the Ranking Member were very willing to allow us to go forward with this hearing today is a good omen. I am confident that we will reach a point where we can draw a close to this whole debate about Missouri River flooding compensation.

Thank you again.

With that, this hearing is adjourned.

[Whereupon, at 12:18 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DUANE BIG EAGLE, CHAIRMAN, CROW CREEK SIOUX TRIBE

Mr. Chairman, Members of the Committee, I am Duane Big Eagle, Chairman of the Crow Creek Sioux Tribe. Thank you very much for the opportunity to testify in support of the Tribal Parity Act, S. 1530.

First, I would also like to thank Senator Daschle for the introduction of the legislation, and Senator Johnson for cosponsoring. The legislation before you this morning is of great importance to the Crow Creek Sioux Tribe. We support it and urge its favorable consideration by the Committee and the Congress.

The Crow Creek Sioux Tribe is, like Lower Brule, a constituent band of the Great Sioux Nation and a signatory of the Fort Laramie Treaty of 1851 and the Fort Sully Treaty of 1865. The Missouri River establishes our western boundary, directly across the river from Lower Brule. The Big Bend Dam connects our two reservations and its construction effected our two reservations in a similar manner. It flooded our best bottomlands and required us to relocate our town; for us that is Fort Thompson.

In 1996, the Congress enacted Public Law 104–223 creating the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act. It established a Trust Fund of $37,500,000 for the benefit of the tribe. The legislation before you today, S. 1530, the Tribal Parity Act, would compliment that earlier law.

We are not seeking any advantage over any other tribe, just parity. The additional compensation called for in the Tribal Parity Act was computed by Dr. Lawson based on methodology used by the GAO for other tribes. The amount included in the legislation, was not computed by either the Crow Creek Sioux Tribe or the Lower Brule Sioux Tribe. It is the amount that Dr. Lawson has computed would bring us up to the standard used by the Congress for Cheyenne River.

Candidly, Mr. Chairman, our tribe needs ever dollar that is fairly owed to us. Our unemployment rate is too high, our health problems are a significant barrier to progress, and our education and infrastructure systems are in need on great improvement.

With the interest on the trust fund, we could much more effectively meet the challenges we face on the reservation, and these challenges can not be overstated. We are a small tribe with great human needs. The Tribal Parity Act is vital to the progress and future of the Crow Creek Sioux Tribe.

Mr. Chairman, we all know—painfully—the history of the reservations in the United States and the history of the Great Sioux Nation Tribes, in particular. We are not near any major population center. We have a casino, as does Lower Brule, but that will never be a major source of income. For us to stand a chance, we must, at aminimum, be fairly compensated for the land that was taken by the Pick-Sloan. The $78 million in the Parity bill for Crow Creek, if added to our current trust fund, would give us a trust fund of $105 million. The interest on this trust fund would provide Crow Creek with the resources necessary to make a significant difference in the lives of our people and the lives of our children and grandchildren. It would, in short, give our tribe a second chance. Thank you for your consideration. I would be pleased to answer any questions.

STATEMENT

OF

MICHAEL B. JANDREAU

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

JUNE 15, 2004

Mr. Chairman, Members of the Committee, thank you very much for the opportunity to testify on the Tribal Parity Act, S. 1530. I am Michael Jandreau, the Chairman of the Lower Brule Sioux Tribe. I have been Chairman of the Tribe for twenty-five years.

The legislation before you this morning is of great importance to our tribe and our people. I would like to thank Senator Daschle for the introduction of the legislation, and Senator Johnson for cosponsoring. I am joined today by members of our Council, other tribal members, and our Counsel, Marshall Matz with the law firm of Olsson, Frank and Weeda.

The Lower Brule Sioux Tribe is a constituent band of the Great Sioux Nation and a signatory of the Fort Laramie Treaty of 1851 and the Fort Sully Treaty of 1865. The reservation is approximately 230,000 acres in central South Dakota. The Missouri River

establishes the eastern boundary of the reservation. Historically, the Missouri's bottomlands provided food, wood for shelter and fuel, forage for cattle and wildlife, and plants utilized for medical purposes. In 1804, Lewis and Clark traveled up the Missouri River, passing through our area during the month of September. Nothing has been the same since that time.

In 1944, Congress enacted the Flood Control Act, which authorized implementation of the Missouri River Basin Pick-Sloan Plan for water development in the Missouri River Basin. Two of its main-stem dams, Fort Randall and Big Ben, flooded over 22,000 acres ---approximately 10% of the entire reservation and our best bottomland. In addition, it required the resettlement of nearly 70% of the resident population. For the Lower Brule Sioux Tribe, the human and economic costs have far outweighed any benefits from the Pick-Sloan project.

The Congress, under the leadership of this Committee, and in response to legislation introduced by Senator Daschle, responded in 1997 with the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act, Public Law 105-132. This legislation has been of enormous benefit to our people. It established a Trust Fund of $39,300,000 for the benefit of the tribe. With this Fund, we have begun to revitalize our infrastructure. We built a new community center, tribal administration building, and wildlife building, among others. They are more than just buildings. It is allowing us to improve our economy and the quality of life on the reservation in many ways.

Legislation is now pending, S. 1530, the Tribal Parity Act, that would build upon the earlier law. As you have heard from Dr. Mike Lawson, the Tribal Parity Act is intended to do just that.....provide parity between the Missouri River Tribes. We are not seeking any advantage over any other tribe in the Great Sioux Nation, only equity and parity. The additional compensation called for in the Tribal Parity Act was computed by Dr. Lawson based on methodology used by the GAO for other tribes.

Our tribe is asking for this legislation because the United States should treat all tribes fairly and because of what it would mean for our people. It would, if enacted, add over $147 million to our trust fund. With the interest on the trust fund, we could attack the many human challenges we face on the reservation. Further, we could more adequately build our infrastructure to the point that it would be possible to attract a private sector economy.

As you know, sovereignty is key to tribal existence. But, in the long run, for sovereignty to survive, there must be economic sovereignty as well. We must develop a private sector economy. The legislation before you will allow us to do all of that. We will improve education, health care, housing, transportation, the justice system, and so many other services.

As much as we need this legislation, let me stress that we are not asking for a hand out or charity. This legislation is intended to provide more complete compensation for the loss of our best land and other costs suffered by the Tribe. The Army Corps of Engineers has

estimated that the Pick-Sloan project's overall contribution to the national economy averages $1.27 billion per year. S. 1530 should be seen in that context.

The Lower Brule Sioux Tribe is making great progress. Our unemployment rate is the lowest of any reservation in South Dakota, but it is still much above the national average. Our goal is to participate fully in the United States economy while maintaining our heritage and identity. We urge your support for S. 1530, the Tribal Parity Act. I would be pleased to answer any questions. Thank you very much.

TESTIMONY

ON S. 1530

TRIBAL PARITY ACT:

TO PROVIDE COMPENSATION TO THE LOWER BRULE AND CROW CREEK SIOUX TRIBES OF SOUTH DAKOTA FOR DAMAGE TO TRIBAL LAND CAUSED BY PICK-SLOAN PROJECTS ALONG THE MISSOURI RIVER

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

U. S. SENATE

JUNE 15, 2004

SUBMITTED BY

MICHAEL L. LAWSON, Ph.D.
SENIOR ASSOCIATE
MORGAN, ANGEL & ASSOCIATES. L.L.C.
PUBLIC POLICY CONSULTANTS
WASHINGTON, D.C.

Mr. Chairman and members of the Committee, I am grateful to have the opportunity to provide testimony today in regard to Senate Bill S. 1530, the Tribal Parity Act. With your permission, Mr. Chairman, I would like to provide my written statement for the hearing record, along with my report entitled *Parity Compensation for Losses from Missouri River Pick-Sloan Dam Projects*, and then summarize my findings.

I am Mike Lawson and I am a historian and a senior associate with Morgan Angel & Associates, a public policy consulting firm here in Washington. I have considerable specific knowledge about the impact on Indian tribes of the six dams constructed by the U.S. Army Corps of Engineers on the main-stem of the Missouri River as part of the Missouri River Basin Development Program (better known as the Pick-Sloan Plan). I first began studying these impacts more than thirty years ago when I was a graduate student in Nebraska. In my book, *Dammed Indians,* first published in 1982, I explored in detail the development of the Pick-Sloan Plan and the negotiations that took place between the tribes and the Federal government. I measured the physical, aesthetic, cultural, and psychological damages the tribes suffered against the benefits they received and concluded that the critical losses far exceeded the minimal gains

My research has been used in part to document and support all of the legislation that Congress has enacted since 1992 to provide additional compensation to the Missouri River Sioux tribes for the loss of reservation resources and infrastructure caused by the Pick-Sloan dam projects.

I have been asked to review the proposed Tribal Parity Act in light of the previous compensation Congress has provided to the Lower Brule and Crow Creek Sioux Tribes of South Dakota. I have also been requested to determine, based on methodology approved by the General Accounting Office, whether additional compensation for these two tribes is justified and appropriate. I have reviewed all of the compensation legislation that Congress has enacted for the Missouri River tribes. My review has included, but has

not been limited to, the additional compensation provided by Congress to the Three Affiliated Tribes and the Standing Rock Sioux Tribe in 1992 and the Cheyenne River Sioux Tribe in 2000 and the GAO reports underpinning that legislation. I have concluded, based on my review, that additional compensation for the Lower Brule and Crow Creek Sioux Tribes is warranted and required if the Untied States is to treat all the Missouri River tribes equally. I therefore support S. 1530 as being a consistent, accurate, and a fair method by which the Federal Government can provide parity to all the Missouri River tribes.

The Lower Brule and Crow Creek Sioux Tribes were deprived of a total of approximately 38,000 acres of their best reservation lands as a result of the development of the Fort Randall and Big Bend dam projects. These two tribes have never fully recovered from losing their most productive land and resources and having to relocate a majority of their tribal members.

The damages suffered by the Lower Brule and Crow Creek Sioux Tribes as a result of these projects are comparable to the impacts of the Garrison Dam on the Three Affiliated Tribes of Fort Berthold and the Oahe Dam on the Standing Rock and Cheyenne River Sioux Tribes. This is especially true in regard to the loss of natural resources and reservation infrastructure.

The Lower Brule and Crow Creek Sioux Tribes seek final compensation for damages caused to their reservations by the two dam projects and parity with the final settlements provided by Congress to the Three Affiliated Tribes in 1992 and the Cheyenne River Sioux Tribe in 2000. These settlements were based on the methodology for determining fair compensation first proposed by the General Accounting Office in 1991. A GAO report of that year noted that "the Tribes may not have been willing sellers of the land at the amount of compensation authorized by Congress." The GAO proposed that Congress, as a method of determining a range of fair compensation, "start with the difference between the compensation the Tribes believed was warranted at the time of the

taking and the compensation that was appropriated by Congress."

The compensation suggested by the GAO was to take the difference between the amounts requested by the Tribes and the amounts appropriated by Congress and add to that difference a further valuation within two possible ranges. The lower range of these valuations was based on the average annual rate of inflation. The higher range of valuation was based the rate of average annual rate of interest that would have accrued over time had the amount of the difference been invested in AAA corporate bonds as of the date of settlement. AAA is the highest grade of corporate bonds in the estimate of bond rating services such as Moody's Investment Services.

The 102nd Congress followed the GAO's compensation formula in 1992 when it enacted Public Law 575. This statute authorized the establishment of a developmental trust fund or Recovery Fund capitalized at $149.2 million for the Three Affiliated Tribes of North Dakota. This was approximately the same amount suggested by the GAO as the highest range of valuation based on the average annual interest rate on AAA corporate bonds.

Public Law 102-575 also appropriated a $90.6 million recovery fund for the Standing Rock Sioux. This amount represented more than the lowest range of valuation suggested by the GAO, based on the rate of inflation, but was considerably less than the highest range based on corporate bond interest rates.

Public Law 102-575 acknowledged for the first time that the United States Government had not adequately compensated Tribes for the taking of their land and resources for the Pick-Sloan projects. It also established as precedent that the impacted Tribes were thus entitled to additional compensation.

Accordingly, in 1996, Congress passed PL 104-223, which established a $27.5 million recovery fund for the Crow Creek Sioux Tribe. In 1997, Congress likewise enacted PL 105-132, which created a $39.3 million trust fund for the Lower Brule Sioux Tribe. However, the amount of the recovery funds for the Crow Creek and Lower Brule

Tribes were not based on what can be termed the "range of difference" formula suggested by the GAO in 1991. Rather, they were based on the "per-acre value" of the 1992 compensation for the Three Affiliated Tribes and the Standing Rock Sioux. This was calculated as a value of approximately $1,763 per acre lost.

The $1,763 per acre valuation was also used as the basis of compensation in 2002 when Congress enacted PL 107-331. This statute established a $23 million development trust fund for the Yankton Sioux Tribe of South Dakota and a $4.7 million trust fund for the Santee Sioux Tribe of Nebraska. These amounts were calculated based on the valuation of $1,763 per acre multiplied by 438 percent. This multiplier represented the average amount above property damages that five other Missouri River Tribes received from Congress between 1947 and 1962 for severance damages and the rehabilitation of their reservations. The Yankton and Santee Sioux Tribes had not received funds for these purposes as part of their initial settlements. These Tribes were not eligible for the "range of difference" compensation suggested by the GAO in 1991 because they did not propose an overall asking price to the Government.

The 106th Congress returned to the GAO's "range of difference" formula in 2000 when it approved Public Law 511. This statute appropriated $290.7 million for the establishment of a recovery fund for the Cheyenne River Sioux Tribe of South Dakota. In common with the settlement provided to the Three Affiliated Tribes in 1992, this additional compensation was based on the average annual interest rate earned on investments in AAA corporate bonds. The GAO had reiterated its "range of difference" formula in a 1998 report it prepared regarding additional compensation for the Cheyenne River Sioux.

The Lower Brule and Crow Creek Sioux Tribes are requesting that Congress extend to them the same method of determining fair compensation based on the GAO's "range of difference" formula calculated at the AAA corporate bond interest rate.

Congress provided initial compensation to the Lower Brule and Crow Creek

Sioux Tribes for their Fort Randall damages in 1958 and for their Big Bend losses in 1962. The Tribes did not consider this compensation to be adequate, because the settlements provided by Congress were significantly less than the Tribes' own estimates of damages. The Lower Brule Sioux Tribe requested a total of $11.4 million in compensation, but received only $4.3 million from Congress. The Crow Creek Sioux Tribe likewise asked for $10 million in compensation, but was given just $5.9 million

The value in 2004 dollars of the total differences between the amounts the Lower Brule Sioux Tribe believed were warranted for its damages in regard to the Fort Randall and Big Bend projects and the initial compensation provided by Congress in 1958 and 1962, when calculated as an investment in prime corporate bonds, is approximately $186,382, 140 (see Table below). If one subtracts from the present valuation of the total differences ($176,398,012.25) the $39,300,000 provided by Congress to the Tribe as additional compensation for Fort Randall and Big Bend damages in 1997, it brings the present valuation to $147,082,140 (see Table below). This is the amount requested by the Lower Brule Sioux Tribe as further compensation from Congress in order to provide it with a final settlement equitable to that provided previously by Congress to the Three Affiliated Tribes and the Cheyenne River Sioux Tribe.

The application of the AAA corporate bond interest rate to the total differences between the amounts requested by the Crow Creek Sioux Tribe and those authorized by Congress yields a valuation in 2004 dollars of approximately $105,917,853 (see Table below). If the $27,500,000 the Tribe received from Congress as additional compensation from Congress in 1996 is subtracted from the present valuation of total differences ($100,244,040.77), the value in 2003 dollars becomes $78,417,853 (see Table below). This is the amount requested by the Crow Creek Sioux Tribe as further compensation from Congress in order to provide it with a final settlement equitable to that provided by Congress to the Three Affiliated Tribes and the Cheyenne River Sioux Tribe.

The members of the Lower Brule and Crow Creek Sioux Tribes have yet to

receive their fair share of the benefits that were supposed to be provided by the Pick-Sloan Plan, although they suffered a great deal as a result of its implementation. The saga of the Missouri River dams and their impact on the Sioux and other tribes of the Northern Plains region will continue well into the future. It is my conclusion that additional compensation for the Lower Brule and Crow Creek Sioux Tribes is appropriate and necessary if ever the Untied States is to provide equity to the Missouri River tribes. The members of these tribes sacrificed much so that many other citizens of the Northern Plains might enjoy the benefits of increased electrical power, flood control, and recreational opportunities provided by the Pick-Sloan dams. It will always be impossible to ignore or excuse the abuse of Native American rights that has characterized much of the history of Pick-Sloan. However, it is sincerely hoped that the federal government will continue to provide corrective initiatives that will allow this historian to someday write a more optimistic conclusion to the episode as it pertains to the Lower Brule and Crow Creek Sioux Tribes. This can be accomplished by extending to these tribes the benefit of recovery funds that offer parity with those that Congress has previously established for other tribes impacted by the Pick-Sloan dams. I therefore urge the Committee to support S. 1530 and encourage passage of the Tribal Parity Act as a means of providing equity, consistency, and fairness to all Missouri River tribes.

This concludes my remarks. I would be happy to answer any questions you may have.

Table 1: Basis for Parity Compensation in 2004 Dollars

TRIBE	Crow Creek	Lower Brule
Fort Randall Damages Difference	$709,208.61	$1,553,948.75
Fort Randall Damages Difference in 2004 Dollars*	$21,211,040.08	$46,475,562.69
Big Bend Damages Difference	$447,592.00	$1,170,667.00
Big Bend Damages Difference in 2004 Dollars*	$11,282,601.04	$29,509,394.08
Rehabilitation Difference	$2,912,811.50	$4,379,566.00
Rehabilitation Difference in 2004 Dollars*	$73,424.212.38	$110,397,182.97
Total Requested by Tribes 1954-1960	$10,007,226.05	$11,450,169.75
Total Provided by Congress 1958 and 1962	$5,937,613.94	$4,345,988.00
Total Difference	$4,069,612.11	$7,104,181.75
Total Provided by Congress 1958, 1962, 1996/1997	$33,437,613.94	$43,645,988.00
Total Difference in 2004 Dollars*	$105,917,853.50	$186,382,139.60
Minus Amount Provided by Congress, 1996/1997	- $27,500,000.00	- $39,300,000.00
Total Parity Compensation Requested**	**$78,417,853.00**	**$147,082,140.00**

*Difference in 2004 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. This is the same calculating method approved by Congress in providing additional compensation to the Three Affiliated Tribes of Fort Berthold in Public Law 102-575, Title XXXV, October 30, 1992, and the Cheyenne River Sioux Tribe in Public Law 106-511, November 13, 2000. **Rounded to nearest dollar.

Statement of Dr. Lawson
Supplement – June 15, 2004

In establishing recovery trust funds for the Crow Creek Sioux Tribe in 1996 (Public Law 104-223) and for the Lower Brule Sioux Tribe in 1997 (Public Law 105-132) Congress focused on the per acre value of the total compensation appropriated by Public Law 102-575 (1992). It approved a compensation formula for these tribes based on a value of approximately $1,763 per acre for the land and resources taken by the Fort Randall and Big Bend projects. There was no precedent at that time for applying the General Accounting Office formula of 1991, on which Public Law 102-575 was based, to a South Dakota tribe. Public Law 102-575 applied to two North Dakota tribes, the Three Affiliated Tribes of Fort Berthold and the Standing Rock Sioux Tribe. It was not until 2000 that the Congress applied the GAO formula based on the AAA corporate bond rate to a South Dakota tribe, when it enacted Public Law 105-511 to provide a final settlement to the Cheyenne River Sioux Tribe. S. 1530 seeks to establish parity with Public Law 105-511 by extending the same GAO-recommended compensation formula utilized in the Cheyenne River legislation to a final settlement with the Lower Brule and Crow Creek Sioux Tribes.

Michael L. Lawson, Ph.D.
Senior Associate
Morgan Angel & Associates, LLC
Washington, DC

THE LOWER BRULE AND CROW CREEK SIOUX TRIBES OF SOUTH DAKOTA: PARITY COMPENSATION FOR LOSSES FROM MISSOURI RIVER PICK-SLOAN DAM PROJECTS

Prepared for

The Lower Brule Sioux Tribe
and
The Crow Creek Sioux Tribe

by
Michael L. Lawson, Ph.D.
Senior Associate

Morgan Angel & Associates

Public Policy Consultants
Washington, D.C.

June 15, 2004

About the Author

Michael L. Lawson is a Senior Associate and Historian with Morgan, Angel and Associates, L.L.C., Washington, D.C. He previously served for thirteen years with the Bureau of Indian Affairs (BIA), first as Staff Historian for the Aberdeen Area Office in South Dakota (1980-1984) and then as Senior Historian for the BIA's Branch of Acknowledgment and Research in Washington, D.C (1984-1993). Lawson is the author of *Dammed Indians: The Pick Sloan Plan and the Missouri River Sioux* (University of Oklahoma Press, 1982, revised ed. 1994), which received the Phi Alpha Theta International Book Award. He has also received the Ray A. Billington Award of the Western History Association and the Governor's Award of the South Dakota State Historical Society for his articles on Native American land and water issues. Lawson received bachelors and masters degrees from the University of Nebraska at Omaha and earned a doctorate in history at The University of New Mexico. He presently serves on the Board of Editors for the journal *South Dakota History*.

I. EXECUTIVE SUMMARY

The Lower Brule and Crow Creek Sioux Tribes of South Dakota seek final compensation for damages caused to their reservations by two Missouri River Pick-Sloan dam projects and parity with the final settlements provided by Congress to the Three Affiliated Tribes in 1992 (Public Law 102-575) and the Cheyenne River Sioux Tribe in 2000 (Public Law 106-511), based on the methodology for determining fair compensation first proposed by the General Accounting Office (GAO) in 1991 and authorized by Congress in Public Laws 102-575 and 106-511.

A. General Accounting Office Compensation Formula

The method for determining additional compensation approved by Congress in these two prior statutes is based on the difference between the amounts believed by the the Tribes to be warranted at the time of the taking of their land and resources and the amounts that Congress eventually provided to them as compensation. The compensation formula first introduced by the GAO in 1991 and endorsed by Congress in 1992 was to take the difference between the amount requested by the Tribes and the amount appropriated by Congress and add to that difference the average annual rate of interest that would have accrued over time had the amount of the difference been invested in AAA corporate bonds as of the date of settlement. AAA is the highest grade of corporate bonds in the estimate of bond rating services such as Moody's Investment Services.

In accordance with this method of determining fair compensation, the Lower Brule Sioux Tribe is entitled to a parity payment and final compensation of **$147,082.140**

and the Crow Creek Tribe to **$78,417,853.00** for their Pick-Sloan damages (See Table 1, Basis for Parity Compensation).

Table 1: Basis for Parity Compensation

TRIBE	Crow Creek	Lower Brule
Fort Randall Damages Difference	$709,208.61	$1,553,948.75
Fort Randall Damages Difference in 2004 Dollars*	$21,211,040.08	$46,475,562.69
Big Bend Damages Difference	$447,592.00	$1,170,667.00
Big Bend Damages Difference in 2004 Dollars*	$11,282,601.04	$29,509,394.08
Rehabilitation Difference	$2,912,811.50	$4,379,566.00
Rehabilitation Difference in 2004 Dollars*	$73,424.212.38	$110,397,182.97
Total Requested by Tribes 1954-1960	$10,007,226.05	$11,450,169.75
Total Provided by Congress 1958 and 1962	$5,937,613.94	$4,345,988.00
Total Difference	$4,069,612.11	$7,104,181.75
Total Provided by Congress 1958, 1962, 1996/1997	$33,437,613.94	$43,645,988.00
Total Difference in 2004 Dollars*	$105,917,853.50	$186,382,139.60
Minus Amount Provided by Congress, 1996/1997	- $27,500,000.00	- $39,300,000.00
Total Parity Compensation Requested**	**$78,417,853.00**	**$147,082,140.00**

*Difference in 2004 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. This is the same calculating method approved by Congress in providing additional compensation to the Three Affiliated Tribes of Fort Berthold in Public Law 102-575, Title XXXV, October 30, 1992, and the Cheyenne River Sioux Tribe in Public Law 106-511, November 13, 2000. **Rounded to nearest dollar.

B. Lower Brule and Crow Creek Damages

The Lower Brule and Crow Creek Sioux Tribes were deprived of a total of 37,893 acres of their reservation lands as a result of the development of the Fort Randall and Big Bend dam projects. These projects comprised two of the five dams constructed by the U.S. Army Corps of Engineers on the main-stem of the Missouri River as part of the Missouri River Basin Development Program (Pick-Sloan Plan), authorized by Congress in 1944. The damages suffered by the Lower Brule and Crow Creek Tribes as a result of these projects are comparable to the impacts of the Garrison Dam on the Three Affiliated Tribes of Fort Berthold and Oahe Dam on the Standing Rock and Cheyenne River Sioux Tribes in terms of losses of natural resources and reservation infrastructure.

C. Initial Compensation from Congress, 1958 and 1962

Congress provided initial compensation to the Lower Brule and Crow Creek Sioux Tribes for their Fort Randall damages in 1958 and for their Big Bend losses in 1962. The Tribes did not consider this compensation to be adequate, because the settlements provided by Congress were significantly less than the Tribes' own estimates of damages. Other Tribes impacted by Pick-Sloan projects who received initial compensation from Congress held the same view. Subsequently, in the 1980s, two of the North Dakota Tribes, the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux of the Standing Rock Reservation, began to approach Congress with requests for additional compensation.

D. Additional Compensation for Select Tribes*

In reviewing these requests, the GAO noted that "the Tribes may not have been willing sellers of the land at the amount of compensation authorized by Congress" and proposed that Congress, as a method of determining a range of fair compensation, "start with the difference between the compensation the Tribes believed was warranted at the time of the taking and the compensation that was appropriated by Congress." In order to determine the current value of the differences, the GAO suggested a range of approaches. The lower range applied the annual rate of inflation between the time of taking and the present; the higher range utilized the average annual rate of interest earned on investments in AAA corporate bonds during that period.

Congress responded in 1992 by enacting Public Law 102-575 (the Three Affiliated Tribes of Fort Berthold and Standing Rock Sioux Tribe Equitable Compensation Act) which acknowledged for the first time that the United States Government had not adequately compensated Tribes for the taking of their land and resources for the Pick-Sloan projects. This legislation also established as precedent that the impacted Tribes were thus entitled to additional compensation. Accordingly, the statute authorized the establishment of a developmental trust fund or Recovery Fund capitalized at $149.2 million for the Three Affiliated Tribes. This was approximately the same amount suggested by the GAO as the higher range of valuation based on the average annual rate of interest earned by AAA corporate bonds. The Act also

appropriated a $90.6 million recovery fund for the Standing Rock Sioux Tribe, an amount that represented more than the lower range of valuation suggested by the GAO, but considerably less than the higher range.

In 1994, the Cheyenne River Sioux Tribe sought additional compensatory legislation from Congress for its damages from the Oahe Dam. Again, the GAO proposed to Congress a range of valuations between the average annual rate of inflation and the average annual rates of interest earned on prime corporate bonds. Congress responded in 2000 by enacting Public Law 106-511 (the Cheyenne River Sioux Tribe Equitable Compensation Act), which appropriated $290,722,958 for the establishment of a recovery fund for the Cheyenne River Sioux Tribe. This amount was the same as that proposed by the GAO as the higher range of fair compensation based on the average annual interest rate earned on investments in AAA corporate bonds.

E. Parity Compensation for Lower Brule and Crow Creek

The Lower Brule and Crow Creek Sioux Tribes seek parity with the final compensation provided by Congress to the Three Affiliated Tribes of Fort Berthold and to the Cheyenne River Sioux Tribe. The Lower Brule and Crow Creek Tribes request that Congress apply the same method of determining fair compensation it applied in these two previous statutes. That methodology is to measure the difference between the amounts the Tribes requested and the amounts they received from Congress and then

* See Appendix II for a full list of Statutes Providing Additional Compensation to Missouri River Tribes Impacted by Pick-Sloan Dam Projects, 1992-2002.

accrue to the difference the average annual rate of interest earned on investments in AAA corporate bonds between the date of settlement and the present.

The Lower Brule Sioux Tribe asked for **$2,530,471.75** for Fort Randall damages in 1954, and **$100,000** for negotiating expenses in 1955 (for a total of **$2,630,471.75**), but received only **$1,076,523** from Congress in 1958 (**$976,523** for damages and **$100,000** for negotiating expenses). The value of the difference of **$1,553,948.75** when treated as an investment in AAA corporate bonds between 1959 and the present equals **$46,475.562.69**. The Crow Creek Sioux Tribe requested **$2,105,020.55** for its damages from the Fort Randall project and **$100,000** for negotiating expenses in 1957 (for a total of **$2,205,020.55**). It received **$1,495,811.94** from Congress in 1958 (**$1,395,811.94** in damages and **$100,000** for negotiating expenses). The present value of the difference of **$709,208.61,** when calculated at the prime corporate bond interest rate since 1959, is **$21,211,040.08**.

In 1960, the Lower Brule Sioux Tribe requested **$2,346,382** for damages and **$125,000** for administrative expenses incurred in negotiating a settlement (for a total of **$2,471,382**) for losses from the Big Bend project. In 1962, Congress provided the Tribe with a settlement of **$1,300,715** (**$1,225,715** for damages and **$75,000** for negotiating expenses). The value of the total difference of **$1,170,667**, if treated as an investment in AAA corporate bonds from 1963 to the present, is **$29,509,394.08** The Crow Creek Sioux Tribe asked for **$961,894** for damages from Big Bend and **$125,000** for negotiating expenses (for a total of **$1,086,894**). In 1962, Congress provided the Tribe with a

settlement of **$639,302** (**$564,302** for damages and **$75,000** for expenses). The value in 2004 dollars of the difference of **$447,592** at the average annual prime corporate bond interest rate is **$11,282,601.04**.

In 1955, the Lower Brule Sioux Tribe asked for **$6,348,316** for rehabilitation of its entire reservation in light of the losses caused by the Fort Randall and Big Bend projects. Funds for rehabilitation were included in most of the initial settlements to Tribes by Congress for the impacts of Pick-Sloan projects. In 1962, Congress appropriated just **$1,968,750** for the rehabilitation of the Lower Brule Sioux reservation. The value of the difference of **$4,379,566** in 2004 dollars is **$110,397,182.97**.

The Crow Creek Sioux Tribe also requested **$6,715,311.50** for rehabilitation in 1957, but received only **$3,802,500** from Congress in 1962. The difference of **$2,912,811.50,** had it been invested in AAA corporate bonds in 1962, would now be **$73,424,212.38**.

The Lower Brule Sioux Tribe requested a total of **$11,450,169.75** for its Fort Randall and Big Bend damages, but received just **$4,345,988** from Congress. The difference of **$7,104,181.75** calculated at the average annual interest rate earned on AAA corporate bonds between the settlement dates and the present, is **$186,0382,139.60**. In 1997, Congress established a recovery fund of **$39,300,000** for the Lower Brule Sioux Tribe as additional compensation for its losses from the Pick-Sloan projects (see Appendix IV for the full text of this legislation). The amount of the recovery fund was

based on the per acre value of the 1992 Fort Berthold/Standing Rock legislation (Public Law 102-575), rather than on the difference between the amounts requested by the Tribe and the amounts provided by Congress, compounded at the average annual interest rate on prime corporate bonds as proposed in 1991 by the GAO. If the **$39,300,000** received by the Tribe from Congress as additional compensation is subtracted from the present valuation of total differences (**$186,382,139.60**), the result in 2004 dollars is **$147,082,140** (rounded to nearest dollar). This is the amount requested by the Lower Brule Sioux Tribe as fair compensation from Congress for a final settlement equitable to that provided by Congress to the Three Affiliated Tribes of Fort Berthold in 1992 and Cheyenne River Sioux Tribe in 2000. South Dakota Governor M. Michael Rounds supports legislation providing parity to the Lower Brule Sioux Tribe (see Appendix I).

The Crow Creek Sioux Tribe requested a total of **$10,007,226.05** for damages from the Fort Randall and Big Bend projects and received **$5,937,613.94** from Congress. The difference of **$4,069,612.11**, calculated at the average annual interest rate earned on AAA corporate bonds between the settlement dates and the present, is **$105,917,853.50** In 1996, Congress established a recovery fund of **$27,500,000** for the Crow Creek Sioux Tribe as additional compensation for its Pick Sloan losses (see Appendix III for the full text of this legislation). The amount of this recovery fund was also based on the per acre value of the 1992 Fort Berthold/Standing Rock legislation, rather than the GAO proposal for calculating differences at the average annual interest rate on prime corporate bonds. If the **$27,500,000** the Tribe received from Congress as additional compensation is subtracted from the present valuation of total differences (**$105,917,853.50**), the result in

2004 dollars is **$78,417,853** (when rounded to the nearest dollar). This is the amount requested by the Crow Creek Sioux Tribe as fair compensation from Congress for a final settlement equitable to that provided by Congress to the Three Affiliated Tribes of Fort Berthold in 1992 and Cheyenne River Sioux Tribe in 2000. South Dakota Governor M. Michael Rounds supports legislation providing parity to the Crow Creek Sioux Tribe (see Appendix I).

II. DEVELOPMENT OF THE PICK-SLOAN PLAN

During the first six decades of the 20th century, the United States Government invoked its powers of eminent domain to seize large parcels of Native American trust lands and resources for the purpose of constructing flood control and reclamation projects on various rivers. Although Federal water agencies claimed that the technology of their dams and reservoirs would provide multiple benefits for the general public, the overall cost-benefit ratio of these projects has seldom been to the advantage of the affected Tribes.[1]

In the Missouri River Basin, the Pick-Sloan Plan -- the joint water development program designed by the U.S. Army Corps of Engineers and the Department of the Interior's Bureau of Reclamation in the early 1940's -- caused more damage to Indian reservation lands than any other public works project in this nation. Whether or not the architects of the plan chose deliberately to impact Indian rather than non-Indian land and

[1] Michael L. Lawson, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux, 1944-1980* (Norman: University of Oklahoma Press, 1994), pp. xxviii-xxx.

resources, as some tribal leaders charged, their projects ultimately affected twenty-three different reservations.[2]

A. A Compromise Between Plans of Competing Agencies

The Pick-Sloan Plan represented a compromise between the separate water resource programs developed by Colonel Lewis A. Pick of the U.S. Army Corps of Engineers and William G. Sloan of the Department of the Interior's Bureau of Reclamation. The Pick Plan was primarily concerned with the development of flood control measures to protect the lower Missouri Basin, while the Sloan Plan was preoccupied with the construction of irrigation facilities in the upper Missouri Basin. Although these seemingly conflicting programs were proposed by two powerful agencies traditionally at odds with one another, a remarkable conciliation of the two plans was rather quickly achieved and hastily approved and enacted by Congress as part of the Flood Control Act of 1944.[3] This modern "Missouri Compromise" was accomplished partly as a result of the urgent demand for Federal action following the disastrous Missouri River floods of 1942 and 1943. It also represented an attempt to stifle growing support for an alternative plan to develop a Missouri Valley Authority (MVA) — an independent public corporation patterned after the Tennessee Valley Authority (TVA).[4]

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[2] Ibid., pp. xxix-xxx.

[3] Ibid., pp. 9-20; Flood Control Act of 1944 (58 Stat. 827).

[4] U.S., Congress, Senate, *Missouri River Basin, Report of a Committee of Two Representatives Each From the Corps of Engineers, U.S. Army, and the Bureau of Reclamation, Appointed to Review the Features of Plans Presented by the Corps of Engineers (H.R. Doc. 475) and the Bureau of Reclamation (S. Doc. 191) for the Comprehensive Development of the Missouri River Basin*, Document No. 247, 78th Cong., 2d Sess., 1944, pp. 1-6; Richard G. Baumhoff, *The Dammed Missouri Valley: One-Sixth of Our Nation* (New York:

Officially labeled the Missouri River Basin Development Program, the Pick-Sloan Plan was gradually expanded to include the construction of 150 multiple-purpose reservoir projects. In addition to flood control, these projects were designed to provide the benefits of hydroelectric power, navigation, recreation, and improved water supplies.[5]

The backbone of the Pick-Sloan Plan was provided by six massive dams constructed by the Corps of Engineers on the main-stem of the Missouri River; Fort Peck in Montana, Garrison in North Dakota, Oahe, Big Bend, and Fort Randall in South Dakota, and Gavins Point in Nebraska.[6] Two of these projects, Fort Peck and Oahe, rank among the largest earth dams in the world. The Fort Peck Dam, authorized as a National Industrial Recovery Act project in 1933[7] and constructed prior to World War II, was incorporated within and improved under the Pick-Sloan Plan.[8]

Alfred A. Knopf, 1951), pp. 184-95; Bruce Nelson, *Land of the Dacotahs* (Minneapolis: University of Minnesota Press, 1946), pp. 318-28.

[5] John W. Ball, "Midwest Flood Also Burst Political Dike," *Washington Post*, July 29, 1951; Otto G. Hoiberg, *It's Your Business and Mine: Missouri River Basin Development Program, A Study Guide*, University of Nebraska, Extension Division, Booklet No. 175 (May 1950), pp. 39, 60; Marvin Meade, *The Missouri River Proposals for Development*, Citizens Pamphlet 11 (Lawrence: University of Kansas, Bureau of Government Research, 1952), p. 22.

[6] *The World Almanac and Book of Facts*, 1976 (New York: Newspaper Enterprise Association, Inc., 1976) p. 592.

[7] National Industrial Recovery Act of 1933 (48 Stat. 201).

B. Pick Sloan's Unwieldy Administrative Structure

Together, these six projects inundated over 550 square miles of Indian land and displaced more than 900 Indian families.[9] Many of the problems encountered by tribal members resulted from the Federal Government's failure to provide an adequate administrative structure for the Pick-Sloan Plan. In response to the apparently overwhelming opposition to the creation of a Missouri Valley Authority (MVA), the Truman Administration placed the program under the rather loose-knit coordination of the Missouri Basin Inter-Agency Committee (MBIAC). The MBIAC was a non-statutory body created to coordinate all Federal and State activities and provide administrative guidelines for the entire Missouri Basin Development Plan. However, it quickly fell under the domination of the Corps of Engineers. General Pick himself served as chairman of the MBIAC for more than three years.[10] In 1972, the MBIAC was replaced

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[8] Flood Control Act of 1944 (58 Stat. 827); Meade, *The Missouri River Proposals*, pp. 10-14; Marian E. Ridgeway, *The Missouri Basin's Pick-Sloan Plan: A Case Study in Congressional Policy Determination*, Illinois Studies in Social Science, Vol. 35 (Urbana: University of Illinois Press, 1955), p. 126.

[9] U.S., Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigations Project (hereinafter cited as DOI, BIA, MRBI), *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138 (Billings, 1954), pp. 1, 18-19, 47; "Summary and Evaluation of Experiences of Six Indian Reservations Affected by Large Dam and Reservoir Projects on Missouri River," pp. 5-10, 44-45; General Programs, Missouri Basin, 1960, MRBI, pt. 1-A; File 1766-074.1, Records of the Bureau of Indian Affairs, Record Group 75 (hereinafter cited as RG 75 (BIA)), Washington National Records Center, Suitland, Maryland (hereinafter cited as WNRC).

[10] U.S., Missouri Basin Inter-Agency Committee and the Missouri River States Committee, *The Missouri River Basin Development Program* (Washington: Government Printing Office, 1952), p. 11; Ridgeway, *The Missouri Basin's Pick-Sloan Plan*, pp. 15-21, 282-83; Baumhoff, *Dammed Missouri Valley*, pp. 169-79; Nelson, *Land of the Dacotahs*, pp. 325-28; Meade, *Missouri River Proposals*, pp. 15-16, 28-29; Rufus Terral, *The Missouri Valley—Land of Drouth, Flood, and Promise* (New Haven: Yale University Press, 1947), pp. 208-210, 236; William E. Warne, *The Bureau of Reclamation* (New York: Praeger Publishers, 1973), pp. 165-66; John R. Ferrell, "Water in the Missouri Valley: The Inter-Agency River Committee at Mid-Century," *Journal of the West* 7 (January, 1968): 97-98.

by the Missouri River Basin Commission, which was more representative of broader Basin interests.[11]

The Inter-Agency Committee's piecemeal approach to Missouri Basin problems and its preoccupation with engineering methods did not allow for adequate consideration of such important human factors as the condemnation of farms and ranches and the relocation of families. The Army Engineers had little in their training or background that prepared them to deal knowledgeably with Native Americans. The Federal agency usually charged with that responsibility, the Bureau of Indian Affairs (BIA), was hampered during this period by a severely reduced budget and threatened with abolishment by those in Congress who supported "termination" of the government's trust responsibility for Indian Tribes.[12]

C. A Negative Cost-Benefit Ratio for the Tribes Impacted

A more centralized administrative structure, such as that proposed for the Missouri Valley Authority, might have received an annual block appropriation for all of its activities and functions. The numerous agencies involved with the Pick-Sloan program, however, had to deal with several separate committees in Congress for funding of their particular part of the overall program. As a result, the Army often received generous amounts for dam construction during years when the Indian Tribes were not able to receive appropriations for their necessary relocation or compensation for their losses. Due to this lack of coordination, tribal members were systematically denied most

[11]Warne, *Bureau of Reclamation,* p. 166.

of the important benefits offered by Pick-Sloan and the efforts to reconstruct their communities fell far short of the Indians' needs.[13] The Corps of Engineers, which constructed and operates the Missouri's main-stem dams, estimated in the mid-1990's that their overall annual contribution to the national economy averaged $1.27 billion.[14] However, for the Sioux and other Tribes along the Missouri, the human and economic costs have far outweighed any benefits received, since the Pick-Sloan projects destroyed a disproportional amount of Indian lands and resources and devastated entire tribal communities and economies.

III. INITIAL SETTLEMENTS WITH THE TRIBES, 1947-1962

A. Impact on Eight Tribal Entities

The five new main-stem dams constructed under the Pick-Sloan Plan (Garrison, Fort Randall, Oahe, Gavins Point, and Big Ben) flooded approximately 381,817 acres of land on eight Indian reservations: the Fort Berthold reservation of the Three Affiliated Tribes and the Standing Rock Sioux reservation in North Dakota; the Cheyenne River, Crow Creek, Lower Brule, Rosebud, and Yankton Sioux reservations in South Dakota; and the Santee Sioux reservation in Nebraska.[15] The Tribes all suffered similar damages

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[12]Lawson, *Dammed Indians*, pp. 25-26, 29-30.

[13] Ibid., pp. 26, 29, 179-200.

[14] Michael L. Lawson, *An Analysis of the Impact of Pick-Sloan Dam Projects on the Lower Brule Sioux Tribe* (Washington: Morgan Angel & Associates, November 1996), p. 1.

[15] U.S., General Accounting Office, Resources, Community, and Economic Development Division, *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation Claim for the Oahe Dam*, Report to the Honorable Thomas Daschle, U.S. Senate (GAO/RCED-98-38), January 1998, p. 25, Appendix III, Five Reservations Affected by Missouri River Flood Control Projects; Michael L. Lawson, *Historical Analysis of the Impact of Missouri River Pick-Sloan Dam Projects on the Yankton and Santee Sioux Indian Tribes* (Washington: Morgan Angel & Associates, April 1999), pp. 20-21, 68.

in varying degrees. The Government's piecemeal approach to providing compensation to the Tribes was spread out over a period of fifteen years -- 1947 to 1962. Many tribal members were compelled to abandon their homes and lands years before they received payment. Due to the Government's inconsistent methods of calculating damages, the settlements provided to the separate Tribes differed considerably.

B. Initial Compensation to Tribes, 1947-1958

Congress determined compensation for five of the Tribes -- the Three Affiliated Tribes of Fort Berthold (1947, 1949); the Cheyenne River Sioux (1954); the Standing Rock Sioux (1958); the Crow Creek Sioux (1958, 1962); and the Lower Brule Sioux (1958, 1962). The Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota lost 152,360 acres of land to the Garrison Dam project.[16] The Three Affiliated Tribes had received an initial settlement of $5,105,625 from Congress in 1947[17] and an additional appropriation of $7,500,000 in 1949.[18] The Cheyenne River Sioux lost approximately 104,420 acres to the Oahe Dam project,[19] for which the Tribe received a $12,346,553 initial settlement from Congress in 1954.[20] The Standing Rock Sioux Tribe

[16] GAO, *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation Claim for the Oahe Dam* (1998), p. 25, Appendix III, Five Reservations Affected by Missouri River Flood Control Projects.
[17] Act of July 31, 1947 (61 Stat. 686), Public Law 80-296.
[18] Act of October 29, 1949 (63 Stat. 1026), Public Law 81-437.
[19] GAO, *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation* (1998), p. 25, Appendix III, Five Reservations Affected by Missouri River Flood Control Projects.
[20] Act of September 3, 1954 (68 Stat. 1191) Public Law 83-776.

of North Dakota lost approximately 55,994 acres to the Oahe Dam project.[21] The Standing Rock Sioux received $12,346,553 in compensation from Congress in 1958.[22]

The Lower Brule Sioux Tribe lost a total of 22,296 acres to two Pick-Sloan projects; 7,997 acres to the Fort Randall Dam and 14,299 acres to the Big Bend Dam.[23] In 1958, Congress provided the Lower Brule Sioux with a settlement of $1,076,523 for Fort Randall damages.[24] The Tribe received $3,269,465 from Congress for its Big Bend losses in 1962.[25]

The Crow Creek Sioux Tribe was also impacted by two Pick-Sloan projects, losing a total of 15,597 acres of reservation lands; 9,418 acres to the Fort Randall Dam and 6,179 acres to the Big Bend Dam.[26] In 1958, Congress provided the Crow Creek Sioux with a settlement of $1,495,812 for its Fort Randall damages.[27] The Tribe received $4,441,802 from Congress for its Big Bend damages in 1962.[28]

The Congressional settlements with these Tribes included payment for direct property damages and severance damages (including the cost of relocation and

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[21] GAO, *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation* (1998), p. 25, Appendix III, Five Reservations Affected by Missouri River Flood Control Projects.
[22] Act of September 2, 1958 (72 Stat. 1762), Public Law 85-915.
[23] GAO, *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation* (1998), p. 25, Appendix III, Five Reservations Affected by Missouri River Flood Control Projects.
[24] Act of September 2, 1958 (72 Stat. 1773), Public Law 85-923.
[25] Act of October 3, 1962 (76 Stat. 698), Public Law 87-734.
[26] GAO, *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation* (1998), p. 25, Appendix III, Five Reservations Affected by Missouri River Flood Control Projects.
[27] Act of September 2, 1958 (72 Stat. 1766), Public Law 85-916.
[28] Act of October 3, 1962 (76 Stat. 704), Public Law 87-734.

reestablishment of affected tribal members). With the exception of the legislation for the Three Affiliated Tribes, the settlements also included funds for rehabilitation of the entire reservation. In providing funds for rehabilitation, Congress recognized that the Tribes as a whole and not just the tribal members within the taking areas of the dams were affected negatively by the loss of the bottomland environment and reservation infrastructure. Accordingly, the settlements with the four Sioux Tribes provided compensation for severance damages and rehabilitation averaging 458 percent more than was paid for direct damages. The additional payment to the Standing Rock and Crow Creek Sioux Tribes was over 630 percent more than the amount awarded to them for direct damages.[29]

C. Lesser Compensation for Yankton, Rosebud, and Santee Sioux Tribes

The Yankton, Rosebud, and Santee Sioux Tribes were not initially provided the opportunity to receive compensation from Congress for direct damages or funds for rehabilitation. Instead, these Tribes and/or their individual members merely received settlements for the appraised value of their property through condemnation proceedings in U.S. District Courts. Rosebud Sioux property holders received settlements from the U.S. District Court for the District of South Dakota in 1951 that did not include severance damages.[30] Approximately 1,251 acres of the Rosebud Sioux reservation was

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[29] Lawson, *Historical Analysis of the Impact of Missouri River Pick-Sloan Dam Projects on the Yankton and Santee Sioux Indian Tribes*, pp. 82-83.

[30] U.S. District Court for the District of South Dakota, Southern Division, *U.S. v. 304.69 acres of land, more or less, situate in Gregory County, State of South Dakota*, Civil No. 704 S.D., "Final Judgment No. 1 As to Tracts Nos. G-20 and G-22," September 3, 1951; and *U.S. v. 206 acres of land, more or less, situate in Lyman County, South Dakota*, Civil No. 134 C.D., "Final Judgment No. I As To Tracts Nos. G-30, G-32 and G-36," September 3, 1951; both in U.S. District Court, South Dakota, Civil Journal #6, Southern Division, June 25, 1950 to February 29, 1952; Record Group 21 (District Courts); National Archives – Central Plains Region, Kansas City, Missouri.

condemned for the Fort Randall project,[31] including 20 acres of tribal land on Hiram Wood Island for which the Tribe was never compensated.[32] Because the existing documentary record is incomplete, it is not known how many families the Rosebud taking affected. However, since it was a common practice for two or more tribal families to share land and even households, it is reasonable to estimate that at least a dozen family units were directly involved, and several more probably held inherited interests in the allotted lands. Missing records also make it impossible to determine the total amount of compensation awarded by the District Court. The Rosebud Sioux Tribe has never sought additional compensation from Congress for losses caused by the Fort Randall project.

In 1954, Congress provided supplementary compensation to the Yankton Sioux for severance damages. The Fort Randall dam project also flooded 2,851 acres of Indian trust land within the Yankton Sioux Reservation[33] and required the relocation and resettlement of at least 20 families,[34] constituting approximately 8 percent of the resident

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[31] U.S., DOI, BIA, MRBI *Report of Ownership Status of Restricted, Allotted, and Tribal Indian Lands on the Crow Creek, Lower Brule, and Rosebud Reservations, South Dakota, Affected by Fort Randall Dam and Reservoir Project,* MRBI Rept. 83 (Billings, 1949), p. 3.

[32] The Corps of Engineers never obtained title to Lot 1 on Hiram Wood Island before it was flooded because the Army could not determine ownership. Although the BIA informed the Corps in 1964 that the Tribe held title, the Army has never attempted to acquire legal ownership. The Rosebud Sioux Tribal Land Enterprise (TLE) presently holds both title to and a mortgage on the 20-acre parcel. Acting Aberdeen Area Director, BIA, to Omaha District Engineer, Corps of Engineers, July 31, 1964; Files of the Rosebud Tribal Land Enterprise, Rosebud, South Dakota; Interview with Howard Valandra, Executive Director of Rosebud TLE, October 22,1998, Rosebud, South Dakota.

[33]Distribution of Funds to Indian Families, Fourth Supplement to MRBI Report No. 141 (1957), p. 2; U.S., Congress, Senate, *Separate Settlement Contracts, Sioux Indians, Lower Brule and Crow Creek Reservations for Lands Taken by Reason of Construction of the Fort Randall Dam, S. Dak*, S. Report 1594, 83d Cong., 2d Sess., June 14, 1954, pp. 2-3.

[34]Summary of Memorandum undated to Ben Riefel, Area Director, Aberdeen, South Dakota with respect to P.L. 478, 83rd Congress, as to Indian families participating in $106,500." c. October 1955, Yankton Indian

tribal population.[35] Settlement funds were distributed to some but not all of the Yankton tribal families affected nine years after their properties were condemned. In 1960, the Bureau of Indian Affairs (BIA) conducted a comparative study of the experiences of six reservations impacted by Pick-Sloan dams (it did not include Rosebud or Santee). This investigation found that the average total damage payment per family within the taking area on the Yankton reservation was $5,605, whereas the payment averaged $16,680 per family on the other five reservations in the study (Fort Berthold, Standing Rock, Cheyenne River, Crow Creek, and Lower Brule).

The Santee Sioux also received payment for severance damages from the U.S. District Court for the District of Nebraska in 1958.[36] The Gavins Point project inundated 593 acres of land within the Santee Sioux Indian Reservation, including part of the reservation community of Santee, Nebraska. This lost acreage represented approximately 8.5 percent of the reservation's total land base of 6,951 acres. Of the total amount of

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Agency, Box 37, Yankton Sioux Special Tribal Records, 1958-1964, RG 75 (BIA), National Archives – Central Plains Region, Kansas City, Missouri.

[35] *Social and Economic Conditions of Resident Families on the Yankton Sioux Reservation, South Dakota*, MRBI Report No. 141 (Billings, January 1954), p. 1.

[36] The precise date of the final Santee condemnation settlement is not known because the court docket is missing from the records of the U.S. District Court in the National Archives' Central Plains branch in Kansas City. Related correspondence of the Office of the Solicitor, Department of the Interior, suggests that it may have been in January 1958 (Morris D. Cook, Field Solicitor, DOI, Omaha, Nebraska, to Regional Solicitor, Denver, Colorado, January 10, 1958; James D. Geissinger, Regional Solicitor, Denver Region, Department of the Interior, memorandum to Field Solicitor, Aberdeen, South Dakota, January 13, 1958. both in the Central Classified Files, Winnebago Agency. Box 21; File 777-58-175.2, Civil Case No. 144. Record Group 75 (Bureau of Indian Affairs); National Archives, District of Columbia. It is assumed from the lack of further discussion in the extant documents that the Santee Sioux defendants were paid a total of $52,000 on the basis of a 1955 agreement between the Tribe and the Corps of Engineers (Resolution No. 91 of the Tribal Council of the Santee Sioux Tribe of Nebraska, November 25, 1955; Central Classified Files, 1958, Winnebago Agency, Box 21, File 1261-58-054, Santee Sioux Tribal Resolutions, Record Group 75 (Bureau of Indian Affairs), National Archives, Washington D.C.)

Indian land condemned by the Army, the Santee Sioux Tribe owned approximately 223 acres. Fifteen individual tribal members or their estates held the remaining 370 acres.[37]

IV. ADDITIONAL COMPENSATION FOR THE TRIBES, 1992-2002

A. Creation of the JTAC

None of the Tribes considered their compensation to be adequate. All the Tribes that secured settlements from Congress received less than their own estimates of damages. Beginning in the 1980s, some of the Tribes approached Congress with requests for further compensation. In particular, two North Dakota Tribes, the Three Affiliated Tribes of Fort Berthold and the Standing Rock Sioux sought further reparations. In response to their demands in 1985, the Secretary of the Interior in 1985 established the Garrison Unit Joint Tribal Advisory Committee (JTAC) to evaluate the economic and developmental needs of the two Tribes, including the need for additional compensation for reservation lands acquired for Pick-Sloan projects. The JTAC examined detailed analyses of the Tribes' specific losses developed by economic consultants who were retained by the Tribes. On the basis of its review, the JTAC concluded in its 1986 Final Report to the Secretary that the Tribes had not been adequately compensated by Congress for the economic losses sustained. The report recommended payment of additional compensation within a range of upwards to $754 million.[38]

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[37] *Appraisal of Indian Trust Land Required for Gavins Point Dam and Reservoir Project, Nebraska*, MRBI Report No. 35 (Billings, MT, 1957), p. 9.

B. Economic Analysis of Losses at Fort Berthold and Standing Rock

Ronald G. Cummings, Professor and Chairman of the Department of Economics at the University of New Mexico prepared the economic analysis of losses at Fort Berthold. Professor Cummings concluded, upon estimating the income the Three Affiliated Tribes would have earned from the land and resources acquired for the Garrison Dam, that the Tribes had not received adequate compensation from Congress. Using the economic technique known as capitalization,[39] Professor Cummings estimated that the economic losses sustained by the Tribes were equal to between $170,000,000 and $180,000,000 in 1986 dollars.[40]

Robert McLaughlin, a Standing Rock tribal member trained in economics at Harvard University and principal of the Robert McLaughlin Company of Solen, North Dakota, estimated the value of the economic losses sustained by the Standing Rock Sioux Tribe as a result of losing reservation bottomlands to the Oahe Dam project. Utilizing the

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[38] U.S., Department of the Interior, Bureau of Indian Affairs, *Final Report of the Garrison Unit Joint Tribal Advisory Committee*, May 26, 1986.

[39] "Capitalization is a technique utilized to estimate the current value of the expected future earnings of a particular asset (for example, the annual income earned from the land over a period of years). Earnings that are expected to occur in future years are discounted back to the present using a rate of discount. Discounting accounts for the fact that, in general, a dollar today is worth more than a dollar one year from now. 'In perpetuity' refers to the fact that the asset will produce earnings every year 'forever.' It is, of course, unrealistic to presume that an asset will earn income 'forever,' but, as a result of discounting, the sum of earnings in later years is negligible." See U.S., General Accounting Office, Resources, Community, and Economic Development Division, *Indian Issues: Compensation Claims Analyses Overstate Economic Losses*, Report to the Chairman, Select Committee on Indian Affairs, U.S. Senate (GAO/RCED-91-77) May 1991, p. 12, ftn. 2.

[40] See R.G. Cummings, *Valuing the Resource Base Lost By the Three Affiliated Tribes as a Result of Lands Taken From Them for the Garrison Project* (Albuquerque: Research Management Associates, 1986).

monetary measure known as consumer surplus.[41] McLaughlin also concluded that the compensation appropriated to the Tribe by Congress was inadequate and that the total economic loss was equal to $342,897,374 in 1986 dollars.[42]

C. The GAO Suggested Range of Additional Compensation

The economic analyses prepared by the tribal consultants served as the basis for the JTAC's 1986 recommendation for additional compensation. Senator Daniel K. Inouye (D, Hawaii), Chairman of the Select Committee on Indian Affairs, then requested the General Accounting Office (GAO) to:

> (1) assess the adequacy of the economic analyses prepared by theTribes' consultants and
> (2) identify any alternative methods the Committee might consider in addressing the question of additional financial compensation to the Tribes.[43]

In response, the GAO reported to Senator Inouye in May 1991 that it had found the analyses prepared by the Tribes' consultants overstated the economic losses, as a result of making overly optimistic assumptions regarding the Tribes' economic situation prior to their loss. Therefore, the GAO concluded, the JTAC recommendations for additional compensation should not be relied on by Congress. The GAO noted, however, that "the Tribes may not have been willing sellers of the land at the amount of

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[41] "Consumer surplus is the monetary measure of the benefit consumers derive from using a particular good. The consultant assumed that because the decrease in resource supply, the price of the good produced from the resource increased. According to the consultant, the Tribe sustained a monetary loss as a result of the increase in price." See GAO, *Indian Issues: Compensation Claims Analyses Overstate Economic Losses* (1991), p. 16, fnt. 2.

[42] Robert McLaughlin, *Analysis of Economic Loss Resulting from Lands Taken From the Standing Rock Sioux for the Oahe Dam* (Solen, ND: The Robert McLaughlin Company, 1986).

[43] GAO, *Indian Issues: Compensation Claims Analyses Overstate Economic Losses* (1991), p. 1.

compensation authorized by Congress"[44] and suggested that Congress consider an alternative method of providing additional compensation. The approach suggested was to:

> Start with the difference between the compensation the Tribes believed was warranted at the time of the taking and the compensation that was appropriated by Congress. Appropriate adjustments could be made to reflect current value.[45] (emphasis added)

Accordingly, the GAO calculated the 1990 dollar value of the difference between the amounts believed by the Tribes to be warranted and the amounts received using a range of values for each of the reservations. The lower range of these valuations was based on the annual rate of inflation between the date the land was acquired and 1990. The upper range of value was based on the average annual rate of interest earned on investments in corporate bonds during the same periods (emphasis added). The GAO calculated the range of dollar value of additional compensation to be between $51,803,940 and $149,243,557 for Fort Berthold and between $64,460,876 and $170,031,297 for Standing Rock.[46]

D. Legislation for Additional Compensation for Fort Berthold and Standing Rock

In 1992, Congress responded by enacting the Three Affiliated Tribes of Fort Berthold and Standing Rock Sioux Tribe Equitable Compensation Act.[47] This legislation acknowledged for the first time that the United States Government had not adequately

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[44] GAO, *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation* (1998), p. 2.
[45] GAO, *Indian Issues: Compensation Claims Analyses Overstate Economic Losses* (1991), p. 7.
[46] Ibid., p. 6.
[47] The Reclamation Projects Authorization and Adjustment Act of 1992, Title XXXV — Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Program, North Dakota, October 30, 1992, (106 Stat. 4731).

compensated Tribes for the taking of their land and resources for the Pick-Sloan projects. It also established as precedent that Tribes were thus entitled to additional compensation. Accordingly, the statute authorized the establishment of development trust funds or Recovery Funds capitalized at $149.2 million for the Three Affiliated Tribes. This was approximately the same amount suggested by the GAO as the highest range of valuation based on the average annual interest rates of corporate bonds. The legislation also appropriated a $90.6 million recovery fund for the Standing Rock Sioux Tribe. This represented more than the lower range of valuation suggested by the GAO, but considerably less than the highest range. These trust accounts were funded by an allocation of profits collected by the Eastern Division of the Western Area Power Administration (WAPA) of the Department of Energy from the sale of the firm power generated by the Missouri River dams.

E. Legislation for Additional Compensation for Lower Brule and Crow Creek

In 1996, Congress passed the Crow Creek Sioux Tribe Infrastructure Development Trust Act, which established a $27.5 million Recovery Fund for the Crow Creek Sioux Tribe (see Appendix III for the full text of this statute).[48] In 1997, Congress enacted The Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act that created a $39.9 million Recovery Fund for the Lower Brule Sioux Tribe (see Appendix IV for the full text of this statute).[49] The amount of compensation for the Crow Creek

[48] Act of October 1, 1996 (110 Stat. 3026), Public Law 104-223 (see Appendix III for the full text of this statute).

[49] Act of December 2, 1997 (111 Stat. 2563), Public Law 105-132 (see Appendix IV for the full text of this statute).

and Lower Brule Tribes (also funded by WAPA revenue) was determined by a formula for equity based on the per-acre value of the earlier Fort Berthold/Standing Rock legislation, rather than on the range of valuations based on inflation or interest rates suggested by the GAO in its 1991 report on Fort Berthold and Standing Rock.

F. Legislation for Additional Compensation for Cheyenne River

In 1994, the Cheyenne River Sioux Tribe sought additional compensatory legislation for its damages from the Oahe Dam, utilizing as its primary approach the same consumer surplus methodology that served as the basis of the JTAC's 1986 recommendations for Standing Rock. Robert McLaughlin, the consultant who had estimated Standing Rock's damages, also prepared the Tribe's analysis of economic loss.[50] McLaughlin's primary approach recalculated the value of the Cheyenne River Sioux Tribe's losses based on market values of natural resources and agricultural production, which produced an estimate of $300,700, 000 (in 1996 dollars). The consultant's secondary approach was similar to the alternative approach proposed by the GAO in its 1991 report to Congress on additional compensation for Fort Berthold and Standing Rock, using the average annual interest rate on corporate bonds. The valuation of this estimate was $279,100,00 in 1996 dollars.[51]

In 1997, Senator Thomas Daschle (D, South Dakota) requested a GAO assessment of the economic analysis prepared by Robert McLaughlin for the Cheyenne

[50] See McLaughlin, *Analysis of Economic Loss Resulting From Lands Taken from the Cheyenne River Sioux Tribe for the Oahe Dam* (1994).
[51] GAO, *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation* (1998), p. 2.

River Sioux Tribe. In January 1998, the GAO issued a report in response to Senator Daschle's request, concluding that the consultant's primary approach was based on questionable assumptions regarding the value of the Tribe's losses. The GAO also was critical of McLaughlin's secondary approach, primarily because it provided a single amount for additional compensation, rather than a range of values such as the GAO had proposed in its 1991 report on Fort Berthold and Standing Rock. The GAO suggested instead that Congress consider the GAO's calculation of a range of values.[52]

The lower range of the GAO's calculation, based on the inflation rate, was $78,204,862. This amount indicated how much the Tribe would have needed in 1996 to equal the purchasing power in 1954 of the amount of difference between the compensation requested and the amount appropriated. The GAO's higher range of $290,722,958 was based on the annual average rate of interest earned on investments in AAA corporate bonds between 1954 and 1996. This amount reflected how much the Tribe might have earned by investing the amount equal to the compensation it did not receive in bonds issued in the private sector.[53]

On November 13, 2000, Congress responded by enacting the Cheyenne River Sioux Tribe Equitable Compensation Act as Title I of Public Law 106-511. This statute provided for the appropriation of $290,722,958 plus interest for the establishment of a Recovery Trust Fund for the Cheyenne River Sioux Tribe of South Dakota.[54] This

[52]Ibid., pp. 2-3.
[53] Ibid, pp. 11-12.
[54] Act of November 13, 2000 (114 Stat. 2365), Title I of Public Law 106-511..

amount was the same as proposed by the GAO as the highest range of additional compensation based on the average annual interest rates of AAA corporate bonds. The establishment of the Cheyenne River Recovery Trust Fund by Congress represented the largest settlement ever awarded to an Indian Tribe impacted by a Pick-Sloan project.

G. Legislation for Additional Compensation for Yankton and Santee

The 107th Congress provided additional compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux of Nebraska in 2002. As Title II of Public Law 107-331, the Yankton Sioux and Santee Sioux Tribes Equitable Compensation Act, enacted on December 13, 2002, authorized the appropriation of a $23,023,743 Development Trust Fund for the South Dakota tribe and a $4,789,010 Development Trust Fund for the Nebraska tribe.[55] The amounts of this additional compensation were based on the per-acre amount provided by Congress as additional compensation to the Lower Brule Sioux Tribe in 1997 ($1,763 per acre) multiplied by 438 percent. This multiplier represented the average amount above property damages that five other Missouri River Tribes received from Congress between 1947 and 1962 for rehabilitation of their reservations. The Yankton and Santee Sioux Tribes had not received funds for this purpose as part of their initial settlements.[56]

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[55] Act of December 11, 2002 (116 Stat. 2834), Title II of Public Law 107-331

[56] Lawson, *Historical Analysis of the Impact of Missouri River Pick-Sloan Dam Projects on the Yankton and Santee Sioux Indian Tribes*, pp. 82-84.

The Yankton, Santee, and Rosebud Sioux Tribes are probably not eligible for parity with the Fort Berthold and Cheyenne River additional compensation under the GAO "unwilling seller" approach. These Tribes may be ineligible because they did not, as tribal entities, propose an overall asking price to the Government, as did the Fort Berthold, Standing Rock, Cheyenne River, Lower Brule, and Crow Creek Tribes. Thus, there is no "difference" to measure. However, the Yankton and Santee Sioux Tribes did receive the highest per-acre amount of additional compensation ($8,074.54) of any of the Tribes impacted by Pick-Sloan projects. In comparison, the additional compensation received by the Cheyenne River Sioux Tribe in 2000 represented a per-acre amount of approximately $2,784, while that received by the Crow Creek Sioux Tribe in 1996 and the Lower Brule Sioux Tribe in 1997 was approximately $1,763 per acre. If the Lower Brule and Crow Creek Sioux Tribes sought parity with the Yankton and Santee Sioux additional compensation on a per-acre basis, they could ask for $140,729,956 and $98,438,609,[57] respectively, rather than the $107,828,801 (Lower Brule) and $45,746,160 (Crow Creek) sought under the GAO proposal of differences calculated at the average annual rate of interest earned on AAA corporate bonds between the date of initial settlement and the present.

[57] U.S., General Accounting Office, Spreadsheet Adjusting Four Prior Bills to Cheyenne River Per Acre Rate and Five Prior Bills to Highest Per Acre Rate, 2002.

V. BASIS FOR FURTHER COMPENSATION FOR THE CROW CREEK AND LOWER BRULE SIOUX TRIBES

A. Similar Damages as the Cheyenne River Sioux Tribe

The Fort Randall and Big Bend dam projects compelled 69 percent of the tribal residents on the Lower Brule Sioux Reservation, and 45 percent of those on the Crow Creek Reservation, to evacuate their riverside homes and to accept land further inland that was less well suited for houses, ranches, and farms.[58] In comparison, the inundation

[58]The Fort Randall Dam flooded 22,091 acres of Sioux land and dislocated 136 Indian families. The Crow Creek Sioux were the hardest hit. The Tribe lost 9,514 acres of precious bottomland, over one-third of which was forested. Eighty-four families, representing approximately 34 percent of the reservation population, were compelled to relocate. The flooding of 7,997 acres of the Lower Brule reservation by the Fort Randall project caused the dislocation of thirty-five Indian families, or approximately 16 percent of the resident population. Nearly one-half of the lost acreage was sheltered pastureland. The Big Bend project took an additional 21,026 acres of Sioux land. This time Lower Brule suffered the most damage. The flooding of 14,609 acres, approximately 15 percent of the reservation land base caused the displacement of sixty-two families, comprising 53 percent of the tribal population. Most of the timber and pastureland not already destroyed by the Fort Randall project and nearly one-half of the remaining farms and ranches were inundated. The Crow Creek Sioux lost 6,417 acres to the Big Bend project and were forced to move twenty-seven families. These damages affected 5 percent of the reservation's land base and 11 percent of its population. Approximately one-fourth of the Tribe's remaining farms and ranches were also deluged. *Report of Ownership Status of Restricted, Allotted, and Tribal Indian Lands on the Crow Creek, Lower Brule, and Rosebud Reservations, South Dakota, Affected by Fort Randall Dam and Reservoir Project,* MRBI Rept. 83, pp. 1-4; *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota,* MRBI Rept. 138, pp. 1, 18-19, 47; "Summary and Evaluation of Experiences of Six Indian Reservations Affected by Large Dam and Reservoir Projects on Missouri River, 1960," File 1766-074. 1, MRBI, pt. I-A, General Programs, 1960, Record Group 75, Records of the BIA, National Archives, Washington National Records Center, Suitland, MD, pp. 5-10, 44-45; U.S., DOI, BIA, MRBI, *Appraisal of Indian Property on the Fort Randall Reservoir Site Within the Lower Brule and Crow Creek Indian Reservations, South Dakota,* MRBI Rept. 135 (Billings, 1953), pp. 1-7; U.S., DOI, BIA, MRBI, *Problems of Indian Removal and Rehabilitation Growing Out of the Fort Randall Taking on Crow Creek and Lower Brule Reservations, South Dakota,* MRBI Rept. 136 (Billings, 1953), pp. 1-6, 17-20; U.S., DOI, BIA, MRBI; U.S., DOI, BIA, MRBI, *Damages to Indians on Crow Creek and Lower Brule Reservations from Big Bend Dam and Reservoir Project, South Dakota,* MRBI Rept. 165 (Billings, 1960), pp. 1-10.

of the lands of the Cheyenne River Sioux Tribe by the Oahe Dam project forced approximately 30 per cent of tribal population to abandon their homes and relocate.[59]

The Fort Randall dam project flooded the town site of Fort Thompson, the largest community on the Crow Creek Sioux reservation. The BIA agency headquarters at Fort Thompson, which served both the Crow Creek and Lower Brule Tribes, and its sub-agency in the town of Lower Brule, were combined and relocated off the reservations in Pierre, South Dakota, 60 miles from the town of Lower Brule. Likewise, the Public Health Service hospital at Fort Thompson, which also served both Tribes, was moved off the Crow Creek reservation to Chamberlain, South Dakota, a distance of 30 miles from the town of Lower Brule. With the closing of the Indian boarding school at Fort Thompson, students from Lower Brule and Crow Creek were also compelled to leave the reservations to attend high school. The off-reservation facilities were now located over 80 miles from remote parts of the reservations. Tribal offices remained on Indian land, but with the removal of BIA facilities, it was no longer possible for the Lower Brule and Crow Creek Sioux to take care of their BIA, public-health, and tribal business needs on the same day at the same location. For people whose transportation facilities were severely limited, this situation created an immense hardship.[60]

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[59] Cheyenne River lost 104,420 acres to the Oahe Dam project. *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 1, 18-19, 47; "Summary and Evaluation of Experiences of Six Indian Reservations Affected by Large Dam and Reservoir Projects on Missouri River, pp. 5-10, 44-45; U.S., DOI, BIA, MRBI, "*Problems on the Cheyenne River and Standing Rock Reservations Arising from the Oahe Project,* MRBI Rept. 100 (Billings, 1950), pp. 1-8.

[60] *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota,* MRBI Rept. 138, pp. 1, 18-19, 47; "Summary and Evaluation of Experiences of Six Indian

The Big Bend project, which was actually built on Lower Brule and Crow Creek lands near the new town site of Fort Thompson, required the relocation of the town of Lower Brule, the largest community on the Lower Brule reservation. The entire town was moved to a new site one mile west of its former location. Because the Corps of Engineers was determined to change the original site of the Big Bend project and waited until 1957 to select a final alternative site, as is explained in more detail below, families on both the Lower Brule and the Crow Creek reservations were relocated on lands within what became the taking area for Big Bend Reservoir. These unfortunate tribal members were thus required to undergo the trauma of a second move.[61]

At Cheyenne River, by contrast, the largest town on the reservation, Cheyenne Agency, and three other smaller communities were completely submerged. The BIA and tribal facilities at Cheyenne Agency, including offices, schools, and a medical clinic were moved from 60 miles westward from the Missouri shore to the desolate prairie town of

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Reservations Affected by Large Dam and Reservoir Projects on Missouri River, 1960," pp. 5-10, 44-45; *Appraisal of Indian Property on the Fort Randall Reservoir Site Within the Lower Brule and Crow Creek Indian Reservations, South Dakota,* MRBI Rept. 135, pp. 1-7; *Problems of Indian Removal and Rehabilitation Growing Out of the Fort Randall Taking on Crow Creek and Lower Brule Reservations, South Dakota,* MRBI Rept. 136, pp. 1-6, 17-20; *Report of Ownership Status of Restricted, Allotted, and Tribal Indian Lands on the Crow Creek, Lower Brule, and Rosebud Reservations, South Dakota, Affected by Fort Randall Dam and Reservoir Project,* MRBI Rept. 83, pp. 1-4.

[61] *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 1, 18-19, 47; "Summary and Evaluation of Experiences of Six Indian Reservations Affected by Large Dam and Reservoir Projects on Missouri River, 1960," pp. 5-10, 44-45;; U.S., DOI, BIA, MRBI, *Damages to Indians on Crow Creek and Lower Brule Reservations from Big Bend Dam and Reservoir Project, South Dakota*, MRBI Rept. 165 (Billings, 1960), pp. 1-10.

Eagle Butte, South Dakota. Though distant from its former location, the new facilities built at Eagle Butte were still within the reservation and somewhat centrally located.[62]

Because their families and most important resources were concentrated near the Missouri River, resettlement devastated the affected members of all three Sioux Tribes. As one tribal elder at Lower Brule described it, "We lost a whole way of life." The natural advantages of their former homes could not be replaced on the marginal reservation lands remaining after inundation. Shaded bottomlands had provided a pleasant environment with plenty of wood, game, water, and natural food sources. Livestock could graze on abundant grasses and take shelter under the trees. The barren upland regions onto which these people were forced to move were less hospitable, more rigorous, and presented far greater challenges to their survival.[63]

For those unfamiliar with Sioux culture and the geography of the Dakotas, it is perhaps difficult to appreciate how important the bottomlands were to the way of life of the Sioux people along the Missouri. Trees along the river had provided them with their primary source of fuel and lumber. Nearly all reservation houses and other buildings were made of wood or logs. The wooded areas also protected both man and beast from the ravages of winter blizzards and the scorching summer heat. Willow branches were

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[62] *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 1, 18-19, 47; "Summary and Evaluation of Experiences of Six Reservations Affected by Large Dams," pp. 5-10, 44-45.

[63] Interviews with Tribal Elders, conducted by Michael L. Lawson, Lower Brule, South Dakota, June 28-29, 1996; *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 12-14, 18-19; "Experiences of Six Reservations Affected by Large Dams,"

used to construct sun shelters known as "squaw coolers." The gathering and selling of wood helped supplement their small cash income. The flooding of the forestlands destroyed 90 percent of the timber on all three reservations.[64]

The gathering and preserving of wild fruits and vegetables was a traditional part of Sioux culture. The many herbs, roots, berries, turnips, grapes, cherries, and beans that grew in the bottomlands added variety and bulk to the diet of these people. These plants were eaten raw, dried and stored for winter, made into soups, sauces, or mixed with other foods to add flavoring. For example, a pudding was made with berries from wild roses, now known to be one of the best sources of Vitamin C. Mint leaves were used to make tea. A mixture of sumac leaves, tobacco, and ground bark, known as *knik knik*, was used for smoking in pipes. A form of wild pea called a "mouse bean"[65] was regarded as one of the most palatable wild vegetables on the Great Plains. The loss of these and other plants greatly reduced the Indians' natural food supply. After the flooding, many of the delectable treats enjoyed by tribal families, such as mouse beans and morel mushrooms, were no longer to be found on the reservations.[66]

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pp. 5-10, 44-45; *Problems on the Cheyenne River and Standing Rock Reservations Arising from the Oahe Project,* MRBI Rept. 100, pp. 1-8.

[64]Ibid.

[65]This food source acquired its name because it was collected and stored by field mice and taken from their nests by tribal members. According to tradition, the Sioux always replaced the beans that they took with an equal amount of corn or other grain. Soup made from these beans was still considered a delicacy at the time of the inundation.

[66] Interviews with Tribal Elders, Lower Brule, South Dakota, June 28-29, 1996; *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, p. 79; Ethel Nurge, "Dakota Diet: Traditional and Contemporary," in *The Modern Sioux: Social Systems and Reservation Culture*, edited by Ethel Nurge (Lincoln: University of Nebraska Press, 1970), pp. 39, 75-89. For a full discussion of traditional plant uses, see Melvin Randolph Gilmore, "Use of Plants by the Indians

A variety of plants were used traditionally for ceremonial and medicinal purposes. Buffalo berries, for example, were once used in female puberty rites, and chokeberries continued to serve as a cure for diarrhea and other ailments. Bitterroot and sweet grass were used extensively in curing ceremonies. Once the bottomlands were flooded, medicine men at Lower Brule and Crow Creek had to go to other reservations to obtain the primary ingredients for their cures.[67]

The wooded bottomlands also served as a shelter and feeding ground for many kinds of wildlife. Deer, muskrats, rabbits, and coyotes were abundant year-round, and numerous pheasants, ducks, and other game birds wintered there each year. The unrestricted hunting and trapping of this game provided tribal members with an important source of food, income, and recreation. Wild fruit, including chokecherries, buffalo berries, gooseberries, and currants were readily available for picking. Destruction of this environment by the Pick-Sloan dams reduced the wild game and plant supply on the reservations by 75 percent. After the dams were in place, the white tail deer population disappeared at Lower Brule and Crow Creek and hunting and fishing within the reservoir taking areas was restricted by Federal and State regulations.[68]

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of the Missouri River Region," in *Thirty-third Annual Report of the American Bureau of Ethnology* (Washington, D.C.: Government Printing Office, 1919), pp. 43-154.

[67] Ibid.

[68]Interviews with Tribal Elders, Lower Brule, South Dakota, June 28-29, 1996; *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 12-14.

Reservation families had fully exploited the resources of the bottomlands and utilized the Missouri and other nearby streams as primary sources of water. Tribal members also fished for subsistence, using both lines and nets. Fishing and swimming were likewise common recreational activities. However, few if any tribal members had boats.[69]

The loss of the bottomland grazing areas seriously crippled the livestock industry at Cheyenne River, Lower Brule, and Crow Creek. Ranching had become the primary economic activity on the reservations in the years prior to the implementation of the Pick-Sloan Plan. The Tribal Livestock Enterprise at Lower Brule, for example, maintained ranches in four locations totaling up to 700 head of cattle. However, the progress made in establishing tribal cattle enterprises was greatly hindered by the reservoir projects. A substantial portion of the Indian ranchers were forced either to liquidate their assets altogether or to establish smaller operations on the inferior reservation land that remained.[70]

In the bottomlands, cattle were able freely to graze, water, and take shelter. On the upland prairies, artificial shelters had to be built to replace the natural shelter of the trees, and the loss of the winter hay meadows meant open grazing was no longer possible. Fences had to be erected to confine the herds in smaller areas and to protect them from

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[69]Interviews with Tribal Elders, Lower Brule, South Dakota, June 28-29, 1996; *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, p. 39; Nurge, "Dakota Diet," p. 39.

[70]Interviews with Tribal Elders, Lower Brule, South Dakota, June 28-29, 1996; "Experiences of Six Reservations Affected by Large Dams," pp. 8-9, 49-53.

the waters of the wildly fluctuating reservoirs. Artesian wells, cisterns, and stock water ponds had to be dug, and feed supplements had to be purchased to replace the natural water and food sources of the old habitat. Stock raising in the new environment thus proved more difficult, expensive, and risky.[71]

The upland regions also presented a stiff challenge for Indian homeowners. Houses built or relocated on this treeless land required better insulation and could no longer be heated by wood stoves. New sources of fuel, lumber, food, and water had to be developed or purchased. The necessity of finding new homesites and rangelands on the reduced reservations created a highly competitive and inflated real estate market. The nature of the soil and terrain made irrigation much more difficult. Paradoxically, the Pick-Sloan projects flooded the most potentially irrigable lands on the reservations. The Fort Randall and Big Bend projects, for example, destroyed the possibility of implementing plans proposed jointly by the BIA and the Bureau of Reclamation for sizable irrigation projects on the Lower Brule Reservation.[72]

Damage caused by the Pick-Sloan projects touched every aspect of the life of the affected Sioux Tribes. Abruptly, tribal members were transformed from a subsistence

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[71]Interviews with Tribal Elders, Lower Brule, South Dakota, June 28-29, 1996; *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 9-11, 61-67.

[72]Interviews with Tribal Elders, Lower Brule, South Dakota, June 28-29, 1996; *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 8-9, 11-12, 51, 56-60; *Damages to Indians on Crow Creek and Lower Brule Reservations from Big Bend Dam and Reservoir Project, South Dakota*, MRBI Rept. 165, pp. 2, 10; *Problems of Indian Removal and Rehabilitation Growing Out of the Fort Randall Reservoir Taking on Crow Creek and Lower Brute Reservations, South Dakota*, MRBI Rept. 136, p. 2.

economy to a cash economy and forced to develop new ways of making a living. The uprooting of long-standing reservation communities disrupted and disorganized the social, economic, political, and religious life of well-integrated tribal groups and had a serious effect on entire tribal populations, both resident and non-resident. It was an onerous imposition for tribal members to be forced to move their community halls, churches, and religious shrines. It was even harder for them to disturb the graves of their ancestors. Yet, the largest cemeteries and most of the private burial grounds had to be excavated and moved elsewhere.[73]

Physical losses inflicted by the Pick-Sloan projects were easily quantified. Psychological and aesthetic damages were more difficult to measure. Like any people forced to relinquish their homes, the Sioux along the Missouri River hated not only giving up their property, but also seeking unfamiliar places to live. Their particular circumstances made the situation even more difficult. Because of their close relationship with nature, these people had a sacred attachment to their land. The areas along the river had afforded them a comfortable and relatively scenic environment with resources enough to sustain their way of life. The loss of this land and livelihood had a strong emotional impact on them. The disruption of both traditional communities and Federal services created a great deal of anxiety, insecurity, and resentment. Feeling that they were being unjustly exploited made them sullen and bitter. Unlike others affected by public works projects, the Sioux were not able to duplicate their old way of life by

[73] Interviews with Tribal Elders, Lower Brule, South Dakota, June 28-29, 1996; *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI, Rept. 138, pp. 15-16.

moving to a similar environment. No Indian lands like the ones vacated existed after the reservation bottomlands were inundated. When measured in terms of the loss or reduction of Federal services and close kinship ties, the disadvantages of leaving the reservations were much too great to make it a viable alternative.[74]

The flooding of the bottomlands also caused tribal families previously scattered along the river and streams to become concentrated in tract housing at the new town sites Tribal elders at Lower Brule maintain that this development has had a negative impact. In their view, this crowding is largely responsible for increased rates of crime, violence, alcohol and substance abuse, death, and other social problems in the community and the decline of traditional values. As one elder expressed it, "we lost our contact with the land," which also means that today's tribal members have lost touch with important aspects of traditional Sioux culture.[75]

B. Application of the Cheyenne River Sioux Additional Compensation Approach to the Lower Brule and Crow Creek Sioux Tribes

In common with the Cheyenne River Sioux Tribe, the Lower Brule and Crow Creek Sioux Tribes received less compensation from Congress than they believed was warranted for losses caused by Missouri River Pick-Sloan dam projects. In 1954, the Lower Brule Tribe asked Congress for $2,530,471.75 for payment of direct and indirect damages to its reservation resulting from the construction of the Fort Randall Dam project. This tribal request was incorporated in legislation (H.R. 9832) introduced by

[74]Ibid.

[75] Interviews with Tribal Elders, Lower Brule, South Dakota, June 28-29, 1996.

Congressman E.Y. Berry (R, South Dakota) on July 8, 1954 on behalf of the Tribe.[76] A Tribal Negotiating Committee headed by Tribal Chairman Moses DeSmet in counsel with tribal attorney Ralph Hoyt Case determined the amount of compensation requested. The estimates of damages were developed over an eighteen month period by the committee and based on U.S. Department of Agriculture land values, U.S. District Court land settlements, and other data on the value of similar bottomlands and natural resources. Of the total amount requested, $739,904.03 was for direct damages and $1,790,567.72 for relocation costs and intangible damages.[77] After the Cheyenne River Sioux Tribe received reimbursement of up to $100,000 for administrative expenses (essentially the costs of negotiating a settlement) as part of the compensation provided by Public Law 83-776 on September 3, 1954,[78] the Lower Brule Sioux Tribe also requested an award of $100,000 to offset administrative expenses in legislation that was again introduced on the Tribe's behalf by Congressman Berry on February 3, 1955.[79] This brought the total initial tribal request for compensation to $2,630,471.75.

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[76] U.S., Congress, House of Representatives, A Bill to Provide for the Acquisition by the United States of Lands Required for the Reservoir to be Created by the Construction of the Fort Randall Dam on the Missouri River, and to Provide for Rehabilitation of the Sioux Indians of the Lower Brule Indian Reservation in South Dakota, H.R. 9832, 83d Cong., 2d Sess., July 8, 1954, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 83A-D9, Box 1002, 83d Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[77] Statements of Moses DeSmet, Chairman, Lower Brule Sioux Tribal Council, Richard LaRoche, Member, Lower Brule Sioux Tribal Council, and Ralph Hoyt Case, tribal attorney, Stenographic Transcript of Hearings Before the Committee on Interior and Insular Affairs, Joint Hearing on S. 3747 and H.R. 9832, Washington, D.C., July 15, 1954, pp. 38-36, 61-62, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 83A-D9, Box 1002, 83d Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[78] Act of September 3, 1954 (68 Stat. 1191), Public Law 83-776.

[79] U.S., Congress, House of Representatives, A Bill to Provide for the Acquisition by the United States of Lands Required for the Reservoir to be Created by the Construction of the Fort Randall Dam on the Missouri River, and to Provide for Rehabilitation of the Sioux Indians of the Lower Brule Indian Reservation in South Dakota, H.R. 3544, Section 13, 84th Cong., 1st Sess., February 3, 1955, Committee

On September 2, 1958, the 85th Congress provided the Lower Brule Sioux Tribe compensation totaling $1,076, 523 for its Fort Randall losses, including $976,523 for direct and indirect damages and $100,000 for administrative expenses.[80] The difference between the $2,630,471.75 requested by the Tribe and the $1,076,523 appropriated by Congress is $1,553,948.75. The value of the difference of $1,553, 948.75 in 2004 dollars, if treated as an appreciating investment in AAA corporate bonds (the approach approved for the Fort Berthold and Cheyenne River settlements) is $46,475,562.69 (See Table 2 below and Appendix I, Fort Randall Yield Chart).

TABLE 2: Fort Randall Damages Settlement, Lower Brule Sioux Tribe

Type of Payment	Tribe's 1954 Request	Payment Received from Congress 1958	Difference	Total Difference
Damages	$2,530,471.75	$976,523	$1,553,948.75	
Administrative Expenses	$100,000	$100,000	$0	**$1,553,948.75**

Difference in 2004 Dollars = $46,475,562.69*

*Difference in 2004 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. This is the same calculating method that was approved by Congress in providing additional compensation to the Three Affiliated Tribes of Fort Berthold in Public Law 102-575, Title XXXV, October 30, 1992, and the Cheyenne River Sioux Tribe in Public Law 106-511, November 13, 2000.

The Crow Creek Sioux Tribe requested $2,105,020.55 for its damages from the Fort Randall project and $100,000 for negotiating expenses (for a total of $2,205,020.55)

on Interior and Insular Affairs, Bills and Hearings, File HR 84A-D9, Box 104, 84th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

in legislation that was introduced on its behalf by Congressman George McGovern (D., South Dakota) on May 24, 1957.[81] As was the case with the Lower Brule Sioux, the amount requested was based on damage estimates calculated by a Tribal Negotiating Committee over a period of eighteen months. Vernon Ashley, a former Tribal Chairman who had recently completed his undergraduate studies at Dakota Wesleyan University, headed the Crow Creek Negotiating Committee.[82] On September 2, 1958, the 85th Congress provided the Crow Creek Sioux Tribe with a settlement of $1,495,811.94. This included $1,395,811.94 for all damages and $100,000 for negotiating expenses.[83] The difference in this case between the $2,205,020.55 requested by the Tribe and the $1,495,811.94 received from Congress is $709,208.61. The value of the difference in 2004 dollars, when calculated at the prime corporate bond interest rate since 1959, is $21,211,040.08 (See Table 2 below and Appendix I, Fort Randall Yield Chart).

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[80] Act of September 2, 1958 (72 Stat. 1773), Public Law 85-923.

[81] U.S., Congress, House of Representatives, A Bill to Provide for the Acquisition by the United States of Lands Required for the Reservoir to be Created by the Construction of the Fort Randall Dam on the Missouri River, and to Provide for Rehabilitation of the Sioux Indians of the Lower Brule Indian Reservation in South Dakota, H.R. 7758, 85th Cong., 1st Sess., May 24, 1957, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 85A-D8, Box 106, 85th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[82] Statements of Vernon Ashley, Member, Crow Creek Sioux Tribal Negotiating Committee, Stenographic Transcript of Hearings Before the Committee on Interior and Insular Affairs, Joint Hearing on S. 3747 and H.R. 9832, Washington, D.C., July 15, 1954, pp. 70-84, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 83A-D9, Box 1002, 83d Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[83] Act of September 2, 1958 (72 Stat. 1766), Public Law 85-916.

TABLE 3: Fort Randall Damages Settlement, Crow Creek Sioux Tribe

Type of Payment	Tribe's 1957 Request	Payment Received from Congress 1958	Difference	Total Difference
Damages	$2,105,020.55	$1,395,811.94	$709,208.61	
Administrative Expenses	$100,000	$100,000	$0	**$709,208.61**

Difference in 2004 Dollars = $21,211,040.08*

*Difference in 2004 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. This is the same calculating method approved by Congress in providing additional compensation to the Three Affiliated Tribes of Fort Berthold in Public Law 102-575, Title XXXV, October 30, 1992, and the Cheyenne River Sioux Tribe in Public Law 106-511, November 13, 2000.

The Lower Brule and Crow Creek Sioux Tribes received their settlements from Congress more than five years after the initial reservation lands needed for the Fort Randall project had been condemned by the Corps of Engineers in August 1953.[84] The compensation was also provided more than two years after the project, 99 percent complete according to Army reports, was officially dedicated on August 11, 1956.[85] Both Tribes had also included funds for the rehabilitation of their entire reservations as

[84] U.S., District Court, South Dakota District, Central Division, *U. S. v. 9,148 Acres of Land, et al., and the Crow Creek Tribe of Sioux Indians*, Civil No. 184, August 4, 1953, p. 47; *New York Times*, March 20, 1953; *Congressional Record*, 83d Cong., 1st Sess., February 25, 1953, 99:A887.

[85] C. H. Beitzel, Pierre Agency, Bureau of Indian Affairs, to Commissioner of Indian Affairs, May 6, 1957, File 7115-1952-056, Pierre Agency, Records of the Bureau of Indian Affairs, Record Group 75, National Archives, Washington, D.C.; U.S., Department of the Army, Corps of Engineers, *Annual Report of the Chief of Engineers, U.S. Army, 1956*, Vol. 2 (Washington, D.C.: Government Printing Office, 1957), pp. 937-39; *New York Times*, August 12, 1956.

part of their compensation requests prior to 1958, in keeping with the precedent established in the Cheyenne River settlement of 1954. However, Federal officials urged Congress to postpone consideration of funding for tribal rehabilitation until after the Army had completed its acquisitions on the reservations for the Big Bend Dam project. South Dakota politicians were also afraid of the negative connotations that had become associated with the term "rehabilitation." Overly sensitive that this word had become synonymous with the idea of reparations in the minds of many in Congress, they decided that the Lower Brule and Crow Creek Sioux Tribes could wait a few more years to receive general improvement funds. After all, the damage had already been done and more was coming.[86]

Groundbreaking ceremonies for the construction of the Big Bend project were held on May 30, 1960, presided over by presidential hopeful Senator Lyndon B. Johnson of Texas.[87] Three months earlier, the first legislation to provide compensation to the Lower Brule and Crow Creek Sioux Tribes for their damages from the project were introduced in Congress. Bills introduced by Congressman Berry on behalf of the Lower

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[86] Ernest L. Schusky, *Politics and Planning in a Dakota Indian Community*, (Vermillion: Institute of Indian Studies, University of South Dakota, 1959), p. 58; U.S., Congress, House of Representatives, Committee on Interior and Insular Affairs, Providing for the Payment for Individual and Tribal Lands of the Crow Creek Sioux Reservation in South Dakota, Required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Development of the Members of the Tribe, H. Rept. 853, 87th Cong., 1st Sess., 1961, p. 11.

[87] Richard LaRoche, Jr., former Lower Brule Sioux Tribal Chairman, interview conducted at Lower Brule, South Dakota, August 21, 1971, by the American Indian Research Project, South Dakota Oral History Center, University of South Dakota, Tape 784, pp. 31-32; U.S., Department of the Army, Corps of Engineers, *Annual Report of the Chief of Engineers, U.S. Army, 1960*, Vol. 2 (Washington, D.C.: Government Printing Office, 1961), pp. 939-41; *New York Times*, May 30, 1960.

Brule Sioux Tribe (H.R. 11214)[88] and by Congressman McGovern for the Crow Creek Sioux Tribe (H.R. 11237)[89] contained no specific requests for damage amounts, but contained provisions to compensate each Tribe for its negotiating expenses up to $125,000. In addition, the Lower Brule bill included a request for the construction of a new school for the relocated Lower Brule town site at a cost of $350,000.

It was not possible for the 86th Congress to determine an amount of compensation because of the Corps of Engineers was not able to determine the readjusted taking line of the Big Bend project until late October 1960. Accordingly, the Senate Committee on Appropriations directed the Secretary of the Interior and the Chief of Engineers to negotiate with tribal representatives to determine the fair market value of damages to the reservations and to report the results to Congress by January 15, 1961. In preparation for these negotiations, the Tribes employed Mr. Earl Sonnenschein of Pierre, South Dakota, a

[88] U.S., Congress, House of Representatives, A Bill for the Payment for Individual and Tribal Lands of the Lower Brule Sioux Reservation in South Dakota, required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Rehabilitation, Social and Economic Development of the Members of the Lower Brule Sioux Tribe, and for other Purposes , H.R. 11214, 86th Cong., 2d Sess., March 16, 1960, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 86A-D6, Box 180, 86th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[89] U.S., Congress, House of Representatives, A Bill for the Payment for Individual and Tribal Lands of the Crow Creek Sioux Reservation in South Dakota, required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Rehabilitation, Social and Economic Development of the Members of the Crow Creek Sioux Tribe, and for other Purposes , H.R. 11237, 86th Cong., 2d Sess., March 17, 1960, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 86A-D6, Box 180, 86th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

highly qualified and experienced appraiser familiar with local land and resource values, to determine the fair market value of each tract of reservation land to be inundated.[90]

As directed by Congress, representatives of the Secretary of the Interior and the District Engineer of the Omaha District of the Corps of Engineers met with the Lower Brule and Crow Creek tribal councils in December 1960 and January 1961 to negotiate settlement terms and the amounts of compensation.[91] After the parties were unsuccessful in reaching an agreement, new legislation incorporating the tribal estimates of damages and terms of settlement were introduced in the 87th Congress. H.R. 5144, introduced by Congressman Berry on behalf of Lower Brule Sioux Tribe on March 2, 1961, provided for a payment of $1,111,910 for direct damages, $783,998 for indirect damages, $350,000 for a new high school, and $125,000 for negotiating expenses (for a total of $2,370,908).[92]

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[90] Statement of Marvin J. Sonosky, Attorney for the Crow Creek Tribe of South Dakota and the Lower Brule Sioux Tribe of South Dakota, before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, U.S. House of Representatives, on H.R. 5144 (Lower Brule) and H.R. 5165 (Crow Creek), May 22, 1961, pp. 4-6, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 87A-D7, Box 155, 87th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[91] E.C. Itschner, Lieutenant General, U.S. Army, Chief of Engineers, to Honorable Sam Rayburn, Speaker, House of Representatives, January 13, 1961, in U.S., Congress, House of Representatives, Committee on Interior and Insular Affairs, Providing for the Payment for Individual and Tribal Lands of the Crow Creek Sioux Reservation in South Dakota, required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Rehabilitation, Social and Economic Development of the Members of the Crow Creek Sioux Tribe, House Report No. 853, 87th Cong., 1st Sess., August 5, 1961, pp. 16-18.

[92] U.S., Congress, House of Representatives, To Provide for the Payment for Individual and Tribal Lands of the Lower Brule Sioux Reservation in South Dakota, required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Rehabilitation, Social and Economic Development of the Members of the Lower Brule Sioux Tribe, and for other Purposes , H.R. 5144, 87th Cong., 1st Sess., March 2, 1961, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 87A-D7, Box 154,

Even after this legislation was introduced, representatives of the Lower Brule Sioux Tribe continued to negotiate fair market values with representatives of both the Department of the Interior and the Corps of Engineers. In carefully reviewing the separate BIA and Army appraisals, tribal negotiators found errors in regard to acreage, the identification of improvements, and the failure to include the value of the tax immunity of the trust land to be taken..[93] As a result, the Tribe, by June 1961, revised its estimate of indirect damages from $783,998 to $884,472. The additional amount included $26,910 for the Tribe's interest in 4,485 acres within the bed of the Missouri River (appraised at a value of $6.00 per acre), and $73,564 for the loss of tax immunity on trust lands.[94] This brought the total request of the Lower Brule Sioux Tribe for Big Bend damages to $2,471,382, including $1,111,910 for direct damages, $884,472 for indirect damages, $350,000 for a new high school and $125,000 for negotiating expenses.

On October 3, 1962, the 87th Congress provided the Lower Brule Sioux Tribe with an appropriation of $1,225,715 for damages and $75,000 for administrative

87th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[93] Statement of Marvin J. Sonosky, Attorney for the Lower Brule Sioux Tribe of South Dakota, before the House Subcommittee on Indian Affairs on H.R. 5144 (Lower Brule) and H.R. 5165 (Crow Creek), May 22, 1961, p, 10, Table 3.

[94] Assistant Secretary of the Interior to Honorable James A. Haley, Chairman, Subcommittee on Indian Affairs, enclosing Amendments to H.R. 5144 and H.R. 5165, June 16, 1961, Committee on Interior and

expenses for its losses from the Big Bend project (totaling a settlement of $1,300,715).[95] This legislation contained no specific appropriation for the construction of a new high school at the relocated Lower Brule town site. The difference between the amount the Tribe believed was warranted and what it received was $1,120,667 for damages and $50,000 for administrative expenses, totaling $1,170,667. Applying the average annual rate of interest earned on an investment in AAA corporate bonds between 1963 and the present yields a valuation of the difference in 2004 dollars of $29,509,394.08 (See Table 4 below and Appendix II, Big Bend Yield Chart).

TABLE 4: Big Bend Damages Settlement, Lower Brule Sioux Tribe

Type of Payment	Tribe's 1961 Request	Payment Received from Congress 1962	Difference	Total Difference
Damages	$2,346,382	$1,225,715	$1,120,667	
Administrative Expenses	$125,000	$75,000	$50,000	**$1,170,667**

Difference in 2004 Dollars = $29,509,394.08*

*Difference in 2004 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. This is the same calculating method approved by Congress in providing additional compensation to the Three Affiliated Tribes of Fort Berthold in Public Law 102-575, Title XXXV, October 30, 1992, and the Cheyenne River Sioux Tribe in Public Law 106-511, November 13, 2000.

Insular Affairs, Bills and Hearings, File HR 87A-D7, Box 155, 87th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[95] Act of October 2, 1962 (76 Stat. 698), Public Law 87-734.

As noted above, the Crow Creek Sioux Tribe also developed its own estimate of Big Bend damages, with the assistance of appraiser Earl Sonnenschien, in preparation for negotiations with representatives of the Department of the Interior and the Chief of Engineers in late 1960 and early 1961. Congressman Benjamin Reifel (R., South Dakota), a member of the Rosebud Sioux Tribe, introduced legislation embodying the Tribe's estimates of fair market values on March 2, 1961 (as H.R. 5165).[96] This bill requested $494,890 for direct damages, $421,034 for indirect damages, and $125,000 for negotiating expenses (totaling $1,040,924).

As negotiations continued and the tribal negotiating committee had an opportunity to more thoroughly review appraisals conducted by the BIA and the Corps of Engineers, the Crow Creek Sioux Tribe, by June 1961, revised its request for indirect damages from $421,034 to $467,004. The increase included $13,890 for the Tribe's interest in 2,315 acres of the Missouri River bed (at a rate of $6.00 per acre) and $32,080 for the loss of the tax immunity on its trust land with the taking area.[97] This revised estimate brought

[96] U.S., Congress, House of Representatives, To Provide for the Payment for Individual and Tribal Lands of the Crow Creek Sioux Reservation in South Dakota, required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Rehabilitation, Social and Economic Development of the Members of the Tribe, and for other Purposes , H.R. 5165, 87th Cong., 1st Sess., March 2, 1961, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 87A-D7, Box 154, 87th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[97] Statement of Marvin J. Sonosky, Attorney for the Crow Creek Sioux Tribe of South Dakota, before the House Subcommittee on Indian Affairs on H.R. 5144 (Lower Brule) and H.R. 5165 (Crow Creek), May 22, 1961, p, 10, Table 4; Assistant Secretary of the Interior to Honorable James A. Haley, Chairman, Subcommittee on Indian Affairs, enclosing Amendments to H.R. 5144 and H.R. 5165, June 16, 1961. Both in Committee on Interior and Insular Affairs, Bills and Hearings, File HR 87A-D7, Box 155, 87th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

the total tribal request to $1,086,894, including $494,890 for direct damages, $467,004 for indirect damages, and $125,000 for negotiating expenses.

On the same date as the Lower Brule settlement enactment, October 3, 1962, the 87th Congress provided the Crow Creek Sioux Tribe with an appropriation of $639,302 ($564,302 for damages and $75,000 for administrative expenses in compensation for its Big Bend damages.[98] The difference between the amount the Tribe believed was warranted and what it received was $397,592 for damages and $50,000 for administrative expenses, a total amount of $447,592. Applying the average annual rate of interest earned on an investment in AAA corporate bonds between 1963 and the present equals a valuation of the difference in 2004 dollars of $11,282,601.04 (See Table 5 below and Appendix II, Big Bend Yield Chart).

TABLE 5: Big Bend Damages Settlement, Crow Creek Sioux Tribe

Type of Payment	Tribe's 1961 Request	Payment Received from Congress 1962	Difference	Total Difference
Damages	$961,894	$564,302	$397,592	
Administrative Expenses	$125,000	$75,000	$50,000	**$447,592**

Difference in 2004 Dollars = $11,282,601.04*

*Difference in 2004 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. This is the same calculating method approved by Congress in providing additional compensation to the Three Affiliated Tribes of Fort Berthold in Public Law 102-575, Title XXXV, October 30, 1992, and the Cheyenne River Sioux Tribe in Public Law 106-511, November 13, 2000.

[98] Act of October 3, 1962 (76 Stat. 704), Public Law 87-735.

As part of their settlement packages, both the Lower Brule and Crow Creek Sioux Tribes requested funds for the rehabilitation of their reservations. Congress had established the precedent of providing appropriations for such purposes as part of the overall compensation package for Tribes impacted by Pick-Sloan projects in its 1954 settlement with the Cheyenne River Sioux for damages caused by the Oahe Dam.[99] In providing funds for rehabilitation, Congress recognized that the Tribes as a whole (not just the tribal members within the taking areas of the dams) were affected negatively by the loss of the bottomland environment and reservation infrastructure.

With the assistance of BIA and State officials, their Tribal Councils, and individual tribal members, the respective tribal negotiating committees at Lower Brule and Crow Creek developed estimates of the costs of economic, social, educational, and community programs to rehabilitate their reservations.[100] The Lower Brule Sioux Tribe's initial request for rehabilitation was included in H.R. 3544, introduced by Congressman Berry on February 3, 1955. This bill requested an appropriation of $6,348,316 to be used toward the goal of establishing a general "condition more advantageous to said Indians than the condition that the said Indians now are in."[101] This same amount was requested

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[99] Act of September 3, 1954 (68 Stat. 1191), Public Law 83-776.

[100] See, for example, Crow Creek Sioux Tribe, Statement and Estimates of Crow Creek Sioux Tribe, Negotiating Committee, May 17, 1957, pp. 7-10, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 85A-D8, Box 160, 85th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[101] U.S., Congress, House of Representatives, A Bill to Provide for the Acquisition by the United States of Lands Required for the Reservoir to be Created by the Construction of the Fort Randall Dam on the Missouri River, and to Provide for Rehabilitation of the Sioux Indians of the Lower Brule Indian Reservation in South Dakota, H.R. 3544, Section 5, 84th Cong., 1st Sess., February 3, 1955, Committee on

in other bills introduced in the 84th Congress as well as in subsequent sessions, including a legislative proposal that Congressman Berry introduced on March 18, 1957 (H.R. 6074).[102]

As noted above, Congress did not provide funds for rehabilitation as part of its 1958 settlements with the Lower Brule and Crow Creek Sioux Tribes for Fort Randall project damages, because the Department of the Interior had recommended that such compensation be deferred until a settlement could be negotiated for damages caused by the Big Bend project. In the meantime, the Tribes were pressured to scale back considerably their requested amounts for rehabilitation. The October 3, 1962 legislation that provided a settlement for the Lower Brule Sioux Tribe, Public Law 87-734, authorized an appropriation of $1,968,750 for rehabilitation purposes.[103] This appropriation was considerably less than the rehabilitation fund authorized for the Crow Creek Sioux Tribe on that same date, even though the Lower Brule Sioux Tribe suffered more damages from the combined Fort Randall and Big Bend projects.[104] It was also $4,379,566 less than the amount that the Lower Brule Sioux had determined was necessary to rehabilitate its reservation seven years earlier.

Interior and Insular Affairs, Bills and Hearings, File HR 84A-D9, Box 104, 84th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[102] See, for example S.953, 84th Cong., 1st Sess., February 4, 1955. See also H.R. 6074 (March 18, 1957) and H.R. 6569 (April 2, 1957), 85th Cong., 1st Sess., and U.S. Congress, House of Representatives, Committee on Interior and Insular Affairs, Standing Rock, Lower Brule, and Crow Creek Indian Tribes, North and South Dakota, Committee Print No. 19, 85th Cong., 2d Sess., March 21, 1958, p.31.

[103] Act of October 2, 1962 (76 Stat. 698), Public Law 87-734.

[104] Public Law 87-735 authorized a payment of $3,802,500 for rehabilitation of the Crow Creek Sioux reservation. This was $1,833,750 less than the Lower Brule Sioux received for rehabilitation, even though the Fort Randall and Big Bend dams destroyed 6,699 more acres of land on the Lower Brule Sioux

The GAO, in proposing an alternative range of additional compensation to Congress in 1998 for the Cheyenne River Sioux Tribe, included rehabilitation funding as part of its calculations of the value of differences between the amounts requested by the Tribe and that received in the initial settlement. Congress endorsed the inclusion of rehabilitation funds and compensated the Tribe at the highest rate proposed by the GAO; the amount keyed to interest rates on AAA corporate bonds. Applying this method of calculation to the rehabilitation difference in the case of the Lower Brule Sioux settlement between 1963 and the present yields a valuation of $110,397,182.97 (See Table 6 below and Appendix III, Fort Randall/Big Bend Rehabilitation Yield Chart).

Tribal negotiators for the Crow Creek Sioux Tribe requested $6,715,311.50 for rehabilitation programs in a report submitted to Congress on May 17, 1957. This report contained a detailed breakdown of the separate programs and an estimate of their costs. It also indicated that it had been developed in consultation with BIA, State, and Tribal officials, as well as individual members of the Tribe.[105] The amount of the tribal request was included in legislation introduced by Senator Francis Case (D., South Dakota) on

reservation. The Lower Brule Sioux lost 22,296 acres to the combined projects and the Crow Creek Sioux lost 15,597 acres. Both reservations were forced to relocate their largest community.

[105] Crow Creek Sioux Tribe, Statement and Estimates of Crow Creek Sioux Tribe, Negotiating Committee, May 17, 1957, pp. 7-10, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 85A-D8, Box 160, 85th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

May 23, 1957 (S. 2152) and by Congressman McGovern on May 24, 1957 (H.R. 7758).[106]

More than five years later, in 1962, Congress provided the Crow Creek Sioux Tribe with an appropriation of $3,802,500 for rehabilitation programs as part of the compensation authorized by Public Law 87-735 for Big Bend project damages.[107] This was $2,912,811.50 less than the amount determined by the Crow Creek Sioux Tribe to be necessary to rehabilitate its reservation in 1957. As has been noted above, Congress endorsed the inclusion of rehabilitation funding and compensated the Cheyenne River Sioux Tribe in 2000 at the highest rate proposed by the GAO; the amount keyed to interest rates on AAA corporate bonds. Applying this method of calculation to the rehabilitation difference in the case of the Crow Creek Sioux settlement between 1963 and the present yields a valuation of $73,424,212.38 (See Table 6 below and Appendix III, Fort Randall/Big Bend Rehabilitation Yield Chart).

[106] U.S., Congress, Senate, A Bill to Provide for the Acquisition of Lands by the United States for the reservoir Created by the Construction of the Fort Randall Dam on the Missouri River and for Rehabilitation of the Indians of the Crow Creek Sioux Reservation, South Dakota, and for other Purposes, S. 2152, 85th Cong., 1st Sess., May 23, 1957, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 85A-E9, Box 189, 85th Congress, Records of the U.S. Senate, Record Group 46, National Archives, Washington, D.C.; U.S., Congress, House of Representatives, same title as S. 2152, 85th Cong., 1st Sess., May 24, 1957, Committee on Interior and Insular Affairs, Bills and Hearings, File HR 85A-D8, Box 160, 85th Congress, Records of the U.S. House of Representatives, Record Group 233, National Archives, Washington, D.C.

[107] Act of October 3, 1962 (76 Stat. 705), Public Law 87-735, Section 3.

TABLE 6: Fort Randall/Big Bend Rehabilitation Settlement, Lower Brule Sioux Tribe and Crow Creek Sioux Tribe

Tribe	Tribes' Request	Payment Received from Congress 1962	Difference
Lower Brule	$6,348,316.00	$1,968,750	**$4,379,566.00**
Crow Creek	$6,715,311.50	$3,802,500	**$2,912,811.50**

Difference in 2004 Dollars, Lower Brule = $110,397,182.97*

Difference in 2004 Dollars, Crow Creek = $73,424,212.38*

*Difference in 2004 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. This is the same calculating method approved by Congress in providing additional compensation to the Three Affiliated Tribes of Fort Berthold in Public Law 102-575, Title XXXV, October 30, 1992, and to the Cheyenne River Sioux Tribe in Public Law 106-511, November 13, 2000.

The value in 2004 dollars of the total differences between the amounts the Lower Brule Sioux Tribe believed were warranted for its damages, administrative expenses, and rehabilitation in regard to the Fort Randall and Big Bend projects and the initial compensation provided by Congress in 1958 and 1962, when calculated as an investment in prime corporate bonds, is $186,382,139.60 (See Table 6 below). If one subtracts from the present valuation of the total differences ($186,382,139.60) the $39,300,000 provided by Congress to the Tribe as additional compensation for Fort Randall and Big Bend damages in 1997, it brings the present valuation to $147,082,140 (See Table 6 below). This is the amount requested by the Lower Brule Sioux Tribe as further compensation from Congress in order to provide it with a final settlement equitable to that provided by Congress in 2000 for the Cheyenne River Sioux Tribe.

The application of the corporate bond interest rate to the total differences between the amounts requested by the Crow Creek Sioux Tribe and those authorized by Congress yields a present valuation of $105,917,853.50 (See Table 7 below). If the $27,500,000 the Tribe received from Congress as additional compensation from Congress in 1996 is subtracted from the present valuation of total differences ($105,917,853.50), the value in 2004 dollars becomes $78,417,853.00 (See Table 7 below). This is the amount requested by the Crow Creek Sioux Tribe as further compensation from Congress in order to provide it with a final settlement equitable to that provided by Congress to the Cheyenne River Sioux Tribe in 2000.

TABLE 7: Total Further Compensation Requested in 2004 Dollars*

TRIBE	Crow Creek	Lower Brule
Fort Randall Damages Difference	$20,074,806.05	$43,985,957.49
Big Bend Damages Difference	$10,678,214.12	$27,298,633.43
Rehabilitation Difference	$69,491,020.62	$104,483,421.33
Total Difference in 2004 Dollars*	$105,917,853.50	$186,382,139.60
Minus Amount Provided by Congress, 1996/1997	- $27,500,000.00	- $39,300,000.00
Total Additional Amount Requested**	**$78,417,853.00**	**$147,082,140.00**

*Difference in 2004 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. This is the same calculating method that was approved by Congress in providing additional compensation to the Cheyenne River Sioux Tribe in Public Law 106-511, November 13, 2000. **Rounded to nearest dollar.

APPENDIXES

APPENDIX I

Letter in Support of Tribal Parity Act signed by South Dakota Governor M. Michael Rounds on April 28, 2003.

STATE OF SOUTH DAKOTA
M. MICHAEL ROUNDS, GOVERNOR

April 28, 2003

The Honorable Tom Daschle
United States Senate
509 Hart Senate Office Building
Washington, DC 20510

The Honorable Tim Johnson
United States Senate
324 Hart Senate Office Building
Washington, DC 20510

The Honorable Bill Janklow
United States House of Representatives
1504 Longworth House Office Building
Washington, DC 20515

Dear Senators Daschle and Johnson and Congressman Janklow:

As you know, South Dakota Indian tribes that lie along the Missouri River lost thousands of acres of economically and culturally valuable land as a result of the Missouri River Basin Development Program (Pick-Sloan) authorized by Congress in 1944. Several infrastructure development trust funds have been enacted by Congress to compensate these tribes for the value of the land lost and damage suffered. These trust funds represent sound public policy, but they have provided widely disparate levels of compensation.

The Congress is now considering the Tribal Parity Act to provide additional compensation for the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe. The Act is intended to provide parity with the Cheyenne River Sioux Tribe's settlement as contained in Public Law 106-511, based upon the methodology determined appropriate by the General Accounting Office.

I am writing to indicate my support for the Tribal Parity Act. Simple fairness demands that the tribes be adequately compensated for the losses they suffered, and that the compensation packages be consistent between the tribes. Thank you for your consideration.

Sincerely,

M. Michael Rounds

STATE CAPITOL • 500 EAST CAPITOL • PIERRE, SOUTH DAKOTA 57501-5070 • 605-773-3212

APPENDIX II

List of Statutes Providing Additional Compensation to Missouri River Tribes Impacted by Pick-Sloan Dam Projects 1992-2002.

List of Statutes Providing Additional Compensation to Missouri River Tribes Impacted by Pick-Sloan Dam Projects 1992-2002

1992

The Three Affiliated Tribes of Fort Berthold and Standing Rock Sioux Tribe Equitable Compensation Act. Title XXXV of Public Law 102-575, October 30, 1992, (106 Stat. 4731). Authorized establishment of a $149.2 million recovery fund for the Three Affiliated Tribes of Fort Berthold in North Dakota and a recovery fund of $90.6 million for the Standing Rock Sioux Tribe of North Dakota and South Dakota.

1996

The Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996. Public Law 104-223, Act of October 1, 1996 (110 Stat. 3026). Authorized establishment of a $27.5 million recovery fund for the Crow Creek Sioux Tribe of South Dakota.

1997

The Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act. Public Law 105-132, Act of December 2, 1997 (111 Stat. 2563). Authorized establishment of a $39.3 million recovery fund for the Lower Brule Sioux Tribe of South Dakota.

2000

The Cheyenne River Sioux Tribe Equitable Compensation Act. Title I of Public Law 106-511, November 13, 2000 (114 Stat. 2365). Authorized establishment of a $290,722,958 recovery fund for the Cheyenne River Sioux Tribe of South Dakota.

2002

The Yankton Sioux and Santee Sioux Tribes Equitable Compensation Act. Title II of Public Law 107-331, December 11, 2002 (116 Stat. 2834). Authorized establishment of a $23,023,743 recovery fund for the Yankton Sioux Tribe of Nebraska and a $4,789,010 recovery fund for the Santee Sioux Tribe of Nebraska.

APPENDIX III

Full Text of The Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996.

<DOC>
[DOCID: f:publ223.104]

[[Page 3025]]

CROW CREEK SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND ACT OF 1996

[[Page 110 STAT. 3026]]

Public Law 104-223
104th Congress

An Act

To provide for certain benefits of the Pick-Sloan Missouri River basin program to the Crow Creek Sioux Tribe, and for other purposes. <<NOTE: Oct. 1, 1996 - [H.R. 2512]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996.>>

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996''.

SEC. 2. FINDINGS.

(a) Findings.--The Congress finds that--

(1) the Congress approved the Pick-Sloan Missouri River basin program by passing the Act of December 22, 1944, commonly known as the ``Flood Control Act of 1944'' (58 Stat. 887, chapter 665; 33 U.S.C. 701-1 et seq.)--

(A) to promote the general economic development of the United States;

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

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

(D) for other purposes;

(2) the Fort Randall and Big Bend projects are major components of the Pick-Sloan program, and contribute to the national economy by generating a substantial amount of hydropower and impounding a substantial quantity of water;

(3) the Fort Randall and Big Bend projects overlie the western boundary of the Crow Creek Indian Reservation, having inundated the fertile, wooded bottom lands of the Tribe along the Missouri River that constituted the most productive agricultural and pastoral lands of the Crow Creek Sioux Tribe and the homeland of the members of the Tribe;

(4) Public Law 85-916 (72 Stat. 1766 et seq.) authorized the acquisition of 9,418 acres of Indian land on the Crow Creek Indian Reservation for the Fort Randall project and Public Law 87-735 (76 Stat. 704 et seq.) authorized the acquisition of 6,179 acres of Indian land on Crow Creek for the Big Bend

(5) Tribe.--The term ``Tribe'' means the Crow Creek Sioux Tribe of Indians, a band of the Great Sioux Nation recognized by the United States of America.

SEC. 4. ESTABLISHMENT OF CROW CREEK SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND.

(a) Crow Creek Sioux Tribe Infrastructure Development Trust Fund.--There is established in the Treasury of the United States a fund to be known as the ``Crow Creek Sioux Tribe Infrastructure Development Trust Fund''.

(b) Funding.--Beginning with fiscal year 1997, and for each fiscal year thereafter, until such time as the aggregate of the

[[Page 110 STAT. 3028]]

amounts deposited in the Fund is equal to $27,500,000, the Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.

(c) Investments.--The Secretary of the Treasury shall invest the amounts deposited under subsection (b) only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(d) Payment of Interest to Tribe.--

(1) Establishment of account and transfer of interest.--The Secretary of the Treasury shall, in accordance with this subsection, transfer any interest that accrues on amounts deposited under subsection (b) into a separate account established by the Secretary of the Treasury in the Treasury of the United States.

(2) Payments.--

(A) In general.--Beginning with the fiscal year immediately following the fiscal year during which the aggregate of the amounts deposited in the Fund is equal to the amount specified in subsection (b), and for each fiscal year thereafter, all amounts transferred under paragraph (1) shall be available, without fiscal year limitation, to the Secretary of the Interior for use in accordance with subparagraph (C).

(B) Withdrawal and transfer of funds.--For each fiscal year specified in subparagraph (A), the Secretary of the Treasury shall withdraw amounts from the account established under such paragraph and transfer such amounts to the Secretary of the Interior for use in accordance with subparagraph (C). The Secretary of the Treasury may only withdraw funds from the account for the purpose specified in this paragraph.

(C) Payments to tribe.--The Secretary of the Interior shall use the amounts transferred under subparagraph (B) only for the purpose of making payments to the Tribe.

(D) Use of payments by tribe.--The Tribe shall use the payments made under subparagraph (C) only for carrying out projects and programs pursuant to the plan prepared under section 5.

(3) Prohibition on per capita payments.--No portion of any payment made under this subsection may be distributed to any

member of the Tribe on a per capita basis.

(e) Transfers and Withdrawals.--Except as provided in subsection (d)(1), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

[[Page 110 STAT. 3029]]

SEC. 5. PLAN FOR SOCIOECONOMIC RECOVERY AND CULTURAL PRESERVATION.

(a) Plan.--

(1) In general.--The Tribe shall, not later than 2 years after the date of enactment of this Act, prepare a plan for the use of the payments made to the Tribe under section 4(d)(2). In developing the plan, the Tribe shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.

(2) Requirements for plan components.--The plan shall, with respect to each component of the plan--

(A) identify the costs and benefits of that component; and

(B) provide plans for that component.

(b) Content of Plan.--The plan shall include the following programs and components:

(1) Educational facility.--The plan shall provide for an educational facility to be located on the Crow Creek Indian Reservation.

(2) Comprehensive inpatient and outpatient health care facility.--The plan shall provide for a comprehensive inpatient and outpatient health care facility to provide essential services that the Secretary of Health and Human Services, in consultation with the individuals and entities referred to in subsection (a)(1), determines to be--

(A) needed; and

(B) unavailable through existing facilities of the Indian Health Service on the Crow Creek Indian Reservation at the time of the determination.

(3) Water system.--The plan shall provide for the construction, operation, and maintenance of a municipal, rural, and industrial water system for the Crow Creek Indian Reservation.

(4) Recreational facilities.--The plan shall provide for recreational facilities suitable for high-density recreation at Lake Sharpe at Big Bend Dam and at other locations on the Crow Creek Indian Reservation in South Dakota.

(5) Other projects and programs.--The plan shall provide for such other projects and programs for the educational, social welfare, economic development, and cultural preservation of the Tribe as the Tribe considers to be appropriate.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this Act, including such funds as may be necessary to cover the administrative expenses of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund established under section 4.

APPENDIX IV

Full Text of The Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (1997).

[DOCID: f:publ132.105]

[Page 111 STAT. 2563]]

Public Law 105-132
105th Congress

An Act

To provide certain benefits of the Pick-Sloan Missouri River Basin program to the Lower Brule Sioux Tribe, and for other purposes. <<NOTE: Dec. 2, 1997 - [S. 156]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act.>>

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act''.

SEC. 2. FINDINGS.

Congress finds that--

(1) under the Act of December 22, 1944, commonly known as the ``Flood Control Act of 1944'' (58 Stat. 887, chapter 665; 33 U.S.C. 701-1 et seq.) Congress approved the Pick-Sloan Missouri River Basin program--

(A) to promote the general economic development of the United States;

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

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

(D) for other purposes;

(2) the Fort Randall and Big Bend projects are major components of the Pick-Sloan Missouri River Basin program, and contribute to the national economy by generating a substantial amount of hydropower and impounding a substantial quantity of water;

(3) the Fort Randall and Big Bend projects overlie the eastern boundary of the Lower Brule Indian Reservation, having inundated the fertile, wooded bottom lands of the Tribe along the Missouri River that constituted the most productive agricultural and pastoral lands of the Lower Brule Sioux Tribe and the homeland of the members of the Tribe;

(4) Public Law 85-923 (72 Stat. 1773 et seq.) authorized the acquisition of 7,997 acres of Indian land on the Lower Brule Indian Reservation for the Fort Randall project and Public Law 87-734 (76 Stat. 698 et seq.) authorized the acquisition of 14,299 acres of Indian land on the Lower Brule Indian Reservation for the Big Bend project;

(5) Public Law 87-734 (76 Stat. 698 et seq.) provided for the mitigation of the effects of the Fort Randall and Big Bend projects on the Lower Brule Indian Reservation, by directing the Secretary of the Army to--

(A) as necessary, by reason of the Big Bend project, protect, replace, relocate, or reconstruct--

(i) any essential governmental and agency facilities on the reservation, including schools, hospitals, offices of the Public Health Service and the Bureau of Indian Affairs, service buildings, and employee quarters existing at the time that the projects were carried out; and

(ii) roads, bridges, and incidental matters or facilities in connection with those facilities;

(B) provide for a townsite adequate for 50 homes, including streets and utilities (including water, sewage, and electricity), taking into account the reasonable future growth of the townsite; and

(C) provide for a community center containing space and facilities for community gatherings, tribal offices, tribal council chamber, offices of the Bureau of Indian Affairs, offices and quarters of the Public Health Service, and a combination gymnasium and auditorium;

(6) the requirements under Public Law 87-734 (76 Stat. 698 et seq.) with respect to the mitigation of the effects of the Fort Randall and Big Bend projects on the Lower Brule Indian Reservation have not been fulfilled;

(7) although the national economy has benefited from the Fort Randall and Big Bend projects, the economy on the Lower Brule Indian Reservation remains underdeveloped, in part as a consequence of the failure of the Federal Government to fulfill the obligations of the Federal Government under the laws referred to in paragraph (4);

(8) the economic and social development and cultural preservation of the Lower Brule Sioux Tribe will be enhanced by increased tribal participation in the benefits of the Fort Randall and Big Bend components of the Pick-Sloan Missouri River Basin program; and

(9) the Lower Brule Sioux Tribe is entitled to additional benefits of the Pick-Sloan Missouri River Basin program.

SEC. 3. DEFINITIONS.

In this Act:

(1) Fund.--The term ``Fund'' means the Lower Brule Sioux Tribe Infrastructure Development Trust Fund established under section 4(a).

(2) Plan.--The term ``plan'' means the plan for socioeconomic recovery and cultural preservation prepared under section 5.

(3) Program.--The term ``Program'' means the power program of the Pick-Sloan Missouri River Basin program, administered by the Western Area Power Administration.

(4) Secretary.--The term ``Secretary'' means the Secretary of the Interior.

(5) Tribe.--The term ``Tribe'' means the Lower Brule Sioux

ıbe of Indians, a band of the Great Sioux Nation recognized by ıe United States of America.

·e 11 STAT. 2565]]

. . ESTABLISHMENT OF LOWER BRULE SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND.

(a) Lower Brule Sioux Tribe Infrastructure Development Trust Fund.--T ɾe is established in the Treasury of the United States a fund to be ɔwn as the `` Lower Brule Sioux Tribe Infrastructure Development Trust ınd''.

(b) Funding.--Beginning with fiscal year 1998, and for each fiscal 'ear thereafter, until such time as the aggregate of the amounts deposited in the Fund is equal to $39,300,000, the Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.

(c) Investments.--The Secretary of the Treasury shall invest the amounts deposited under subsection (b) only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(d) Payment of Interest to Tribe.--

(1) Establishment of account and transfer of interest.--The Secretary of the Treasury shall, in accordance with this subsection, transfer any interest that accrues on amounts deposited under subsection (b) into a separate account established by the Secretary of the Treasury in the Treasury of the United States.

(2) Payments.--

(A) In general.--Beginning with the fiscal year immediately following the fiscal year during which the aggregate of the amounts deposited in the Fund is equal to the amount specified in subsection (b), and for each fiscal year thereafter, all amounts transferred under paragraph (1) shall be available, without fiscal year limitation, to the Secretary of the Interior for use in accordance with subparagraph (C).

(B) Withdrawal and transfer of funds.--For each fiscal year specified in subparagraph (A), the Secretary of the Treasury shall withdraw amounts from the account established under paragraph (1) and transfer such amounts to the Secretary of the Interior for use in accordance with subparagraph (C). The Secretary of the Treasury may only withdraw funds from the account for the purpose specified in this paragraph.

(C) Payments to tribe.--The Secretary of the Interior shall use the amounts transferred under subparagraph (B) only for the purpose of making payments to the Tribe.

(D) Use of payments by tribe.--The Tribe shall use the payments made under subparagraph (C) only for carrying out projects and programs pursuant to the plan prepared under section 5.

(3) Prohibition on per capita payments.--No portion of any payment made under this subsection may be distributed to any member of the Tribe on a per capita basis.

ransfers and Withdrawals.--Except as provided in subsection
.he Secretary of the Treasury may not transfer or withdraw any
.n' ,eposited under subsection (b).
PLAN FOR SOCIOECONOMIC RECOVERY AND CULTURAL PRESERVATION.

a) Plan.--

,ge 111 STAT. 2566]]

(1) In general.--The Tribe shall, not later than 2 years after the date of enactment of this Act, prepare a plan for the use of the payments made to the Tribe under section 4(d)(2). In developing the plan, the Tribe shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.

(2) Requirements for plan components.--The plan shall, with respect to each component of the plan--

(A) identify the costs and benefits of that component; and

(B) provide plans for that component.

(b) Content of Plan.--The plan shall include the following programs and components:

(1) Educational facility.--The plan shall provide for an educational facility to be located on the Lower Brule Indian Reservation.

(2) Comprehensive inpatient and outpatient health care facility.--The plan shall provide for a comprehensive inpatient and outpatient health care facility to provide essential services that the Secretary of Health and Human Services, in consultation with the individuals and entities referred to in subsection (a)(1), determines to be--

(A) needed; and

(B) unavailable through facilities of the Indian Health Service on the Lower Brule Indian Reservation in existence at the time of the determination.

(3) Water system.--The plan shall provide for the construction, operation, and maintenance of a municipal, rural, and industrial water system for the Lower Brule Indian Reservation.

(4) Recreational facilities.--The plan shall provide for recreational facilities suitable for high-density recreation at Lake Sharpe at Big Bend Dam and at other locations on the Lower Brule Indian Reservation in South Dakota.

(5) Other projects and programs.--The plan shall provide for such other projects and programs for the educational, social welfare, economic development, and cultural preservation of the Tribe as the Tribe considers to be appropriate.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this Act, including such funds as may be necessary to cover the administrative expenses of the Fund.

SEC. 7. EFFECT OF PAYMENTS TO TRIBE.

(a) In General.--No payment made to the Tribe pursuant to this Act shall result in the reduction or denial of any service or program to

ursuant to Federal law--

(1) the Tribe is otherwise entitled because of the status of the Tribe as a federally recognized Indian tribe; or

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

(b) Exemptions; Statutory Construction.--

(1) Power rates.--No payment made pursuant to this Act shall affect Pick-Sloan Missouri River Basin power rates.

(2) Statutory construction.--Nothing in this Act may be construed as diminishing or affecting--

[[Page 111 STAT. 2567]]

(A) any right of the Tribe that is not otherwise addressed in this Act; or

(B) any treaty obligation of the United States.

Approved December 2, 1997.

LEGISLATIVE HISTORY--S. 156:

SENATE REPORTS: No. 105-146 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 143 (1997):
Nov. 9, considered and passed Senate.
Nov. 13, considered and passed House.

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APPENDIX V

Chart Illustrating Growth of Principal Amounts of Differences in the FORT RANDALL DAM PROJECT Settlements for DAMAGES AND ADMINISTRATIVE EXPENSES if Principal was Invested in AAA Corporate Bonds and Accrued the Average Annual Rate of Interest on Such an Investment.

Data on Historical Rates of Interest on AAA Corporate Bonds provided by Moody Investment Services.

FORT RANDALL DAM PROJECT

Principal Amounts:
CROW CREEK: $709,208.61
LOWER BRULE: $1,553,948.75
Plus Average Annual Interest on AAA Corporate Bonds

Year	Average Yield	Crow Creek	Lower Brule
1959	4.38	$740,271.95	$1,622,011.71
1960	4.41	$772,917.94	$1,693,542.42
1961	4.35	$806,539.87	$1,767,211.52
1962	4.33	$841,463.05	$1,843,731.78
1963	4.26	$877,309.37	$1,922,274.75
1964	4.41	$915,998.72	$2,007,047.07
1965	4.49	$957,127.06	$2,097,163.48
1966	5.13	$1,006,227.68	$2,204,747.97
1967	5.51	$1,061,670.82	$2,326,229.58
1968	6.18	$1,127,282.08	$2,469,990.57
1969	7.03	$1,206,530.01	$2,643,630.90
1970	8.04	$1,303,535.02	$2,856,178.83
1971	7.39	$1,399,866.26	$3,067,250.44
1972	7.21	$1,500,796.62	$3,288,399.20
1973	7.44	$1,612,455.88	$3,533,056.10
1974	8.57	$1,750,643.35	$3,835,839.01
1975	8.83	$1,905,225.16	$4,174,543.59
1976	8.43	$2,065,835.64	$4,526,457.62
1977	8.02	$2,231,515.66	$4,889,479.52
1978	8.73	$2,426,326.98	$5,316,331.08
1979	9.63	$2,659,982.27	$5,828,293.76
1980	11.94	$2,977,584.15	$6,524,192.04
1981	14.17	$3,399,507.82	$7,448,670.05
1982	13.79	$3,868,299.95	$8,475,841.65
1983	12.04	$4,334,043.27	$9,496,332.98
1984	12.71	$4,884,900.17	$10,703,316.91
1985	11.37	$5,440,313.31	$11,920,284.04
1986	9.02	$5,931,029.58	$12,995,493.66
1987	9.38	$6,487,360.15	$14,214,470.97
1988	9.71	$7,117,282.82	$15,594,696.10
1989	9.26	$7,776,343.21	$17,038,764.95
1990	9.32	$8,501,098.40	$18,626,777.85
1991	8.77	$9,246,644.73	$20,260,346.27
1992	8.14	$9,999,321.61	$21,909,538.45
1993	7.22	$10,721,272.63	$23,491,407.13
1994	7.97	$11,575,758.05	$25,363,672.28
1995	7.59	$12,454,358.09	$27,288,775.00
1996	7.37	$13,372,244.28	$29,299,957.72
1997	7.27	$14,344,406.44	$31,430,064.64
1998	6.53	$15,281,096.18	$33,482,447.87
1999	7.05	$16,358,413.46	$35,842,960.44
2000	7.62	$17,604,924.57	$38,574,194.03
2001	7.08	$18,851,353.23	$41,305,246.96

2002	6.49	$20,074,806.05	$43,985,957.49
2003	5.66	$21,211,040.08	$46,475,562.69

APPENDIX VI

Chart Illustrating Growth of Principal Amounts of Differences in the BIG BEND DAM PROJECT Settlements for DAMAGES AND ADMINISTRATIVE EXPENSES if Principal was Invested in AAA Corporate Bonds and Accrued the Average Annual Rate of Interest on Such an Investment.

Data on Historical Rates of Interest on AAA Corporate Bonds provided by Moody Investment Services.

BIG BEND DAM PROJECT

Principal Amounts:

CROW CREEK: $ 447,592.00

LOWER BRULE: $ 1,170,667.00

Plus Average Annual Interest on AAA Corporate Bonds

Year	Average Yield	Crow Creek	Lower Brule
1963	4.26	$ 466,659.42	$ 1,220,537.41
1964	4.41	$ 487,239.10	$ 1,274,363.11
1965	4.49	$ 509,116.14	$ 1,331,582.02
1966	5.13	$ 535,233.79	$ 1,399,892.18
1967	5.51	$ 564,725.17	$ 1,477,026.23
1968	6.18	$ 599,625.19	$ 1,568,306.46
1969	7.03	$ 641,778.84	$ 1,678,558.40
1970	8.04	$ 693,377.86	$ 1,813,514.49
1971	7.39	$ 744,618.48	$ 1,947,533.22
1972	7.21	$ 798,305.48	$ 2,087,950.36
1973	7.44	$ 857,699.40	$ 2,243,293.87
1974	8.57	$ 931,204.24	$ 2,435,544.15
1975	8.83	$ 1,013,429.58	$ 2,650,602.70
1976	8.43	$ 1,098,861.69	$ 2,874,048.51
1977	8.02	$ 1,186,990.40	$ 3,104,547.20
1978	8.73	$ 1,290,614.66	$ 3,375,574.17
1979	9.63	$ 1,414,900.85	$ 3,700,641.96
1980	11.94	$ 1,583,840.01	$ 4,142,498.61
1981	14.17	$ 1,808,270.15	$ 4,729,490.67
1982	13.79	$ 2,057,630.60	$ 5,381,687.43
1983	12.04	$ 2,305,369.32	$ 6,029,642.59
1984	12.71	$ 2,598,381.76	$ 6,796,010.17
1985	11.37	$ 2,893,817.77	$ 7,568,716.52
1986	9.02	$ 3,154,840.13	$ 8,251,414.75
1987	9.38	$ 3,450,764.14	$ 9,025,397.46
1988	9.71	$ 3,785,833.33	$ 9,901,763.55
1989	9.26	$ 4,136,401.50	$ 10,818,666.86
1990	9.32	$ 4,521,914.12	$ 11,826,966.61
1991	8.77	$ 4,918,485.99	$ 12,864,191.58
1992	8.14	$ 5,318,850.75	$ 13,911,336.77
1993	7.22	$ 5,702,871.77	$ 14,915,735.29
1994	7.97	$ 6,157,390.65	$ 16,104,519.39
1995	7.59	$ 6,624,736.60	$ 17,326,852.41
1996	7.37	$ 7,112,979.69	$ 18,603,841.44
1997	7.27	$ 7,630,093.31	$ 19,956,340.71
1998	6.53	$ 8,128,338.41	$ 21,259,489.76
1999	7.05	$ 8,701,386.27	$ 22,758,283.79
2000	7.62	$ 9,364,431.90	$ 24,492,465.01
2001	7.08	$ 10,027,433.68	$ 26,226,531.53
2002	6.49	$ 10,678,214.12	$ 27,928,633.43
2003	5.66	$ 11,282,601.04	$ 29,509,394.08

APPENDIX VII

Chart Illustrating Growth of Principal Amounts of Differences in the FORT RANDALL/BIG BEND DAM PROJECTS Settlement for REHABILITATION if Principal was Invested in AAA Corporate Bonds and Accrued the Average Annual Rate of Interest on Such an Investment.

Data on Historical Rates of Interest on AAA Corporate Bonds provided by Moody Investment Services.

FORT RANDALL/BIG BEND REHABILITATION

Principal Amounts:

CROW CREEK: $ 2,912,811.50

LOWER BRULE $ 4,379,566.00

Plus Average Annual Interest on AAA Corporate Bonds

Year	Average Yield	Crow Creek	Lower Brule
1963	4.26	$ 3,036,897.27	$ 4,566,135.51
1964	4.41	$ 3,170,824.44	$ 4,767,502.09
1965	4.49	$ 3,313,194.46	$ 4,981,562.93
1966	5.13	$ 3,483,161.33	$ 5,237,117.11
1967	5.51	$ 3,675,083.52	$ 5,525,682.26
1968	6.18	$ 3,902,203.68	$ 5,867,169.43
1969	7.03	$ 4,176,528.60	$ 6,279,631.44
1970	8.04	$ 4,512,321.50	$ 6,784,513.80
1971	7.39	$ 4,845,782.06	$ 7,285,889.37
1972	7.21	$ 5,195,162.95	$ 7,811,202.00
1973	7.44	$ 5,581,683.07	$ 8,392,355.43
1974	8.57	$ 6,060,033.31	$ 9,111,580.29
1975	8.83	$ 6,595,134.25	$ 9,916,132.83
1976	8.43	$ 7,151,104.07	$ 10,752,062.82
1977	8.02	$ 7,724,622.62	$ 11,614,378.26
1978	8.73	$ 8,398,982.17	$ 12,628,313.48
1979	9.63	$ 9,207,804.15	$ 13,844,420.07
1980	11.94	$ 10,307,215.97	$ 15,497,443.83
1981	14.17	$ 11,767,748.47	$ 17,693,431.62
1982	13.79	$ 13,390,520.99	$ 20,133,355.84
1983	12.04	$ 15,002,739.71	$ 22,557,411.88
1984	12.71	$ 16,909,587.93	$ 25,424,458.94
1985	11.37	$ 18,832,208.08	$ 28,315,219.92
1986	9.02	$ 20,530,873.25	$ 30,869,252.75
1987	9.38	$ 22,456,669.16	$ 33,764,788.66
1988	9.71	$ 24,637,211.73	$ 37,043,349.64
1989	9.26	$ 26,918,617.54	$ 40,473,563.82
1990	9.32	$ 29,427,432.69	$ 44,245,699.96
1991	8.77	$ 32,008,218.54	$ 48,126,047.85
1992	8.14	$ 34,613,687.53	$ 52,043,508.15
1993	7.22	$ 37,112,795.77	$ 55,801,049.43
1994	7.97	$ 40,070,685.59	$ 60,248,393.07
1995	7.59	$ 43,112,050.63	$ 64,821,246.11
1996	7.37	$ 46,289,408.76	$ 69,598,571.95
1997	7.27	$ 49,654,648.77	$ 74,658,388.13
1998	6.53	$ 52,897,097.34	$ 79,533,580.87
1999	7.05	$ 56,626,342.70	$ 85,140,698.32
2000	7.62	$ 60,941,270.01	$ 91,628,419.54
2001	7.08	$ 65,255,911.93	$ 98,115,711.64
2002	6.49	$ 69,491,020.62	$ 104,483,421.33
2003	5.66	$ 73,424,212.38	$ 110,397,182.97

STATEMENT
OF
ROSS MOONEY
ACTING DEPUTY DIRECTOR OF TRUST SERVICES
BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
AT THE HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
on
S. 1530, THE TRIBAL PARITY ACT

JUNE 15, 2004

Good morning Mr. Chairman and Members of the Committee. I am pleased to be here today to present the views of the Administration on S. 1530, the "Tribal Parity Act." Based on the reasons I will discuss today, the Administration cannot support this bill at this time.

S. 1530, if enacted, would increase the compensation for the Lower Brule and Crow Creek Tribes for their loss of lands and cultural resources as a result of the Pick-Sloan Project. The intent of the legislation is to put the compensation provided to the Lower Brule and Crow Creek Tribes' on par with that provided to similarly situated Tribes in the region that received compensation for losses resulting from Pick-Sloan.

The original legislation for these two Tribes were the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (Public Law 105-132), and the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act (Public Law 104-223). The original principal amounts for the Lower Brule Tribe and the Crow Creek Tribe are $39,300,000 and $27,500,000, respectively.

Section 2 of S. 1530 references a methodology determined appropriate by the General Accounting Office (GAO). We are under the assumption the sponsor is referring to the GAO Reports of May 1991, concerning the Fort Berthold and Standing Rock Sioux Tribes, and January 1998, concerning the Cheyenne River Sioux, in which questions were raised about the calculations used to determine the amounts of the compensation provided. Within Appendix 3 of the January 1998 GAO Report, there is a table which states in the footnotes "the dollar amounts shown are not comparable. The original payments authorized and the additional compensation authorized are not comparable across the five reservations or with each other..." In 1991, testimony provided on behalf of the GAO stated "the question of whether additional compensation should be provided to the tribes is a policy decision for the Congress."

The Department is not in a position to comment on whether these two Tribes were equitably compensated. However, we will be happy to work with the sponsor of the bill, the Committee and the Tribes to determine if in fact there was an inequitable calculation regarding the original principal amounts as originally determined under P.L. 105-132 and P.L. 104-223.

This concludes my testimony. I will be happy to respond to any questions you may have. Thank you.

1227

STATE OF SOUTH DAKOTA
M. MICHAEL ROUNDS, GOVERNOR

August 11, 2004

Chairman Ben Nighthorse Campbell
U.S. Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Nighthorse Campbell and Committee Members:

I would like to express my support of Senate Bill 1530, an Act to provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River.

The Lower Brule Sioux Tribe and Crow Creek Sioux Tribe suffered from the development of the Pick-Sloan Missouri River Basin Program. The Fort Randall and Big Bend Dam and reservoir projects in South Dakota damaged the land held by the two tribes. The projects also affected the economy and cultural resources of the tribes.

When the allocation for damaged land was authorized to the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe, the amount was inconsistent with other tribes. The Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe should receive compensation consistent with what other tribes along the Missouri River received. This Act would simply put the two South Dakota tribes in parity with all the Missouri River Indian tribes.

The Tribal Parity Act would amend the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act to increase from $39,300,000 to $176,398,012 and would also amend the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 to increase from $27,500,000 to $100,244,040.

I urge you to support Senate Bill 1530 and rectify this allocation discrepancy. Thank you for your support.

Sincerely,

M. Michael Rounds

STATE CAPITOL • 500 EAST CAPITOL • PIERRE, SOUTH DAKOTA 57501-5070 • 605-773-3212

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