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S. HRG. 109–572

TRIBAL PARITY ACT; AND THE CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION AMENDMENTS ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

S. 374

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

S. 1535

TO AMEND THE CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION ACT TO PROVIDE COMPENSATION TO MEMBERS OF THE CHEYENNE RIVER SIOUX TRIBE FOR DAMAGE RESULTING FROM THE OAHE DAM AND RESERVOIR PROJECT

JUNE 14, 2006
WASHINGTON, DC

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CONTENTS

	Page
S. 374 and S. 1535, text of	3
Statements:	
Dorgan, Hon. Byron L., U.S. Senator from North Dakota, vice chairman, Committee on Indian Affairs	13
Frazier, Harold, chairman, Cheyenne River Sioux Tribe	30
Jandreau, Michael, chairman, Lower Brule Sioux Tribe	22
Johnson, Hon. Tim, U.S. Senator from South Dakota	13
Lawson, Michael L., Morgan, Angel and Associates	24
Malcolm, Jeffery D., assistant director, Natural Resources and Environment, U.S. Government Accountability Office	14
McCain, Hon. John, U.S. Senator from Arizona, chairman, Committee on Indian Affairs	1
Nazzaro, Robin M., director, Natural Resources and Environment, U.S. Government Accountability Office	14
Thompson, Lester, chairman, Crow Creek Sioux Tribe	23
Thune, Hon. John, U.S. Senator from South Dakota	21
Vogel, Sharon, Cheyenne River Sioux Tribe	32

APPENDIX

Prepared statements:	
Frazier, Harold (with attachment)	42
Jandreau, Michael	39
Lawson, Michael L. (with attachment)	75
LeBeau, Freddy, vice chairman, Oahe Landowners Association	86
Nazzaro, Robin M. (with attachments)	87
Thompson, Lester	167
Vogel, Sharon	170

TRIBAL PARITY ACT; AND THE CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION AMENDMENTS ACT

WEDNESDAY, JUNE 14, 2006

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

The committee met, pursuant to notice, at 9:35 a.m. in room 485 Senate Russell Office Building, Hon. John McCain (chairman of the Senate Committee on Indian Affairs) presiding.

Present: Senators McCain, Dorgan, Johnson, and Thune.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The hearing this morning will address two measures that are currently before the committee: S. 374, known as the Tribal Parity Act, and S. 1535, the Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2005.

The first two panels of the hearing will be addressing S. 374, and the third panel will address S. 1535. The principal reason for the hearing on S. 374 is to address a recent report issued by the GAO at the committee's request. The committee marked up this bill back in late June 2005. After that, but before a committee report was filed, a representative of GAO contacted committee staff expressing some concern about language in the bill suggesting that the compensation levels of the bill were based on a methodology that had been determined inappropriate by the GAO. The GAO staff indicated that in certain respects, the methodology used to calculate the compensation levels in the bill deviated from the GAO methodology used in determining the additional compensation in legislation enacted for other Indian tribes impacted by Pick-Sloan projects on the Missouri River.

Therefore, I asked the GAO to analyze the methodology used for S. 374 and to prepare the report which is the focus of the first part of the hearing today.

The second matter of the hearing, S. 1535, would amend the Cheyenne River Sioux Tribe Equitable Compensation Act that was passed by Congress in the year 2000. The principal amendment to the 2000 act would accelerate the payment schedule and change the funding source from annual appropriations to revenues derived from the Pick-Sloan.

[Text of S. 374 and S. 1535 follow:]

II

109TH CONGRESS
1ST SESSION

S. 374

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

FEBRUARY 14, 2005

Mr. THUNE (for himself and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

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 ''$186,822,140''.

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 ''$105,917,853''.

○

II

109TH CONGRESS
1ST SESSION

S. 1535

To amend the Cheyenne River Sioux Tribe Equitable Compensation Act to provide compensation to members of the Cheyenne River Sioux Tribe for damage resulting from the Oahe Dam and Reservoir Project, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2005

Mr. JOHNSON (for himself and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the Cheyenne River Sioux Tribe Equitable Compensation Act to provide compensation to members of the Cheyenne River Sioux Tribe for damage resulting from the Oahe Dam and Reservoir Project, and for other purposes.

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 "Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2005".

SEC. 2. FINDINGS.

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

(2) the Oahe Dam and Reservoir Project—

(A) is a major component of the Pick-Sloan Missouri River Basin program; and

(B) contributes to the national economy;

(3) the Oahe Dam and Reservoir Project flooded the fertile bottom land of the Cheyenne River Sioux Reservation, which greatly damaged the economy and cultural resources of the Cheyenne River Sioux Tribe and caused the loss of many homes and communities of members of the Tribe;

(4) Congress has provided compensation to several Indian tribes, including the Cheyenne River Sioux Tribe, that border the Missouri River and suffered injury as a result of 1 or more of the Pick-Sloan projects;

(5) on determining that the compensation paid to the Cheyenne River Sioux Tribe was inadequate, Congress enacted the Cheyenne River Sioux Tribe Equitable Compensation Act (Public Law 106–511;

114 Stat. 2365), which created the Cheyenne River Sioux Tribal Recovery Trust Fund; and

(6) that Act did not provide for additional compensation to members of the Cheyenne River Sioux Tribe that lost land as a result of the Oahe Dam and Reservoir Project.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide that the Cheyenne River Sioux Tribal Recovery Trust Fund may be used to provide compensation to members of the Cheyenne River Sioux Tribe that lost land as a result of the Oahe Dam and Reservoir Project; and

(2) to provide for the capitalization of the Cheyenne River Sioux Tribal Recovery Trust Fund.

SEC. 3. CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION.

(a) FINDINGS AND PURPOSES.—Section 102 of the Cheyenne River Sioux Tribe Equitable Compensation Act (Public Law 106–511; 114 Stat. 2365) is amended—

(1) in subsection (a)(3), by striking subparagraphs (A) and (B) and inserting the following:

"(A) the United States did not justify, or fairly compensate the Tribe and member landowners for, the Oahe Dam and Reservation project, under which the United States acquired

104,492 acres of land of the Tribe and member landowners; and

"(B) the Tribe and member landowners should be adequately compensated for that land;"; and

(2) in subsection (b)(1), by inserting "and member landowners" after "Tribe" each place it appears.

(b) DEFINITIONS.—Section 103 of the Cheyenne River Sioux Tribe Equitable Compensation Act (Public Law 106–511; 114 Stat. 2365) is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (4) and (3), respectively, and moving the paragraphs so as to appear in numerical order; and

(2) by inserting before paragraph (3) (as redesignated by paragraph (1)) the following:

"(1) MEMBER LANDOWNER.—The term 'member landowner' means a member of the Tribe (or an heir of such a member) that owned land (including land allotted under the Act of February 8, 1887 (24 Stat. 388, chapter 119)) located on the Cheyenne River Sioux Reservation that was acquired by the United States for the Oahe Dam and Reservoir Project.

"(2) POWER PROGRAM.—The term 'power program' means the power program under the Pick-Sloan Missouri River Basin program.".

(c) CHEYENNE RIVER SIOUX TRIBAL RECOVERY TRUST FUND.—Section 104 of the Cheyenne River Sioux Tribe Equitable Compensation Act (Public Law 106–511; 114 Stat. 2365) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) FUNDING.—

"(1) IN GENERAL.—The Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the amount deposited into the Treasury from the power program during the preceding fiscal year for the period—

"(A) beginning on October 1, 2004; and

"(B) ending on the last date of the fiscal year during which the total amount deposited into the Treasury from the power program equals the amount described in paragraph (2).

"(2) DESCRIPTION OF AMOUNT.—

"(A) IN GENERAL.—The amount referred to in paragraph (1)(B) is an amount equal to the sum of—

"(i) $290,722,958; and

"(ii) an amount equal to the amount of interest or earnings that would have accrued on the amount described in clause (i) if that amount had been invested in accordance with subsection (c) as of October 1, 2001.

"(B) CALCULATION OF INTEREST.—The amount of interest and earnings described in subparagraph (A)(ii) shall be determined by applying the Lehman Government Bond Index (or a similar index, as determined by the Secretary of the Treasury, in consultation with the Tribal Council).";

(2) in subsection (d)(1), by striking "Beginning on the first day of the 11th fiscal year after the date of enactment of this Act" and inserting "Beginning on October 1, 2005,"; and

(3) in subsection (f)—

(A) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(B) by inserting after paragraph (2) the following:

"(3) MEMBER LANDOWNERS.—

"(A) IN GENERAL.—The plan may provide for the payment of additional compensation to

member landowners for acquisition of land by the United States for use in the Oahe Dam and Reservoir Project.

"(B) PROVISION OF RECORDS.—To assist the Tribe in processing claims of heirs of member landowners for land acquired by the United States for use in the Oahe Dam and Reservoir Project, the Secretary of the Interior shall provide to the Tribe any record requested by the Tribe to identify the heirs of member landowners by the date that is 60 days after the date of receipt of a request from the Tribe.".

(d) ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS AND SERVICES.—Section 105 of the Cheyenne River Sioux Tribe Equitable Compensation Act (Public Law 106–511; 114 Stat. 2365) is amended in the matter preceding paragraph (1) by inserting "or any member landowner" after "Tribe".

○

The CHAIRMAN. I would like to express my appreciation to Senator Johnson, Senator Thune, and Senator Dorgan for their persistence and focus and attention on this issue. It is a bit complex. It sounds a bit arcane to many people, but it is obviously very, very important to the tribes that reside in their States, and I am pleased to see that their commitment and dedication to resolving this issue may bring us much closer as a result of their hard work.

Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator DORGAN. Senator McCain, thank you very much. I want to thank my colleagues Senator Johnson and Senator Thune for their leadership on the bills that are important here to the tribes in South Dakota. We in North Dakota know a fair amount about the Pick-Sloan Missouri River Basin Program and the benefits that it was to provide to the residents of the Missouri River valley in the upstream States. But those benefits have come with very significant costs in many instances, particularly and especially for tribal people.

I know from the tribes in North Dakota how detrimental that dam construction was and has been to their communities, changing the way of life and the subsistence for many tribes. Just for my colleague Senator Johnson's benefit, my father as a very young man lived in Elbow Woods, ND herding horses. Elbow Woods, ND no longer exists. It is now under water. It was inundated with Lake Sacajawea. It has been under water now for 50 years. That community no longer exist, and all those who lived there, including the hospital that existed there, they moved, except the hospital didn't reopen anyplace. That is another issue we are still working on today, 50 years later.

The point is, they moved, significant things changed, the diets changed, opportunities changed. So I well understand the motive and the interest behind this legislation. I think Senator Johnson and Senator Thune are to be commended, and I am appreciative of the chairman for holding this hearing today.

The CHAIRMAN. Senator Johnson.

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

Senator JOHNSON. Thank you, Chairman McCain and Vice Chairman Dorgan, as well as the staff of the Committee on Indian Affairs, for agreeing to hold this hearing.

The Tribal Parity Act and the Cheyenne River Equitable Compensation Amendments Act are of the utmost importance to the tribes involved and the attention the Committee on Indian Affairs has given to the Great Plains is appreciated by all the tribes in my State.

I would also like to welcome our South Dakota witnesses to the committee. Chairman Jandreau of the Lower Brule Tribe is an institution in South Dakota, having served as tribal chairman for over 27 years now. His experience and his perspective have been both kindly provided and a great benefit to my office over the

years. Chairman Frazier of the Cheyenne River Tribe has been a frequent guest of the committee and a tireless advocate for his tribe in Washington. Chairman Thompson of the Crow Creek Tribe is new to the job and comes in with the hopes of his community for building a better future.

Sharon Vogel has been a great advocate for economic development on Cheyenne River. I also want to extend a big welcome to Freddy LeBeau and the others I have met with regard to the importance of these two bills to the tribes and the individual tribal members involved.

The legislation to be discussed in this hearing deals with the Pick-Sloan project on the Missouri River and the impacts it continues to have on three tribes in South Dakota. The Lower Brule and the Crow Creek Tribes were both significantly impacted by the Fort Randall Dam and the Big Bend Dam, which flooded parts of both reservations in 1952 and then again in 1963, forcing many families to relocate twice.

Likewise, the Oahe Dam near Pierre, SD was completed in 1958 and resulted in the loss of 104,420 acres of land to the Cheyenne River Tribe. No amount of compensation could ever fully account for everything that these tribes lost. However, Congress has twice acted to provide some compensation to mitigate the loss of each of these tribes. There still is more that needs to be done.

While we can never erase the damage that has been done to the tribes and tribal members of the Missouri River, these bills go a long way toward helping the Lower Brule, the Crow Creek, and the Cheyenne River recover from the harm inflicted more than 40 years ago.

I want to especially thank Senator Thune for introducing the Tribal Parity Act and for cosponsoring the Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2005. Their leadership on these issues and presence here today are greatly appreciated.

Again, I want to thank the Indian Affairs Committee for allowing this hearing, and I look forward to hearing from the witnesses.

The CHAIRMAN. Thank you, sir.

Our first panel is Robin M. Nazzaro who is the director of the Natural Resources and Environment, Government Accountability Office. She is accompanied by Jeffery Malcolm, assistant director.

Welcome, Ms. Nazzaro. Welcome, Mr. Malcolm.

STATEMENT OF ROBIN M. NAZZARO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GOVERNMENT ACCOUNTABILITY OFFICE, ACCOMPANIED BY JEFFERY MALCOLM, ASSISTANT DIRECTOR

Ms. NAZZARO. Thank you, Mr. Chairman and members of the committee. I am pleased to be here today to discuss the compensation claims of the Crow Creek and Lower Brule Tribes.

As you know, from 1946 to 1966,the Federal Government constructed the Fort Randall and Big Bend Dams as flood control projects on the Missouri River in South Dakota. Installation of the dams caused the permanent flooding of approximately 38,000 acres of the tribes' reservations. During construction, the tribes entered into negotiations with the Federal Government for compensation

for that land. In both cases, they were unable to reach an negotiated settlement and Congress imposed legislative settlements that were less than the amounts that the tribes had requested.

In the 1990's, the tribes sought and received additional compensation. Tribes at five other reservations also lost land to flood control projects, received compensation for damages, and requested and received additional compensation. Prior to the Congress authorizing additional compensation to the tribes at three other reservations, the GAO was asked to review their claims. For these tribes, we found the economic analysis used to justify their claims to be unreliable and we suggested that the Congress not rely on them as a basis for providing additional compensation.

As an alternative, we suggested that if the Congress determined that additional compensation was warranted, it could determine the amount of compensation by calculating the difference between the tribes's final settlement proposal, which we refer to as the tribes's final asking price, and the amount of compensation the Congress originally authorized.

We used the inflation rate and an interest rate to adjust the difference to reflect a range of current values, using the inflation rate for the lower end of the range and the interest rate for the higher end.

In 2003, the Crow Creek and Lower Brule Tribes hired a consultant, Dr. Lawson, to determine if they were due further additional compensation based on the method we proposed. As a result of his analyses, the tribes are currently seeking a third round of compensation totaling about $230 million. The tribes assert that their calculations for additional compensation will bring them into parity with the additional compensation provided to the other tribes on the Missouri River.

After assessing Dr. Lawson's methods and analysis for determining additional compensation, we found his approach differed from the approach we used in two ways. First, Dr. Lawson did not use the tribes's final asking price as the starting point. During settlement negotiations for the Fort Randall and Big Bend Dams, as was the case with the negotiations for the other dams that we reviewed, the tribes made a number of settlement proposals.

In calculating additional compensation amounts, we used the tribes's final asking prices because we believed they represented the most complete and realistic amounts. In contrast, Dr. Lawson used selected numbers from a variety of tribal settlement proposals, several that were not from the tribes's final asking prices.

Second, Dr. Lawson calculated only the highest additional compensation dollar value, rather than a range of possible additional compensation based on different adjustment factors. He used the corporate bond rate to develop a single figure for each tribe. His justification was that the use of the high end of our range would ensure parity with the amounts the tribes at Fort Berthold and the Cheyenne River Tribe received.

However, as our chart shows, the Congress has not always chosen to use the highest value in the ranges we estimated. In the case of the Standing Rock Tribe, the Congress chose to provide additional compensation closer to the lower end of the range we estimated.

Although the additional compensation amounts provided in the 1990's were not calculated using our approach, the amounts were generally within the ranges we would have proposed. Moreover, the additional compensation already authorized for the tribes in the 1990's is consistent with the additional compensation authorized for the other tribes on the Missouri River.

The chart I brought with me today shows the ranges we have calculated for the five tribes on the Missouri River and the additional compensation authorized by the Congress. Rather than bringing the Crow Creek and Lower Brule Tribes into parity with the additional compensation provided to the other tribes, we believe that the compensation under consideration would catapult them ahead of the other tribes and set a precedent for the other tribes to seek a third round of compensation.

Notwithstanding the results of our analysis, the Congress will ultimately need to decide whether additional compensation should be provided and, if so, how much it should be. We recognize that the issues can be sensitive, complex and controversial. Our analysis is intended to assist the Congress in this regard.

Thank you, Mr. Chairman. This concludes my prepared statement. I would be happy to respond to any questions that you or members of the committee may have at this time.

[Prepared statement of Ms. Nazzaro appears in apendix.]

The CHAIRMAN. Do you have a number that you think is reasonable, or is that out of the scope of your studies here?

Ms. NAZZARO. Well, what we were asked to do, sir, was to look at the compensation proposal. What we did is looked at the additional compensation the two tribes previously received, and while we didn't calculate that prior to Congress authorizing those trust funds, it would have been in the range. So what they had already received put them on parity with the other five tribes on the Missouri River.

The CHAIRMAN. Which is, roughly?

Ms. NAZZARO. Which tribes?

The CHAIRMAN. You said, "to put them on parity." How much would that be?

Ms. NAZZARO. We estimated for Crow Creek the range would have been between $6.5 million and $21.4 million. Crow Creek received $27.5 million, so they were actually a little bit above our range. For the Lower Brule, the range would have been $12.2 million to $40.9 million, and they received additional compensation of $39.3 million, so they were already within our range. So we feel both of them are near the high end of what we would have proposed had we reviewed it prior to the additional compensation. So that is why we are saying the additional compensation currently being proposed would actually catapult them above what the other tribes received.

The CHAIRMAN. And this bill, as I understand it, as proposed would raise it from $39 million to $186 million?

Mr. MALCOLM. That is correct.

The CHAIRMAN. That is a pretty big difference in numbers here. How do you account for that?

Ms. NAZZARO. The additional compensation that they are asking for? As I mentioned, the baseline that they used was different than

the baseline that we used. When we started using our methodology, we looked at the final asking price that the tribes had asked during the negotiation process. We then compared that to the difference in what they had received initially. That difference we then applied an interest rate which would have then given a reflection of what their spending power would have been, as well as a corporate bond rate which would have been a high end had they invested the funds.

That gave the range of what we were proposing would have been appropriate for the additional compensation.

The CHAIRMAN. I don't know a lot about this issue, Ms. Nazzaro. It is I think appropriate for members of this committee to rely on the views of people, the members who reside in the States and the various inputs that we receive. But it seems to me there is a very large disparity in amounts of money. Is it based on acres that were inundated? What was the basic formula for this compensation?

Ms. NAZZARO. The original compensation, there were a number of studies that were done. The Corps of Engineers did a study. The Department of the Interior did studies. They actually did a pretty good job of inventorying all of the assets that the tribes had at the time and what was going to be compensated. They also looked at what potential earning power the tribes would have had from some of these assets such as timber that were no longer going to be available to them.

That was the basis for the original compensation. As I said, that was not what the tribes were asking for. Initially, the Federal Government gave all the tribes less than what they were asking. The five tribes have come back and asked for a second round of compensation which was awarded to each one of them, and those five would have fallen along the range of what we had proposed using our methodology, starting with this final asking price, and them somewhere within the range reflecting the current value of that money, the difference of the money.

The CHAIRMAN. Well, I guess I would ask the next panel and my colleague from South Dakota, is this the last time we are going to come back and ask for more money? It looks to me like this is the third or fourth trip to the trough here. I would be interested in that.

Senator Dorgan.

Senator DORGAN. Thank you, Mr. Chairman.

Just briefly, it is the case both I think in North Dakota, because we have been through this, and also with respect to South Dakota and other circumstances along the Missouri, when the Pick-Sloan project was built and the main-stem dams were created and the reservoirs flooded lands that were on Indian reservations, the Indians were under-compensated for that. You believe as well that the Indians were not compensated adequately originally by the Federal Government. Is that correct?

Ms. NAZZARO. We have not assessed whether the original authorization was adequate or not. We have looked at the studies that were done. We know what the basis was for the Government's negotiated price, and we know somewhat about the basis for what the tribes were asking. We know the tribes did not get compensation that they felt was equitable at that time.

Senator DORGAN. I think we have been back through this with respect to some North Dakota tribes. It is pretty clear that back then, one-half century ago when these lands were taken, that the compensation was not adequate to respond to the needs of the tribes that were going to exist after all of that land was taken and flooded and so on. And their lives were changed dramatically.

I was just trying to understand what you are saying with this report, and I think I now do understand it.

Ms. NAZZARO. We never objected to the second round of compensation. We just tried to provide a method that should Congress determine if a second round was due, what methodology they could use to try to put some equity to that, given that the tribes did not feel they had parity at that point.

Senator DORGAN. I understand. The fact is, the chairman's question is a legitimate question as well. I mean, there needs to be settlement with respect to these issues, and you need to establish what is a fair level of compensation, and then all the parties need to move on. You can't come again and again and again.

I go back to the point I asked originally. I think it is clear, at least it was with respect to our having gone through this with the North Dakota tribes, that the original compensation was inadequate, and that required the Congress to readdress that.

Mr. Chairman, thank you very much.

The CHAIRMAN. Senator Johnson.

Senator JOHNSON. Thank you.

I think it is important to note that the two tribes we are talking about here are relatively modest-sized tribes. The Crow Creek is in Buffalo County, SD, which is the poorest county in America. And I think it is important than when we base a fair price based on the last asking price of tribes, that presumes a fair negotiating balance between the tribes and the Federal Government at the time. The fact is, at the time the land was already flooded. These people were desperately poor. Their negotiating capability is not very sophisticated.

So to this day, they are paying the price for their last offer, when in fact I think the last offer may not have been as equitable as it needed to be.

In any event, I want to thank the GAO for its testimony today. I want to make it clear that we as members of the committee are not seeking to simply augment the trust fund for the sake of augmenting the trust fund. What we are attempting to do here is to arrive at a systematic, equitable and fair way of determining what a fair trust fund compensation ought to be, and we want to come to that conclusion with great finality, so that as the chairman notes, this isn't going to be some perennial issue where we come back and seek additional trust fund compensation, but that we come to a final conclusion and that will be that.

The GAO report states that the drawn out negotiations and the amounts of the tribes's final asking price do not support the conclusion that the tribes simply capitulated and accepted whatever the Government offered. The tables this statement refers to on pages 18, 19, and 20 do not include initial settlement proposals and instead have a settlement figure used by the tribes's consultant.

I see that the additional table on table two that you have provided as part of your testimony includes initial settlement proposals. What accounts for the differences between the initial proposals and the proposals used by the tribes's consultant?

Mr. MALCOLM. In a couple of cases, there was actually, he did use the tribes's initial settlement offer. For Fort Randall Dam and for Lower Brule, in fact, he used the initial offer in a couple of instances, I believe for direct and indirect damages, which was two of the components. That was from 1954.

Conversely, for Crow Creek for the same dam, he used numbers from 1957. So again, he used selected numbers from a variety of offers over points in time. But yes, over the course of the negotiations, the offers for individual components fluctuated and went up and down. So there was a lot of variability. Again, it was just part of the negotiations. Either the tribes received additional information through negotiations with the Government. They may have been willing to accept less for one component as a tradeoff for receiving more in another component.

Ms. NAZZARO. If I could add, though, Mr. Johnson, in total, if you look at what the tribes asked in their initial price versus their final asking price, the final asking price in total was higher. Actually in 12 of the 15 components, the indirect, the direct, the rehabilitation et cetera, 12 of the 15 are either higher in the final asking price or equal to the initial proposal.

We went through extensive records at the archives, as well as Department of the Interior's library to get an understanding, to make sure that we weren't applying just an arbitrary decision to use the final asking price, but to make sure that the tribes hadn't capitulated, hadn't been worn down through the negotiations, and that the numbers just kept falling.

Senator JOHNSON. The numbers suggested in this bill are within the range of what the negotiations were. Is that fair to say?

Ms. NAZZARO. The number that the tribe is requesting in this bill would exceed what we are——

Senator JOHNSON. It exceeds what you think is right, but it falls within the range of what the negotiations were at the time.

Mr. MALCOLM. In one sense. It does in the sense that those individual components that were selected were offered as part of the tribal settlements at various points in time. However, the tribes as a cohesive settlement proposal never had a proposal that consisted of those dollar values at a point in time. So for example in 1954, if you want to use an original settlement, rather than consistently using all the numbers from 1954, he instead chose to use numbers picking various components at different points in time. So historically from that point, no, the tribes never made a settlement proposal that consisted of the numbers he used as his starting point.

Senator JOHNSON. I understand that the GAO's basis for using final asking price is the assumption that better information will emerge throughout negotiations leading to a closer approximation of the amounts asked for, with the value of actual loss to the parties. Inconsistency of the amounts asked for by the tribes between initial asking price, Dr. Lawson's figures, and the final asking price shows considerable inconsistency at what was asked for at different points in time. How do you justify this inconsistency with the no-

tion that better information is the prime factor influencing the tribe's settlement proposals or their asking process?

Ms. NAZZARO. I don't think we said it was just better information, but better information and more realistic. As I said, in the number of cases, though, we do see where the final asking price was higher than the original proposal, so in there, we do feel that more information came to light as to the value of the assets, particularly where you are talking direct damages. For example, in the case of Crow Creek, direct damages originally they were asking $566,000, and in the final asking price they asked for $641,000.

Mr. MALCOLM. One of the other main components here that is the main difference in all this is called "rehabilitation." That, again, was to enhance the economic standing of all the tribe and all of its members. So a lot of the funding, over 50 percent in most cases for both tribes, were really as a result of a kind of a termination era policy in the 1950's and 1960's. So the variability you see is really largely in the rehabilitation figure, so it is just in one component, and that component was not directly related. It was intertwined with the negotiations, but it wasn't directly related to damages from the dam.

Senator JOHNSON. Finally, I know the tribes have serious concerns with the conclusion in your report that states:

> While our analysis does not support the additional compensation amounts contained in the parity bill, the Congress will ultimately decide whether additional compensation should be provided, and if so, how much it should be.

I understand the GAO does not take positions on pending legislation, so could you please clarify the role of the GAO in this analysis and discuss whether or not this conclusion was a policy statement of the GAO?

Ms. NAZZARO. I would say this was not a policy statement because as we said, it is not our decision to decide whether the tribes are due additional compensation. What we were asked to look at was what was the difference between, or whether the numbers put forward by the consultant were consistent with the methodology that we had used when we had reviewed prior tribal requests.

In this case, we found there were some differences in the methodology that he applied. Ultimately, we looked at what the tribes had requested initially, what they received in additional compensation, and tried to apply our formula, and that is where we came to the conclusion that what they had received in the second round of compensation was consistent with what we would have proposed had we looked at it prior.

We do realize that there are other factors that may need to come into the discussion over and above the kind of analysis we did that would certainly lend itself to your ultimate decisionmaking. So we did not intend to usurp that power.

Senator JOHNSON. Right. Well, thank you. Obviously, this is legislation that has passed the Senate on three occasions and it is my hope that we can arrive at a number. It is my understanding that the consultants to the tribe concede that there was some mathematical error in arriving at the figures in the original bill and that they would be inclined to adjust that somewhat downward, but it is my hope that we can bring a final closure to the disasters that were visited upon these tribes, and as the Chairman noted, make

this an issue that will not need to be revisited and to bring it to final closure.

So thank you again to the GAO.

Mr. MALCOLM. Thank you.

The CHAIRMAN. Senator Thune, do you have any questions?

Senator THUNE. No; thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Thanks for your help on this issue. We appreciate it very much.

Our next panel is Michael Jandreau, who is the chairman of the Lower Brule Sioux Tribe; Lester Thompson, who is the chairman of the Crow Creek Sioux Tribe; and Michael Lawson of Morgan, Angel and Associates, Washington, DC.

I believe that Senator Thune wanted to make an opening comment.

STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Mr. Chairman, I thank you for giving me the opportunity to participate in the hearing today, although I am not a member of this committee. I do want to recognize, I know that there are a large number of elders in the room who have come here from South Dakota because they care passionately about this issue. I want to welcome them and thank them for being here today.

Mr. Chairman and members of the committee, Senator Johnson, my colleague from South Dakota, I am delighted to be able to introduce three of our distinguished tribal chairmen from South Dakota and the great Sioux Nation. Chairman Mike Jandreau of Lower Brule is the senior chairman in South Dakota and the Great Plains region. He has been chairman for 27 years and has been on the council for 34 years, which is an extraordinary accomplishment for any elected official, particularly in Indian country.

I would also like to commend to the committee's attention a recent article by Chairman Jandreau entitled "Flattening the Reservations," which outlines a comprehensive economic program for Indian country. Picking up on the book "The World is Flat" by Thomas Friedman, it suggests how the reservations might fully participate in our economy. We would do well to consider his thoughts.

Chairman Lester Thompson from Crow Creek is our most junior chairman, elected just a few months ago. Buffalo County, SD, where the Crow Creek Indian Reservation is located, is now ranked the poorest county in America. Obviously, Chairman Thompson faces many difficult challenges, but I believe he is the right man for the job. His uncle was chair at Crow Creek, as was his grandmother. In fact, his grandmother was the first woman to serve as tribal chair.

Both chairmen appear today here in support of the Tribal Parity Act. Mr. Chairman, as you know, this legislation passed the Senate on three occasions in the 108th Congress, but died at the end of the Congress in the House as there was not enough time to consider it.

Although he will be testifying as a member of the next panel on the Cheyenne River Sioux Tribe Equitable Compensation Amendments bill that I cosponsored with Senator Johnson, I would also

like to take this opportunity to introduce Chairman Harold Frazier of the Cheyenne River Sioux Tribe. Chairman Frazier is currently serving his first term as tribal chairman of the Cheyenne River Sioux Tribe. He was elected by popular vote in 2002, and since 2003 has also served as chairman of the Great Plains Tribal Chairmans Association, representing 16 tribes from South Dakota, North Dakota, and Nebraska.

Mr. Chairman, I appreciate your holding this hearing so the committee might determine what is fair compensation for the Lower Brule and Crow Creek Tribes. As the GAO pointed out in its report, this is a sensitive and complex issue. The Pick-Sloan project resulted in thousands of acres being flooded, and the population being relocated not once, but twice. It is important to resolve this matter to allow these chairmen to successfully prepare their reservation for the future.

So Mr. Chairman, I thank you for this opportunity to welcome the chairmen here to join us at the hearing today.

The CHAIRMAN. Thank you very much, Senator Thune, and thank you for your active participation in this issue that I know is very important to all the people of your State. I thank you for your partnership with Senator Johnson as we try to move this legislation forward.

I welcome the witnesses, and we will begin with our youngest witness, Michael Jandreau. [Laughter.]

STATEMENT OF MICHAEL JANDREAU, CHAIRMAN, LOWER BRULE SIOUX TRIBE

Mr. JANDREAU. First, let me say thank you very much for allowing this opportunity to testify before you today.

While the irony of this hearing brings into my mind 50 some years ago, my mother was a council member and was involved in the negotiations regarding the issue of settlement for the takings. At that time, the idea that was put forward was that the Government knew better than the tribes what their values were and what they should be compensated for. That was not entirely true. Our people knew what they were asking for and wholly and fully expected to receive it.

Mr. Chairman, beyond the numbers and the methodology, and what methodology to use, and how to compound interest correctly, there is a policy question and only Congress can decide. The GAO says the tribes differ from the approach used in its prior reports by not using the tribes's final asking price. The clear implication is that there is only one standard, only one correct method of evaluation. We do not believe that this is correct.

Congress has never taken the position that there is only one way to determine what fair and reasonable compensation is for the Missouri River tribes. To the best of my knowledge, until this report, the GAO has never said that in their opinion there is only one appropriate method to calculate compensation.

When our lands were flooded, we asked for in current dollars $432 million. That is what I believe would be fair compensation. We did not ask a high figure with the idea of negotiating a true or fair low price. Our tribe thought $432 million was the correct amount in today's dollars.

The GAO looks to the final asking price as if that was our real bottomline. That may be how a negotiation is conducted on Wall Street, but this is not a negotiation. The land was flooded. Our people were already displaced. The final asking price was a very poor indication of the real and fair value of the damage caused to my tribe by the dams on the Missouri River.

If the Congress were to provide Lower Brule with an additional $129 million, supplementing our existing trust fund of $39.3 million, it is still far below $432 million, but it comes closer to fair compensation.

I ask this committee on behalf of the United States to use its discretion and to make a policy decision that provides an additional $121 million for Lower Brule and $69 million for the Crow Creek Tribe. I ask that not because we want to be a burden on this country, but I ask that we may use the values to create a real, enduring and long-lasting life for the members of our tribe and our reservation.

The question was asked earlier: Is this going to be our final time to come before Congress and ask for, on this issue, additional dollars. It is my word to you that I will recommend to my tribal council and to the people of our tribe that this would be out last our last time at this issue. However, being a real democracy, they have a right to state their own opinions in this matter.

Thank you.

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

The CHAIRMAN. Well, sir, I think they have the right to express their opinion, but if we keep revisiting this issue, you will not find a great deal of sympathy from the chairman of this committee.

Mr. JANDREAU. Thank you very much for your directness.

The CHAIRMAN. Chairman Thompson.

STATEMENT OF LESTER THOMPSON, CHAIRMAN, CROW CREEK SIOUX TRIBE

Mr. THOMPSON. Thank you, Mr. Chairman.

I would like to thank Mr. Thune and Mr. Johnson for their valiant efforts behind this act. I know they put a lot of time and committed to a lot of hours into pushing this forward to benefit our tribes.

Mr. Chairman, members of the committee, the statements you have heard from Chairman Jandreau are very true and I agree with him on the subjects that he had touched on. There was no negotiation at the time that the people of both tribes were uprooted and displaced. It came down to move or else. The detrimental impact that this event had on both tribes, socially and economically, has rippled down through time and hit my generation with the force of a tidal wave. You really can't put a price on this.

Mr. Chairman, if there is one thing I agree with the GAO on is that compensation issues can be sensitive, complex and controversial. The GAO also said Congress will decide whether additional compensation should be provided. The Parity Act presents a policy issue for Congress. The amount that has already been awarded to the tribes is minimal, and very minute. These awards are only a paper transaction. We only draw a small amount of interest off these dollars. This is not enough to sustain a true economic base.

As stated by Mr. Johnson and Mr. Thune, Crow Creek Reservation resides in Buffalo County, which is the poorest in the country. This, to me, is a national shame. My fellow council members and I, as newly elected leaders, have taken major steps in dealing with our financial situation. We are currently laying a new foundation and focusing on safeguarding funding received by our tribe by establishing internal processes for accountability and have sought outside advisers to assist in financial direction and investments.

The Parity Act would help greatly with my tribe and immensely. I urge the committee to stay the course. The Parity Act has passed the Senate three times and this committee twice. Please allow the legislation to move forward. The compensation would be a building block toward a better future for my tribe.

With this said, Mr. Chairman, I will lay a challenge down to you and to all the other Senators that you serve with, to come to South Dakota and to see and to visit the people of Crow Creek and Lower Brule. For this way, you see how beneficial the Parity Act would be toward our area.

Thank you.

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

The CHAIRMAN. Thank you very much.

Dr. Lawson.

STATEMENT OF MICHAEL L. LAWSON, MORGAN, ANGEL AND ASSOCIATES

Mr. LAWSON. Mr. Chairman and members of the committee, I am grateful to have the opportunity to provide testimony today. With your permission, I would like to submit my written statement for the hearing record.

The CHAIRMAN. Without objection.

Mr. LAWSON. Then I will summarize my findings.

My name is Michael Lawson and I am a historical consultant with Morgan, Angel and Associates. In 2003, I authored a report that provided the factual basis for the legislation that was reintroduced in the 109th Congress as S. 374. The General Accountability Office [GAO] report issued on May 19 was highly critical of my study. It concluded that my report did not follow the approach recommended by the GAO in two prior reports involving Missouri River tribes. This is because it did not base the difference on the tribes's final asking price or last best offers.

I did not use the tribes's final asking prices as the basis for the difference for three reasons. The first reason was because the GAO's previous two reports did not clarify that its references to tribal prices "at the time of the taking" was to be understood as meaning the final asking price.

The second reason is because I do not believe that these so-called "last best offers" provide a fair standard on which to base additional compensation. It is my view that settlements based on final asking prices award the tribes not for the fair market value of their losses, but rather for the ability or inability of their tribal leaders to negotiate.

My third reason was because my historical research indicated that those final tribal offers were made under conditions of duress. The chronology I have developed to supplement my statement illus-

trates the context of the tribes's situation at the time their final offers were made.

The GAO report was also critical that I used only the high range of their approach, and did not project the low range based on the annual inflation rate, but Congress has established no precedent for basing additional compensation to the Missouri River tribes at that rate, and calculation at that rate has no value.

The GAO report stated that my calculations of the total amounts requested in the current bill incorrectly adjusted for the additional compensation received by the Crow Creek Sioux Tribe in 1996, and by the Lower Brule Sioux Tribe in 1997. I acknowledge these miscalculations and I have adjusted the amounts accordingly.

As a result, the amount for the Lower Brule Sioux Tribe in section 3 of S. 374 should be $169,122,085 instead of $186,822,140. The amount for the Crow Creek Sioux Tribe in section 4 of the bill should be $96,722,084 rather than $105,917,853. These new amounts reflect both my adjustments in the calculations and the current 2006 value in the differences.

It is my view that the tribal asking prices that I used in my report more accurately reflect what the tribes considered to be the fair market value of their losses. They also fall within the mid-range of the tribes's total request during the course of negotiations. The amounts requested in this bill also fall within the mid-range of possible alternative approaches as I have outlined in the second table of my written statement.

While the GAO and I have differed over approaches and statistics, this bill is really about the policy of trying to establish tribal parity. The additional compensation that Congress has provided to seven of the Missouri River tribes between 1992 and 2002 appears to be all over the map. Congress has applied four different approaches and the perception of the tribes is that these settlements have not been equitable.

After listening to the remarks of the tribal chairmen here today, there should be no doubt that the Crow Creek and Lower Brule Sioux Tribes suffered irreparable damages and sacrificed much of their way of life for the greater progress of this Nation. In 1982, the late Sioux author and historian Vine Deloria, Jr., wrote:

> Their reservations were so drastically impacted that they have never been able to establish viable communities since their lands were lost.

In conclusion, it is my view that S. 374 offers an equitable and reasonable approach to providing additional compensation to these two tribes. Therefore, I urge the committee to support this bill as amended by the adjusted calculations. In my considered opinion, this legislation represents a fair and final compensation package. It also provides a just conclusion to an extremely difficult chapter in the history of the relationship between the United States and the Crow Creek and Lower Brule Sioux Tribes.

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

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

The CHAIRMAN. Thank you very much.

Senator Johnson.

Senator JOHNSON. Thank you, Mr. Chairman.

I want to thank Chairman Jandreau and Chairman Thompson for their excellent testimony here today. I want to thank you for traveling to Washington to appear before this committee.

Let me ask the two chairmen, what do you think would be accomplished with the proceeds of the parity bill? And do you believe that the parity bill does in fact represent final compensation, at least as far as you are concerned as leaders of your tribes?

Mr. JANDREAU. First, Mr. Chairman, I also had a written statement for the record and I ask that it be made a part of the record.

The CHAIRMAN. Without objection.

Mr. JANDREAU. As far as the results of what would happen with the trust fund and the dollars that we look to be extracted from that, we have done a plan that was submitted to Congress and was submitted to Interior. It was submitted to every Federal agency with whom we are involved. Under that plan, we have identified how we are truly trying to reconstruct the total infrastructure of our tribe.

We have been successful in a large portion of that. We still have a long, long way to go. The dollars that we are able to utilize, we expend nearly $1 million a year to hire 270 people to work in our community, providing them jobs that otherwise would not be able to be had. We are in the process of completing a new detention facility that was funded nearly 40 percent by the tribe, and the other 60 percent with the Department of Justice. It was a detention facility, a courthouse, and a police station. Our police station had been condemned for the last 20 some odd years. We finally are able to get that completed.

We have completed a community facility. We have completed an administration building that houses both the tribe and the Bureau of Indian Affairs offices. We have utilized our dollars to assist housing, to assist our wildlife program, to assist with the development of an opportunity to utilize some of the products grown on our corporate farm, to reach a new level of employment on our reservation by manufacturing and packaging popcorn.

So the dollars that we do receive will be used further to assist with our education, which we also assist with; with those opportunities necessary for elders and assisted living facilities. The list goes on and on. I did not bring a copy of our plan with me today, but I will submit that to the committee for your use.

The dollars that are necessary also allow us to delve deeper into economic development in its truest sense, utilizing the resources of the tribe to have sustainable and long-range employment and economic opportunities. Those are the types of things that we would do.

Thank you.

Senator JOHNSON. Chairman Thompson, any observations?

Mr. THOMPSON. Yes; with the infrastructure money that has been sent down and we have received in the past, we currently had purchased a small school in our most outer districts. It houses classes one through six, and for this community out there which lies about 30 miles south of Pierre and another 30 miles from Harrold, SD, this was viable for that community to help educate our youth and it kept them closer to home.

Also, we established community centers in two of our districts, which play a vital role. These community centers serve almost every purpose there is from weddings to funerals and other community functions. Also, we have established a higher ed program to assist with the education of our people. These have been successful so far. With further funding, we have established long-range plans for reestablishing our farm and also we have looked into forming our own construction companies. There is a lot of thought that has gone into how and what direction that we want to see our tribe to go in.

Right now, due to the financial situation that Crow Creek is in, it kind of stops this immediately. With this extra funding, we would be able to come close to being in parity with the local town of Chamberlain. Chamberlain unemployment rate is probably 5 percent, which is pretty close to the State's average. Am I right, Mr. Thune? Okay. Crow Creek is about 85 percent unemployment. I think that is the highest in the State of South Dakota, if I am right.

We would be looking forward to establishing new jobs to actually start a true economic base for our communities. If you look at this in that for years Government has always looked at the tribes as a burden. With this Act going through, this would help both Lower Brule and Crow Creek come into the modern world and be parallel to the economic base of South Dakota and other States.

With that, thank you, and thank you for your time. I will close.

Senator JOHNSON. All right. For Mr. Lawson, the amount called for in your testimony today is lower than the parity bill as introduced. I appreciate your explanation of that. Finally, the theory behind the GAO's use of final asking price in determining the range of compensation is that more negotiations lead to better information. However, I think it is apparent that this could also be substantially affected by the relative bargaining power of the parties.

Could you please discuss the historical context of the negotiations process and how it may have affected that asking price?

Mr. LAWSON. Yes, sir; I tried to use asking prices that I thought reflected what the tribe considered its fair market values. Each one of the tribes when confronted with their lands already being flooded by 1952 in some cases, formed tribal negotiating committees who over an 18-month period made an estimate of what their valuation was for the damages that they would receive, and also an estimate of what the cost might be to rehabilitate the entire reservation, because a precedent had been established for extending those kinds of moneys for rehabilitation when Cheyenne River received its compensation for the Oahe Dam in 1954.

So I tried to use the figures that tracked back to those numbers that were developed. Now, they were tweaked a little bit. After Cheyenne River, for example, got its settlement, there is a factor in there for the tribe's expenses in having to go through the negotiations, and they were compensated $100,000 for that.

So those are the bases of the prices that I tried to use, is what the tribes before they entered a varied amount of negotiations, what they considered fair market values to be. Now, sometimes those were negotiated, and there was a series of negotiations. I

mean, some of these values were developed in 1954 and negotiations continued until legislation was issued in 1958.

Some of those asking prices turned out to be the final asking prices that the tribe had. Others were negotiated down and none of them were negotiated any higher. But that was the process and that is the basis of what I used for the amount of differences. I didn't consistently use the final asking prices.

Senator JOHNSON. Mr. Chairman, I yield back.

The CHAIRMAN. Senator Thune, do you have any questions?

Senator THUNE. Mr. Chairman, I would just, if I might, follow up on the question Senator Johnson asked a little bit earlier. I appreciate where you are coming from in terms of concern about whether or not this is the end, and whether or not there would be additional requests in the future, and making sure that there is finality associated with this request in the level that it is at.

As you have both noted, these are very difficult economic circumstances on the reservations. Buffalo County is the poorest county in the country. Many of our reservation counties share a similar economic condition.

I guess my question is this, assume we do this now and the infrastructure that you have both addressed in terms of things that you want to do to improve the quality of life and the opportunity on the reservation, and I want to tie a little bit, Chairman Jandreau, to flattening the reservations that you authored here.

In terms of creating a private sector economy, it seems to me at least ultimately the only hope that we have long-term on the reservations is to create the kind of economic opportunity for young people there to enable them to derive a living that isn't dependent upon or based upon Government assistance. The parity acts, if the right investments are made and infrastructure, provides a basis of a foundation for that.

I am just curious if you could elaborate a little bit, both of you, on what steps you could take to help create a private sector economy. It seems to me at least part of the problem in attracting economic development to Indian Country is lack of legal certainty, need for reform in the judiciary system so that businesses that come there know with some predictability where they are going to be dealing with disputes and conflicts and that sort of thing.

Can you just elaborate a little bit on that? Because I think it gives us some direction in terms of if we do this now and to make sure that we are not coming back again and asking Congress, that the permanent, good paying, private sector jobs that we need to bring to the reservations, what steps you all might be taking or that could be taken.

Mr. JANDREAU. Thank you.

We have probably the lowest unemployment rate in Indian Country, and it is because we have taken our resources, both those resources we raised from land leases from our corporate farm, from other activities. We have taken those incomes and tried to create to the greatest extent possible employment opportunities there on the reservation.

We just recently moved into the establishment of a popcorn packaging and popping plant. We are in the final stages of completing the building to start that activity. That is as a result of utilizing

those assets and those products that are renewable on the reservation.

As far as private sector involvement, we are tied into a number of different companies in regard to doing our own construction on the reservation, utilizing, leveraging the dollars that we receive to do these kinds of things.

The more that we are able to do that and to create an economy there on the reservation, the more self-sufficient we are going to become. We are dealing with a company out of Oklahoma on our cattle operation. We are doing some things that have to do with the type of beef that is produced, and so we have an arrangement with an organization called DuckSmith Farms of Enid, OK. It is going to be at least a 3- to 5-year arrangement and we are doing that today.

With our popcorn process, we are dealing with a former singer, well, I guess he is still a singer, Chubby Checker and some of his ventures. It all seems to make the process work, to develop those opportunities with individuals who have the capability to move products, and that kind of activity.

We are not about just wanting the dollars to have the dollars. The dollars, if they do not work for us, are not at all justified in receiving. It is more than just for damages. It is about allowing us to create lifestyle with the remnants of land that are left, and trying to, a part of the process is we have replanted probably 1.5 million trees on the reservation, trying to create reforestation projects and trying to deal with the ecological problems that occur when areas of the country are denuded of timber.

So our desire to receive this last shot at getting our trust fund expanded is about the whole future of our tribe and what happens as far as our own individual sustainability and capability to become economically independent, economically self-sufficient. You know, our people don't like to always come back to the trough either. It is wanting to get compensated for these losses with adequate justification that we can move forward with these dollars without always having to knock at the door.

I don't know how to say it.

Senator THUNE. That is great.

Chairman Thompson, if you want to add just what steps can be taken or are being taken that would help create permanent jobs on the reservations.

Mr. THOMPSON. Well, both you and Mr. Johnson have been to Fort Thompson. We have two major highways that cross right in the middle. To me, this is the crossroads of South Dakota. The vision that I see, I don't see despair there. I see opportunity. I see a lot of it. There is private sectors in Fort Thompson. We have a small grocery store, which is privately owned; a convenience store. We have a lot of gentlemen who do independent contracting, carpentry businesses and so on.

As far as the plan goes, I really thought about that, and I thought about how I would be able to benefit our people the most. A lot of it is going to come down to reeducating them into proper business practices, to make them where they are understandable of how business is conducted on the outside of our reservations, and apply that back to our communities and work on developing pro-

grams to help with them, to establish their businesses that will end up being around and being major players into our communities again.

Senator THUNE. Okay. Good.

Tim?

Senator JOHNSON. [Presiding.] Thank you, Senator Thune.

I want to thank the panel. Senator McCain has asked that I chair this hearing for the remainder of the hearing, and so I will be doing that.

I do appreciate both Chairmen Jandreau and Thompson indicating that the goal of the tribe is to create a much stronger, more robust private sector economy on the reservations in some instances through tribally owned enterprises, but in other instances through individual entrepreneurship of tribal members. I think that has to be so important as we work in a public-private way to find ways out of this what has been an unending cycle of poverty on both of these reservations.

I applaud your leadership and your vision for the future. It is my hope that we at the Federal side can live up to our treaty and trust responsibilities, to work with you to create a greater climate of hope and opportunity and fairness in Indian Country. So thank you very much for your testimony today.

Dr. Lawson, thank you for your work as we struggle to find the most logical and equitable level of trust fund funding here on this legislation. So thank you very much.

We will have the next panel come forward. Again, welcome to Chairman Harold Frazier of the Cheyenne River Sioux Tribe, and to Sharon Vogel, who is the manager for Tribal Ventures project. This portion of the hearing is given over to a discussion of S. 1535, the Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2005. That legislation would allow the tribe to use money deposited in their settlement trust fund to compensate individual landowners and their heirs, and also to use receipts of the Western Area Power Administration, or WAPA, to make the interest on the fund available to the tribe at the start of the next fiscal year, rather than 2011, as is required under existing legislation.

Third, it would provide a methodology based on the Lehman Government bond index for calculating the total amount at which the trust fund is to be capitalized.

I want to again thank you for your leadership for the many things that you have already done providing leadership on the Cheyenne River Tribe for your people in that area. We welcome you here today.

We will begin first with Chairman Frazier.

STATEMENT OF HAROLD FRAZIER, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE

Mr. FRAZIER. Thank you, Senator Johnson. I would like to begin by thanking you and Senator Thune for cosponsoring our legislation and also Senators McCain and Dorgan for holding this hearing.

I also want to recognize and acknowledge Freddie LeBeau, who is one of our elders and one of the original Oahe landowners whose land was taken back in the 1950's.

In 1948, the United States Army Corps of Engineers began construction of Oahe Dam and Reservoir project, a part of the Pick-Sloan Program. The program caused massive relocation of our tribal members, including relocating our tribal headquarters. We lost over 104,000 acres of land and many of these lands were tribal and allotted lands within our reservation.

This dam also devastated the tribe's economy and our way of life. More than 181 tribal families, or about 30 percent of the tribal population, were forced to move. We lost our most valuable and fertile lands, and our traditional hunting-gathering ceremonial grounds. In 1954, Congress authorized payment of $10.6 million to the tribe for compensation, less than half of the $23.5 million sought by the tribe.

In later years, various reports confirmed that the tribe had not been fairly compensated for its losses. In 2000, Congress enacted the Cheyenne River Sioux Equitable Compensation Act as Title I of Public Law 106–511. The act created the Cheyenne River Sioux Tribe Tribal Recovery Trust Fund to further compensate the tribe. Under current law, the fund will not be capitalized until October 1, 2011.

S. 1535 would make three amendments to Public Law 106–511. The first amendment is to take care of our landowners who lost land. It would allow the tribe to use the interest from the trust fund to pay additional compensation to tribal members or their heirs who lost over 46,000 acres due to the construction of the Oahe Dam.

Those landowners have never been provided fair or adequate compensation for their losses. Public Law 106–511 does not allow the tribe to use any of the proceeds from the trust fund to provide compensation to them. In order to respond to the needs and wishes of our citizens and consistent with tribal sovereignty and the compensatory purpose of Public Law 106–511, the tribal council wishes to devote some of the portion of the interest from the trust fund to provide additional equitable compensation to the tribal member landowners and their heirs.

This proposed amendment is revenue neutral for the Federal Government. As such, compensation would be provided out of the trust fund interest and would not require any additional appropriation for the landowners.

The second purpose of S. 1535 is to make earnings from the trust fund available sooner. Public Law 106–511 as enacted essentially gives the tribe an IOU from the United States payable on October 1, 2011 for losses it suffered in the 1950's and that it continues to suffer from today.

The bill would capitalize the trust fund sooner using receipts of the Western Area Power Administration, instead of a one-time appropriation in 2011. This method was used to capitalize trust funds in the other tribal equitable compensation acts enacted prior to Public Law 106–511.

Receipt of the money sooner would allow the tribe to address significant unmet needs in the areas of economic development, infrastructure, education, health and social welfare programs. Capitalizing the fund sooner would also reduce the interest to be paid by the United States to the tribe on the $290 million now due in 2011.

The third and final purpose of the bill is to make a technical amendment to provide a methodology for calculating the total amount of which the trust fund is to be capitalized. Under current law, Treasury is to deposit into the trust fund some $290 million plus the interest that would have been accrued had the fund been fully invested in October 2001, but the law provides no methodology to calculate those earnings. However, S. 1535 provides a methodology using a Government bond index.

For the reasons I have stated, I respectfully ask on behalf of the Cheyenne River Sioux Tribe that this committee approve of S. 1535 and send it to the Senate for consideration by that body as soon as possible.

Thank you, and I would be glad to answer any questions you may have.

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

Senator JOHNSON. Thank you, Chairman Frazier.

Ms. Vogel.

STATEMENT OF SHARON VOGEL, CHEYENNE RIVER SIOUX TRIBE

Ms. VOGEL. Thank you.

Good morning, Senator Johnson and Senator Thune, I too would like to thank you for the opportunity to provide supportive testimony for the tribe's efforts to obtain immediate access to its funds under Public Law 106–511, which I will refer to as JTAC funds, to implement the tribe's JTAC plan.

My name is Sharon Vogel. I am an enrolled member of the Cheyenne River Sioux Tribe and the administrative manager of the Tribal Ventures Project. Tribal Ventures is a planning project between the Cheyenne River Sioux Tribe and the Northwest Area Foundation out of St. Paul and Minneapolis, MN. The process was to develop a 10-year plan to reduce poverty and increase prosperity for the families residing on our reservation.

My submitted testimony has a description of the process that we undertook on the reservation to look at poverty, collect the thoughts of our people, and decide how we would proceed with reducing poverty. I would be happy to take questions on that aspect of my testimony, but I will use my time this morning to focus on the ways our tribe is ready to proceed with economic development.

We have just completed an 18-month strategic planning process that resulted in a 10-year commitment to reduce poverty. The Northwest Area Foundation has invested $9.5 million in our effort to reduce poverty. That is a big investment from a major foundation.

As a result, we have a concrete plan to strategically move forward to reduce poverty conditions on our reservation. The only thing holding us back from true economic development from investment and job creation is the lack of capital. I want to be clear: We truly are ready to move economic development projects forward. We have development plans for infrastructure and economic development that are ready to go. We need capital to start our economic engines.

Let me go over an example of projects or programs we are ready to undertake. We have identified two priorities. One is the infra-

structure development and the second is education. When we were holding our planning sessions, we also undertook a project called Young Voices. We interviewed over 600 young adults from 18 to age 30 on our reservation. We found that while they wanted to live on the reservation, there were no opportunities. Job prospects and educational opportunities are much too limiting. As a result, we would like to use our JTAC funds to train our young people, provide them with scholarships for education, as an incentive to stay on our reservation and carry on the culture of our people.

Our population is overwhelmingly young. Almost one-half of these are under 25 years of age. We must act as soon as possible to ensure that we don't lose a generation because of the lack of opportunity. We have identified that economic development requires infrastructure. While the Federal Government has an obligation to the tribe to provide roads, drinking water, water treatment, and other infrastructure, the tribe has a role, too.

The JTAC funds would be used to leverage infrastructure improvements. For example, the tribe has initiated discussions with Merrill Lynch to use JTAC funds to finance an advanced-funded road construction effort similar to the advanced-funded road project that Standing Rock Sioux Tribe did using some its JTAC funds. The more infrastructure we have, the better our standing will be. We will no longer start with a deficit when negotiating development for our tribe.

With a developed infrastructure, we will be able to use that as a bargaining chip when pursuing investments. Of course, this is just an example of several plans that we have ready to implement. We also plan to create a cultural center, to enter the energy industry with wind turbines, to start a credit union, to expand our hotel, and to develop tourism. Additionally, we want to create partnerships with private entrepreneurs who realize the opportunity Cheyenne River presents.

We can no longer wait to develop our economy, communities and families in a piece-meal fashion. We must have multiple strategies that are linked to establishing a stable economy, reducing poverty and improving the quality of life for our reservation families. We truly need access to the resources promised under JTAC.

In summary, I would like to stress that JTAC funds will result in, one, increased assets of the tribal communities and our families. It will develop economic opportunities for our families, provide educational opportunities for our tribal members. We will have development of comprehensive social and health programs and we will increase the capacity of our tribal government to develop long-term strategies that will result in sustainable economic, community and social development.

I would also like to note that payments to individual landowners such as Mr. LeBeau, our elder that is accompanying us, that the tribe is seeking, will also do a lot to reduce poverty on the reservation. Obviously, the payments will directly counteract the loss of assets aspect of the Oahe project. Combined with financial literacy, education and other advising, it will eliminate long-term poverty for many reservation families.

Tribal landowners and heirs who receive these payments will have the capital to invest in both their families and their commu-

nities. Some may choose to become business owners that employ other tribal members, and some may choose to use their funds for their or their families' education.

I would like to address one final issue. One question you may have is why should we be able to access these funds now, rather than five years from now. There are several good reasons for opening up the interest on our compensation fund. First and foremost, it is just a clear issue of time. We have 29 original landowners, all of whom are well into their eighties. Frankly, some of them may not be around in 5 years to benefit from the funds. These lands were taken in 1948, 56 years ago. They have been waiting long enough.

Second, our tribe has urgent needs to address now. We can't afford 5 more years of missed opportunity. We will have missed the opportunity to put 500 people or more through our workforce development programs. We have people who need homes to live in today. We have hundreds of young adults who want to attend college, but don't have the financial resources to do so. We have the need to create a viable infrastructure today.

These are burning needs and will only be more costly to meet further down the road. More importantly, over the next 5 years, we will have 1,000 children born on the reservation, and 780 of these babies will be born into poverty. Every year gone is a year of missed chances, and we can't afford it.

Senator Johnson, members of the committee, thank you for scheduling this hearing to learn about how we plan to improve our tribe with our much-needed JTAC funds. I will be happy to take any questions you may have.

Thank you.

[Prepared statement of Ms. Vogel appears in appendix.]

Senator JOHNSON. Thank you for your testimony.

Senator Thune has another obligation, another committee hearing to attend to, and he has had to excuse himself. I do express my appreciation to Senator Thune for his work on these issues.

It is my understanding, Chairman Frazier, that at the time that the trust settlement was reached, the legislation was passed, all of the interest income from the trust fund after 2011 would be directed to the benefit of the tribe.

The tribe now believes that it ought to have the discretion to redirect some of that revenue to compensate individual landowners, given the fact that as I understand it, about 45 percent of the land that was flooded did indeed belong to individual landowners, as opposed to being tribally owned. Is that a fair and correct observation?

Mr. FRAZIER. Yes; that is correct.

Senator JOHNSON. I appreciate, Chairman Frazier, that you have been a tireless advocate for your tribe, and I appreciate your commitment to rectifying damages incurred by your people almost 50 years and which continue on today. What, if any, compensation was provided to those individual landowners when the initial cash settlement was reached in 1954?

Mr. FRAZIER. On behalf of the landowners, I know when I visit with many of them, a lot of them were not happy with the amount of money that they received. I think there are reports showing that

they received around $20 or $21 an acre, when right across the river the non-Indian population received over $43 to $45 an acre. Many of them just are not satisfied. I don't blame them. I personally have experienced the loss of a home, some land, and that is why I am here advocating on their behalf. I think that in my opinion, as well as theirs, that they were not fairly compensated at the end of the 1950's.

Senator JOHNSON. It is clear that this legislation is a major priority for you and for the tribe. I think one of the questions that might occur on the part of some of my colleagues on the Committee is that only 6 years ago when the tribe agreed to the Equitable Compensation Act, and I appreciate that you can't speak for others who made decisions at previous times, but 6 years ago that legislation prohibited any per capita payments to members of the tribe.

So why do you think that decision was made by the tribe at that time, versus the interest now that the tribe has in allowing at least some of this revenue to be redirected toward private landowners?

Mr. FRAZIER. I can't speak and I don't know what the discussion was back then. I do know that the way I understand the per capita is that every member of the tribe would be getting paid. We look at this as not a per capita payment because not every member is going to get paid, just the ones who have lost land in this taking. They would be the only ones that would be compensated for their losses.

Senator JOHNSON. How many landowners remain to this day, roughly?

Mr. FRAZIER. I believe there were originally 420; now there are 29.

Senator JOHNSON. And it would be the 29 plus the heirs of anybody who did own original land, is what the tribe envisions?

Mr. FRAZIER. Yes.

Senator JOHNSON. I appreciated your participation in the tribal listening session that I held on economic development this past April in South Dakota. I think we both share a strong vision for the future of your tribe and all our South Dakota tribes. I wondered if you could discuss briefly the importance of this trust fund to the tribe and the process the tribe will pursue to ensure that the trust fund effectively serves the development of the tribe. How are you going about that?

Mr. FRAZIER. One of the things, as Sharon, Ms. Vogel, she has been out to the community several times, to every community on our reservation, and gotten the comments of our members. Two of the things that really stick out in my mind that are much needed on our reservation is capital and infrastructure. I believe that if we are ever going to get anywhere in dealing with economic development, that is what is needed. That is something that is always top.

I just want to make a quick point. Right now, we are in the process of refinancing our buffalo program to the amount of $8 million. The bank is requiring our tribe, and it is pretty much collateralized 300 percent, and yet it is not enough. So I know that we have a huge need for capital, so we don't have to deal with banks and just pretty much give up the whole farm for a loan. So that is something. We know what our needs are. We have to plan. If we get the money, we can implement the plan.

Senator JOHNSON. Finally, Chairman Frazier, I understand this legislation is supported by a resolution of the tribal council. Could you please speak to the support of this legislation among the tribe and if it is supported by the tribal elders?

Mr. FRAZIER. Several times last year as well as this year, I have discussed this with our members throughout our reservation, and every year I have been giving a tribal state of the tribe address. Each time, these initiatives are brought up on what the tribal council and the tribal government is doing. Each time, I have not really heard any negative comments from the members of our tribe.

Senator JOHNSON. Ms. Vogel, thank you for your testimony. I am struck by your observation that of the 1,000 children to be born on the reservation in the coming years, that 785, roughly, will be born into poverty.

Ms. VOGEL. Yes.

Senator JOHNSON. And with all the complications and the disadvantages that go with that. So the need to address these issues is truly urgent.

I appreciate the point you made in your written testimony about the potential payments counteracting the loss of assets aspect of poverty. In terms of the causes of poverty, could you please speak to the cultural and psychological effects related to the loss of individual lands?

Ms. VOGEL. Well, when our tribal council held the local hearing for our tribal government officials to hear from original landowners and other individuals that were interested or had recommendations about this legislation, I recall the testimony of two of our elders that talked about the loss that they had, and the loss they had on their children and their grandchildren. They owned a piece of land. They were self-sufficient on that piece of land. And when they lost that, they couldn't replicate that wealth that they had developed on that land. They had a home. They had a garden. They had livestock. And they made improvement to that land that they owned, that they had planned on handing down to their children.

When they lost that, they were then relocated and they could not, that wealth was gone. And there wasn't enough compensation to rebuild that wealth.

So they ended up being in poverty, and their children and their grandchildren lived in poverty because of that loss. That, I think, is one cultural wrong. We are a proud people. We have a history of self-sufficiency. The poverty conditions were harsh. It was hard to get out when you live in a place of poverty, when there is no opportunity. So that was the reality. That was the aftermath of the loss.

Senator JOHNSON. Sharon, what sort of financial literacy programs are being implemented within the tribe and tribal membership to help landowners or their heirs invest and build the economy of the Cheyenne River? Obviously, we want financial resources to be available to people, but we want to be confident those resources are being put to good use.

So what is your group doing to help ensure that that would be the case?

Ms. VOGEL. There are several entities that provide financial literacy and consumer education on Cheyenne River. One is the Four

Bands Community Fund. In addition to providing the business training for entrepreneurs, they also provide an IDA, individual development account, and that comes with a curriculum of education.

We with the Tribal Ventures Poverty Reduction Plan will partner with the Four Bands Community Fund to where we, too, will offer reservation-wide financial literacy training, using a curriculum that was developed for Native American families that was funded in part by Fannie Mae. We also propose that we will have a youth IDA so that our young people can start saving for scholarships.

But in addition, there are other reasons why it is important for us to have financial literacy on Cheyenne River. One is predatory lending. We want to make sure that our people are protected from predatory lending and that they are better consumers, they make more informed decisions.

So the value of financial literacy is not just limited to just making sure that these individuals that when they receive the compensation that they spend that wisely. It is for all of our members across the reservation.

Senator JOHNSON. Well, thank you, Ms. Vogel, and I thank both of you for your testimony. It obviously was very important that we make your testimony on the record here for all the members of the committee. We have bipartisan staff here. I think we all feel that we have gained from your testimony as well. It was important that we go through this process in our effort to move this legislation along.

So I want to thank you. I also want to thank others, including elders and members of the tribes who have traveled long distances and have gone out of their way to be here today. We want to welcome you as well.

So with that, we are going to wrap up this hearing, but we will redouble our effort to work in a bipartisan fashion with Senator Thune, with Chairman McCain, Vice Chairman Dorgan, to see what we can do to take into consideration your testimony here today and to use that as support for this legislation.

So thank you very much. And with that, this hearing is adjourned.

[Whereupon, at 11:12 a.m., the committee was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF MICHAEL B. JANDREAU, CHAIRMAN, LOWER BRULE SIOUX TRIBE

Mr. Chainnan, members of the committee, thank you very much for the opportunity to testify on the Tribal Parity Act, S. 374. I am Michael Jandreau, the chairman of the Lower Brule Sioux Tribe. I have been chairman of the tribe for 27 years, and served on the council for 7 years before being elected chairman.

The legislation before you this morning is of great importance to our tribe and our people. I would like to thank Senator Thune introducing 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 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 percent of the entire reservation and our best bottomland. In addition, it required the resettlement of nearly 70 percent 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 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, and using leverage, we invested over $27 million in our entire infrastructure. We have built:

- A new community center,
- A tribal administration building,
- A detention center with a courthouse and police department, and a
- Wildlife building.

We have also used the fund to improve tribal housing and employ 250–270 individuals [both youth and adults] in the summer months. In short, the trust fund is allowing us to improve our economy and the quality of life on the reservation in many ways.

The legislation before you today, S. 374, is intended to supplement our existing trust fund. It passed the Senate three times in the 108th Congress, once as an independent bill and twice as an amendment to other bills. All three died in the House. The Parity Act was again reported by this committee on June 30, 2005, but has yet to come before the entire Senate for consideration.

Mr. Chairman, in all honesty, I am completely baffled by the recent GAO report entitled "Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes' Additional Compensation Claims". It is the most frustrating Government document I have read in all of my years as chairman.

Essentially, the GAO makes two criticisms of the Tribal Parity Act and the approach used by our consultant, Dr. Mike Lawson. First, the GAO criticizes us [and it is, in fact, the tribes that the GAO is criticizing] for not using "the final asking price". Second, the GAO is indignant that Dr. Lawson suggests one level of compensation, and not a range. I would like to make several points in response:

No. 1. The Congress never established the final asking price as the standard that must be used for determining what is fair compensation under the Flood Control Act. In a business transaction when two parties are negotiating with equal standing, I can understand how the last asking price would indicate the true feelings of the parties. That is clearly not the case here. There was no "negotiation". Our land had been flooded and we were trying to do the best we could. The Congress should look at all of the facts when trying to evaluate the appropriate level of compensation and not be blinded by the last offer.

No. 2. GAO criticizes Dr. Lawson for not providing a range of reasonable compensation levels based upon different policy assumptions, but then the GAO does the same thing and fails to give you, the Congress, a range of possibilities.

No. 3. Beyond the numbers, there is a tone to the GAO report that is deeply disturbing. Dr. Mike Lawson is a nationally recognized expert on the Flood Control Act and the tribes affected by that legislation. Yet, the GAO does not even mention his name anywhere in the document. Dr. Lawson is a consultant to two sovereign Indian tribes. The GAO has every right to disagree with him, or with me, or with anyone else. But I would hope they also recognize that a mechanical application of a standard formula may not apply in all cases. The tribes are not one size fits all.

Our best land was taken to benefit America. Our tribe is not seeking charity; we are seeking justice and parity with other Missouri River tribes that have been adversely affected by the Flood Control Act. There has been no one, clear policy decision by the Congress on how to determine what is just and fair compensation for Missouri River tribes. The Tribal Parity Act is not based upon the "highest asking price". And we are not seeking parity with the Santee Sioux, who has received the highest amount on a per acre basis. We are seeking what Dr. Lawson, the recognized national expert, believes to be fair and owing from the United States to the people of Lower Brule. The Congress has the power and the obligation to make a fair policy decision. You are not bound by any one formula or test, as, I believe, the GAO would have you believe.

This legislation would, if enacted, add to our trust fund and allow us to aggressively 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, sovereignly is key to tribal existence. But, in the long run, for sovereignty to survive, there must be some type of economic sovereignty as well. We must develop private sector economy and jobs for our people. The legislation before you will allow us to do all of that. We will be able to 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 handout. 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 U.S. economy averages $1.27 billion per year. The Tribal Parity Act must be seen in that context.

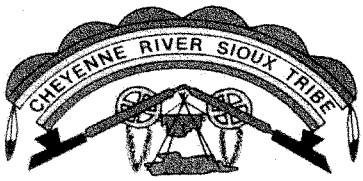
The Lower Brule Sioux Tribe is making great progress. Our unemployment rate is the lowest of any reservation in South Dakota, but it is still much above the national average. My goal as chairman is to see Lower Brule fully participate in the U.S. economy while maintaining our heritage and identity. It is very painful for me to read The World Is Flat by Thomas Friedman and realize that globalization is passing over Lower Brule and the Indian reservations of the United States. China and India, for example, are revolutionizing their economy while Indian reservations are essentially ignored.

The reservations are a part of the United States, but we are not a part of the U.S. economy. Mr. Chairman, I am not here today to outline a comprehensive agenda for Lower Brule or for tribes, generally. I am here to say that the Tribal Parity Act is the essential next step to improving the quality of life at Lower Brule and it is completely justified. We urge you to finally file the committee report and bring it to the floor of the Senate as soon as possible. It has been exactly 2 years since

I first testified on the Parity Act. Our tribe needs and deserves the benefits of the Tribal Parity Act, as adjusted to reflect a more accurate mathematical computation.

We urge the committee to amend S. 374 to provide $129,822,085 of additional compensation to Lower Brule and $69,222,085 of additional compensation for Crow Creek. These figures are far lower that our highest asking price and are lower than the amount provided to the Santee. It is, in short, fair and just compensation for the complete disruption to our reservation life and the taking of our best bottom lands. Thank you. I would be pleased to answer any questions.

CHAIRMAN
Harold Frazier
SECRETARY
Colette LeBeau Iron Hawk
TREASURER
Benita Clark
VICE-CHAIRMAN
Raymond Uses The Knife, Jr.



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STATEMENT OF HAROLD FRAZIER
CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON S.1535, THE CHEYENNE RIVER SIOUX TRIBE
EQUITABLE COMPENSATION AMENDMENTS ACT OF 2005

June 14, 2006

As Chairman of the Cheyenne River Sioux Tribe, I am pleased to present this testimony on the Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2005. I thank Senators Thune and Johnson for sponsoring this important piece of legislation, and Senators McCain and Dorgan for holding this hearing.

THE PICK-SLOAN MISSOURI RIVER BASIN PROGRAM

In 1944, Congress authorized the Pick-Sloan Missouri River Basin Program (the "Pick-Sloan Program") as part of the Flood Control Act of 1944.[1] This plan, which would destroy more Indian lands than any other public works project ever in the United States, was approved without tribal consultation and regardless of the devastating impacts it would have on tribes along the Missouri River.

The Pick-Sloan Program caused massive relocation of members of the Cheyenne River Sioux Tribe ("Tribe"), and devastated the Tribe's economy and way of life. In 1948, the United States Army Corps of Engineers ("Corps") took possession of lands within the Cheyenne River Sioux Reservation and began construction of the Oahe Dam and Reservoir Project ("Project"), a part of the Pick-Sloan Program. In total, the Corps acquired 104,492 acres of tribal and allotted lands within the Reservation for the Project. One-hundred and eighty-one families of the Cheyenne River Sioux Tribe–or about 30% of the tribal population—were forced to move as a result of the Project. The Tribe and its members lost their most valuable and fertile lands, and lost access to traditional hunting, gathering, and ceremonial grounds. At the same time, the Tribe did not enjoy any benefits of the Project. It did not receive preferential power rates. It did not receive flood control benefits, as it had not

[1] 58 Stat. 887.

experienced flooding previous to the Project. It did not benefit from any irrigation project. The severe detrimental impacts of the Project upon the Tribe have been the subject of congressional reports.[2]

Congress first compensated the Tribe and its members for their losses in 1954, when Congress authorized payments totaling $10.6 million for damages, rehabilitation, and administrative expenses. These payments were less than half of the $23.5 million requested by the Tribe. The Tribe agreed to the bill authorizing the payments only because South Dakota Senator Karl Mundt promised to pursue an amendment in the next session of Congress to increase the payments. No such amendments were introduced or considered.

In later years, reports of the Joint Tribal-Federal Advisory Committee ("JTAC"), the General Accounting Office, and private consultants showed that the Cheyenne River Sioux Tribe and other tribes along the Missouri River that had lost lands to the Pick-Sloan Program had not been fairly compensated for their losses.[3]

THE CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION ACT

On April 2, 1998, Senators Daschle and Johnson of South Dakota introduced S.1905, the Cheyenne River Sioux Equitable Compensation Act. Eventually, the 106th Congress enacted the Cheyenne River Sioux Equitable Compensation Act ("Compensation Act") as Title I of Public Law 106-511.

The Compensation Act acknowledged that the Pick-Sloan Program damaged the economy of the Tribe and its members [Section 102(a)(1)(C)], and that the Tribe had not been fairly compensated for the Program [Section 102(a)(3)(A)]. The Compensation Act created the Cheyenne River Sioux Tribal Recovery Trust Fund ("Trust Fund") to provide further compensation to the Tribe. It provided that the Secretary of the Treasury would deposit into the Trust Fund, *on October 1, 2011*, (a) $290,722,958, plus (b) an amount equaling the interest that would have accrued on that amount if that amount had been deposited into an account on October 1, 2001, and been invested in securities issued by the Treasury Department and other federal agencies and corporations (also known as "treasuries" and "agencies"), compounded annually [Section 104(b)]. The Treasury Department is to invest such funds in treasuries and agencies [Section 104(c)]. Beginning on October 1, 2011, Treasury shall withdraw the aggregate interest deposited into the fund for the fiscal year, and shall transfer that amount to the Secretary of the Interior, who is authorized to make payments to the Tribe in accordance with a plan adopted by the Tribe for the use of such funds [Section 104(d)]. The Tribal plan must provide that the funds shall be used for one or more of the following purposes: (A) economic development; (B) Infrastructure development;

[2] Senate Report 105-363 at pp. 1-2; Senate Report 106-217 at pp. 1-2.

[3] Report of the Joint Tribal-Federal Advisory Committee ("JTAC"); Indian Issues: Compensation Claims Analyses Overstate Economic Losses (GAO/RCED-91-77, May 21, 1991); Analysis of Economic Losses Resulting from Lands Taken From the Cheyenne River Sioux Tribe for the Oahe Dam, The Robert McLaughlin Company (Solen, N.D., July 1994); Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation Claim for the Oahe Dam (GAO/RCED-98-39, Jan. 28, 1998).

and (C) the educational, health, recreational and social welfare objectives of the Tribe and tribal members [Section 104(f)((2)].

S.1535

S.1535 would make three amendments to Public Law 106-511. These amendments would accomplish the following purposes:

(1) to allow the Tribe to use interest from the Trust Fund to pay additional compensation to tribal members who lost their lands due to the Oahe Dam (or their heirs).

(2) to capitalize the Trust Fund sooner, using receipts of the Western Area Power Administration (WAPA) (the same method used in equitable compensation acts for some other Missouri River tribes), and to make the interest on the Fund available to the Tribe sooner, on October 1, 2005, rather than 2011.

(3) to make a technical amendment to provide a methodology for calculating the total amount at which the Trust Fund is to be capitalized.

These three areas of amendment are discussed in more detail below.

The Tribal Council approved of the proposed amendments on June 29, 2004, and sought their introduction. The bill also enjoys the support of tribal members. Attached to this statement is the transcript of a tribal hearing held on the bill on June 14, 2005, at which tribal members testified in support of the bill.

Compensating the Tribal Member Landowners

The first purpose of the bill is to allow the Tribe to use interest from the Trust Fund to pay additional compensation to tribal members who lost their lands due to the Oahe Dam (or their heirs).

It was not just the Tribe that lost Reservation lands to the Oahe Project. Many tribal member landowners lost lands as well. Of the 104,492 acres of tribal and allotted Reservation lands acquired by the Corps for the Project, 46,274.95 acres, or about 44.3 percent, were allotted lands. Tribal members also lost fee lands within the Reservation. The tribal member landowners, like the Tribe, were not adequately compensated for their losses. At a June 14, 2005 Tribal hearing, tribal members testified as to the inadequate compensation they received for their lands. One tribal member testified, for example, that he was paid $21.40 per acre, compared to compensation of $49.22 paid to landowners off the reservation for comparable land. Despite the inadequacy of their compensation, however, the tribal member landowners have never been provided additional compensation for their losses, however, and no bill has ever been enacted to provide them any additional compensation.

Public Law 106-511 provided additional compensation to the Tribe based on the entire 104,492 acres lost by the Tribe and its members as a result of the Oahe Dam Project.

Yet, the Act does not allow the Tribe to use any of the proceeds from the Trust Fund to provide additional compensation to tribal member landowners who suffered the losses. The Tribal Council believes that, consistent with tribal sovereignty, and with the compensatory purpose of Public Law 106-511, it should be able to devote some portion of the interest from the Trust Fund to provide additional equitable compensation to the tribal member landowners or their heirs.

Accordingly, S.1535 would allow the Tribe to amend its plan for the use of the Trust Fund to provide for additional compensation for tribal member landowners that lost lands due to the Project (or their heirs). The bill does not set forth how the Tribe is to provide such compensation, or in what amounts. The Tribe would make those determinations through its own tribal processes, consistent with tribal self-determination. One decision the Tribe has made is that it will first provide compensation to the surviving tribal member landowners who lost their lands, of which there are now about 29, and later to the heirs of the landowners who are deceased.

Although the Tribe intends to provide compensation to tribal member landowners from the interest from the Trust Fund, the Tribe will also use Fund interest for other important purposes of the Act -- namely, (A) economic development; (B) Infrastructure development; and (C) the educational, health, recreational and social welfare objectives of the Tribe and tribal members.

This proposed amendment to allow compensation to tribal member landowners is revenue neutral, as the compensation provided to tribal landowners or their heirs would be provided out of the Trust Fund interest, and would not require a separate fund for the landowners on any additional appropriation for the landowners.

Making the Funds Available to the Tribe Sooner

The second purpose of S.1535 is to capitalize the Trust Fund sooner, using receipts of the Western Area Power Administration ("WAPA") (the same method used in equitable compensation acts for other Missouri River tribes that were enacted prior to PL 106-511), and to make the interest on the Fund available to the Tribe sooner, rather than in 2011. When Congress enacted Public Law 106-511, it decided not to use WAPA receipts and instead opted for a payment eleven years out in order to avoid "pay-as-you-go" provisions relating to funding new programs.

Public Law 106-511, as enacted, essentially gives the Tribe an IOU from the United States payable on October 1, 2011, for losses it suffered in the 1950s and that it continues to suffer from today. The Tribe would like to receive payment sooner in order to address significant unmet needs in the areas of economic development, infrastructure development, education, health, social welfare, and recreation. The Tribe's needs, possible programs to remedy those needs, and how immediate funding will help alleviate tribal poverty are the subject of separate testimony by Sharon Vogel, administrative manager for the Tribal Ventures Project.

The Tribe proposes two amendments to address this issue. First, it proposes to begin to capitalize the Trust Fund immediately, using receipts of WAPA. This methodology was used to fund trust funds in equitable compensation acts for some other Missouri River tribes.[4] Second, the proposed amendments would make the interest on the Fund available to the Tribe even before the Fund is fully capitalized.

These changes will not result in increased costs to the United States. To the contrary -- quicker capitalization of the Fund will result in savings to the United States, since the Act provides that the principal will be adjusted as of October 1, 2012 to reflect what the interest would have been on the Fund had it been fully capitalized at $290 million as of October 1, 2001.

Technical Amendment Regarding Amount Needed to Fully Capitalize the Fund

The third and final purpose of the bill is to make a technical amendment to provide a methodology for calculating the total amount at which the Trust Fund is to be capitalized.

Under current law, when the Fund is capitalized, it is to be invested in an undefined mix of securities issued by the Treasury Department ("treasuries") and federal agencies and corporations ("agencies"). When fully capitalized, the Fund shall contain $290,722,958 *plus* the interest that would have accrued from October 1, 2001 until the Fund was fully capitalized if the Fund had been invested in the undefined mix of treasuries and agencies. [Section 104(b)(2)] This is unworkable, since no one can say what interest would have accrued on an undefined mix of securities. S.1535 solves this problem by tying the interest to the Lehman Government Bond Index, an index of treasuries and agencies that would leave no ambiguity. Information on the Lehman Government Bond Index is attached to this statement.

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[4] Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, Public Law 102-575, § 3504 (a)(2) & (b)(2), 106 Stat. 4731, 4732-4733; Crow Creek Sioux Tribe Infrastructure and Development Trust Fund Act of 1996, Public Law 104-223, §4(b), 110 Stat. 3026, 3027-3028; Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act, Public Law 105-132, §4(b), 111 Stat. 2563, 2565.

Lehman Brothers Government Bond Index

Composed of all publicly issued, nonconvertible, domestic debt of the US government or any agency thereof, quasi-federal corporations, or corporate debt guaranteed by the US government. Flower bonds and pass-through issues are excluded. Total return consists of price appreciation/depreciation plus income as a percentage of the original investment. Indexes are rebalanced monthly by market capitalization.

Sub-indexes include:

Lehman Brothers Government Intermediate Bond Index

Composed of all bonds covered by the Lehman Brothers Government Bond Index with maturities between one and 9.99 years. Total return comprises price appreciation/depreciation and income as a percentage of the original investment. Indexes are rebalanced monthly by market capitalization.

Lehman Brothers Government Long Term Bond Index

Composed of all bonds covered by the Lehman Brothers Government Bond Index with maturities of 10 years or greater. Total return comprises price appreciation/depreciation and income as a percentage of the original investment. Indexes are rebalanced monthly by market capitalization.

CHEYENNE RIVER SIOUX TRIBE

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1 CHEYENNE RIVER SIOUX TRIBE
2 =
3 JTAC Testimony
4 =
5 Transcript of Proceedings
6 June 14, 2005
Eagle Butte, South Dakota
Super 8 Hotel
7
8 =
Chairman Harold Frazier
9 Freddy LeBeau
Clayton Arpan
10 Barry Mann
Vivian Traversie
11 Sharon Vogel
Farrel Smith
12 Doris LeBeau White
Zach Ducheneaux
13 Kevin Keckler
Jayme Longbrake
14 Cynthia Cook
Rebecca Kidder
15 Dee Lawrence
Margaret Bad Warrior
16 Lola Pritzkau
Richard Ducheneaux
17 Marcella Ryan LeBeau
Benita Clark
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23 Reported By Cheri McComsey Wittler, RPR, CRR
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1 CHAIRMAN FRAZIER: Harold Frazier,
2 I'm Chairman of the Cheyenne River Sioux Tribe.
3 The purpose for having this hearing today is back
4 in March we went to Congress, and we took our
5 proposed amendments to the JTAC legislation, and
6 when we visited Congresswoman Herseth she stated
7 she wanted stories that she could use in support of
8 getting our amendments passed. And that's why I
9 wanted to have this hearing today, and I figured,
10 you know, get support and testimony to give to our
11 representatives over in Washington so they can -- I
12 guess give them more ammunition to push our
13 amendments through.
14 And the amendments were passed by Tribal
15 Council and supported by Tribal Council. And three
16 other things. The amendments call for
17 legislation -- one is to capitalize the trust fund
18 earlier. As you guys are well-aware, it won't be
19 until 2011 until Congress appropriates any of our
20 money, and many of the people who are entitled to
21 some of that money may not be here with us. So
22 it's important that Congress passes our amendment
23 and capitalizes our trust fund earlier.
24 And we're -- one of the avenues we were
25 looking at as a Tribe is the same process that the

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1 other Tribes had is Standing Rock and Three
2 Affiliated Tribes is to use the WAPA revenue. So
3 hopefully Congress will see fit and passes this
4 amendment and funds our trust fund earlier.
5 The other one is to clarify this interest,
6 what is accruing today and what will be there in
7 2011. And we've been working with the Department
8 of Treasury as well as a law firm, Hobbs & Strauss,
9 to come up with language, and we do have language
10 to get the interest clarified.
11 And the other amendment is that we recognize
12 that the landowners have a claim -- or have an
13 interest into this legislation. And, like I stated
14 earlier, 2011, I believe the landowners will talk
15 more and we'll have more numbers and facts, but I
16 think there's 34 original landowners alive today.
17 And the way it's going there may not be that many
18 in 2011. So it's really important that this
19 amendment gets pushed through.
20 And I think our needs are high on Cheyenne
21 River. They have a high unemployment rate of
22 78 percent, overcrowded housing, inadequate health
23 care. Our health care is funded at 46 percent of
24 our need. And so it's important and I hope that
25 Congress supports and passes our amendments to help

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1 our people.
2 Rebecca, I'll turn it over to you.
3 (Discussion off the record)
4 MS. KIDDER: Good afternoon. I'm
5 honored to appear before you today to discuss the
6 unmet needs in the areas of housing and water
7 supply within the exterior boundaries of the
8 Cheyenne River Sioux Indian Reservation, which
9 includes all of Dewey and Ziebach Counties in
10 South Dakota.
11 My name is Rebecca Kidder and I am currently a
12 tribal attorney and I have worked extensively with
13 the water, health, and housing issues.
14 I'm going to start by providing a little
15 background. The current population of residents on
16 the reservation according to the Census Bureau is
17 8,470 people. However, the total tribal enrollment
18 is 14,277 people. The actual population including
19 all residents is somewhere in between these two
20 statistics.
21 Using Indian Health Service data,
22 United States Census data, and Bureau of Indian
23 Affairs Labor Force Reports the firm of Banner
24 Associates calculated the current population at
25 least 8,533 people. According to the Census Bureau

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the population has increased at least 9.7 percent between 1990 and 2000. At the present time approximately 25 percent of the population is under 16 years old. The rate of population growth is extremely high and can be expected to increase with such a young population structure, which means that the current unmet needs in all areas can be expected to increase rapidly over the next decade.

At this rate of growth, even accounting for death and migration, the population served by the Tribe will be over 25,000 residents by the year 2055. I present this to you only so that we keep in mind the incredible infrastructure needs that will only increase over the next 50 years.

To plan appropriately to meet this need it's important to look at the infrastructure that is currently in place. In the area of housing there is currently a need for at least 700 new homes. This information is based on the assessment of needs conducted by the Cheyenne River Housing Authority. The demand for decent, safe, and affordable housing is at an all-time high. Unfortunately, the funds available to provide this housing have not kept pace with the demand for housing.

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The cost of constructing one home, even if infrastructure was in place, averages $92,400 for a three-bedroom unit, $120,960 for a four-bedroom home. This is for a moderate-sized home. The cost of building housing in this area is increased by the geography that we live in. The high winds and extreme heat and cold in summer and winter make it necessary to use steel siding rather than vinyl or other building materials and require either asphalt or steel roofing. In addition, each home must be wrapped and insulated extremely well to withstand the elements. The foundations must be constructed with iron and concrete re-bar pylons driven into the ground sometimes as deep as 50 feet because the soils here are clay, and they are constantly shifting.

The funding provided by the Department of Housing & Urban Development to the Tribe at the present time is less than $5 million a year. The amount of funding has decreased rapidly in the past three years due to HUD decisions to change how funds are distributed and due to Congressional budget cuts to Indian housing programs. The funding provided is used to maintain rental units, renovate existing housing units, and build an

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average of 11 new units a year. Again, keep in mind we need 700 new units today.

While there are many new types of funding available for housing and development, many of these programs assume that a Housing Authority will be able to charge high enough rents to maintain housing units and earn a profit from housing. Unfortunately, the poverty rate here is very high. The average rents charged per unit at the present time is low in comparison with other housing markets. This is the result of a 78 percent unemployment rate, with 96 percent of working families living below the national poverty level. Ziebach County is currently the fifth poorest county in the United States, according to the United States Census Bureau of Economic Analysis.

With this level of poverty, the options available for housing development are limited due to the inability to provide affordable housing and maintain housing units with the rents received without any form of subsidy.

It has been said by many, including the Executive Director of the Housing Authority, Wayne Ducheneaux, that home ownership is the key to building wealth. When a family owns a home they

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have security, stability, and improved financial status. To that end, much has been done in the area of home ownership in efforts to make homes affordable for families by Tribal Government, the Housing Authority, Habitat for Humanity, Oti Kaga, and Four Bands Loan Fund. Nevertheless, there is still this incredible need for 700 new homes today.

If you were to ask me what it would cost to build all the homes needed for families, I would tell you those 700 homes without the cost of infrastructure were to require approximately $75 million. Given the high population growth rate, that figure can be expected to increase by at least 2 percent per year. And this excludes the inflation costs as housing materials rise.

The problems created by a lack of decent, safe, and affordable housing cannot be overemphasized. Right now over 1,910 homes here are overcrowded. That amounts to approximately 60 possess of all households. An additional 1,528 homes lack safe plumbing and kitchen facilities. That's about 24 percent of all of our homes.

When a family lives in overcrowded conditions education suffers for lack of space to study and space to get a good night's sleep. Job performance

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1 suffers due to the added stress from living too
2 closely with other people, and people's physical
3 and mental health suffers.
4 Lack of housing also limits the ability to
5 recruit and retain professional staff for health
6 care programs and business ventures. Many of the
7 professional recruited were tribal members who have
8 gotten a degree in higher education and want to
9 return home, but they find that the lack of housing
10 is an absolute barrier to their return. Suffice it
11 to say that without adequate housing, efforts to
12 generate economic development will be severely
13 hampered.
14 If JTAC funds are dedicated to provision of
15 housing, such funds would be used for three
16 purposes:
17 First, to construct new homes to meet the
18 current unmet need. The types of housing needed
19 include rental and home ownership single family
20 homes. Some of the home ownership funds would need
21 to be dedicated to homeowner assistance programs to
22 make mortgages affordable, including down payment
23 assistance, grants, and secondary mortgages.
24 Second, funds are needed to renovate existing
25 housing. Funds will be dedicated to grant and loan

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1 assistance for private homeowners and additional
2 funds for Tribal, BIA, and Housing Authority homes
3 in need of renovation so that we can preserve the
4 homes we already have.
5 Third, funds are needed for basic water and
6 sewer infrastructure to make the provision of
7 housing possible. At the present time the
8 Housing Authority cannot construct any new homes
9 with new water hookups because over 99 percent of
10 the water system is at or above its capacity.
11 Currently the Housing Authority may only finish the
12 units under construction and add approximately
13 50 homes throughout the area communities where
14 there is already an existing hookup.
15 Current plans for housing construction include
16 over 200 units north of Eagle Butte that cannot be
17 constructed without water system upgrades and over
18 100 units of housing that go along with the
19 construction of a new hospital south of
20 Eagle Butte.
21 With that being said, I would like to take
22 some time to testify about the water infrastructure
23 needs and how the lack of water will impact this
24 area in the future. But first I think it's
25 important to take a step back and look at where the

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1 water problems started. In 1944 the Pick Sloan Act
2 was passed authorizing the construction of the
3 Oahe Dam and the flooding of over 104,000 acres of
4 lands. The Tribe was notified of this plan in
5 1947, over three years after the decision was made
6 and the project was well into the planning process.
7 In the late '40s and '50s the Tribe provided
8 Congress and the Corps of Engineers with
9 information on the cost of providing for
10 replacement water sources. That request for
11 compensation was never granted. It was not until
12 the 1970s that the Tribe was able to secure funding
13 for a water intake and water treatment project.
14 The Tribe took those funds and constructed a water
15 intake and transport line that is the current water
16 supply system. Despite repeated attempts to have
17 the Bureau of Reclamation and the Corps of
18 Engineers assist in system expansion replacement
19 and upgrade, to date neither agency has engaged in
20 a major project to ensure the decent, safe, clean
21 drinking water is available to all of the residents
22 of Cheyenne River.
23 The Tribe, the Housing Authority, and the
24 Mni Waste' Water Company are working together along
25 with the City and County officials to deal with a

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1 very serious infrastructure need: Water. In the
2 fall of 2004 the Housing Authority completed an
3 updated housing needs assessment with Banner &
4 Associates Engineering Firm. The study concluded
5 that by 2055 the demand for water for business,
6 industry, drinking water, and agriculture will be
7 6.7 million gallons of water a day. The current
8 system can only provide 1.2 million gallons a day.
9 So in less than 50 years we have a situation where
10 we will need 6 times the amount of water we can
11 actually provide.
12 The current system also suffers from emergency
13 issues. First, the water intake may fail as early
14 as next August because the drought is causing lower
15 water levels on the Cheyenne River arm of Lake Oahe
16 where the intake is located. The Tribe is working
17 with the Corps of Engineers on an emergency
18 short-term solution to this crisis. But even
19 without this emergency, the intake will silt in and
20 become completely nonoperational as early as 2011.
21 In addition, the existing water line from the
22 treatment plant to Eagle Butte is crumbling. No
23 additional users can be placed on the water system
24 because the line cannot take any increase in
25 pressure. Already there are numerous line breaks

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on this main line and on the distribution lines occurring every year. On average there are more than 25 leaks a year in the system with two to three main breaks in the main line a year. Finally, the water treatment plant can only treat 2.2 million gallons of water a day, and, therefore, it must also be replaced.

The Tribe, Housing Authority, and Water Company have developed a plan and a cost estimate of what it will cost to fix these problems and meet the need for water through 2055. Based on this plan, the cost of installing a permanent intake on the Missouri River, a new expanded water line from the Missouri River to Eagle Butte, and a new water treatment plant is approximately $76 million. The cost of expanding the water lines to every community on the reservation is approximately another $312 million. That's a total unmet need for water in the amount of $388 million.

Until and unless the water system infrastructure is upgraded and replaced, several negative consequences will continue. Here I will list just a few of these consequences:

First, we will continue to have problems with contaminated water causing human health effects.

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This intake is located in an area that is contaminated with arsenic, mercury, and heavy metals, and heavy silt deposits. There have been instances of failing to meet clean drinking water standards already. These problems will worsen as the existing infrastructure continues to decline. The rates of rare disorders, including brain cancer, scleroderma, and autoimmune disorders are incredibly high here at Cheyenne River. Diseases that normally occur at rates between 1 and 6 in 100,000 people in the United States population are occurring here at rates of 5 to 15 cases in a population of less than 10,000 people. Therefore, the contamination issues still present a very serious and ongoing health hazard.

Second, we will continue to see inadequate water supply to fight fires, thereby threatening human lives, homes, and businesses. Already there have been two prairie fires in which we were very close to running out of water to fight the fires. In another fire four children perished in part because of inadequate water supply.

Third, there will be no water for economic development. No new buildings can access water until the system is upgraded, placing most efforts

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to generate new business at a standstill. Given that over 80 percent of the local economy is agriculture and livestock based, the lack of water for any new pasture taps any limits any efforts to start new agriculture businesses as well. It also limits the ability to start any irrigation projects which would increase the productivity of the land.

Fourth, no water for standard health facilities. The need for basic health services cannot be understated, and it will be presented today to you by other witnesses. Without water system upgrades, the ability to provide water for a new hospital, new clinic, and a new nursing home will be incredibly difficult.

I encourage and support the dedication of JTAC funds to water and sewer infrastructure. The first step is to ensure that a permanent intake is constructed on the Missouri River away from contamination on the Cheyenne River. The second step is to construct a permanent line and water treatment plant up to Eagle Butte. The third step is to expand water distribution lines already in place. And the final step so to fund new distribution lines for the communities that currently use low quality well water.

16

The final unmet need that must be discussed is the need for a sewage treatment plant. Waste water is currently handled throughout the reservation by a system of lagoons. Those lagoons cannot keep pace with the demand for development. Lagoons create a public nuisance and a health hazard, and they are expensive to maintain. This will still be the case -- and many private homes also operate using a septic tank and leach bed system. This will still be the case with many homes in remote areas. However, a waste water treatment plant is needed for the Eagle Butte area, which is experiencing the highest rate of development to ensure protection of the environment and human health from exposure to human waste.

I hope that it has become apparent how economic progress must be viewed in a wholistic manner. While water and sewer infrastructure and housing are not considered in some circles as economic development projects, without access to decent, safe, affordable housing, clean drinking water, and adequate sewage facilities, any effort to gain economic self-sufficiency becomes more difficult, if not impossible.

May I just close by stating that I am

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1 heartened to see that the funds requested back in
2 the late 1940s and early 1950s to restore what was
3 lost in the construction of the Oahe Dam are in
4 sight. It saddens me to know that the toll in
5 human lives has had to continue at crisis
6 proportions for so many years to get to this point.
7 I am hopeful that the efforts to secure funds and
8 to allow the Tribe to access some funds as soon as
9 possible will be successful. The longer the Tribe
10 has to wait to fix these major infrastructure
11 issues, the more lives that will be lost and the
12 more expensive the solutions will become.
13 I believe we must know our history, understand
14 our current needs, and, finally, have a plan for
15 the future to succeed. I am reminded of the words
16 of former Chairman Frank Ducheneaux when he wrote
17 to President Eisenhower on August 25, 1954
18 requesting that the President not sign
19 House Bill 2233, the bill that set the level of
20 compensation for the losses resulting from the
21 Oahe Project.
22 He said, "We feel that Congress took the
23 attitude that the Tribe was attempting to rob the
24 government, that we were being unreasonable. All
25 we wanted and still want is truly adequate and just

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1 compensation for the taking of our best lands.
2 This bill as amended and passed does not give us
3 justice. We earnestly pray that you give
4 thoughtful consideration to the objections set
5 forth in this letter and that you do not sign the
6 bill into law."
7 Today I have hope that Congress will act to
8 make sure that the just compensation comes in time
9 to stop more suffering from happening, and I hope
10 that Congress will not further delay the efforts of
11 the Tribe to restore self-sufficiency as soon as
12 possible with the proposed amendments.
13 I have attached a copy of the Housing Plan
14 developed by the Housing Authority for the last
15 five years and a copy of the Banner study on water
16 needs for your information. I thank you for the
17 opportunity to testify, and I am ready to answer
18 any questions you may have.
19 CHAIRMAN FRAZIER: Thank you.
20 MR. LEBEAU: My name is Freddy
21 LeBeau. I'm an enrolled member of the Cheyenne
22 River Sioux Tribe. I am kicking the hell out of
23 83 years old, and I'm a World War II veteran. I
24 spent just about four years in the United States
25 Navy in the South Pacific during World War II, and

19

1 I was discharged from Okinawa -- out of Okinawa. I
2 was a further merchant they call us, the reserves.
3 That's the reason I didn't make it all the way to
4 four years. Just a few months shy.
5 But during this time -- my time in the navy
6 there was some land, 200 acres, that was across the
7 River from where I was born and raised that was
8 deeded land owned by a white man. And during the
9 early '30s money was hard to come by, and he lost
10 the land due to taxes. And no one ever picked that
11 land up again.
12 But during the war I thought of that land. I
13 thought to myself that when I got out of the navy
14 if I lived that long, why, I would have my own
15 place.
16 So I wrote a letter to my father, and I sent
17 him the money and told him to go to Timber Lake,
18 the county seat, and put this land up for sale and
19 buy it for me and if I didn't make it back, just
20 leave it as it was, he'd own that 200 acres, but if
21 I came back, then we'd go and get the title
22 changed, which happened.
23 Now I work there, building this place up and
24 raising my family, my horses and cows, and I
25 figured to do the rest of my life in that one

20

1 place.
2 Well, the Corps of Engineers came in there and
3 told me I had to move out. They offered me a check
4 for $6,000 for 200 acres of my home and my ranch
5 headquarters. I told them my land wasn't for sale
6 and that according to law you had to have a willing
7 seller and a willing buyer.
8 Well, they ignored that. But they said to
9 eminent domain they could file condemnation
10 procedures to gain my land and take it anyway and
11 put the money with the court and I'd have to fight
12 the court for my money.
13 So I signed the agreement under protest. I
14 wasn't in the mood for selling my land. But I kept
15 it in taxes. This land was in taxes. My father
16 wrote me a letter and said he could get a trust
17 patent where I wouldn't have to pay taxes. I told
18 him for once in my life I feel like I'm an asset to
19 my country, my county, and my state. Leave it in
20 taxes. We live in a poor county, and if I can pay
21 taxes on that land and help the county in that
22 small manner, I would be glad to do that.
23 So we left it in the taxes. I thought I was
24 an asset there fighting for my country, and I'd
25 remain an asset when I came home in a small way and

21

1 pay my taxes on my land. But the Corps of
2 Engineers took it from me, and I'm still looking
3 for a place as good as the place that I lost.
4 When our past Chairman testified to the Senate
5 he lied to them when the Senator asked him if that
6 was all tribal land. 13 of us Indians owned deeded
7 land at that time that was taken, and that's a long
8 ways away from being tribal land. He said it's all
9 tribal land.
10 And another thing he lied about was that the
11 Tribe bought the land from us, which they never did
12 do. That money was given to the Tribe to pay us
13 for the land. So it was money from the government,
14 not from the Tribe. And he took our land and
15 included it in on this $200 million JTAC bill, but
16 he excluded the landowners and the heirs from this
17 bill.
18 And that's the reason from day one we started
19 this five years ago. We should have had that
20 amendment written up then to include the landowners
21 and heirs in this bill.
22 He used our land to get him -- him and Senator
23 Daschle used our land to get the $290 million but
24 they excluded us, as I said. So we've been
25 fighting now for going on five years to be included

22

1 in on this bill.
2 I testified in Washington to that effect too
3 about the 18th of April, and I testified yesterday
4 down at Pierre to the same thing. So with the help
5 of our Chairman now, Mr. Harold Frazier, he has
6 pledged to help the landowners and the heirs to get
7 their land, to get their land money back. And he's
8 been doing it. He's been working faithfully for
9 us.
10 We all appreciate his efforts. And I know I
11 for one and I hope the rest of them will vote him
12 back in the next time he runs for Chairman because
13 we need a man in there that's going to work not
14 only for the landowners but for all the people and
15 he's been doing that.
16 Because when I was in Washington, D.C. I
17 talked with a lot of people down there, influential
18 people, important people. And they had nothing but
19 good words for that man, the trips he's made down
20 there, and what he's done for -- been trying to do
21 for the Tribe. And it all takes time.
22 So that's my report on my land deal here on
23 what I lost. I lost 200 acres for $6,000 they gave
24 me for it. So I want to thank you. Thank you,
25 all.

23

1 CHAIRMAN FRAZIER: Thank you,
2 Freddy.
3 MR. ARPAN: My name is Clayton
4 Arpan. I'm an enrolled member of the Cheyenne
5 River Sioux Tribe. I'm 77 years old and still
6 waiting for just compensation, I guess. But I lost
7 767 acres in 1953. I was paid an average of $21.50
8 an acre. Just across the River, our white
9 neighbors across the River, they received 49.22 an
10 acre. Now this is all documented. It's not coming
11 off the top of somebody's head. It's documented.
12 Well, that was our home. I mean, if it was
13 possible, we'd still be there today. I know we
14 would have. And maybe I could have had an easy
15 life by now instead of having to bust your tail end
16 all your life. But I would have busted it out
17 there no matter. Jayme knows. He was out there
18 with Eddy Claymore for a while. They were our
19 neighbors.
20 It was a hard life, but it was a good life.
21 It belonged to us. It wasn't nobody else's life.
22 It was ours.
23 And the engineers come along and say, well,
24 here's your money, you get out, and we just bought
25 your life, your lifestyle, your way of life,

24

1 whatever. I don't know. I guess you can do that.
2 However, that's what they done, and I feel that I
3 haven't been justly compensated when across the
4 River they got twice as much, more than twice as
5 much.
6 So whatever we get we're not looking for a
7 handout. We're looking out for what is justly
8 ours. That's all we want. And it is justly ours,
9 and I know we're right. And that's about all I can
10 say on that. Thank you.
11 MR. MANN: Good afternoon. My name
12 is Barry Mann. I am currently the Oahe Landowners
13 Association's Chairperson. About a year and a half
14 ago, almost two years ago, I guess, the Oahe
15 Landowners Association asked me if I would help
16 them with their organization. I have 20 plus years
17 in higher ed, in education.
18 But I'm not an original landowner, but I am an
19 heir. I was raised by my grandparents, Joe Mann
20 and Jenny Shepherd Mann. They lived at the old
21 camp, at the Cheyenne River Agency. They also
22 lived down in Armstrong. My grandfather lived way
23 down by the River probably at the mouth of the
24 creek called Bull Creek.
25 So I don't -- I was too young to remember all

25

1 of the devastation that this Oahe Dam project
2 caused, but growing up I heard a lot of stories
3 from all the different people, including my
4 grandparents. And some of the things that I do
5 remember, I have some pictures of our log house
6 that was out in the country down by the River down
7 by Armstrong. And if I remember right, he had like
8 two log houses. He had a barn. He had a couple of
9 barns, corrals down there.
10 I have those pictures of that old log house
11 when the water is up to the roof of that log house.
12 And that was his livelihood. That was his castle,
13 so to speak. The land that was there, his house,
14 everything that he owned was devastated, he lost
15 because of this Oahe Water Project.
16 So after he lost his place he moved up on the
17 hill. He moved closer to the Agency, lived in the
18 camp there for a while, and then we moved further
19 up on the hill in Marksville. So I grew up in
20 those areas down on the east end.
21 This morning I was driving down to Cherry
22 Creek, and I was looking at the Cheyenne River with
23 all the trees and the way the water is now. It's
24 all green.
25 On the east end down here we no longer have

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1 anymore trees. We lost that resource on the east
2 end of the reservation. No trees, no fruits on
3 there, like choke cherries, plums, those kinds of
4 things. We lost all of those things to this
5 project, this water project, that Congress enacted
6 or passed.
7 So I guess as the Chairperson for the Oahe
8 Landowners Association my priority is to help these
9 members -- and I am also a member of the Cheyenne
10 River Sioux Tribe, but our members get just
11 compensation for all the things that they lost.
12 That's our priority as an organization.
13 I think since -- we've been doing this --
14 since I've been doing this, I've been helping the
15 Oahe Landowners Association, we've accomplished a
16 lot of positive things. I want to thank Tribal
17 Council and Chairman Frazier for helping us and
18 some of the members of the Tribal Council that have
19 been doing a lot of positive things because they
20 understand and they realize what these landowners
21 and heirs gave up as far as their land was
22 concerned and their home lives and livelihoods and
23 things. So I want to thank the Tribal Council and
24 Chairman Frazier for their help in that respect.
25 Prior to that, the prior administration never

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1 helped this organization. In fact, they were very
2 negative, as Fred stated earlier. And last summer
3 we visited with Senator Daschle, and I want to
4 thank the Senator for drawing up this piece of
5 legislation that was called the JTAC bill. Prior
6 to that, we didn't have anything to begin with. So
7 even though we weren't included in there, at least
8 it was a thought process there.
9 So our next -- our next task, I guess, was to
10 get included in this bill, and that's what these
11 amendments are about. Because according to what
12 you've seen out of that 290 million almost or close
13 to 170 million of that as far as interest or moneys
14 is concerned belongs to landowners and heirs. And
15 they were excluded out of this act. So that's the
16 thing that we're working on as an organization,
17 trying to get compensated and included in this
18 amendment.
19 So, anyway, last summer when we visited with
20 Senator Daschle we pointed this out to him. I
21 pointed this out to him, and one of the things that
22 he indicated is that he wanted to help us with what
23 we were doing. And he said he wanted to right this
24 wrong. And that was yet to be seen because Senator
25 Daschle didn't get back into the position that he

28

1 was currently in when we visited with him at that
2 time last summer. But he said he actually -- he
3 wanted to do this. He gave us like about a
4 half-hour to visit with him at Fred's house.
5 And so since that time we've been in contact
6 with the other Congressional people from the state,
7 Senator Thune, Herseth, and Johnson. We've been
8 on -- as an organization, we've been in on the
9 amendments. We've helped -- we've read them.
10 We've edited them. We've talked about some of the
11 things that we wanted in there as far as heirs and
12 landowners are concerned. So we know what's going
13 on with these amendments.
14 And we've also been in contact with our
15 Tribe's attorneys that are dealing with the
16 language with these amendments, and we've also been
17 visiting with the Congressional people's staffing
18 as far as these amendments are concerned.
19 So those are the things that we're
20 concerned -- or I'm concerned with as far as this
21 testimony is concerned.
22 Just some things, some notes here. I know
23 earlier some statistics were read, but the Corps
24 took approximately 104,492 acres owned by the
25 Cheyenne River Sioux Tribe and 45,796 acres owned

29

by 438 individuals. At this time a small amount of moneys was paid to the Tribe and to individual landowners. During the '50s the Tribe received approximately 10 million of additional compensation for its losses and for recovery purposes.

But the bottom line is the flooding of the land greatly damaged the economy and the cultural resources of the Tribe and also of individual landowners. They lost their homes and livelihoods. Such individuals were forced to relocate and were never adequately compensated for their losses, and I guess that's our purpose for our organization. And my priority is to adequately hopefully compensate all the original landowners and heirs.

Thank you.

MS. TRAVERSIE: I am Vivian Traversie, and I'm a member of the Tribe, Cheyenne River Sioux Tribe. And I'm a landowner, and I don't have too much to say because I -- all I'm interested in is hoping to get some money because I'm really in debt and I'd like to see some money before I pass away.

Because I'm diabetic and I feel like, you know, I'm not going to live too long. So for that reason I would like to see us get our money right

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away. That's all I've got to say.

MS. WHITE: My name is Doris LeBeau White. I am also a member of the Cheyenne River Sioux Tribe. I am 57 years old. I was born at the Old Cheyenne Agency. My parents are Rose Gabe LeBeau, and my father was Nelson LeBeau, Henry Nelson LeBeau. And they both owned land at the Old Agency.

My memories of growing up -- of course, I think we moved up here when I was 10 years old, but I do have some good memories of the Cheyenne Agency and the sense of community that we had when we lived there. Growing up as a young child we never really had to worry about food. I mean, if you went somewhere, it was a relative. They welcomed you. It was an aunt or somebody and we were all related and they were always forevermore feeding us. You know, nobody -- and, like I said, I remember that was the last time my parents stating that they never locked their doors.

When we moved up here, you know, then we had to lock our doors. But nobody did down there. All of the kids always hung out down at the River, you know, all day long and swimming and, you know, horseback riding and, you know, like I said, we had

31

a genuine sense of community and security.

And when we moved to Eagle Butte it was under protest. I know my parents mentioned that several times my mother would cry because she didn't care for the area. There was no trees. The sense of community was lost. Sure, we had all of our relatives, but they were just kind of scattered and put in, you know, different places. And, like I said, those are my fond memories of growing up down at the Old Cheyenne.

When we moved here my father acquired some lots on Meadowlark Hill, which have since been taken from me. But he did plant trees up there because we grew up by the water and by the trees and vegetation. And right away he planted trees so we would feel a little more at home. Because it was so desolate, and it was just -- they were cutting down hills, a big hill, and everything. And I remember when we first moved up here how I guess it seemed really strange because it was a totally different environment.

And I know people don't like to mention the word racism, but we experienced that when we moved here because we weren't welcome here. Our money was. And the Eagle Butte community grew because we

32

moved here. And there were some individuals, my father was one of them, that preferred to move up on top there at that community called Marksville. Because they wanted a central location, and I guess that made sense it was Eagle Butte.

But I know our members, our relatives on the west end of the reservation, never had to go through what we did. We were more or less uprooted from our homes and forced to move. People that owned land out in the west end districts never had to experience that. They're still in the place where they grew up. We're not. We were just uprooted and forced to move.

I recall when they were building the bridge and as a young child playing down at the Old Agency, and they had these big pillars, you know, that they were building for the bridge. And it was scary. I mean, everybody was moving and there were people that didn't want to move, and it was just a sense of terror at that time because the old people were crying. And I know my mother did a lot of crying, even when we moved up to Eagle Butte.

Like I said, that sense of community was totally gone. We tried up here in Meadowlark Hill -- I know my father always did community

33

1 meetings and tried to have community involvement
2 for everyone, and that's what's lacking in this
3 community right now, our spirituality, that seemed
4 to have been lost. I remember the women's guilds
5 that were down at the Old Agency with the church,
6 and the ladies all worked hard to make items for
7 the bizarre.
8 And, you know, for the younger girls, you
9 know, that was role modeling. We could watch, you
10 know, as -- and it stressed, you know, our
11 spirituality and we had values. We had things that
12 were taught. And, like I said, the older ladies
13 had a group and then the kind of younger ladies had
14 a group and it was just a lot of things were lost.
15 Not only natural resources. All of our vegetation,
16 as Barry stated, the berries and all of that are --
17 we don't have trees down by the River now. They're
18 all under the water, and a lot of our natural
19 resources were lost.
20 And that's really -- how can you measure that,
21 you know, in dollars and cents? How can you
22 measure the psychological things that went on with
23 our parents, with us as children, having to move?
24 There really is not a dollar amount you could put
25 on all of that. And, you know, it's coming to the

34

1 point soon that maybe there will be just
2 compensation, but I really pray that these things
3 are taken into consideration, all of the things
4 that our parents, our grandparents, and that we as
5 young children sacrificed when we were forced to
6 leave our homeland, where we grew up. You know,
7 the monetary compensation wouldn't never be nearly,
8 nearly, as much as our losses.
9 That's about all I have to say. Thank you for
10 listening to me.
11 CHAIRMAN FRAZIER: Who wants to go
12 next?
13 MS. VOGEL: Good afternoon,
14 Mr. Chairman and members of the Tribal Council. I
15 would like to thank you for the opportunity to
16 provide supportive testimony for the Tribe's
17 efforts to provide justification to Congress to
18 pass legislation regarding the JTAC funds.
19 My name is Sharon Vogel. I'm an enrolled
20 member of the Cheyenne River Sioux Tribe and an
21 heir to lands that the landowners are attempting to
22 be compensated for and serve as the administrative
23 manager for the Tribal Ventures project.
24 Tribal Ventures is a planning project between
25 the Cheyenne River Sioux Tribe and the Northwest

35

1 Area Foundation. The foundation has selected the
2 Cheyenne River Sioux Tribe as a Ventures
3 candidate to develop a 10-year plan to reduce
4 poverty and increase prosperity for the families
5 residing on our reservation.
6 For the past 12 months we have been engaged in
7 the inclusive planning process which encouraged the
8 participation of all reservation residents,
9 especially those living in poverty. In order for
10 us to begin to plan poverty reduction strategies we
11 first had to understand the nature and extent of
12 poverty on our reservation.
13 There isn't a one size fits all definition of
14 poverty, and we know there are different kinds of
15 poverty. There are many categories of poverty
16 definition, all of which apply to Cheyenne River.
17 There is structural poverty. This results
18 from underlying conditions of our economy. Our
19 lack of infrastructure to promote and support
20 economic development restricts our ability to
21 create and maintain economic incentives to attract
22 investors.
23 There is incidental poverty. This results
24 from changing events in people's lives, also known
25 as situational poverty. The lack of reoccurring

36

1 funds in our federally funded programs results in
2 job layoffs. This lack of job security for several
3 of our employees forces them in and out of poverty.
4 Generational poverty. This is defined as
5 being in poverty for two or more generations. The
6 sad reality for our families is that the majority
7 of them are victims of multi-generational poverty
8 conditions. These individuals have been impacted
9 by their poverty environment and have had few
10 opportunities to move them out of poverty.
11 Poverty of place. For decades our reservation
12 has faced a declining economy, which has created a
13 poverty of place. The 2000 U.S. Census ranked
14 Ziebach County as the poorest county in
15 South Dakota. Pockets of poverty that can be
16 linked in geographic areas, especially in cases of
17 rural and isolated Native American reservations.
18 Both Ziebach and Dewey counties rank in the top
19 5 percent of the nation's poorest counties. If
20 poverty reduction strategies are not implemented,
21 the concentration of poverty will continue to
22 increase and the ability of the Tribe to develop a
23 stable infrastructure will be further compromised.
24 Poverty related to people. There are any
25 number of indicators that link poverty to our

37

1 reservation. Because we have had ongoing decades
2 of persistent poverty, we have seen a steady
3 increase in the number of social, medical, and
4 economic problems. This has been compounded with
5 the emerging new threats to the well beings of our
6 family. For example, the rate of alcoholism is
7 excessive for our population group. And now today
8 we are facing a new threat of drug addiction. So
9 instead of combating just alcoholism, we now have
10 two serious addiction issues to address with little
11 or no money.
12 Poverty caused by dislocation, loss of
13 lifestyle, and loss of personal assets. Oahe Water
14 Project caused a significant disruption in our
15 economy. Our families, our communities, and our
16 tribes lost their way of self-sufficiency. It
17 forced families to relocate. Families could never
18 replicate their self-sufficient lifestyle, rebuild
19 homes, and buy back parcels of lands. For many of
20 our families it resulted in a cycle of poverty that
21 has never been broken.
22 Disparity in funding allocations. The
23 formulas for allocating funds do not utilize
24 poverty indicators as key formula factors. This
25 has created disparity in funding allocations for

38

1 the tribes. The poorest of the poor are not
2 guaranteed a fair share of the resources to address
3 their needs.
4 In reviewing our poverty indicators, it is
5 obvious that our reservation has unique
6 characteristics that will impact the type of
7 poverty reduction strategies needed to remove our
8 families of poverty.
9 Age distribution. We have a young population
10 whose needs are ever changing as they age.
11 According to the 2000 U.S. Census, 45.1 percent of
12 our population is under the age of 18 years.
13 Childcare services are needed to enable their
14 parents to seek employment, enroll in higher
15 education programs, and participate in job training
16 opportunities.
17 Teens unemployed and not in school.
18 27 percent of our teens age 16 to 19 were not
19 working, looking for work, or not in school in
20 2000. This is 6 percent higher than all other
21 reservations. We have to create opportunities for
22 our teens and young adults to develop a work ethic
23 and educational goals.
24 Median household income. In 1999 Cheyenne
25 River's median household income was 20,218 compared

39

1 with 23,070 for all U.S. reservations.
2 Per capita income. The real per capita income
3 in 1999 for Cheyenne River was $7,026 compared to
4 $7,971 for all reservations in the United States.
5 Home ownership rate. The rate of homeowner
6 for our two counties, for Dewey County is
7 55.2 percent and Ziebach County is 59.4 percent
8 compared to the U.S. rate of 66.2 percent.
9 Poverty rate. In 1999 the percentage of
10 people living below the poverty level for
11 Cheyenne River was 46 percent compared to
12 39 percent for all American Indians on all U.S.
13 reservations. This impacted 2,782 households that
14 were surviving with an income below the poverty
15 level.
16 Lack of livable wage. Has resulted in a
17 growing number of working poor which limits their
18 wealth accumulation, such as savings accounts and
19 home ownership.
20 Our families are suffering from the effects of
21 persistent poverty. The high poverty rate has
22 impacted our families who suffer from despair,
23 hopelessness, lack of opportunities, disparities in
24 health conditions creating an additional burden of
25 illness, impacting our children's education and

40

1 perpetuating the impoverished conditions of our
2 reservation.
3 Through the Tribal Ventures planning
4 activities we have hosted a series of community
5 conversations that were held in each of our
6 19 communities. These community conversations
7 allowed us to gather ideas on what a 10-year
8 poverty reduction plan should have in it.
9 The people participating in the Tribal
10 Ventures planning activities are united on common
11 themes irregardless of their age or community
12 residency. The community conversation comments
13 were compiled and sorted into categories which were
14 then organized into common themes. The 10 common
15 themes and possible projects or services are:
16 1, promoting lifelong learning and training,
17 developing leadership, life skills, social skills,
18 job training opportunities, community education,
19 individual development.
20 2, restoring individual and community wellness
21 would allow us to focus on creating healthy life
22 styles, health promotion, disease prevention, the
23 importance of proper exercise and good nutrition.
24 3, preserving cultural teachings and values
25 would allow us to preserve our language, our

41

stories, preserve the Lakota history and our culture, and ensure that these things are carried on for future generations.

4, creating economic engines. Partnerships, legislation, investments will lead to economic engines that will stabilize the economy of the Cheyenne River Reservation.

5, improving community relations. We need to look at improving our community relations with our schools, our health care providers, our families, and our communities.

6, maintaining community safety. We want to protect the quality of life, provide a safe and nurturing environment for our children.

7, building reservation infrastructure. Looking at things such as roads and transportation, expansion of our water lines, commercial buildings, multi-purpose community buildings, mixed use housing development, and land use planning.

8, strengthening families. Providing families with the opportunity to participate in programs that would strengthen their parenting skills, financial literacy, promote spirituality, provide mediation, family conferencing, provide home ownership opportunities.

42

9, enhancing agricultural resources. Expansion of the packing plant, develop an Indian-owned livestock program and value-added projects that would use our natural resources in a way to benefit the members of the Cheyenne River Sioux Tribe.

10, valuing education. We need to provide programs and opportunities for our children to value the education and for the parents to participate in a positive way with their child's education and also to further their own educational goals.

The poverty reduction strategies must be balanced between economic development, community development, and social development.

In the past the majority of the focus has been on economic development, especially job creation. This approach has been ineffective because we need to have an ongoing infrastructure development that will support the efficient movement of goods and services. Basic things like quality roads, facilities, affordable housing, utility services are either nonexistent or wholly inadequate. The JTAC funds will be utilized to develop, expand, and stabilize our infrastructure, which will allow the

43

Tribe to begin to market its assets to attract investors, which will lead to job creation, which will lead to prosperity for our families.

However, we know that we need to implement long-term strategic planning to ensure that these three areas can be developed through coordination, partnership, and linking strategies. There is a critical need to devote financial resources to investing in our human capital. Unfortunately, there isn't any one entity that is interested in investing in the individual development of our people or our infrastructure.

We must utilize our own tribal resources such as the JTAC funds to develop, implement, and administer tribally designed poverty reduction strategies.

We can no longer wait to piecemeal the development of our economy, communities, and families. This approach is not effective. We must have multiple strategies that are linked to establishing a stable economy, reducing poverty, and improving the quality of life for our reservation families. Therefore, we need access to our tribal resources. The JTAC funds are a tribal resource that can make a difference in the lives of

44

our families.

Specifically the JTAC funds when applied to strategies that result in economic development, community development, social development, will increase the assets of the Tribe, communities, and our families. It will create economic opportunities. It will provide educational opportunities, develop comprehensive and social health programs, continue to increase the capacity of our tribal government to develop long-term strategies that will result in sustainable projects.

Mr. Chairman and members of the Council, I thank you for scheduling this hearing and gathering recommendations from tribal entities and tribal members regarding the urgent need for accessing our JTAC funds.

Thank you.

MS. LAWRENCE: Thank you for the opportunity to testify on the Higher Education Program. My comments are on behalf of the Cheyenne River Sioux Tribe Education Services Department.

In our pursuit of developing into an intellectual culture, we as Native American Lakota are determined to meet the challenges in a highly

45

1 technological world. We strive to conquer our fear
2 of the white man by competing in a corporate
3 society in spite of our cultural differences while
4 maintaining our identity. By obtaining a higher
5 education we will possess the tools necessary to
6 become a strong nation.
7 Quoting Mr. Wayne Ducheneaux in his 1987
8 Congressional testimony, today there is an accepted
9 certainty among white society that education is a
10 right and higher education and expectation. For
11 the Indian that right has been absent.
12 18 years later media reports indicate our
13 schools are considered persistently dangerous, and
14 test scores are among the lowest in the nation. If
15 our children are not possessing basic reading
16 skills, how can we expect them to succeed in
17 college? No Child Left Behind was designed to
18 bring all U.S. children into reading proficiency.
19 However, it appears easier said than done.
20 Nonetheless, this must be corrected, as it is
21 number one of many very important elements in
22 determining college success.
23 From high school to college, whether it be
24 attending Si Tanka University, Harvard, or Yale,
25 our people have demonstrated competency with a

46

1 desire to prosper spiritually, intellectually, and
2 financially. In the past high schools provided the
3 skills necessary to obtain a good job. However,
4 today a high school diploma will get you a job
5 working at McDonald's. Not that you cannot make a
6 living working at McDonald's, but our people aspire
7 to a higher quality of life.
8 Higher education is no longer considered a
9 luxury but a rather a necessary. A college degree
10 will open bigger doors for our people. However, in
11 this race, money is a major hurdle for the Indian.
12 Colleges and universities are operated a lot
13 like a business for profit and, in my opinion, are
14 very overrated. The average student is plagued
15 with fees and expenses imputed by the universities
16 for basic necessities such as application fees,
17 transcript fees, deposits, meal plans, parking,
18 computer fees, not including the initial cost of
19 apparel, bedding, school supplies, toiletries,
20 et cetera. These can total a whopping $1,000 just
21 to get in the door.
22 Most students come from impoverished
23 backgrounds with barely enough money to survive
24 living at home. The Tribe is overwhelmed with
25 requests for financial assistance for matters such

47

1 as these. When a student arrives on campus they
2 are greeted with a bill, and most colleges demand
3 payment upon arrival. Therefore, it is important
4 parents as well as high school counselors inform
5 the students starting at the freshman level all
6 throughout high school preparing them to know what
7 to expect when they reach this point in life.
8 This leads to another concern. Not only is
9 money a challenge for our students but also culture
10 shock and racial discrimination on college
11 campuses. We tend to shelter our children to the
12 point of not giving them enough exposure to white
13 society and it is these students that experience
14 problems which result in dropping out of college.
15 Our students are not spiritually prepared to meet
16 this sort of challenge without a support system in
17 place made up of strong family values and healthy
18 relationships.
19 Along with the obvious, which is finances, it
20 should also be recognized by parents, teachers,
21 tribal leaderships, as well as the community that
22 another need exists in order to succeed in college.
23 A need not so obvious is to provide our people with
24 spiritual weapons such as a firm foundation made up
25 of values and principles, acceptance, confidence,

48

1 and a healthy self-esteem in order to combat this
2 sort of warfare. Many of our students fail not
3 because of lack of finances but because they lack
4 confidence in themselves, thus causing them to be
5 easily led astray by alcohol and drugs.
6 It is also important to teach our children our
7 own history and language to establish that solid
8 foundation. We need to know who we are in Lakota
9 culture. In recollecting my own early education,
10 we were taught the white man's history portraying
11 the Indian as the bad guy. It is no wonder our
12 people suffer from a defeated attitude. Our
13 children need to know who we are, why we fought,
14 and why we are fighting, what we are fighting for
15 in order to understand what we are today.
16 With that said, the Education Services Office
17 has provided both financial and nonfinancial
18 services to its clients. Financial services refer
19 to direct financial services in the forms of grants
20 and scholarships. Nonfinancial services refer
21 primarily to the services we provide that do not
22 involve direct disbursement of funds, such as
23 carrying out the provisions of the contract.
24 The Higher Education Scholarship Program is
25 designed to provide a college scholarship in the

49

1 amount of $1,500 for a single student and 3,000 for
2 a student with dependents. All scholarship awards
3 are based on individual student's unmet need. With
4 the cost of tuition rising each year, including Ivy
5 League colleges such as Harvard, Yale, and
6 Dartmouth, in which our students do attend, the
7 Higher Education Scholarship has not increased, nor
8 with the present world conditions do we foresee an
9 increase in funding from the Federal Government.
10 The Employment Assistance Grant Adult
11 Vocational Training Program is designed to assist
12 students attending vocational training earning less
13 than a four-year degree. The program will pay the
14 balance on tuition, books, and fees after all other
15 financial aid resources have been considered and
16 will provide a bimonthly stipend for maintenance
17 costs, also known as living expenses.
18 The average cost per student is $3,500,
19 enabling us to fund between 10 to 15 students per
20 year. The Cheyenne River Lakota Nursing Program,
21 Presentation College, a private institution, will
22 cost the program anywhere from 12,000 to $30,000
23 alone, depending on the needs of the student. The
24 budget for grants is only $67,768 per year.
25 Now given the above, the question presented is

50

1 how the Tribe would use the JTAC funds for
2 education on Cheyenne River. At the community JTAC
3 meetings held at the beginning of Mr. Frazier's
4 term in office it was apparent that in our
5 communities they are in support of higher
6 education. Although not all tribal members desire
7 a degree, training is still needed to fill
8 vacancies that will become available once the
9 economic development component of the JTAC
10 provisions has reached fruition.
11 At this time it is unknown the amount of money
12 that will be available to meet the recommendations
13 outlined in this testimony. However, Mr. Gregg
14 Bourland indicated it could possibly be at least
15 4 million. In the event that this is the amount
16 and if it is a perpetual amount, my recommendations
17 are to, one, increase the amount of scholarships to
18 $3,000 per student, per single student, and $5,000
19 for students with dependents; provide an incentive
20 for students who complete a college education.
21 This incentive would encourage tribal members to go
22 to college. Funds would be provided to any student
23 that receives their college degree; increase
24 recruitment; increase the current staffing levels
25 to include a career counselor, records

51

1 administrator, and additional clerical staff;
2 purchase a 15-passenger van to make campus visits
3 and to transport students with families to college;
4 provide an annual one-day college seminar, college
5 career seminar, for prospective college students
6 locally to include addressing spiritual, cultural
7 issues affecting Native American college students;
8 computerized application process via Internet
9 making applications accessible to all tribal
10 members around the country; appropriate funds to
11 increase direct financial assistance to students in
12 need of assistance for initial education costs such
13 as deposits, transportation, apparel, et cetera.
14 The importance of continued education is
15 stressed at all levels; federal, state, and tribal.
16 However, sufficient funding is not available to
17 accommodate all of our tribal members who wish to
18 continue their post-secondary education. This year
19 the Education Services Office received 495 higher
20 education applications, and of those applications,
21 209 were not funded.
22 Current regulations for the Higher Education
23 Scholarship as established by the Cheyenne River
24 Sioux Tribal Council prioritized student
25 applications due to limited funding. In addition,

52

1 due to the high number of applications received
2 each year, the Education Services Office must limit
3 the amount of each scholarship given, even though a
4 student's financial need may be greater as the cost
5 of attending college is continually rising.
6 The Federal Pell Grant was increased this
7 year. Unfortunately, the CRST Higher Education
8 scholarship will not be increased accordingly.
9 Many of our students can expect to face a high loan
10 debt if they want to go to college unless they are
11 very aggressive in finding alternative financial
12 aid resources.
13 The Bush administration is proposing budget
14 cuts which will have a direct impact on federal
15 aid, thus making it more difficult to secure
16 funding for higher education. All federal aid is
17 need-based, including loans, and all applicants
18 qualify to receive financial aid in some form.
19 This indicates that their need for financial aid is
20 great.
21 Staff budget inadequacies and needs. The
22 greatest budget inadequacy exists within the
23 scholarship element of the program. However,
24 deficiencies also exist within administration. The
25 following statistical data is a reflection of the

53

1 increased need for funding:
2 Number of applicants, 495. Number of students
3 funded, 286. Nonfunded applicants, 209. Average
4 higher education award, $994. Average unmet need
5 before scholarship, $7,228. Average unmet need
6 after scholarship, 6,234. Average cost of
7 attendance, $10,918. Average unmet need for
8 nonfunded students, $5,624. Funds necessary to
9 meet total unmet needs, $6,361,740.
10 Prior to the Tribe contracting the two
11 programs, four or five individuals staffed the two
12 offices separately. The Education Services
13 Department consists of a staff of two employees.
14 Inadequate staffing provides an unabridged effort,
15 therefore, adversely affecting the realization of
16 program goals. A counselor position would greatly
17 enhance the effectiveness of our efforts as the
18 individual would be knowledgeable in all aspects of
19 post-secondary education and would be responsible
20 for developing a comprehensive educational program
21 which would augment the success of our college
22 students.
23 Higher Education Program staffing. At the
24 current level we have one administrator and one
25 secretary. The secretary position is funded

54

1 through the Employment Assistance Grant Contract,
2 as the Cheyenne River Sioux Tribe maintains two
3 contracts that operate concurrently with one set of
4 staff; the Higher Education Scholarship Program and
5 the Employment Assistance Program. This structure
6 was implemented by the tribal government to reduce
7 administrative costs and alleviate some of the
8 financial deficiencies of the scholarship element.
9 Minimum would be one administrator, one
10 secretary, one counselor, and one administrator,
11 and that would also complete the adequate portion.
12 Higher education budget summary. The current
13 budget is $332,393. Minimum, $610,190. Adequate,
14 $6,516,281.
15 Since 1986 the Education Services Office has
16 administered the Higher Education Scholarship and
17 Employment Assistance Grant Programs. The programs
18 compliment each other as both are designed to
19 provide post-secondary services to members of the
20 Cheyenne River Sioux Tribe.
21 In 1996 funding for the Direct Employment
22 Program, also known as the Relocation Program, was
23 cut from the budget. This program enabled Indians
24 to secure full-time employment and housing off the
25 reservation. The Employment Assistant Grant Adult

55

1 Vocational Training Program has been able to
2 provide placement services similar to relocation.
3 However, the services are only for students
4 graduating from vocational school/training, have
5 obtained employment off the reservation, and based
6 on availability of funds. The success of this
7 program is determined if students remain employed
8 beyond a period of one year.
9 In fiscal year 2004 the Employment Assistance
10 Program received 21 completed applications. 14 of
11 the 21 applicants were funded, and 7 applicants
12 were placed on a waiting list pending availability
13 of funds. In addition, we received 18 incomplete
14 applications which were pending completion. The
15 average AVT grant that each student received was
16 $3,512. This figure fluctuates each year due to
17 the rising cost of tuition. It is essential that
18 this program be fully funded to increase the
19 success rate for the AVT program components
20 inclusive of issues addressing financial need,
21 counseling, tutorial services, retention, and
22 reward.
23 Fiscal year 1986 to 2004 compared to funding
24 levels. In fiscal year 1986 our budget was
25 $157,700. In FY 1996, $75,501. Fiscal year 2004,

56

1 $97,426. The administrative costs were 29,728.
2 And allocated for grants, $69,122. Additional
3 funds needed to fund all applicants, $136,968.
4 Fiscal year 2004 data. We had 443 AVT
5 inquiries. Total AVT students funded were 14.
6 Average cost per student, $3,512. Applicants
7 pending available funding, 7. Direct employment
8 inquiries, 5. Direct employment funded, 0.
9 Average cost per client, 0. No funds are available
10 to support the direct employment component.
11 Budget increase request. The Employment
12 Assistance Grant Program is requesting an increase
13 in budget funding for fiscal year 2006, an increase
14 of $146,862 is needed to bring the budget to
15 minimum staffing and adequate funding levels. An
16 increase of $1,579,043 is needed to bring the
17 budget up to adequate staffing and student
18 applicant funding levels.
19 Employment Assistance Grant Program staffing.
20 One administrator, one secretary. This position
21 is -- the administrator position is funded through
22 the Higher Ed. Contract Source, as the Cheyenne
23 River Sioux Tribe maintains two contracts that
24 operate concurrently with one set of staff, the
25 Higher Education Scholarship Program and the

57

Employment Assistance Grant Program. Minimum would be one administrator, one secretary, one counselor, one records administrator.

Employment Assistance Program budget summary. The current budget is $97,426. The adequate budget would be $244,288. And the adequate budget would be $1,676,469.

In conclusion, we Lakota are compelled to overcome oppression in the forms of poverty, racial, prejudice, and stereotypes as well as the oppression that stems from a string of broken promises as well as the dependency on the federal government. Indeed, a college education will enhance one's quality of life and provide for a new generation of intellectual Lakota. However, we must not neglect to balance the spiritual aspect of our culture that enables us to conquer and succeed in every area of life. Thank you.

MS. COOK: Good evening. My name is Cynthia Cook, and I represent the Human Services Committee of the Cheyenne River Sioux Tribe. I am here representing Bob Walters who is the Chairman for the Human Services Committee.

As mentioned before, our people are suffering because of the 80 percent unemployment on the

58

reservation. Due to this, we have a number of social programs to try and alleviate the many problems our people encounter. I would like to report that the Human Services Committee under the Cheyenne River Sioux Tribe Council is working to get the Social Services Program back on the reservation. And they are also working towards getting the Foster Parenting Program established to avoid sending our children off the reservation.

This information I received from the Child Protection Services Office. This contains information from March 2005.

There were 159 families on TANF in Dewey County, 94 families on TANF in Ziebach. And this includes all the work program recipients that are required to work so many hours to get a TANF check.

There are 482 families on food stamps in Dewey County. There are 229 families on food stamps in Ziebach County. And these two programs are operated by the State of South Dakota Social Services Programs. And this is one of the areas that the Cheyenne River Sioux Tribe is working on getting back on the reservation.

This information is from the BIA Social Services Office. There are 66 families on General

59

Assistance. There are 100 single families on Generally Assistance. Some -- and the reason for the singles being on the program is some have their own home, some are unemployable, and are waiting for Disability. And there are 15 families that are being supported by TANF and General Assistance together.

The Burial Assistance is being handled by BIA Social Services, but after October 1, 2005 this portion will be removed from their budget. And it is very important that the Cheyenne River Sioux Tribe be able to pick up this assistance to our people.

In April of 2005 there were 50 families removed from General Assistance due to lack of funding.

The Family Violation Prevention and Services Program is operated by the Cheyenne River Sioux Tribe. Their budget a year runs from July 1 to June 30 of every year. At the present time the Family Violence Program handles 563 victims of domestic violence -- are from domestic violence. And the batterer's group, there are 12 individuals or men or women who are taking their education classes.

60

Their budget this year was $92,661 and only one position is being funded and that's the director position. At the present there aren't any counselors. And their budget to have two counselors on the program, they would need $141,826.

The Food Distribution Program uses income guidelines, and that is effective October 1 of every year and changes -- there may be a little increase in there but not very much. And at the present time they're serving 1,329 families. A total of 11 households were denied for being over income or living out of area or currently on food stamps.

In the fiscal year -- in 2004 there was 1,418 families that were served, and 17 of those households were denied due to the reasons I mentioned before. And right now the building that they're in is inadequate to serve more families. Their budget at the present time is $262,955. And the total is $296,226, which includes indirect costs that they aren't able to use.

And their adequate budget in order to have a larger building to be able to house more food and to serve more families, they would need $1,175,453.

61

The Indian Child Welfare Program. At the present time they have three people on staff; the director, the legal assistant, and a person who manages the emergency shelter home. They had three programs to work with, but one of the programs was just called a child and family services -- that's a 4B funded -- money under the State. Ran out of funds, and that was closed. From this program, the Child and Family Services, they were able to serve people who were either on welfare or didn't have a job, by buying them school clothes or helping them with utilities and food, which they're unable to do as of today.

And the Indian Child Welfare Program is running low on funds. And we need more money to have a better program in order to bring our children back onto the reservation. Today they're being funded at $81,027. And to have an adequate budget and more staff, they would need a budget of $171,160.

And they have -- they're funded under the 638 contract from the federal government. And in order to properly represent the children within the legal system and provide support services for re-unification with families they're desperately in

62

need of more money.

And I work with the -- it's called a Special Supplemental Food Programs for women, infants, and children. I'm the director of that program. And at this time we are funded through the USDA. Plus we have two small programs that are funded from -- it's a special account for breast feeding programs, and we were able to purchase a mobile clinic van to transport our staff members out to the communities to certify all eligible families on the reservation and to help them with transportation moneys because that's the biggest problem within our program and within our Tribe.

And in order for us to meet all the needs on the reservation, we need like $2 million in order to have better service to our individuals. And right now we're working with $600,000 a year.

And we have about seven other social programs. One is the WIA Program. One is the Tribal Work Experience Program. The LIEAP Program is called the Low Income Energy Home Assistance Program. We have Rural Domestic Violence Program. And they are all desperately in need of more funds.

So with the help of the JTAC funds and the committee that looks at all of these funding

63

requests, we would appreciate all the help that can be given to these social welfare programs. Thank you.

MS. BAD WARRIOR: Good afternoon. My name is Margaret Bad Warrior. I am a tribal attorney for the Cheyenne River Sioux Tribe, and I'd like to thank you for this opportunity to submit testimony on the proposed amendments to the Cheyenne River Sioux Equitable Compensation Act. This hearing represents an important opportunity to review the health needs of our tribal membership and to review the difference that the moneys from the Cheyenne River Sioux Tribal Recovery Trust Fund will make to the lives of our elders, our children, and the coming generations.

Our tribal health programs have many needs. Our master contract under Public Law 93-638 is currently funded at approximately 44 percent of our total health needs. An additional $4.2 million would be needed annually for our tribal health programs to meet the most basic health needs of our people.

The spending plan that I will go through now includes additional one-time costs in the amount of $3.76 million for much needed capital construction

64

projects. These include an inpatient substance abuse treatment center, two halfway houses for persons in recovery from addiction, a behavioral health building, a health education library building, and 16 units of housing for medical professional staff.

I'd like to go through eight areas of tribal health and detail our needs in regards to those areas.

The first area is our dental program. Dental health is one of the most important indicators of overall health. On the Cheyenne River Sioux Reservation preventative and maintenance dental care is woefully lacking, which leads to overutilization of emergency dental services and an abundance of preventable dental health care crises.

Our spending plan for our dental program would secure the services of a pediadontist, which is a dentist who specializes in oral surgery on children, a dental assistant, a mobile unit which would allow us to provide dental outreach services to remote reservation communities as well as to take dental care to the schools and to any other gathering where we could provide outreach dentistry. And it would also cover a contract with

65

1 Delta Dental to cover the cost of more complex
2 dental services, complex oral surgeries, caps, and
3 so on, which must be outsourced to off-reservation
4 dentists.
5 The secondary is environmental and public
6 health. This area is one of the most overlooked
7 areas of health care. The Tribe's current public
8 health program provides for one tribal sanitarian
9 with no staff and very little equipment or
10 materials. If the Tribal Environmental Health
11 Program had the resources to fully implement the
12 public health principles of education, prevention,
13 early detection, treatment, and continuity of care
14 throughout the reservation health care delivery
15 system, the health benefits to the reservation
16 community would be immeasurable.
17 The spending plan for public health includes
18 additional staff, two tribal sanitarians, two
19 environmental health technicians, three health
20 educators, data entry clerk, supplies, vehicles,
21 equipment, training, health communication
22 materials, and a much needed health education
23 library.
24 The third area is our Four Bands Substance
25 Abuse Treatment Program. Substance abuse is linked

66

1 to intergenerational poverty, mental health, child
2 abuse, suicide, and many of the problems which
3 threaten the future of the people of the Cheyenne
4 River Sioux Tribe. While alcohol addiction has
5 historically been central to substance abuse
6 treatment on the reservation, increasing dependance
7 on methamphetamine among young people is arguably
8 the biggest health threat facing our reservation
9 community. The spending plan for our substance
10 abuse treatment center, which currently offers only
11 outpatient care, includes an inpatient treatment
12 center with a focus on methamphetamine recovery
13 programs, two new halfway houses, additional staff,
14 training, supplies, and equipment, as well as
15 incentive and outreach programs which will target
16 specific population groups, such as youth, such as
17 the elders, in an attempt to foster and maintain a
18 culture of sobriety in reservation communities.
19 In the next area of mental health, suicide
20 among reservation youth has been one of the most
21 heart-rending and difficult problems faced by
22 health professionals at Cheyenne River. In
23 addition to the vital services of a licensed
24 clinical psychiatrist, our spending plan for mental
25 health intends to secure a new behavioral health

67

1 building, additional support staff, and supplies.
2 It is difficult to put into words the importance of
3 securing funding for a behavioral health building.
4 Without the client confidentiality being made
5 possible by a separate building, our mental health
6 program cannot build trust in the community, and
7 without community trust we cannot be effective and
8 we will continue to lose our young people to
9 violence and despair. This cannot continue.
10 The next area is field health clinics. Our
11 Tribal Health Department manages four field health
12 clinics in the remote reservations of Cherry Creek,
13 Swift Bird, Red Scaffold, and White Horse. Our
14 spending plan would allow us to properly equip and
15 supply our clinics as well as to add more hours
16 when medical staff would be available at each
17 clinic. These necessary improvements to our health
18 infrastructure are central to our tribal plan to
19 decentralize services and improve health across the
20 vast distances on our reservation.
21 The eighth area -- excuse me, sixth area is
22 community health representatives. Community health
23 representatives are tribal community members
24 trained in the basic skills of health care
25 provision, disease control, and prevention. They

68

1 are vital to the Tribe's continuity of care and
2 preventative health efforts. Their presence in
3 reservation communities both allows community
4 members to access health services more effectively
5 as well as allows tribal health programs to
6 maintain contact with tribal members who have
7 chronic diseases. Besides additional staff,
8 equipment and supplies, the spending plan for the
9 Community Health Representatives Program includes
10 training to give our community health
11 representatives the proper injury prevention
12 certification, first responder training, and
13 certified nurse assistant. Right now because of
14 underfunding a lot of our CHRs don't have the
15 training and certification that they need.
16 For our diabetes program, diabetes is epidemic
17 in Indian country, and the Cheyenne River Sioux
18 Tribe is not an exception. We are particularly
19 proud of the efforts of our Tribal Diabetes
20 Program, especially in the areas of youth and adult
21 prevention. However, these efforts will be far
22 more effective with additional staff, vehicles to
23 transport clients to the Dialysis Center, and also
24 vehicles will enable home visits for disabled
25 clients.

69

We also need basic medical supplies, such as walkers, blood glucose test strips, shoes, batteries, syringes, wheelchairs, and so on. The efforts of our Diabetes Program are working and must be supported with additional resources.

The final area is housing units for professional medical staff. One of the greatest barriers to realizing our vision for improving health care on the reservation is finding qualified medical professionals who are willing both to come to our reservation and also to stay, to give their professional career to the service of the people. The ability to offer housing to our professional medical staff and their families would make the vital task of recruitment and retention much easier and more effective.

The total request for funding for our tribal health programs is $7,016,000. Approximately 55 percent of that amount would be spent on capital improvement projects for an inpatient substance abuse treatment center, for the halfway houses, for a behavioral health building, the health education library, and the housing units for the medical professional staff.

Of the remaining $3,256,000 that we are

70

requesting, which would be annually recurring costs, 2.2 million of that would pay for the salaries of 40 additional tribal health staff.

In conclusion, this funding will improve our health infrastructure, staff our health programs, and mean the difference between life and death for many of our tribal members. Please give your active support to the proposed amendments to the Cheyenne River Sioux Equitable Compensation Act.

Thank you, and I am open to any questions you have for me.

CHAIRMAN FRAZIER: Thank you.

(A short recess is taken)

MS. PRITZKAU: My name is Lola Pritzkau. I'm 43 years old, and I'm just here to testify on behalf of my grandparents who were landowners when the Oahe came through, the Oahe Project.

And I just wanted to testify that my parents had to move out of the community also up to a smaller community called Marksville. So my grandpa bought some land and let whoever wanted to live there live there for free. His name is Mark Guarder. He's one of the landowners from Old Agency.

71

I'm just here to testify that the original landowners should be compensated because they had to move and change their whole lifestyle and change everything that they had to do. They lost a lot. So I just wanted to testify to my grandparents and my mother.

My mother is Amy Guarder High Bear, the late great Amy Guarder High Bear, the late great Paul High Bear Blue Earth. He's from Standing Rock. She's from Cheyenne River. My mother is Amy Guarder High Bear. When she was in a nursing home in Gettysburg, the Alzheimer's Ward, I used to take her home on weekends and she used to say -- because I think her fond memories are from Old Agency. She used to say, Take me back. Take me home where we used to live by the River.

So those are her fond memories. And she passed way two years ago, and she was hoping to be compensated. But that never happened back then, those two years that passed. But I strongly believe that the original landowners should be compensated for their great loss because it was a great loss. So that's all I have to testify to.

MR. DUCHENEAUX: All I've got to say, I guess, is we lost all of our timber. When I

72

was growing up I guess they flooded that when I was 21 years old. We never went to town to buy a fence post for corrals or fences. We never went to town to buy planks for corrals or anything. We used ash timber from the River. And we used the River for water, our livestock. And there was a lot of timber down there that the livestock stayed in during the winter storms.

And they had a lot of fruit that mom used to can, plums and choke cherries and sand berries and just all kinds, buffalo berries. We used to plant a good garden. It was good soil down there. I guess we never had to pay for fuel. We used wood.

And now you look down there, and it's just lonely looking. It's all silted in, and where the River was there's no River bed there no more. It's just level with the other land. It looks terrible. Old dead trees sticking up. I guess that's all I have to say.

You can also say my dad had I think 800 acres down there that he never got enough money for it when they took the land away. I think my mother had 400 acres. It would sure be good to get paid the right price.

MS. LEBEAU: My name is Marcella

73

1 Ryan LeBeau. I'm a member of the Cheyenne River
2 Sioux Tribe. And I've lived here most of my life,
3 except to go to school in the military. I am here
4 to make comments regarding the Public Law 106-511,
5 the Cheyenne River Sioux Tribe Equitable
6 Compensation Act.
7 I have lived on the Moreau River. That's
8 where I grew up. And living with my family, my
9 father, my mother, and three brothers, one sister.
10 My great grandfather was Joseph Four Bear. He
11 was a chief. He signed the Fort Laramie Treaty of
12 1868. And he was compelled to live on the
13 northeast end of our reservation from that time on.
14 So my relatives, my ancestors, owned land in that
15 area, my grandmother, my mother, and my family,
16 brothers and sisters. So that has been our home.
17 The land was taken from us in about 19 -- I'm
18 not sure of the date. 1950 something for the Oahe
19 Reservoir. We were paid not very much for our
20 land. And we had to move. And it's been
21 devastating to my family, my brothers and sisters,
22 to have to leave the area and not have a place to
23 go home to.
24 Consequently, we have moved on to other parts
25 of the country. My sister went to school and never

74

1 came back, except to come back and visit and walk
2 on the ground where we used to live. She
3 periodically came back because that was our home
4 so that she could walk on the grass, walk on the
5 ground, and then leave again.
6 As the law was written, the landowners and
7 heirs were left out of the bill, and so the money
8 that was being paid would go to the Cheyenne River
9 Sioux Tribe. And this amendment would correct that
10 error and include the landowners and heirs. And we
11 weren't justly -- fairly and justly compensated
12 back at that time, and so this bill would provide
13 fair and just compensation.
14 And the study that Robert McLaughlin did
15 justifies the reason why the land and the
16 landowners were not paid what the land was worth.
17 And they lost everything, their shelter, the trees,
18 the berries, the water, the mouse beans, everything
19 that we had along the River. So this proposed
20 amendment would take care of that error and justify
21 paying the landowners what they have coming.
22 So I guess that's all that I wanted to say.
23 And I wanted to thank you. Thank you for this
24 opportunity.
25 MR. DUCHENEAUX: Good afternoon. My

75

1 name is Zach Ducheneaux, and I'd like to thank
2 everybody for the opportunity to present the
3 testimony on the proposed amendments to the
4 Cheyenne River Sioux Tribe's Equitable Compensation
5 Act.
6 As the other witnesses have already testified,
7 80 percent of the reservation economy is
8 agriculture based. This is the one sector of the
9 economy where the greatest impact can be made from
10 the proceeds of the Cheyenne River Equitable
11 Compensation Fund for several reasons.
12 The first of these reasons is that the
13 proportion of the reservation economy that is
14 related to or dependant on the ag sector as
15 previously stated is enormous, and it stands to
16 reason that creating an impact on the sector would
17 provide the most bang for the buck.
18 Second, along with being by far the largest
19 single sector of the reservation economy, it is
20 also arguably the most underused. My testimony
21 today will focus on this underuse and propose
22 suggestions for addressing this underuse.
23 Every year livestock are brought to the
24 reservation in the spring of the year from outside
25 the reservation boundaries. These cattle will

76

1 graze on the tribal grasslands throughout the
2 growing season, and in the fall of the year they
3 will be loaded on trucks and hauled to market off
4 the reservation. Once these cattle leave the
5 reservation, the millions and millions of dollars
6 in value added to these cattle by grazing on the
7 tribal land is forever lost to reservation economy.
8 The proceeds from the fund would be well used
9 to address the two major issues that result in the
10 current situation that has cattle leaving the
11 reservation and the dollars never returning.
12 The first issue that results in this situation
13 is many tribal members who are willing and able to
14 raise their own stock are unable to secure the
15 funding to get started. And the second issue that
16 results in this situation is that tribal operators
17 struggle to reap the benefits of economies of scale
18 because the expansion of their herd is directly
19 related to the ability to acquire capital necessary
20 for expansion.
21 To address the first issue a model has already
22 been developed. It was known as the Cattle
23 Repayment Program. In this program tribal range
24 unit holders would be issued an allotment of cattle
25 and allowed to repay in cattle over the next 10

77

1 years. Doing so will allow the program
2 participants to continue to build their equity and
3 their cattle numbers regardless of the feast and
4 famine that is known as the cattle price cycle.
5 One of the main reasons the old Cattle
6 Repayment Program failed was the repayment was
7 converted to cash repayment from in-kind repayment
8 so it is important that the repayment be always
9 made in stock. Addressing the second issue is also
10 something that is quite achievable using the
11 proceeds of the fund.
12 Tribal member operators often suffer at the
13 hand of buyers in the auction markets because they
14 do not have load lots of cattle, and, as a result,
15 instead of taking the premium price for their high
16 quality stock, they may take as much as a nickel
17 per pound less than those who have load lots
18 because their stock are often used to put together
19 loads of cattle. Myself and Mr. Keckler are going
20 to realize that this fall.
21 The Tribe through Pte Hca Ka, Incorporated
22 currently operates a slaughter facility and is
23 purchasing beef from off the reservation for
24 slaughter and sale. If the Tribe were to use the
25 funds to establish a feedlot for tribal members who

78

1 are willing to market their cattle through a
2 branded beef program, the benefits would be
3 numerous.
4 Load lots would no longer be an issue since
5 the tribal feedlot would be able to put together
6 similar bunches of tribal member owned cattle. The
7 meat would be sold on the rail rather than the
8 hoof. And the meat can be sold on the truckload,
9 regardless of the size of the operator it comes
10 from, thus capturing the additional value from the
11 operator.
12 Number two, a branded beef program that can
13 trace the animal back to its original herd adds
14 enormous value to the product in these times of
15 food security. Wal-Mart has discussed offering as
16 much as 10 cents per pound premium price for such a
17 product. A portion of the additional revenue
18 captured by participation in such a program could
19 be used to fund the administration and maintenance
20 of the tribal Cattle Repayment Program.
21 Number three, Pte Hca Ka Incorporated would be
22 able to purchase stock from the feedlot or from the
23 producers who retain ownership through the feedlot,
24 and that money would circulate on the reservation
25 instead of going to off-reservation cattle owners.

79

1 Number four, additional profitability realized
2 through participation in branded beef program and
3 the utilization of the tribal feedlot would allow
4 the tribal member operator to increase the size of
5 their herd more rapidly providing them with other
6 marketing opportunities.
7 The major benefit the Tribe with realize from
8 the investment of the trust fund in these projects
9 is the beginning of the building of wealth in what
10 is the reservation's base economy. This wealth
11 will circulate many times on the reservation.
12 An example of the circulation of a dollar that
13 starts in a rancher's pocket from the sale of their
14 own cattle is as follows: A rancher sells his
15 stock. Part of the money is used to buy groceries.
16 The grocery store uses some of the money to pay
17 employees, and the grocery store employee turns
18 around and buys meat at the store that purchases it
19 wholesale from the tribal slaughter facility. The
20 slaughter facility uses the funds to pay its
21 employees who in turn comes to town to buy clothing
22 or household supplies. The clothing or hardware
23 store owner will pay their employees, and those
24 employees will use those wages to pay their
25 household bills, such as cable, propane, and

80

1 telephone, which incidentally are all
2 Tribally-owned businesses. The cycle goes on and
3 on.
4 The grass growing on the tribal land is
5 literally being turned into wealth, not only for
6 ranchers for all sectors of the economy including
7 the Tribe itself. This development of new wealth
8 throughout all sectors of the economy would be an
9 excellent investment to the funds available to the
10 Tribe. If the proposed amendments are passed, the
11 Tribe can begin to implement this and other
12 critical economic development projects that are the
13 key to making the reservation and its residents
14 more self-sufficient.
15 Thank you again for the opportunity to provide
16 this testimony, and I stand ready to answer any
17 questions or field them at the very least.
18 MS. CLARK: My name is Benita Clark,
19 and I'm the tribal member but also I'm the Tribal
20 Treasurer for the Tribe. And I've been the
21 Treasurer for this is going on my third term. It's
22 11 years since I've been in this office.
23 One of the things I'd like to see is really
24 capitalization of our JTAC funds or to be allowed
25 to use -- the interest would go to help our Tribe.

81

1 Because right now the JTAC funds is called a
2 phantom fund. And we'd like to see it become real
3 to be able to tell our tribal membership that there
4 is, you know, dollars there because right now it's
5 just on paper.
6 And we have a great need to provide more
7 services for our tribal members. Our tribal
8 government is growing every day and also our tribal
9 membership.
10 Our general fund budget for this fiscal year
11 2005 is $8,136,917 even. And we have 31 revenue
12 sources, and under that we have 47 programs,
13 program budgets under there.
14 Our three main revenue sources are -- one is
15 tax; and two is land leases, and three is indirect
16 costs.
17 And I did ask some of the program directors to
18 give me some information on their programs, and I
19 did receive some. The one that I have is from Jill
20 Bruner, and she's our Support Services Director,
21 also Protected Payee Director.
22 And what she's saying is that we'd like to see
23 the following line items increased in the Support
24 Service Office. And our federal line item is
25 currently $75,000 which assists a family with $500.

82

1 We would like to be able to provide tribal members
2 with a burial grant of 4,500 per member.
3 Our education line item is currently 75,000.
4 With this we are able to provide assistance with a
5 1 per school year grant. Currently we are able to
6 assist off-reservation students with $200. The
7 on-reservation students receive anywhere from 50 to
8 $100. Due to the increase in the number of
9 students that go to college every year and the
10 returning students, we would like to see this line
11 item increase by 75,000 so we are able to give
12 every student the same amount.
13 Currently our school clothes is at 140,000 and
14 we are able to issue Head Start through the 7th
15 grade. We issue $150 per child and for grades 8th
16 through the 12th grade we issue $200 per child.
17 Due to the increase of living expenses and
18 inflation costs, we would like to increase this
19 line item to 240,000.
20 Currently the elderly account is 250,000. We
21 would like to see this line item increase so that
22 we are able to provide the elderly with $75 toward
23 heating assistance monthly. The number of elderly
24 increases every year. In order to provide current
25 services of $20 monthly phone service and septic

83

1 tank cleaning, we would like to have this increased
2 to 350,000.
3 With our cash relief account we received
4 200,000, and we would like to have this line item
5 increased by 100,000 so that we are able to
6 increase the amounts for the medical emergencies,
7 assistance with gas, food, and lodging expenses.
8 This would be due to the fact that the Indian
9 Health Service does not provide services if they
10 are not the primary care provider for the patient.
11 This has caused hardship to our tribal members that
12 live on a fixed income.
13 And one of the other programs that I spoke out
14 about and -- I just jotted down notes, but the
15 things that they're looking at is a new tribal
16 office building, to be able to -- to be able to
17 staff all of our people, our employees, within, you
18 know, one building so that the tribal members have
19 easier access to them. And that will probably be
20 our main office. Right now we're scattered all
21 over and if we could try to bring them together.
22 And we have a land purchase line item that
23 under the general fund program we only -- we funded
24 it this year for 50,000, but we'd like to see that
25 increase to be able to buy the land back from the

84

1 tribal members. They're selling to outside
2 members -- or outside people, not tribal members.
3 And we'd like to buy that for our -- for the Tribe
4 so that we can increase our land base because
5 that's one of our main revenue sources.
6 And we do need an investment coordinator too
7 that, you know, we're looking at to fund, but we're
8 not able to because of office space and no dollars
9 to fund the position. But we do need it because
10 when the JTAC fund becomes, you know, available we
11 need someone there to help us in this area.
12 Some of the other things i -- right now our
13 general fund budget is the most hardest hit for our
14 dollars, for our people in the community needs
15 because this is where they come and they ask for
16 assistance right from the general fund because all
17 the program dollars that are allocated to the
18 programs are used for, you know, what their program
19 needs are and they're not able to use, you know,
20 for things that the community people need.
21 And some of the communities are like 80 miles
22 away from -- like here the main -- this is our main
23 area here. It's where all the services are here,
24 in the Eagle Butte area, and so the community
25 people have to travel, you know, some distance just

85

1 to get here to do their shopping or to come to the
2 tribal office to do their -- their whatever they
3 need for the day, for Medical Assistance or
4 whatever, that they have to pay individuals like up
5 to $40 one way just to come up here and do their
6 tribal business and then get what they need.
7 And sometimes they just come up here to ask
8 for food, and if they're a single person, it's only
9 $20, but if it's a family, it's $40. But that's
10 all they get, and they still have to pay $40 one
11 way and $40 back home. So that's $80 round trip
12 that they have to pay whoever brings them up
13 because they don't have a vehicle to come to town.
14 And I know that our Tribal Chairman and our
15 Tribal Council Representatives and Program
16 Directors have traveled to Washington, D.C. to --
17 you know, every year to request for more funding
18 for programs, but I feel that with our JTAC if
19 we're able to use it here earlier, that it will
20 help cut -- you know, cut a lot of the costs, you
21 know, that takes for traveling to go out and
22 request for funds.
23 And sometimes we don't see it but, you know,
24 they do travel and they do do a lot of work when
25 they're out to Washington, walking back and forth

86

1 between the buildings and meeting with different
2 Senators and Representatives out there.
3 And one of the things within our general fund
4 budget -- and the youth and the elderly are our
5 main -- seems like was our main focus. We make
6 sure that they're taken care of so no one's ever
7 turned away. And so that's what we -- we want to
8 continue giving the services to people of the
9 communities.
10 And every line item it seems like we have our
11 staff attorney right now -- we've got three
12 attorneys on board, but we need more because of all
13 the changes that are happening within the Congress
14 and within different programs where we need legal
15 advice. So we're needing more moneys there to
16 staff those positions.
17 And we have a property and supply budget, and
18 they maintenance all of our tribal buildings and
19 our tribal, you know, vehicles and they're required
20 to do a lot of work, but their budget is, you know,
21 small. And we need to increase there also.
22 Human services -- Human Resources Office,
23 right now we have like up to 600 tribal employees,
24 and they're in one office with three staff members
25 in there and they need more space and because

87

1 they're -- they have to go -- you know, they have
2 to make sure that the employee -- when a new
3 employee comes on board that, you know, they put
4 them through a lot of orientation and make sure
5 that the employee is able to sign up for the tribal
6 benefits, insurance benefits for the Tribe. So we
7 need more dollars there to staff those.
8 I'm just going through, but I know that we
9 need mostly in all our departments we need more
10 staff members and we just don't have the office
11 space to do it and we don't have the dollars to
12 fund those positions. So I'm just going through
13 them, and I'm not going to name them. I can just
14 give you a list of all the programs because our
15 general -- yeah. Because right now we have 47
16 programs under the general fund.
17 But, you know, our records -- record tribal
18 archives for our records because we're required to
19 keep them on hand for auditors, and they require
20 that we keep them on hand for three to five years.
21 But we have records going back from Tribal Council
22 from when Council first -- when it was first moved
23 here to Eagle Butte from the Old Agency, that we
24 have records that far back that we're not able to
25 store, and we've lost a lot of records due to that.

88

1 We had them stored in buildings that are
2 already demolished and stuff, and they're ruined by
3 water backing up in basements and stuff because
4 that's, you know, the only places we could store
5 them. And we lost a lot of records that way that
6 we're not able to recover.
7 I know our economic development program, we
8 have our -- just we have a director and a tribal
9 planner and their office manager, and they've
10 wanted the positions for different programs and
11 they do the economic development projects and
12 tribal government projects. Tribal government
13 projects, contractuals, Tribal Council wants to do
14 some projects over there, and they're able to use
15 that line item but we need an increase because we
16 have so many projects we need to look at and we're
17 not able to fund and we're not able to because we
18 don't have the dollars to do it.
19 Right now we're in the process of building a
20 new day care center to be able to, you know, serve
21 all the kids here on the reservation for the
22 working parents, and right now we have a lot of
23 need for childcare services for our employees that,
24 you know, need to go to -- that need, you know,
25 childcare services and they're not able to find it.

89

We have a line item called fixed charges where the Tribe pays for the insurance and upkeep of all the buildings, like fuel, electricity, water, and garbage. And those need to be increased because we need good maintenance for our buildings, but we're not able to do it because of the dollars.

We have an emergency shelter home that we funded under the general fund, and that houses our children that are in need of assistance. And, you know, we need a building by itself for them because right now we're using the Cheyenne River Housing Authority building, and we need to take a look at, you know, building our own home for our kids instead of, you know, having just a two-story because they're not able to house as many kids.

But that's one of our main problems is we need a place to be able to provide for like foster care assistance right now. Or to house the kids for safety.

And land and natural resources we, you know -- that program needs to be funded more because we're wanting to do more -- do a land audit on our tribal lands that we have because we need better mapping of that and to be able to know -- get accurate acreage of land that the Tribe owns and where it's

90

located at.

We have a lot of cultural activities so we have a Cultural Center, a budget that needs to be increased because our building is, you know, for cultural purposes. We use it for different activities for the Tribe, tribal members, but, you know, we need better equipment for cooking. Because they do use it for funerals and wakes and for just other activities that's needed.

And our sanitary landfill budget, we made an increase on there because we provide services for our tribal members throughout the whole reservation, and we need more dollars there to do better service to buy more garbage trucks and to provide better services to our tribal members.

We have a veterans line item, which serves for Veterans Services Officer who comes in and works with our veterans in doing their paperwork, but we need more dollars there so we can get more help for him. Because he only comes in two days a week, and that's to serve all our veterans on the reservation.

Overall I think that I'd like to see that, you know, the JTAC funds be -- that we're able to use it so we can better help our members. Because it's

91

just not the general fund. It's the tribal, all of their budgets. Because I know that every one of the directors that got up before me talked about different areas that, you know, needs to be looked at, that we need to look at and to include.

Because we have our law enforcement. That budget really needs to be increased because we want better protection for our tribal members. And right now we just don't have the dollars to bring on more police officers or have more vehicles. We have a good law enforcement building, but we just don't have the staff and the dollars to make it be the way it's supposed to be run.

I think mainly everybody talked about all the things that they were going to talk about. And I know that the LIEAP Program was talked about, but the LIEAP Program comes through Congress that the money goes onto the state, and then from there there's dollars that are allocated to the tribes and from there, from the state, the tribes look at how many tribes are under the state program, and they allocate that funding down to the tribes so we don't get that much -- this year our budget was for 501,000, but we've already expended that through the winter months.

92

And we do get a coolant assistance, and that's based on leveraging. That's spent throughout the year on propane and electricity, and that's supposed used to be like air conditioners for elderly and handicapped and any children 6 years and under that are income eligible.

And then they talked about the health, all the health programs, and I'd like to see better health care for our tribal members also because a lot of our members are under Title 19 programs, and they're able to, you know, utilize the Family Health Center downtown. But if you're not -- if that's your provider and if you go to Indian Health Service, they won't assist you because you're using a different provider.

And we only have two providers here, the Family Health Service and the Indian Health Service.

I know that one of the Councilmen, Mr. Keckler's going to talk about the roads and stuff too because we have real bad roads for the reservation leading to the tribal members' homes. And we're just now starting on doing a lot of work, but he'll explain that more.

They did talk about the Tribal Work Experience

93

1 Program and the work investment -- what was it
2 called, work investment -- Native Employment Works
3 Program. So we need more dollars. I know they
4 talked about that already too so. And I did
5 mention -- I did mention law enforcement already
6 too so -- and he'll probably talk about that too
7 because he's -- he's been on that board --
8 committee too.
9 But overall I'd just like to see that, you
10 know, our JTAC funds not be called phantom funds.
11 I'd rather see that we get our dollars and that
12 we're able to use our interest off the fund, and
13 that will help us in a lot of the areas.
14 That's it.
15 MR. KECKLER: My name is
16 Kevin Keckler. I'm the District 4 Council
17 Representative for the Tribe. Going last, I guess
18 I'm just going to try to summarize some of the
19 issues that our staff and other officials and the
20 landowners have given you earlier. I'd like to say
21 good job to the tribal staff for the detailed
22 information that they provided.
23 I think an important piece of this testimony
24 is that I think it's very important that the
25 Tribe -- that we're successful in getting the

94

1 interest capitalized at an earlier date. So as you
2 can see in earlier testimony, there's a tremendous
3 amount of need and for us to have to wait until
4 2011 or not have the ability to borrow on this
5 money until issues are clarified within the bill,
6 it's doing a tremendous disservice to us.
7 In terms of issues of where we plan to expend
8 our programs have provided you detailed information
9 on economic development as a category. We've
10 talked about poverty reduction programs,
11 agricultural programs, small businesses, lack of
12 the ability to access capital through banks. So I
13 think it's important that we have access to
14 financial institutions, maybe even our own bank
15 which would allow us to do a lot of financing.
16 We also have some tremendous, I feel, good
17 opportunities for economic development. We have
18 what is titled the Lakota Technologies. It's a
19 business that is owned by the Tribe that provides
20 jobs to many people throughout the reservation in a
21 variety of categories. And if we had access to
22 capital, I think we could expand that to create
23 more jobs for our people.
24 And as we talk about economic development, one
25 of the other areas was infrastructure development,

95

1 and as indicated earlier in the testimony, we have
2 a tremendous need for the upgrade of our roads.
3 The roads are very critical in economic
4 development. We have in excess of 350 miles of BIA
5 roads that are quite substandard. So a tremendous
6 amount of time and money should be spent on that.
7 We also testified on water and sewer. An area
8 that we're working on right now that is, I think,
9 equally important is we're in the process of
10 developing a transit system, which would move our
11 people from their -- within their 20, 21
12 communities that we have into Eagle Butte and
13 vice versa to allow people to move back and forth
14 not only for jobs and economic development related
15 reasons, but also for health, education, social
16 welfare, recreation, many needs. And without a
17 transit system, the ability to move people, we're
18 handicapped.
19 Another area is day care. That was talked
20 about. I think it's very important that we have
21 that.
22 In terms of education, I think the tribal
23 staff person that did that testimony did a
24 tremendous job with it. I would just like to say
25 that I believe our future is in our youth and our

96

1 elders, and I think it's very important that we
2 move forward with our education, the
3 recommendations of our education department or --
4 and move into working to help in terms of
5 scholarships.
6 She talked about a need of 6 million plus for
7 scholarships. I think it's very important. We
8 also have a need to upgrade our K through 12, our
9 Head Starts. We have Head Start buildings within
10 communities out on the reservation. They're
11 operating out of buildings that basically should be
12 condemned and built new. So we need to work with
13 them.
14 I think it's also important we have a
15 Ordinance 66, which deals with our language and our
16 culture. I think it's important that we -- the
17 ordinance was created without a funding mechanism
18 to work with it. I think it's important that we
19 provide funding to that -- to support that
20 ordinance, however the final version of that comes
21 out to be.
22 In terms of our health care, testimony was
23 also provided on that and in great detail so I'm
24 not going to get into that too much other than a
25 project that we have right now that I feel is very

97

1 critical. As stated earlier, our future is in our
2 youth and our elders. Right now we're in the
3 process of constructing a new elderly village which
4 will provide services to our elders here at home
5 instead of currently our elders have to go off the
6 reservation when they're in need of extended health
7 care. So we're working to bring them people back.
8 And it's much more than just a nursing home,
9 as titled. We feel this is a village to help build
10 our community through grandparent programs with our
11 elders and our youth and create it more as a
12 community center to integrate our people with our
13 elders, who I feel have the best knowledge and
14 wisdom that they need to pass down to us. So I
15 think a tremendous amount of time needs to be spent
16 with that.
17 As well as we have what's called a Wisdom
18 Keepers organization, and it's comprised of a group
19 of elders that is put together to coordinate
20 services for our elders, and I think more funding
21 needs to be put into that to help them provide
22 services that they want to.
23 In terms of recreation, I think a lot needs to
24 be done in that area. Recreation and exercise
25 deals with a lot of the health issues that we have

98

1 so we need to construct community centers within
2 each and every one of our communities. We're
3 working to do that now, but it's a slow task, and
4 with this legislation it would help us move that.
5 An area that hasn't been talked about but I
6 feel falls into probably a lot of these categories
7 is youth services. We have a system that --
8 fragmented system that deals with youth, and we
9 need to work to bring that all back together and
10 coordinate and provide services out in the
11 communities, more so than we do. We attempt to do
12 a lot of that, but not always successful because of
13 lack of funding and infrastructure within the
14 communities. So we need to spend some time and
15 develop a good youth services program to deal with
16 them.
17 Social welfare, them issues -- a lot of that
18 was hit on by our Treasurer. Burial insurance so
19 that -- assistance, I guess, so that we can provide
20 services to everybody that deals with a loss. And
21 it's a problem that seems to be more and more
22 frequent every year as we move. And it's not going
23 away so we need to address that.
24 In terms of -- I guess the diabetes, that
25 wasn't talked about as much. A focus on them

99

1 issues so that we can deal with them both in our
2 youth and our adults.
3 And the last item but not the least important,
4 I think, is the just compensation to our landowners
5 and their heirs. I believe that that should be the
6 first and foremost issue on this testimony, that we
7 work with -- get this legislation changed and meet
8 with their organization and come to an agreement on
9 the amounts and get them people taken care of.
10 When we originally started -- when I started
11 there were 16 original landowners, and we're down
12 to 13 or somewhere in that number now. And so it's
13 important that we deal with that issue and come to
14 an agreement with them and help them as they're
15 aging in their years and getting their families
16 taken care of. Because I believe that they have
17 suffered more beyond just the sale of their land
18 for small dollars compared to across the River, but
19 the pain and suffering and the displacement that as
20 a result of that -- I think that should be our
21 first priority.
22 That concludes my testimony. Thank you.
23 CHAIRMAN FRAZIER: Okay. I want to
24 thank everybody today for testifying. And I know
25 that what we've done today will be successful in

100

1 Congress, and I think it's proven within our health
2 testimony and such so I know that what you guys
3 done -- I want to thank you guys because I know it
4 gives us a greater chance to get what the Tribe is
5 trying to accomplish. And I know that we can and
6 we will.
7 But I just ask that, you know, you be patient.
8 It's going to be several years, I figure, before we
9 even get any positive changes. And it's going to
10 be a tough battle. But I know that we all have
11 good testimony and that will definitely help not
12 only us but our Congressional people in passing
13 these amendments. So thank you.
14 (The testimony concluded at 7:25 p.m.)
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1 STATE OF SOUTH DAKOTA)
2 :SS CERTIFICATE
3 COUNTY OF HUGHES)
4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 State of South Dakota:
8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 14th day of
11 June 2005, and that the attached is a true and
12 correct transcription of the proceedings so taken.
13 Dated at Pierre, South Dakota this 30th day
14 of June 2005.
15
16
17
18 Cheri McComsey Wittler,
19 Notary Public and
Registered Professional Reporter
20
21
22
23
24
25

TESTIMONY

ON S. 374

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

UNITED STATES SENATE

JUNE 14, 2006

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. 374, the Tribal Parity Act. With your permission, Mr. Chairman, I would like to provide my written statement for the hearing record and then summarize my findings.

My name is Michael Lawson and I am a historical consultant with Morgan Angel & Associates, a public policy consulting firm here in Washington. In 2003, I authored a report entitled *Parity Compensation for Losses from Missouri River Pick-Sloan Dam Projects*. This report provided the factual basis for Senate Bill S. 1530, the initial version of the Tribal Parity Act introduced in the 108th Congress.

Senators Thune and Johnson of South Dakota reintroduced this legislation in the first session of the 109th Congress. Subsequently, Senator John McCain, the Chairman of this Committee, requested the General Accountability Office to assess whether my report followed the approach recommended by GAO in two prior reports involving additional compensation to tribes impacted by the Pick-Sloan dams on the Missouri River.

In 1991, the GAO advised Congress to consider an approach based on a range of compensation in regard to legislation for the Three Affiliated Tribes and Standing Rock Sioux Tribe of North Dakota. In 1998, it suggested the same approach for legislative compensation for the Cheyenne River Sioux Tribe of South Dakota. The approach the GAO recommended in both cases was to compensate the Tribes based on the difference between the amount the Tribes requested for their damages and the amount that Congress eventually provided to them in initial settlements. In order to establish the current value of the differences, the GAO suggested a range of two multipliers. The high range

calculated the value based on the annual interest rate on AAA corporate bonds. The low range established current value based on the annual inflation rate.

The GAO report to Senator McCain issued on May 19, 2006 was highly critical of my study. It concluded, among other things, that my report did not follow the previous GAO approach because it did not base the difference on the Tribes' "final asking price" or "last best offer." I did not use the Tribes' final asking prices as the basis of difference in part because the GAO previous two reports did not clarify that its references to tribal prices "at the time of the taking" was to be understood as meaning the "final asking price." In its most recent report, the GAO admits that it did not use the phrase "final asking price" in its two prior reports.

I also did not use the Tribes' final asking prices because I do not believe that these so-called "last best offers' provide a fair standard on which to base additional compensation. It is my view that settlements based on final asking prices award the Tribes not for the fair market value of their losses but rather for the ability of their tribal leaders to negotiate. The Cheyenne River Sioux Tribe, for example, has received the greatest amount of additional compensation ($290,722,958) in large part because their negotiators back in 1954 held firm to a higher asking price. This created a greater amount of difference between what was asked for and what was received, and it is this difference that is the basis of the GAO's approach.

Placed in a difficult position, the Lower Brule and Crow Creek tribal negotiating committees used a different negotiating strategy. They had never before been required to negotiate values that involved such large sums of moneys or confront issues that would have such a huge impact on their communities and daily lives. They were provided with

only limited professional assistance. Yet, at every turn, they were pitted against government lawyers, accountants, appraisers and others whose goal was to negotiate the lowest price possible. They were also largely at the mercy of their local Congressional delegation, which did not then view Native Americans as a significant portion of their constituencies.

As I pointed out in my April 27, 2006 response to the GAO's draft report, I also did not use the final tribal asking prices as a starting point because my historical research indicated that those final tribal offers were made under conditions of extreme duress. The historical record makes it clear that Tribal representatives were continually pressured to resign themselves to the Government's "take it or leave it" posture.

Congress in 1952 stipulated by law that negotiations with the Tribes would not be allowed to interfere with the scheduled construction of the dam projects. Thus, the Tribes were not in a position to hold firm to an asking price or walk out of negotiations if they were dissatisfied. Their lands were going to be flooded, and their tribal members relocated whether or not they agreed to settlement terms.

By the time of the Tribes' "final offers" in March 1958, which the GAO uses as a starting point for analysis, the damages from the Fort Randall project had already been incurred. The Army had closed the floodgates of the dam in 1952 and had proceeded to condemn tribal lands illegally without Congressional authorization. The Fort Randall Dam had been completed and dedicated nineteen months earlier. This was obviously not a negotiating situation in which the parties had equal standing. In essence, the Tribes had no bargaining power.

The GOA report was also critical that I used only the high range of their approach, based on the annual interest yield of AAA corporate bonds and did not project the low range based on the annual inflation rate. I did not use the annual inflation rate as a range of compensation because Congress has established no precedent for basing additional compensation on that rate. In the three cases where Congress has applied the GAO approach (Three Affiliated Tribes, Standing Rock Sioux, and Cheyenne River Sioux), it has always awarded compensation at a rate that was higher than the annual inflation rate.

I also did not use the annual inflation rate as a lower range of compensation because present values calculated at that rate are less than the amounts the Tribe's have already received. Zero may represent the lower end of a range, but it is does not constitute compensation because it has no value. Faced with a high range of value that Congress has already applied to similarly situated tribes and a low range that it has not applied and which, in this case, has no value, I did not think it unreasonable to not include the lower range.

The GAO report stated that my calculations of the total amounts requested in the current bill incorrectly adjusted for the additional compensation received by the Crow Creek Sioux Tribe in 1996 and by the Lower Brule Sioux Tribe in 1997. I acknowledged these miscalculations in my April 27, 2006 response to the GAO's draft report and have adjusted the amounts accordingly. As a result, the amount for the Lower Brule Sioux Tribe in Section 3 of Senate Bill S. 374 should be **$169,122,085** instead of **$186,822,140**.

The amount for the Crow Creek Sioux Tribe in Section 4 of the bill should be **$96,722,084** rather than **$105,917,853**.

These new amounts reflect both my adjustment in the calculations and the current (2006) value of the differences.

The table below outlines how these amounts were determined.

TABLE 1: Compensation Based on Present Bill Adjusted to Reflect Accurate Interest Rate Calculation

	Crow Creek	Lower Brule
Fort Randall Costs and Expenses Difference	$709,208.61	$1,170,667.00
Fort Randall Difference in 1996-1997 Dollars	$13,368,444.64	$23,688,898.72
Big Bend Costs and Expenses and Rehabilitation Difference	$3,360,403.50	$5,550,233.00
Big Bend Difference in 1996-1997 Dollars	$53,392,328.20	$94,588,086,19
Total Difference in 1996-1997 Dollars	$66,760,772.84	$118,276,984.90
Minus Amount Provided by Congress, 1996/1997	- $27,500,000.00	- $39,300,000.00
Difference Remaining in 1996-1997	$39,260,772.84	$78,976,984.90
Difference Remaining in 2006 Dollars**	**$69,222,084**	**$129,822,085**

*Difference in 1996-1997 Dollars and 2006 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. The new totals for S. 374 represent the amounts of difference in 1996-1997 dollars plus the differences in 2006 dollars. For example, the difference remaining in 2006 dollars for Crow Creek ($69,222,084), when added to the total difference in 1996-1997 dollars ($66,760,773), equals $135,982,857. **Rounded to nearest dollar.

It is my view that the tribal asking prices I used in my report to determine the amount of differences more accurately reflect what the Tribe's considered to be the fair market value of their losses than do their final asking prices or last best offers. For

example, the tribal negotiating committees developed the tribal asking prices I used for Fort Randall damages over an eighteen-month period. Their estimates of damages were 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. Similarly, the tribal asking prices I used for Big Bend damages were based on estimates developed by a highly qualified and experienced appraiser familiar with local land and resource values.

The tribal prices I used in my report also fall within the mid-range of the Tribe's total requests. While they do not consistently represent the tribe's final asking prices, neither do they represent the totality of the highest prices the Tribes requested during the long course of their negotiations.

I concluded in my 2003 report that additional compensation for the Lower Brule and Crow Creek Sioux Tribes was appropriate and necessary if the United States was ever to provide equity to the Missouri River tribes impacted by the Pick-Sloan dams. 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 projects.

As a result, it is my view that Senate Bill S. 374 offers a fair and reasonable approach to providing additional compensation to these two Tribes. The amounts requested in this bill also fall within the mid-range of possible alternative approaches.

In my April 27, 2006 response to the GAO's draft report on this bill, I outlined three alternative approaches for providing additional compensation. I have included these three alternatives in the attached table (Table 2), as well as two others that are based

on the GAO's recommended alternative ranges. One uses the Tribe's final asking price as the basis of difference and calculates the current value using the annual average corporate bond interest rate. The other uses the tribal asking prices that serve as the basis of the current bill and calculates the present value using the average annual inflation rate.

The spectrum of these alternative approaches ranges from $0 to in excess of $432 million. In comparison, the adjusted amounts requested in Senate Bill S. 374 fall significantly below the mid-point of this range.

For the reasons I have stated, I urge the Committee to support Senate Bill S. 374 as amended by the adjusted calculations. In my considered opinion, this legislation represents a fair and final compensation package. It also provides a just conclusion to an extremely difficult chapter in the history of the relationship between the United States and the Crow Creek and Lower Brule Sioux Tribes.

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

Table 2: Alternatives for Additional Compensation

	I. *Based on Current Bill Differences Calculated at Annual Inflation Rate*	II. *GAO Suggested High Range Based on Tribes' Final Asking Price*	III. *Based on Parity with Cheyenne River Sioux Settlement of 2002*	IV. *Based on Current Bill Adjusted to Reflect Corrected Calculation*	V. *Based on Parity with Santee Sioux of Nebraska Settlement of 2000*	VI. *Based on Tribes' Highest Asking Prices*
LOWER BRULE SIOUX TRIBE	**$0**	**$2.556,758**	**$20,690,688**	**$129,822,085**	**$138,368,976**	**$432,547,830**
CROW CREEK SIOUX TRIBE	**$0**	**$0**	**$11,572,974**	**$69,222,084**	**$93,893,940**	**$70,685,862**

Box I. Calculations of the amount of difference in the current bill using the low range of the GAO approach, based on the average annual inflation rate, indicate that no additional compensation would be due to either the Lower Brule or Crow Creek Sioux Tribes. The value of the amount of difference in the current bill for the Lower Brule Sioux Tribe calculated at the annual inflation rate is $35,913,851 in 1997 dollars ($6,451,456.91 for FR plus $29,462,394.45 for BB). This total is $3,386,149 less than the $39.3 million the Tribe received in 1997. The value of the amount of difference in the current bill for the Crow Creek Sioux Tribe calculated at the annual inflation rate is $21,257,556 in 1997 dollars ($3,820,522.75 for FR and $17,437,034.19 for BB). This is $6,242,444 less than the $27.5 million the Tribe received in 1997. Calculation of the GAO's final tribal asking price differences at the annual rate of inflation would also indicate that no additional compensation is due the Tribes.

Box II. Calculations of the GAO's "Final Asking Price" criteria at the high end of its range (based on the average annual yield on AAA corporate bonds) indicate that the Lower Brule Sioux Tribe is still entitled to a limited amount of additional compensation. The value of the GAO's difference in 1997 was $40,855,398. The amount of additional compensation provided by Congress to the Lower Brule Sioux Tribe in 1997 was $39,300.000. The difference between these two amounts is $1,555,398. If the average annual interest rate on AAA corporate bonds is added to the amount of difference, its value in 2006 dollars is $2,556,757.67.

Box III. As an alternative for equitable additional compensation, the Lower Brule and Crow Creek Sioux Tribes could be granted parity with the compensation on a per-acre basis provided to the Cheyenne River Sioux Tribe. Congress has established the precedent for providing additional compensation to the Missouri River Tribes on a per-acre basis in the trust funds it established for the Crow Creek Sioux Tribe in 1996, the Lower Brule Sioux Tribe in 1997, and the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska in 2002. Thus, it has provided additional compensation on a per-acre basis to more Missouri River tribes (four) than it has applied the GAO approach (three tribes). The per-acre value of the total compensation received by the Cheyenne River Sioux Tribe is $2.886 ($301,366,972 divided by 104,420 acres). The difference between the overall compensation provided to the Crow Creek Sioux Tribe and that provided to the Cheyenne River Sioux Tribe is $742 per acre. Multiplying this difference by the number of acres lost by the Crow Creek Sioux (15,597) results in the total listed in Box 3 for Crow Creek. The difference between the overall compensation provided to the Lower Brule Sioux Tribe and that provided to the

Cheyenne River Sioux Tribe is $928 per acre. Multiplying this difference by the number of acres lost by the Lower Brule Sioux (22,296) results in a total listed in Box 3 for Lower Brule.

Box IV. This is the amount of additional compensation calculated in Table 1.

Box V. As an alternative to parity with the Cheyenne River Sioux settlement, the Crow Creek and Lower Brule Sioux Tribes could be granted parity with the Santee Sioux settlement of 2002. The Santee Sioux Tribe of Nebraska received the highest amount of total compensation on a per-acre basis ($8,164 per acre) ($4,841,010 divided by 593 acres). As noted above, Congress has provided additional compensation on a per-acre basis to more Missouri River tribes (four) than it has applied the GAO approach (three tribes). The difference between the overall compensation provided to the Crow Creek Sioux Tribe and that provided to the Santee Sioux Tribe is $6,020 per acre. Multiplying this difference by the number of acres lost by the Crow Creek Sioux (15,597) results in a total listed in Box 5 for Crow Creek. The difference between the overall compensation provided to the Lower Brule Sioux Tribe and that provided to the Santee Sioux Tribe is $6,206 per acre. Multiplying this difference by the number of acres lost by the Lower Brule Sioux (22,296) results in a total listed in Box 5 for Lower Brule.

Box VI. A sixth alternative for the Crow Creek and Lower Brule Sioux Tribes would be to base additional compensation on the difference between the highest amounts asked for by the Tribes for direct and indirect damages from the Fort Randall and Big Bend projects, negotiating expenses, and rehabilitation and the actual amounts provided to the Tribes by Congress in 1958, 1962, and 1996-97. The amounts listed in Box VI indicate the current value of differences based on the Tribes' highest asking prices.

Chronology of Fort Randall and Big Bend Events

1952, July 21> Floodgates of Fort Randall Dam closed. Portions of reservation lands are flooded.

1954, Spring> Dam project is 84 percent complete, Indian property owners await Congressional action

1954, June> Congress sets negotiation guidelines, states talks shall not interfere with continued construction, lowers ratification requirement from ¾ to majority of tribal members.

1954, July> Lower Brule Tribal Negotiating Committee completes 18-month study of fair market value of Fort Randall damages; Rep. Berry introduces these amounts in bill that gets no consideration.

1955, February> Lower Brule Tribal Negotiating Committee develops estimate of costs to rehabilitate reservation. Rep. Berry introduces these amounts in bill that gets no consideration.

1955, Spring> Justice Dept. carries out condemnation suits filed by Army in 1953, which were illegal under court precedent because Congress did not grant specific permission for the Army to condemn tribal land.

1955, Spring> Tribal families face prospect of having homes flooded before receiving money to cover expenses. Court and BIA provide partial payments to some Indian landowners. Others are forced to move with only the meager assistance of tribal hardship funds.

1955> Tribes lack sufficient funds to conduct adequate relocation and salvage operations.

1955ff> Fort Randall project floods Fort Thompson, largest community on Crow Creek. BIA agency office and boarding school and Public Health Service hospital moved off reservation.

c. 1955> Some tribal families were mistakenly relocated to lands that later become part of the taking area of the Big Bend project. Thus, they were compelled to relocate a second time in the 1960s.

1956, August 11> Fort Randall Dam dedicated, project was 99 percent complete.

1957, May> Crow Creek Tribal Negotiating Committee completes 18-month study of fair market value of damages and estimate of costs to rehabilitate reservation; Senator Case and Rep. McGovern introduce these amounts in separate bills.

1958, September 2> Congress provides settlements to LB and CC Sioux Tribes for Fort Randall damages.

1960, May 30> Senate Lyndon Johnson leads groundbreaking ceremony for Big Bend Dam.

c. 1960> Tribes hire local appraiser Earl Sonnenshein to determine fair market value of Big Bend damages.

1961, July> Tribal negotiators adjust estimates upward to include items such as loss of Missouri River bed and loss of tax immunity on trust lands. LB negotiators request a new school.

1962> Congress provides settlements to Lower Brule and Crow Creek Sioux Tribes for Big Bend damages.

1962ff > Big bend project floods town of Lower Brule, largest community on the Lower Brule reservation..

1966> Big Bend Dam officially opened.

Some Impacts: 69 % of LB and 45 % of CC tribal members forced to relocate. Tribes lost 90 % of their timberland, 75% of wild game and plant supply, and the vast majority of their sheltered grazing lands.

PREPARED STATEMENT OF FREDDY LEBEAU, VICE CHAIRMAN OAHE LANDOWNERS ASSOCIATION

My name is Freddy LeBeau. I am an enrolled member of the Cheyenne River Sioux Tribe, and a resident of the Cheyenne River Sioux Reservation. I am one of the tribal members who lost land due to the construction of the Oahe Dam and the acquisition of over 44,000 acres of tribal members' lands by the United States for the Dam. I am also the vice chairman of the Oahe Landowners Association, a group comprised of the tribal member landowners who lost lands on our reservation due to the Oahe Dam Project. So I am providing this statement not only for myself, but also for all of the surviving tribal member landowners who lost their lands due to the Dam, and for their heirs. Today there are only 29 surviving tribal members who lost their lands because of the dam.

We have waited for almost 60 years to tell our story. When the corps took our lands in 1948, we had no choice. The lands weren't acquired through agreed upon sales. No one asked if we wanted to sell our lands, and we would not have agreed to any sale. The lands were simply taken from us to benefit other people. We didn't experience sever flooding on the reservation, and the project was of no use to us. But the powers that be decided they needed a flood control project, and so they authorized a project that required the acquisition of Indian lands and the relocation of Indian people.

I fought for this country in World War II. I spent about 4 years in the U.S. Navy in the South Pacific. During the war, I learned that some fee lands on the reservation totaling 200 acres had been foreclosed on and could be bought. So I sent money to my father and he bought the land for me. After the war, I built the land up, raised livestock on it and supported my family off of it. I wanted to live there the rest of my life. But the Oahe Dam put a stop to that. The Government offered me $6,000 for the land. It wasn't enough, but I would have had to go to court to get fair compensation, so I accepted the check and signed it under protest. I fought for the U.S. Constitution and the American way of life, but then the Federal Government turned around and took my land and didn't provide fair compensation.

We landowners know that we were not fairly compensated. We were paid less for our lands than the Government paid for comparable lands off of the reservation. But for the most part we took whatever the Government offered us, because we didn't want to hire lawyers and go to court and take our chances with a judge.

In total, the U.S. Government acquired over 44,000 acres of reservation lands from tribal members. Many of us, like myself, had to move our families elsewhere and start again. Many of us never got over losing our lands. And many of us found that our new lands weren't as good as the lands we were forced to leave to provide flood control for other people.

The tribe lost lands too, and it was not fairly compensated either. Congress recognized this when it enacted Public Law 106–511, the Cheyenne River Sioux Equitable Compensation Act, in 2000. I have a problem with that law, however. It says the Federal Government acquired some 104,000 acres of land of the tribe for the Oahe Project. But that number includes the 44,000 acres taken from tribal members. Only about 60,000 acres were tribal lands.

Public Law 106–511 provides over $290 million to the tribe, plus interest, to compensate it for its losses, but it doesn't provide any compensation to the tribal member landowners for our losses. In fact, it says the tribe can only spend the earnings from the Trust Fund for certain things, and it doesn't allow the tribe to spend one dime to provide any additional compensation to tribal member landowners.

The landowners don't think this is fair, and our tribal government agrees with us. So they have joined with us to ask Congress to change the law so that they can provide us just compensation. We are not asking for a windfall or a handout—but only for just compensation. We urge Congress to allow the tribe to use its earnings from its Trust Fund to provide us the compensation we deserve.

One final thing. Right now, the tribe won't receive any of the Trust Funds until October 2011. The surviving landowners have waited almost 60 years for just compensation, and we don't want to wait until 2011. Some of us won't make it to then. We'd like to get our compensation now.

Thank you for your consideration of this bill.

United States Government Accountability Office

GAO

Testimony
Before the Committee on Indian Affairs, U.S. Senate

For Release on Delivery
Expected at 9:30 a.m. EDT
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INDIANS' ADDITIONAL COMPENSATION CLAIMS

Calculations for the Crow Creek Sioux and Lower Brule Sioux Tribes Differ from Approach Used in Prior GAO Reports

Statement of Robin M. Nazzaro, Director
Natural Resources and Environment

GAO-06-849T

June 14, 2006

GAO
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Highlights

Highlights of GAO-06-849T, a testimony before the Committee on Indian Affairs, U.S. Senate

INDIANS' ADDITIONAL COMPENSATION CLAIMS

Calculations for the Crow Creek Sioux and Lower Brule Sioux Tribes Differ from Approach Used in Prior GAO Reports

Why GAO Did This Study

From 1946 to 1966, the government constructed the Fort Randall and Big Bend Dams as flood control projects on the Missouri River in South Dakota. The reservoirs created behind the dams flooded about 38,000 acres of the Crow Creek and Lower Brule Indian reservations. The tribes received compensation when the dams were built and additional compensation in the 1990s. The tribes are seeking a third round of compensation on the basis of a consultant's analysis.

The Congress provided additional compensation to other tribes after two prior GAO reports in 1991 and 1998 (GAO/RCED-91-77 and GAO/RCED-98-77). For those reports, GAO proposed that one recommended approach to providing additional compensation would be to calculate the difference between the tribe's final asking price and the amount that was appropriated by the Congress and then adjust that difference using the inflation rate and an interest rate to reflect a range of current values.

This testimony is based on GAO's report, *Indian Issues: Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes' Additional Compensation Claims* (GAO-06-517, May 19, 2006). Specifically, this testimony notes that the tribes' consultant did not follow the approach in GAO's 1991 and 1998 reports. The additional compensation amounts calculated by the tribes' consultant are contained in H.R. 109 and S. 374.

www.gao.gov/cgi-bin/getrpt?GAO-06-849T.

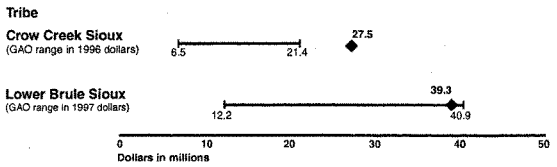
To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin M. Nazzaro at (202) 512-3841 or nazzaror@gao.gov.

What GAO Found

The approach the tribes' consultant used differed from the approach used in prior GAO reports by (1) not using the tribes' final asking prices as the starting point of the analysis and (2) not providing a range of additional compensation. First, in calculating additional compensation amounts, GAO used the tribes' final asking prices, recognizing that their final settlement position should be the most complete and realistic. In contrast, the consultant used selected figures from a variety of tribal settlement proposals. For example, for the rehabilitation component of the tribes' settlement proposals, the consultant used $13.1 million from proposals in 1957, rather than $6.7 million from the tribes' final rehabilitation proposals in 1961. Second, the tribes' consultant calculated only the highest additional compensation dollar value rather than providing the Congress with a range based on different adjustment factors, as in the earlier GAO reports.

Based on calculations using the tribes' final asking prices, GAO's estimated range of additional compensation is generally comparable with what the tribes were authorized in the 1990s (see figure below). GAO determined that the tribes' final asking prices were a reasonable starting point for the calculations, as was the case for the tribes GAO reviewed in two prior reports. By contrast, the consultant estimated about $106 million and $186 million for additional compensations for the Crow Creek Sioux and Lower Brule Sioux tribes, respectively (in 2003 dollars). Rather than bringing the Crow Creek Sioux and Lower Brule Sioux tribes into parity with the additional compensation provided to other tribes, GAO believes that the two bills under consideration in the 109th Congress—H.R. 109 and S. 374—would have the opposite effect. The bills would catapult the Crow Creek Sioux and Lower Brule Sioux tribes ahead of the other tribes and set a precedent for the other tribes to seek a third round of compensation. While our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374, the Congress will ultimately decide whether or not additional compensation should be provided, and if so, how much it should be.

GAO's Estimated Range of Additional Compensation Versus the Additional Compensation the Tribes Were Authorized in the 1990s



◆ Additional compensation that the Congress authorized for the tribes in 1996 and 1997

Source: GAO.

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss our work on the additional compensation claims for the Crow Creek Sioux and Lower Brule Sioux tribes. As you know, during a 20-year period, from 1946 to 1966, the federal government constructed the Fort Randall and Big Bend Dams as flood control projects on the Missouri River in South Dakota. Installation of the dams caused the permanent flooding of approximately 38,000 acres of the tribes' reservations. During the construction of the two dams, the tribes entered into negotiations with the federal government for compensation for their land that would be flooded by the reservoirs that the dams created. In both cases, the tribes and the federal government were unable to reach a negotiated settlement, and the legislative settlements imposed by the Congress were for less than the amounts that the tribes' had requested.

In 1958, the Congress authorized the payment of $2.6 million to the two tribes for damages and administrative expenses related to the Fort Randall Dam.[1] Similarly, in 1962, the Congress authorized the payment of about $7.7 million to the two tribes for damages, rehabilitation (funds for improving the tribes' standard of living), and administrative expenses related to the Big Bend Dam.[2] However, the tribes did not consider the compensation they received in 1958 and 1962 to be sufficient, and they sought additional compensation to address the effects of both dams. As a result, in 1996 and 1997, the Congress authorized the Crow Creek Sioux and the Lower Brule Sioux tribes additional compensation of $27.5 million and $39.3 million, respectively, through the establishment of development trust funds for each tribe.[3]

In addition to the Crow Creek Sioux and Lower Brule Sioux tribes, Indian tribes at five other reservations also (1) lost land to flood control projects on the Missouri River, (2) received compensation for damages in the mid-1900s, and (3) requested and received additional compensation in the

[1]Crow Creek, Pub. L. No. 85-916, 72 Stat. 1766 (1958); and Lower Brule, Pub. L. No. 85-923, 72 Stat. 1773 (1958).

[2]Crow Creek, Pub. L. No. 87-735, 76 Stat. 704 (1962); and Lower Brule, Pub. L. No. 87-734, 76 Stat. 698 (1962).

[3]Crow Creek, Pub. L. No. 104-223, 110 Stat. 3026 (1996); and Lower Brule, Pub. L. No. 105-132, 111 Stat. 2563 (1997).

1990s or early 2000s.[4] Before the Congress authorized additional compensation to Indian tribes at three—Fort Berthold, Standing Rock, and Cheyenne River—of these five other reservations, we were asked to review their additional compensation claims. In 1991, we reported on the additional compensation claims for the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux tribe, and, in 1998, we reported on the additional compensation claims for the Cheyenne River Sioux tribe.[5] For the tribes at these three reservations, we found the economic analyses used to justify their additional compensation claims to be unreliable, and we suggested that the Congress not rely on them as a basis for providing the tribes with additional compensation.

As an alternative, we suggested that if the Congress determined that additional compensation was warranted, it could determine the amount of compensation by calculating the difference between the tribe's final settlement proposal (referred to in this report as the tribe's "final asking price") and the amount of compensation the Congress originally authorized the tribes. We used the inflation rate and an interest rate to adjust the difference to reflect a range of current values, using the inflation rate for the lower end of the range and the interest rate for the higher end. Using this approach, we calculated how much additional compensation it would take today to make up for the difference between the tribes' final asking prices and the original compensation provided.

In 2003, the Crow Creek Sioux and Lower Brule Sioux tribes hired a consultant to determine if they were due even further additional compensation based on the method we proposed in our two prior reports. As a result of the consultant's analysis, the two tribes are currently seeking a third round of compensation totaling an additional $226 million (in 2003

[4]Fort Berthold and Standing Rock, Pub. L. No. 102-575, title XXXV, 106 Stat. 4600, 4731 (1992); Cheyenne River, Pub. L. No. 106-511, title I, 114 Stat. 2365 (2000); and Yankton and Santee, Pub. L. No. 107-331, title II, 116 Stat. 2834, 2838 (2002).

[5]GAO, *Indian Issues: Compensation Claims Analyses Overstate Economic Losses*, GAO/RCED-91-77 (Washington, D.C.: May 21, 1991); and *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation Claim for the Oahe Dam*, GAO/RCED-98-39 (Washington, D.C.: Jan. 28, 1998).

dollars).[6] The tribes assert that their new calculations for additional compensation will bring them into parity with the additional compensation provided to the other tribes on the Missouri River. The additional compensation amounts the consultant recommended are included in two bills pending in the 109th Congress, H.R. 109 and S. 374, referred to as the Tribal Parity Act. Our testimony today is based on our May 2006 report in which we assessed whether the tribes' consultant followed the approach in our prior reports in calculating the additional compensation amounts for the Crow Creek Sioux and Lower Brule Sioux tribes.[7]

To assess the consultant's methods and analysis for determining additional compensation for the Crow Creek Sioux and Lower Brule Sioux tribes, we used standard economic principles and the analysis we conducted in our two prior reports on additional compensation. In order to ensure that we obtained and reviewed all relevant data, we conducted a literature search for congressional, agency, and tribal documents at the National Archives and the Department of the Interior's library. We used original documents to learn about the negotiation process and to identify the appraised land prices and various proposed settlement amounts. As a result, we determined that the data were sufficiently reliable for purposes of this report. We met with representatives of the two tribes and the tribes' consultant to discuss the analysis that was the basis for the tribes' additional compensation claims. Our May 2006 report, on which this testimony is based, was prepared in accordance with generally accepted government auditing standards.

In summary,

- The tribes' consultant differed from the approach used in prior GAO reports by (1) not using the tribes' final asking prices as the starting point of the analysis and (2) not providing a range of additional compensation. First, in calculating additional compensation amounts, GAO used the

[6]Michael L. Lawson, Ph.D., Morgan Angel & Associates, *The Lower Brule and Crow Creek Sioux Tribes of South Dakota: Parity Compensation for Losses from Missouri River Pick-Sloan Dam Projects* (Washington, D.C.: June 15, 2004). See S. Hrg. No. 108-620, at 34-112 (2004). The consultant calculated a gross amount of additional compensation of $292.3 million (in 2003 dollars)—$105.9 million for the Crow Creek Sioux tribe and $186.4 million for the Lower Brule Sioux tribe. After subtracting the $66.8 million in additional compensation that the tribes received in the 1990s, the consultant arrived at a net additional request of $225.5 million.

[7]GAO, *Indian Issues: Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes' Additional Compensation Claims*, GAO-06-517 (Washington, D.C.: May 19, 2006).

tribes' final asking prices, recognizing that their final settlement position should be the most complete and realistic. In contrast, the consultant used selected figures from a variety of tribal settlement proposals. For example, for the rehabilitation component of the tribes' settlement proposals, the consultant used $13.1 million from proposals in 1957, rather than $6.7 million from the tribes' final rehabilitation proposals in 1961. Second, the tribes' consultant calculated only the highest additional compensation dollar value rather than providing the Congress with a range of possible additional compensation based on different adjustment factors, as in the earlier GAO reports.

- Using the approach we followed in our prior reports, we determined in this analysis that the additional compensation the Congress authorized for the tribes in the 1990s was already at the high end or was above the range of possible additional compensation. For the Crow Creek Sioux tribe, we estimated that the difference—adjusted to account for inflation and interest rates through 1996—would range from $6.5 million to $21.4 million, compared with the $27.5 million the Congress authorized for the tribe in 1996. For the Lower Brule Sioux tribe, we estimated that the adjusted difference would range from $12.2 million to $40.9 million, compared with the $39.3 million the Congress authorized for the tribe in 1997. We determined that the tribes' final asking prices were a reasonable starting point for the calculations, as was the case for the tribes GAO reviewed in two prior reports. By contrast, the consultant estimated about $106 million and $186 million for additional compensation for the Crow Creek Sioux and Lower Brule Sioux tribes, respectively (in 2003 dollars). Rather than bringing the Crow Creek Sioux and Lower Brule Sioux tribes into parity with the additional compensation provided to other tribes, GAO believes that the two bills under consideration in the 109th Congress—H.R. 109 and S. 374—would have the opposite effect. While our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374, the Congress will ultimately decide whether or not additional compensation should be provided, and if so, how much it should be.

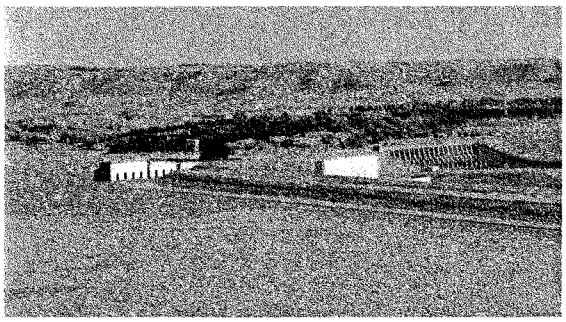
Background

The Flood Control Act of 1944 established a comprehensive plan for flood control and other purposes, such as hydroelectric power production, in the Missouri River Basin.[8] The Pick-Sloan Plan—a joint water development program designed by the U.S. Army Corps of Engineers (the Corps) and the Department of the Interior's (Interior) Bureau of Reclamation—

[8]Pub. L. No. 78-534, 59 Stat. 887 (1944).

included the construction of five dams on the Missouri River, including the Garrison Dam in North Dakota, and the Oahe, Fort Randall, Big Bend, and Gavins Point Dams in South Dakota. The construction of the Fort Randall Dam, located 7 miles above the Nebraska line in south-central South Dakota, began in May 1946 and was officially dedicated in August 1956. The dam is 160 feet high, and the reservoir behind it, known as Lake Case, stretches 107 miles to the northwest. (See fig. 1.)

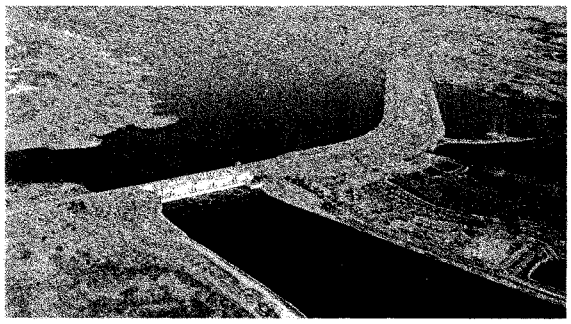
Figure 1: The Fort Randall Dam and Lake Case (February 2006)



Source: GAO.

In September 1959, the Corps began work on the Big Bend Dam, which is about 100 miles northwest of the Fort Randall Dam on land belonging to both the Crow Creek Sioux and Lower Brule Sioux tribes. The Big Bend Dam is 95 feet high and was completed in September 1966. The reservoir behind the dam, known as Lake Sharpe, is 20 miles long. (See fig. 2.)

Figure 2: The Big Bend Dam and Lake Sharpe (July 1998)



Source: U.S. Army Corps of Engineers.

The Crow Creek Sioux and Lower Brule Sioux tribes reside on reservations located across the Missouri River from one another in central South Dakota. Each reservation includes about 225,000 acres. The major economic activities for both the Crow Creek Sioux and Lower Brule Sioux tribes are cattle ranching and farming, and both tribes provide guided hunting for fowl and other game. Each tribe also operates a casino and a hotel. Both tribes are governed by a tribal council under their respective tribal constitutions, and each tribal council is led by a tribal chairman. The major employers on the reservations are the tribes, the casinos, the Bureau of Indian Affairs, and the Indian Health Service.

The construction of the Fort Randall Dam caused the flooding of more than 17,000 acres of Crow Creek and Lower Brule reservation land and the displacement of more than 100 tribal families. After these two tribes sustained major damage from this project, the construction of the Big Bend Dam inundated over 20,000 additional acres of their reservations. This flooding displaced more families, some of whom had moved earlier as a result of flooding from the Fort Randall Dam. (See table 1.) Flooding from the installation of both dams resulted in the loss of valuable timber and pasture and forced families to move to less desirable land, which affected their way of life.

Table 1: Acreage Lost and Families Displaced by the Fort Randall and Big Bend Dams

	Fort Randall Dam		Big Bend Dam	
Tribe	Acreage lost	Number of Families displaced	Acreage lost	Number of families displaced
Crow Creek Sioux	9,418	84	6,179	27
Lower Brule Sioux	7,997	35	14,299	62
Total	**17,415**	**119**	**20,478**	**89**

Sources: House and Senate reports.

During the 1950s and 1960s, the Corps, Interior, through its Missouri River Basin Investigations Unit (MRBI),[9] and the tribes—represented through tribal negotiating committees—developed their own estimates of the damages caused by the Fort Randall and Big Bend dams. The settlement negotiations for the Fort Randall Dam stretched over several years, and the tribes put forward a number of different settlement proposals. The settlement negotiations for the Big Bend Dam were conducted in a much shorter time frame, but there still were a number of settlement proposals and counter-proposals. See table 2 for summary of the tribes' initial settlement proposals and final asking prices for both dams.

[9]The Secretary of the Interior created this unit in 1945 to study the impact of the various Missouri River flood control projects.

Table 2: Initial Settlement Proposals and Final Asking Prices by the Crow Creek Sioux and Lower Brule Sioux tribes for the Fort Randall and Big Band Dams

Current year dollars		
Settlement components, by dam and by tribe	**Initial settlement proposals (1954, 1960, and 1961)**	**Final asking prices (1958 and 1961)**
Fort Randall Dam		
Crow Creek Sioux		
Direct damages	$566,967	$641,588
Indirect damages	1,132,452	1,463,433
Administrative expenses	100,000[a]	100,000
Subtotal	**$1,799,419**	**$2,205,021**
Rehabilitation	$2,560,000	$0
Lower Brule Sioux		
Direct damages	$739,904	$771,998
Indirect damages	1,790,568	788,904
Administrative expenses	100,000[a]	200,000
Subtotal	**$2,630,472**	**$1,760,902**
Rehabilitation	$2,530,000	$0
Subtotal	**$4,429,891[b]**	**$3,965,923**
Big Bend Dam		
Crow Creek Sioux		
Direct damages	$494,890	$355,000
Indirect damages	421,034	467,004
Administrative expenses	125,000	125,000
Rehabilitation	2,790,000	4,002,000
Subtotal	**$3,830,924**	**$4,949,004**
Lower Brule Sioux		
Direct damages	$1,111,910	$825,000
Indirect damages	783,998	884,472
Administrative expenses	125,000	125,000
Rehabilitation	1,620,000	2,670,300
New school	350,000	350,000
Subtotal	**$3,990,908**	**$4,854,772**
Subtotal	**$7,821,832**	**$9,803,776**
Total	**$12,251,723[b]**	**$13,769,699**

Source: National Archives.

[a]Administrative expenses were first proposed in H.R. 3544 and H.R. 3602, 84th Cong., 1st Sess., introduced on February 3, 1955.

[a]To avoid double counting the rehabilitation component, the rehabilitation amounts for the Fort Randall Dam are not included in the subtotal for the Fort Randall Dam nor in the total for the entire table. During the negotiations for the Fort Randall Dam, the tribes agreed to defer the negotiations on the rehabilitation component to the settlement negotiations for the Big Bend Dam. The initial settlement proposals for rehabilitation for the Fort Randall Dam totaled $5,090,000, compared to $4,410,000 for the initial rehabilitation proposals for the Big Bend Dam. Using the higher rehabilitation amounts from the Fort Randall Dam negotiations, the total would increase to $12,931,723, which is still less than the total of the tribes' final asking prices.

Tribes at five other reservations affected by flood control projects along the Missouri River incurred losses ranging from about 600 acres to over 150,000 acres. These tribes received some compensation, primarily during the 1950s, for the damages they sustained. However, beginning in the 1980s, some of these tribes began requesting additional compensation. The Congress responded to their requests by authorizing the establishment of development trust funds. (See table 3.) The tribes at the Fort Berthold, Standing Rock, and Cheyenne River reservations received compensation within the ranges we had suggested the Congress consider in our reviews of the tribes' additional compensation claims. The ranges were based on the current value of the difference between each tribes' final asking price and the amount that the Congress authorized. We were not asked to review the additional compensation claims for the Crow Creek Sioux and Lower Brule Sioux tribes in the 1990s or for the Santee Sioux and Yankton Sioux tribes in 2002.

Table 3: Additional Compensation Authorized by Congress for Tribes on the Missouri River

Current year dollars in millions

Tribe	Dam	Acreage lost	Year additional compensation enacted	Additional compensation authorized
Three Affiliated Tribes of the Fort Berthold Reservation	Garrison	152,360	1992[a]	$149.2
Standing Rock Sioux	Oahe	55,994	1992[a]	90.6
Crow Creek Sioux	Fort Randall; Big Bend	15,597	1996[b]	27.5
Lower Brule Sioux	Fort Randall; Big Bend	22,296	1997[c]	39.3
Cheyenne River Sioux	Oahe	104,420	2000[d]	290.7
Yankton Sioux	Fort Randall	2,851	2002[e]	23.0
Santee Sioux	Gavins Point	593	2002[e]	4.8

Source: GAO analysis of the additional compensation acts.

[a]Pub. L. No. 102-575, title XXXV, 106 Stat. 4600, 4731 (1992).

[b]Pub. L. No. 104-223, 110 Stat. 3026 (1996).

[c]Pub. L. No. 105-132, 111 Stat. 2563 (1997).

[6]Pub. L. No. 106-511, title I, 114 Stat. 2365 (2000). The development trust fund for the Cheyenne River Sioux tribe will not be created until the first day of the 11th fiscal year after enactment, or October 1, 2011.

[7]Pub. L. No. 107-331, title II, 116 Stat. 2834, 2838 (2002). The development trust funds for the Yankton Sioux and Santee Sioux tribes will not be created until the first day of the 11th fiscal year after enactment, or October 1, 2013.

Consultant's Compensation Analysis Differs from the Approach GAO Previously Used for Other Tribes

The approach used by the Crow Creek Sioux and Lower Brule Sioux tribes' consultant differed from the approach we used in our prior reports. The consultant used a variety of settlement proposals, instead of consistently using the tribes' final asking prices, in calculating the difference between what the tribes asked for and what the Congress authorized. As a result, the consultant's proposed compensation estimates are higher than if he had consistently used the tribes' final asking prices In addition, the consultant provided only the highest additional compensation value, rather than a range of possible additional compensation from which the Congress could choose.

Consultant Used Various Settlement Proposals Rather Than Consistently Using the Tribes' Final Asking Prices

To arrive at an additional compensation estimate, the consultant did not consistently use the tribes' final asking prices when calculating the difference between what the tribes asked for and what they finally received. In determining possible additional compensation for the tribes at the Fort Berthold and Standing Rock reservations in 1991, and Cheyenne River reservation in 1998, we used the tribes' final asking prices to calculate the difference between what the tribes asked for and what they received. In our prior reports, we used the tribes' final position because we believed that it represented the most up-to-date and complete information and that their final position was more realistic than their initial asking prices. In contrast, the consultant used figures from a variety of settlement proposals—several of which were not the tribes' final asking prices—to estimate additional compensation for damages (including direct and indirect damages), administrative expenses, and rehabilitation. As a result, the consultant's estimate of the tribes' asking prices in the late 1950s and early 1960s was about $7.7 million higher than it would have been if he had consistently used the tribes' final asking prices. Choosing which settlement proposal to use to calculate the difference between what the tribe asked for and what it finally received is critically important, because a small numerical difference 50 years ago can result in a large difference today, once it is adjusted to reflect more current values.

With respect to the Fort Randall Dam, the consultant used amounts from a variety of settlement proposals for damages and administrative expenses. To determine additional compensation, the consultant used a $2.2 million

settlement proposal by the Crow Creek Sioux tribe and a $2.6 million settlement proposal by the Lower Brule Sioux tribe. (See table 4.) The Crow Creek proposal was from May 1957, and was the same as the tribe's final asking price requested about 1 year later, in February 1958. However, the Lower Brule proposal was from the first compensation bill introduced in the Congress in July 1954, almost 4 years before the tribe's final asking price of about $1.8 million in March 1958—a difference of more than $850,000.

Table 4: Comparison of the Settlement Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices for the Fort Randall Dam

Current year dollars

Type of compensation, by tribe	Settlement figure used by the tribes' consultant*	Date of settlement figure	Tribes' final asking prices	Date of final asking price	Difference
Crow Creek Sioux					
Direct damages	$641,588	May 1957	$641,588	Feb. 1958	$0
Indirect damages	1,463,433	May 1957	1,463,433	Feb. 1958	0
Administrative expenses	100,000	May 1957	100,000	Feb. 1958	0
Subtotal	**$2,205,021**		**$2,205,021**		**$0**
Lower Brule Sioux					
Direct damages	$739,904	July 1954	$771,998	Mar. 1958	($32,094)
Indirect damages	1,790,568	July 1954	788,904	Mar. 1958	1,001,664
Administrative expenses	100,000	Feb. 1955	200,000	Mar. 1958	(100,000)
Subtotal	**$2,630,472**		**$1,760,902**		**$869,570**
Total	**$4,835,493**		**$3,965,923**		**$869,570**

Sources: National Archives and the consultant's analysis.

*The consultant's figures for the Crow Creek Sioux tribe were from H.R. 7758, 85th Cong., 1st Sess., (companion bill S. 2152) introduced on May 24, 1957. The consultant's damage figures for the Lower Brule Sioux tribe were from H.R. 9832, 83rd Cong., 2nd Sess., (companion bill S. 3748) introduced on July 8, 1954. The administrative expenses figure for Lower Brule was from H.R. 3544, 84th Cong., 1st Sess., (companion bill S. 953) introduced on February 3, 1955. The direct damages in H.R. 3544 were reduced to $708,493.29, and the indirect damages were reduced to $788,904.

For the Big Bend Dam, the consultant also used amounts from different settlement proposals for damages and administrative expenses. To determine additional compensation, the consultant used amounts from congressional bills introduced in March 1961 for direct damages, but used amounts from proposed amendments to the bills in June 1961 for indirect damages. The tribes' asking prices from June 1961 can be considered their final asking prices because the proposed amendments are the last evidence of when the tribes requested specific compensation (indirect

damages) or agreed to a compensation amount (direct damages). The consultant would have been more consistent had he used both the indirect and direct damage settlement figures in the proposed amendments from June 1961, rather than a mixture of these figures. As a result, the total amount for damages the consultant used to calculate the difference between what the tribes requested and what it finally received is about $427,000 (in 1961 dollars), which is higher than if the tribes' final asking prices from June 1961 had been used consistently. (See table 5.)

Table 5: Comparison of the Settlement Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices for the Big Bend Dam

Current year dollars

Type of compensation, by tribe	Settlement figure used by the tribes' consultant[a]	Date of settlement figure	Tribes' final asking prices	Date of final asking price	Difference
Crow Creek Sioux					
Direct damages	$494,890	Mar. 1961	$355,000	June 1961	$139,890
Indirect damages	467,004	June 1961	467,004	June 1961	0
Administrative expenses	125,000	Mar. 1961	125,000	June 1961[b]	0
Subtotal	**$1,086,894**		**$947,004**		**$139,890**
Lower Brule Sioux					
Direct damages	$1,111,910	Mar. 1961	$825,000	June 1961	$286,910
Indirect damages	884,472	June 1961	884,472	June 1961	0
Administrative expenses	125,000	Mar. 1961	125,000	June 1961[b]	0
New school	350,000	Mar. 1961	350,000	June 1961[b]	0
Subtotal	**$2,471,382**		**$2,184,472**		**$286,910**
Total	**$3,558,276**		**$3,131,476**		**$426,800**

Sources: National Archives and the consultant's analysis

[a]The consultant used figures from H.R. 5165 (companion bill S. 1252) and H.R. 5144 (companion bill S. 1251) for direct damages and administrative expenses for the Crow Creek Sioux and Lower Brule Sioux tribes, respectively. The figure for the new school for the Lower Brule Sioux Tribe was also from H.R. 5144 (companion bill S. 1251). The figures for indirect damages were from proposed amendments to these bills. An Assistant Secretary for the Department of the Interior included a composite of the recommended amendments of the Secretary of the Interior, the Secretary of the Army, and the tribes to H.R. 5144 and H.R. 5165 in a letter to the Chairman of the House, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, on June 16, 1961.

[b]The tribes' final asking prices for administrative expenses and the new school for the Lower Brule Sioux tribe were represented in congressional bills introduced in March 1961. No changes were proposed to these figures in the proposed amendments to the bills, so we assumed these figures represented the tribes' final asking prices as of June 1961.

Lastly, the consultant did not use the tribes' final asking prices for the rehabilitation component of the settlement payment. The consultant used

a $6.7 million rehabilitation figure that the Crow Creek Sioux tribe's negotiating committee proposed in May 1957 and a $6.3 million rehabilitation figure that was proposed in congressional bills in 1955 and 1957 for the Lower Brule Sioux tribe. (See table 6.) Both of these figures were developed during the negotiations for the Fort Randall Dam. However, the tribes agreed in their February and March 1958 proposals—their final asking prices for the Fort Randall Dam—to defer consideration of their rehabilitation proposals until after land acquisitions were made for the construction of the Big Bend Dam. The Big Bend Dam's installation would once again result in the flooding of their lands. In our view, the consultant should have used the final rehabilitation figures proposed by the tribes in 1961—that is, $4 million for the Crow Creek Sioux tribe and $2.7 million for the Lower Brule Sioux tribe.

Table 6: Comparison of Rehabilitation Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices

Current year dollars

Rehabilitation payment, by tribe	Settlement figure used by the tribes' consultant[a]	Date of settlement figure	Tribes' final asking prices	Date of final asking price	Difference
Crow Creek Sioux	$6,715,311	May 1957	$4,002,000	Mar. 1961	$2,713,311
Lower Brule Sioux	6,348,316	Apr. 1957[b]	2,670,300	Mar. 1961	3,678,016
Total	**$13,063,627**		**$6,672,300**		**$6,391,327**

Sources: National Archives and the consultant's analysis.

[a]The consultant's rehabilitation figure for the Crow Creek Sioux tribe was from H.R. 7758, 85th Cong., 1st Sess., (companion bill S. 2152) introduced on May 24, 1957. The figure was also presented by the tribe's negotiating committee in May 1957. The consultant's rehabilitation figure for the Lower Brule Sioux tribe was from H.R. 6569, 85th Cong., 1st Sess., introduced on April 2, 1957.

[b]The same rehabilitation figure was also included in settlement proposals from February 1955 (H.R. 3544 and S. 953) and March 1957 (H.R. 6074). As shown in table 5, the damage settlement figures the consultant used were from H.R. 9832 (companion bill S. 3748) in 1954, years earlier than the date of the rehabilitation figure that was used. In 1954, H.R. 9832 and S. 3748 both included a rehabilitation figure of $2.53 million—over $3.8 million less than the figure the consultant used.

During the settlement negotiations for the two dams, the tribes never submitted a settlement proposal at a singular point in time that consisted of the settlement figures that the tribes' consultant grouped together for the purposes of his calculations.

Consultant Developed a Single Compensation Estimate for Each Tribe, Rather Than a Range of Estimates

In our two prior reports, we suggested that, for the tribes of Fort Berthold, Standing Rock, and Cheyenne River, the Congress consider a range of possible compensation based on the current value of the difference between the final asking price of each tribe and the amount that it received. In calculating the current value, we used two different rates to establish a range of additional compensation. For the lower end of the range, we used the inflation rate to estimate the amount the tribes would need to equal the purchasing power of the difference. For the higher range, we used an interest rate to estimate the amount the tribes might have earned if they had invested the difference in Aaa corporate bonds as of the date of the settlement.[10] The consultant did not follow this approach when he calculated the compensation estimates for the Crow Creek Sioux and Lower Brule Sioux tribes. Instead, he used the corporate bond rate to develop a single figure for each tribe, rather than a range.

Amounts Calculated by GAO Are Similar to the Amounts Received by the Tribes in the 1990s

Using the approach we followed in our prior reports, which was based on the tribes' final asking prices, we found that the additional compensation the Crow Creek Sioux and Lower Brule Sioux tribes received in the 1990s was either at the high end or above the range of possible additional compensation. For both tribes, we calculated the difference between the final asking prices and the compensation authorized in 1958 and 1962. We then took the difference and adjusted it to account for the inflation rate and the Aaa corporate bond rate through either 1996 or 1997 to produce a possible range of additional compensation to compare it with the additional compensation the Congress authorized for the tribes in 1996 and 1997. For the Crow Creek Sioux tribe, we estimated that the difference adjusted to 1996 values for both dams would range from $6.5 million to $21.4 million (see table 7), compared with the $27.5 million the Congress authorized for the tribe in 1996. The $27.5 million in additional compensation already authorized for the Crow Creek Sioux tribe is therefore higher than the amount that we would have proposed in 1996 using our approach.

[10]Aaa is the highest grade of corporate bonds in the estimate of bond rating services, such as Moody's Investment Services.

Table 7: Estimate of Additional Compensation Range for the Crow Creek Sioux Tribe

Current year dollars

Type of payment	Tribes' final asking prices (1958 and 1961)[a]	Payment authorized (1958 and 1962)[b]	Difference	Additional compensation range (in 1996 dollars) Low end (inflation rate)[c]	High end (interest rate)[d]
Fort Randall Dam					
Damages	$2,105,021	$1,395,812	$709,209	$3,848,314	$13,369,732
Administrative expenses	100,000	100,000	0	0	0
Subtotal	**$2,205,021**	**$1,495,812**	**$709,209**	**$3,848,314**	**$13,369,732**
Big Bend Dam					
Damages	$822,004	$564,302	$257,702	$1,338,508	$4,094,541
Administrative expenses	125,000	75,000	50,000	259,701	794,433
Subtotal	**$947,004**	**$639,302**	**$307,702**	**$1,598, 209**	**$4,888,974**
Rehabilitation	$4,002,000	$3,802,500	$199,500	$1,036,206	$3,169,789
Total	**$7,154,025**	**$5,937,614**	**$1,216,411**	**$6,482,729**	**$21,428,495**

Source: GAO analysis of National Archives legislative files and the consultant's analysis.

[a]The damages figure for the Fort Randall Dam is from the Statement and Estimates of the Crow Creek Sioux Tribal Council and Negotiating Committee, dated February 21, 1958, presented at a hearing on H.R. 10786 before the House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, March 25, 1958. The tribe's final asking price for the damages caused by the Fort Randall Dam was embodied in H.R. 10786, 85th Cong., 2nd Sess., (companion bill S. 3225) introduced on February 18, 1958. The administrative expenses figure for the Fort Randall Dam is from H.R. 10786. The damage figure for the Big Bend Dam is from proposed amendments to H.R. 5165, dated June 16, 1961, and the figures for administrative expenses and rehabilitation are from H.R. 5165 (companion S. 1252) because the tribes did not ask for any changes to these components in the June 1961 proposed amendments.

[b]Fort Randall Dam, Pub. L. No. 85- 916, 72 stat. 1766 (1958); and Big Bend Dam, Pub. L. No. 87-735, 76 Stat. 704 (1962).

[c]Data in this column reflect the annual inflation rate (consumer price index for all items) from 1959 through 1996 for the Fort Randall Dam items and from 1962 through 1996 for the Big Bend Dam items and rehabilitation.

[d]Data in this column reflect the annual average rate of interest earned on investments in Aaa corporate bonds from 1959 through 1996 for the Fort Randall Dam items and from 1962 through 1996 for the Big Bend Dam items and rehabilitation.

For the Lower Brule Sioux tribe, we estimated that the difference adjusted to 1997 values for both dams would range from $12.2 million to $40.9 million (see table 8), compared with the $39.3 million the Congress authorized for the tribe in 1997. The $39.3 million falls toward the high end of the range that we would have proposed in 1997 using our approach.

Table 8: Estimate of Additional Compensation Range for the Lower Brule Sioux Tribe

Current year dollars

Type of payment	Tribes' final asking prices (1958 and 1961)[a]	Payment authorized (1958 and 1962)[b]	Difference	Additional compensation range (in 1997 dollars) Low end (inflation rate)[c]	High end (interest rate)[d]
Fort Randall Dam					
Damages	$1,560,902	$976,523	$584,379	$3,243,892	$11,816,283
Administrative expenses	200,000	100,000	100,000	555,101	2,022,024
Subtotal	**$1,760,902**	**$1,076,523**	**$684,379**	**$3,798,993**	**$13,838,307**
Big Bend Dam					
Damages	$1,709,472	$1,225,715	$483,757	$2,570,431	$8,244,275
Administrative expenses	125,000	75,000	50,000	265,674	852,109
New school	350,000	0	350,000	1,859,716	5,964,764
Subtotal	**$2,184,472**	**$1,300,715**	**$883,757**	**$4,695,821**	**$15,061,148**
Rehabilitation	$2,670,300	$1,968,750	$701,550	$3,727,669	$11,955,943
Total	**$6,615,674**	**$4,345,988**	**$2,269,686**	**$12,222,483**	**$40,855,398**

Source: GAO analysis of National Archives legislative files and the consultant's analysis.

[a]The damages figure and administrative expenses for the Fort Randall Dam are from the Lower Brule Proposed Program in Support of H.R. 6074, which was presented at a hearing on H.R. 6074 before the House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, March 25, 1958. The tribe's final asking price for damages caused by the Fort Randall Dam was embodied in H.R. 6074, 85th Cong., 1st Sess., introduced on March 18, 1957. The damages figure for the Big Bend Dam is from proposed amendments to H.R. 5144, dated June 16, 1961, and the figures for administrative expenses and rehabilitation are from H.R. 5144 (companion bill S. 1251) because there were no changes requested by the tribe to these components in the June 1961 proposed amendments.

[b]Fort Randall Dam, Pub. L. No. 85-923, 72 Stat. 1773 (1958); and Big Bend Dam, Pub. L. No. 87-734, 76 Stat. 698 (1962).

[c]Data in this column reflect the annual inflation rate (consumer price index for all items) from 1959 through 1997 for the Fort Randall Dam items and from 1962 through 1997 for the Big Bend Dam items and rehabilitation.

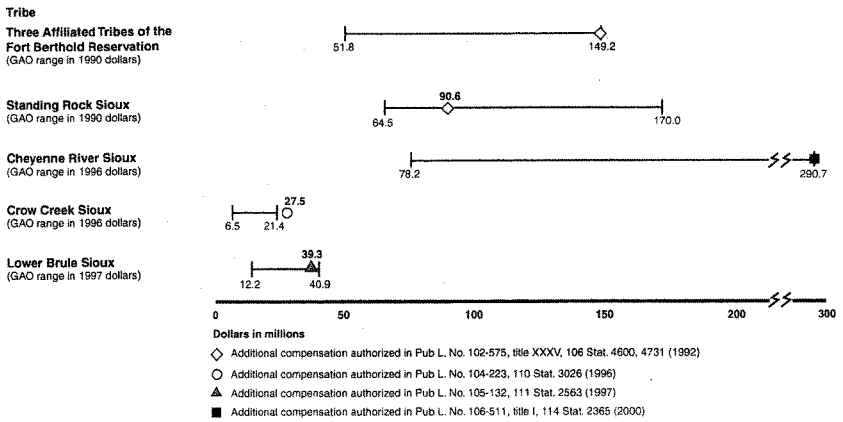
[d]Data in this column reflect the annual average rate of interest earned on investments in Aaa corporate bonds from 1959 through 1997 for the Fort Randall Dam items and from 1962 through 1997 for the Big Bend Dam items and rehabilitation.

Our estimates of additional compensation for the two tribes vary significantly from the amounts calculated by the tribes' consultant. Our estimated range for the two tribes combined is about $18.7 million to $62.3 million. The consultant calculated an additional compensation figure for

the two tribes of $292.3 million (in 2003 dollars)—that is, $105.9 for the Crow Creek Sioux tribe and $186.4 for the Lower Brule Sioux tribe—before subtracting the amounts received by the tribes in 1996 and 1997, respectively.

In conclusion, the additional compensation already authorized for the Crow Creek Sioux and Lower Brule Sioux tribes in 1996 and 1997, respectively, is consistent with the additional compensation authorized for the other tribes on the Missouri River. Rather than bringing the Crow Creek Sioux and Lower Brule Sioux tribes into parity with the other tribes, the two bills under consideration in the 109th Congress—H.R. 109 and S. 374—would have the opposite effect. As such, should the Congress rely on our analysis in this report and not provide these two tribes a third round of compensation, then the additional compensation provided to five of the seven tribes affected by Pick-Sloan dam projects on the Missouri River would generally be within the ranges we have calculated. (See fig. 3.) Accordingly, we believe our approach would provide more consistency among the tribes.

Figure 3: GAO's Estimated Range of Additional Compensation Versus the Additional Compensation Authorized for Five Tribes Since 1992



Source: GAO.

Providing a third round of compensation to the Crow Creek Sioux and Lower Brule Sioux tribes, in the amounts proposed in the bills, would catapult them ahead of the other tribes and set a precedent for the other tribes to seek a third round of compensation. Our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374. Notwithstanding the results of our analysis, the Congress will ultimately decide whether or not additional compensation should be provided, and if so, how much it should be. Our analysis will assist the Congress in this regard.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

Contact and Acknowledgments

For further information, please contact Robin M. Nazzaro on (202) 512-3841 or nazzaror@gao.gov. Individuals making key contributions to this testimony and the report on which it was based are Greg Carroll, Timothy J. Guinane, Susanna Kuebler, Jeffery D. Malcolm, and Carol Herrnstadt Shulman.

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Report to the Chairman, Committee on Indian Affairs, U.S. Senate

May 2006

INDIAN ISSUES

Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes' Additional Compensation Claims

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Highlights

Highlights of GAO-06-517, a report to the Chairman, Committee on Indian Affairs, U.S. Senate

Why GAO Did This Study

From 1946 to 1966, the government constructed the Fort Randall and Big Bend Dams as flood control projects on the Missouri River in South Dakota. The reservoirs created behind the dams flooded about 38,000 acres of the Crow Creek and Lower Brule Indian reservations. The tribes received compensation when the dams were built and additional compensation in the 1990s. The tribes are seeking a third round of compensation based on a consultant's analysis.

The Congress provided additional compensation to other tribes after two prior GAO reports. For those reports, GAO found that one recommended approach to providing additional compensation would be to calculate the difference between the tribe's final asking price and the amount that was appropriated by the Congress, and then to adjust it using the inflation rate and an interest rate to reflect a range of current values.

GAO was asked to assess whether the tribes' consultant followed the approach used in GAO's prior reports. The additional compensation amounts calculated by the tribes' consultant are contained in H.R. 109 and S. 374.

What GAO Recommends

GAO is not making any recommendations. The tribes' consultant commented that he disagreed with our reliance on the tribes' final asking prices. GAO believes its approach is reasonable.

www.gao.gov/cgi-bin/getrpt?GAO-06-517.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin M. Nazzaro at (202) 512-3841 or nazzaror@gao.gov.

May 2006

INDIAN ISSUES

Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes' Additional Compensation Claims

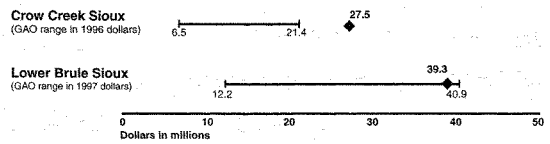
What GAO Found

The tribes' consultant differed from the approach used in prior GAO reports by (1) not using the tribes' final asking prices as the starting point of the analysis and (2) not providing a range of additional compensation. First, in calculating additional compensation amounts, GAO used the tribes' final asking prices, recognizing that their final settlement position should be the most complete and realistic. In contrast, the consultant used selected figures from a variety of tribal settlement proposals. For example, for the rehabilitation component of the tribes' settlement proposals, the consultant used $13.1 million from proposals in 1957, rather than $6.7 million from the tribes' final rehabilitation proposals in 1961. Second, the tribes' consultant calculated only the highest additional compensation dollar value rather than providing the Congress with a range of possible additional compensation based on different adjustment factors, as in the earlier GAO reports.

Based on calculations using the tribes' final asking prices, GAO's estimated range of additional compensation is generally comparable with what the tribes were authorized in the 1990s (see figure below). By contrast, the consultant estimated about $106 million and $186 million for Crow Creek and Lower Brule, respectively (in 2003 dollars). There are two primary reasons for this difference. First, GAO used the tribes' final rehabilitation proposals from 1961, rather than the 1957 proposals used by the consultant. Second, GAO's dollar amounts were adjusted only through 1996 and 1997 to compare them directly with what the tribes received at that time. The consultant, however, adjusted for interest earned through 2003, before comparing it with the payments authorized in the 1990s.

The additional compensation already authorized for the tribes in the 1990s is consistent with the additional compensation authorized for other tribes on the Missouri River. GAO's analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374.

GAO's Estimated Range of Additional Compensation Versus the Additional Compensation the Tribes Were Authorized in the 1990s



◆ Additional compensation that the Congress authorized for the tribes in 1996 and 1997

Source: GAO.

United States Government Accountability Office
Washington, D.C. 20548

May 19, 2006

The Honorable John McCain
Chairman, Committee on Indian Affairs
United States Senate

Dear Mr. Chairman:

During a 20-year period, from 1946 to 1966, the federal government constructed the Fort Randall and Big Bend Dams as flood control projects on the Missouri River in South Dakota. Installation of the dams caused the permanent flooding of approximately 38,000 acres of the Crow Creek Sioux and Lower Brule Sioux Indian reservations. During the construction of the two dams, the tribes entered into negotiations with the federal government for compensation for their land that would be flooded by the reservoirs created by the dams. The settlement negotiations for the Fort Randall Dam stretched over several years, and the tribes put forward a number of different settlement proposals. The settlement negotiations for the Big Bend Dam were conducted in a much shorter time frame, but there still were a number of settlement proposals and counterproposals. In both cases, the tribes and the federal government were unable to reach a negotiated settlement, and the Congress stepped in and imposed a legislative settlement. For both dams, the legislative settlements to the tribes were less than the amounts that they requested.

The settlement processes for the two dams spanned several decades—beginning in 1958, when the Congress authorized the payment of $2.6 million to the two tribes for damages and administrative expenses related to the Fort Randall Dam.[1] Regarding the Big Bend Dam, in 1962, the Congress authorized the payment of about $7.7 million to the two tribes for damages, rehabilitation (funds for improving the Indians' standard of living), and related administrative expenses.[2] However, the tribes did not consider the compensation they received in 1958 and 1962 to be sufficient, and they sought additional compensation to address the effects of both dams. As a result, in 1996 and 1997, the Congress authorized the Crow Creek Sioux and Lower Brule Sioux tribes additional compensation of

[1]Crow Creek, Pub. L. No. 85-916, 72 Stat. 1766 (1958); and Lower Brule, Pub. L. No. 85-923, 72 Stat. 1773 (1958).

[2]Crow Creek, Pub. L. No. 87-735, 76 Stat. 704 (1962); and Lower Brule, Pub. L. No. 87-734, 76 Stat. 698 (1962).

$27.5 million and $39.3 million, respectively, through the establishment of development trust funds for each tribe.[3]

In addition to the Crow Creek Sioux and Lower Brule Sioux tribes, other Indian tribes in North and South Dakota also (1) lost land to flood control projects on the Missouri River, (2) received compensation for damages in the mid-1900s, and (3) requested and received additional compensation in the 1990s or early 2000s. In 1992, 2000, and 2002, the Congress authorized the payment of additional compensation, through the establishment of development trust funds, to Indian tribes at five other reservations for damages suffered from dam projects along the Missouri River.[4] Prior to the Congress authorizing additional compensation to Indian tribes at three—Fort Berthold, Standing Rock, and Cheyenne River—of these five other reservations, we were asked to review their additional compensation claims. In 1991, we reported on the additional compensation claims for the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux tribe, and, in 1998, we reported on the additional compensation claims for the Cheyenne River Sioux tribe.[5] For the tribes at these three reservations, we found the economic analyses used to justify their additional compensation claims to be unreliable, and we suggested that the Congress not rely on them as a basis for providing the tribes with additional compensation.

As an alternative, we suggested that if the Congress determined that additional compensation was warranted, it could determine the amount of compensation by calculating the difference between the tribe's final settlement proposal (referred to in this report as the tribe's "final asking price") and the amount of compensation the Congress originally authorized the tribes. We used the inflation rate and an interest rate to adjust the difference to reflect a range of current values, using the inflation rate for the lower end of the range and the interest rate for the higher end. Using

[3]Crow Creek, Pub. L. No. 104-223, 110 Stat. 3026 (1996); and Lower Brule, Pub. L. No. 105-132, 111 Stat. 2563 (1997).

[4]Fort Berthold and Standing Rock, Pub. L. No. 102-575, title XXXV, 106 Stat. 4600, 4731 (1992); Cheyenne River, Pub. L. No. 106-511, title I, 114 Stat. 2365 (2000); and Yankton and Santee, Pub. L. No. 107-331, title II, 116 Stat. 2834, 2838 (2002).

[5]GAO, *Indian Issues: Compensation Claims Analyses Overstate Economic Losses*, GAO/RCED-91-77 (Washington, D.C.: May 21, 1991); and *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation Claim for the Oahe Dam*, GAO/RCED-98-39 (Washington, D.C.: Jan. 28, 1998).

this approach, we calculated how much additional compensation it would take today to make up for the difference between the tribes' final asking prices and the original compensation provided. The Congress authorized additional compensation to the tribes of the Fort Berthold, Standing Rock, and Cheyenne River Indian reservations that was within our suggested range of additional compensation for each tribe.

We were not asked by the Congress to review the additional compensation claims for the Crow Creek Sioux and Lower Brule Sioux tribes in the 1990s. The Crow Creek Sioux and Lower Brule Sioux tribes did not base their additional compensation claims in the 1990s on an economic analysis as the tribes did for the three other reservations that we reviewed. Rather, the Crow Creek Sioux and Lower Brule Sioux tribes' consultant asserted that since the tribes suffered the same type of damages as the Standing Rock Sioux tribe, they should be provided with additional compensation commensurate, on a per-acre basis, with the additional compensation provided to the Standing Rock Sioux tribe in 1992.[6]

After the Crow Creek Sioux and Lower Brule Sioux tribes received their additional compensation in 1996 and 1997, respectively, the Congress authorized additional compensation for the Cheyenne River Sioux tribe of $290.7 million, or about $2,800 per acre of land flooded. In 2003, the Crow Creek Sioux and Lower Brule Sioux tribes hired a consultant to determine if they were due additional compensation based on the method we proposed in our two prior reports. As a result of the consultant's analysis, the two tribes are currently seeking a third round of compensation totaling an additional $226 million (in 2003 dollars) for the land and resources

[6]We proposed in our 1991 report that the Congress consider a range of additional compensation of $64.5 million to $170 million for the Standing Rock Sioux tribe. In 1992, the Congress authorized payment to the tribe of $90.6 million, which amounted to $1,618 per acre. According to the Crow Creek Sioux tribe's consultant, the additional compensation for the Crow Creek Sioux tribe was calculated by adding an adjustment factor to this per-acre amount—to take into account that a greater percentage of the Crow Creek Sioux Reservation was taken—and then multiplying this figure ($1,763.16) by 15,597 acres. Using this formula, the Congress authorized an additional compensation payment to the Crow Creek Sioux tribe of $27.5 million in 1996. Similarly, using the same $1,763.16 per-acre figure (multiplied by 22,296 acres), the Congress authorized an additional compensation payment to the Lower Brule Sioux tribe of $39.3 million in 1997.

flooded by the reservoirs created by the Fort Randall and Big Bend Dams.[7] The tribes assert that their new calculations for additional compensation, using the alternative method we proposed in our two prior reports, will bring them into parity with the additional compensation provided to the other tribes on the Missouri River.

The additional compensation amounts the consultant recommended are included in two bills pending in the 109th Congress, H.R. 109 and S. 374, referred to as the Tribal Parity Act. Both the consultant's analysis and the bills state that the compensation amounts are based on methodology deemed appropriate by GAO. However, in July 2005, we requested that this language be deleted from the bills because we had not analyzed the proposed additional compensation for these two tribes, as we had for the other tribes. As a result, you asked us to assess whether the tribes' consultant followed the approach in our prior reports in calculating the additional compensation amounts for the Crow Creek Sioux and Lower Brule Sioux tribes.

To assess the consultant's methods and analysis for determining additional compensation for the Crow Creek Sioux and Lower Brule Sioux tribes, we used standard economic principles and the analysis we conducted in our two prior reports on additional compensation. In order to ensure that we obtained and reviewed all relevant data, we conducted a literature search for congressional, agency, and tribal documents at the National Archives and the Department of the Interior's library. We used original documents to learn about the negotiation process and to identify the appraised land prices and various proposed settlement amounts. As a result, we determined that the data were sufficiently reliable for purposes of this report. We met with the tribes' consultant to determine how he used the method we had suggested the Congress use as the basis for granting additional compensation to other tribes. We also met with representatives of the two tribes on their reservations in South Dakota to (1) discuss the analysis, actions taken with the compensation previously obtained, and

[7]Michael L. Lawson, Ph.D., Morgan Angel & Associates, *The Lower Brule and Crow Creek Sioux Tribes of South Dakota: Parity Compensation for Losses from Missouri River Pick-Sloan Dam Projects* (Washington, D.C.: June 15, 2004). See S. Hrg. No. 108-620, at 34-112 (2004). The consultant calculated a gross amount of additional compensation of $292.3 million (in 2003 dollars)—$105.9 million for the Crow Creek Sioux tribe and $186.4 million for the Lower Brule Sioux tribe. After subtracting the $66.8 million in additional compensation that the tribes received in the 1990s, the consultant arrived at a net additional request of $225.5 million.

plans for the additional compensation amounts requested and (2) review any records they might have on previous compensation negotiations. We performed our work from October 2005 to April 2006 in accordance with generally accepted government auditing standards. A more detailed discussion of our scope and methodology is presented in appendix I.

Results in Brief

The Crow Creek Sioux and Lower Brule Sioux tribes' consultant differed from the approach we used in our two prior reports in two ways: (1) by not using the tribes' final asking prices as the starting point of the analysis and (2) by providing a single estimate of additional compensation instead of a range. During the settlement negotiations for the Fort Randall and Big Bend Dams, as was the case with the negotiations for the other dams that we have reviewed, the tribes made a number of settlement proposals. In analyzing a request for compensation, it is critically important to decide which settlement proposal to use to calculate the difference between what the tribe asked for and what it finally received. A small numerical difference in 1950s dollars can result in a large difference today, once it is adjusted to reflect more current values. In our prior reports, we used the tribes' final asking prices because we believed that it represented the most up-to-date and complete information and that their final position was more realistic than their initial asking prices. In contrast, the tribes' consultant used selected numbers from a variety of settlement proposals, several that were not from the tribes' final asking prices. For example, for the rehabilitation component of the tribes' settlement proposals, the consultant used $13.1 million from settlement proposals in 1957, rather than $6.7 million from the tribes' final rehabilitation proposals in 1961. While rehabilitation was the largest component of the tribes' settlement proposals, it was not directly related to the damage caused by the dams. Rehabilitation funding in the 1950s was intended to improve the tribes' standard of living and prepare them for the termination of federal supervision. Finally, the tribes' consultant calculated only the highest additional compensation dollar value, rather than providing the Congress with a range of possible additional compensation based on different adjustment factors.

Using the approach we followed in our prior reports, we determined in this analysis that the additional compensation the Congress authorized for the tribes in the 1990s was already at the high end or was above the range of possible additional compensation. For the Crow Creek Sioux tribe, we estimated that the difference—adjusted to account for inflation and interest rates through 1996—would range from $6.5 million to $21.4 million,

compared with the $27.5 million the Congress authorized for the tribe in 1996. For the Lower Brule Sioux tribe, we estimated that the adjusted difference would range from $12.2 million to $40.9 million, compared with the $39.3 million the Congress authorized for the tribe in 1997. Although the additional compensation amounts enacted in 1996 and 1997 were not calculated using our approach, the amounts were generally within the ranges we would have proposed. Our estimated amounts vary significantly from the amounts calculated by the tribes' consultant. Our estimated range for the two tribes combined is $18.7 million to $62.3 million. By contrast, the tribes' consultant calculated additional compensation for the two tribes combined to be $292.3 million—$105.9 million for the Crow Creek Sioux tribe and $186.4 million for the Lower Brule Sioux tribe (in 2003 dollars). There are two primary reasons for this difference. First, a large difference occurs because we used the tribes' final rehabilitation request from 1961 in our calculation, rather than the tribes' rehabilitation requests from 1957, which the consultant used. Second, our total dollar amounts, including the rehabilitation amount, were adjusted to account for inflation and interest earned through 1996 and 1997 to compare them directly with the additional compensation the Congress authorized for the two tribes at that time. The consultant, however, adjusted for interest earned through 2003, before comparing his estimate with the payments authorized in the 1990s.

Because the consultant's analysis was the basis for the tribes' additional compensation claims and the consultant had asserted that the additional compensation amounts were based on a methodology deemed appropriate by GAO, we chose to provide the tribes' consultant with a draft of this report for review and comment. In commenting on the draft report, the tribes' consultant (1) acknowledged that he had made a calculation error in his analysis, (2) proposed a range of additional compensation, and (3) discussed the complex issues of "asking price" in the context of the Crow Creek Sioux and Lower Brule Sioux tribes' request for additional compensation. The consultant's proposed range of additional compensation is based on four different alternatives, rather than the approach for a range of additional compensation as we suggested in our report. We do not believe that the consultant's four alternatives represent a sound approach for establishing the range of additional compensation. Our approach is to provide the Congress with a range of possible additional compensation based on the difference between the amount the tribes believed was warranted at the time of the taking and the final settlement amount. We then adjusted the differences using the inflation rate for the lower end of the range and the corporate bond rate for the higher end. The ranges of additional compensation we calculated in the report were

calculated in exactly the same way we did in our 1991 and 1998 reports, and we believe our approach is reasonable. Regarding the issue of the tribes' asking prices, the consultant disagreed with our assumption that the tribes' final asking prices were based on the most up-to-date and complete information and that they were more realistic than their initial asking prices. In our view, the drawn out negotiations for the Fort Randall Dam and the amounts of the tribes' final asking prices do not support the conclusion that the tribes simply capitulated and accepted whatever the government offered. For example, for 12 of the 15 compensation components shown in tables 5, 6, and 7 of our report, the tribes' final asking prices were equal to, or higher than, their initial settlement proposals. We used a reasonable, clearly defined, and consistent approach. As a result, we did not make any changes to the report based on the consultant's comments. See the "Consultant's Comments and Our Evaluation" section and appendix V for the consultant's comment letter and our evaluation of these comments.

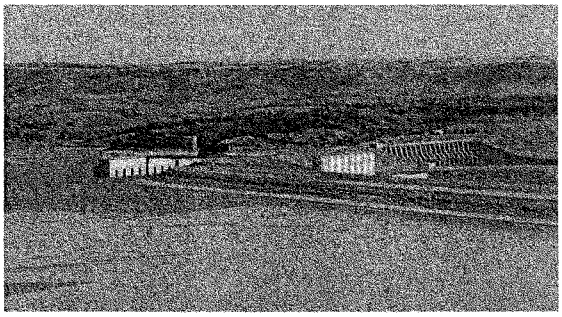
We recognize that compensation issues can be sensitive, complex, and controversial. While our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374, the Congress will ultimately decide whether additional compensation should be provided, and if so, how much it should be. Our analysis is intended to assist the Congress in this regard.

Background

The Flood Control Act of 1944 established a comprehensive plan for flood control and other purposes, such as hydroelectric power production, in the Missouri River Basin.[8] The Pick-Sloan Plan—a joint water development program designed by the U.S. Army Corps of Engineers (the Corps) and the Department of the Interior's (Interior) Bureau of Reclamation—included the construction of five dams on the Missouri River, including the Garrison Dam in North Dakota and the Oahe, Fort Randall, Big Bend, and Gavins Point Dams in South Dakota. The construction of the Fort Randall Dam, located 7 miles above the Nebraska line in south-central South Dakota, began in May 1946 and was officially dedicated in August 1956. The dam is 160 feet high, and the reservoir behind it, known as Lake Case, stretches 107 miles to the northwest. (See fig. 1.)

[8]Pub. L. No. 78-534, 59 Stat. 887 (1944).

Figure 1: The Fort Randall Dam and Lake Case (February 2006)



Source: GAO.

In September 1959, the Corps began work on the Big Bend Dam, which is about 100 miles northwest of the Fort Randall Dam on land belonging to both the Crow Creek Sioux and Lower Brule Sioux tribes. The Big Bend Dam is 95 feet high and was completed in September 1966. The reservoir behind the dam, known as Lake Sharpe, is 20 miles long. (See fig. 2.)

Figure 2: The Big Bend Dam and Lake Sharpe (July 1998)

Source: U.S. Army Corps of Engineers.

The Crow Creek Sioux and Lower Brule Sioux tribes reside on reservations located across the Missouri River from one another in central South Dakota. The Crow Creek reservation includes about 225,000 acres, 56 percent of which is owned by the tribe or individual Indians. According to the 2000 Census, the Crow Creek reservation has 2,199 residents, with the majority residing in the community of Fort Thompson. The Lower Brule reservation includes about 226,000 acres, 60 percent of which is owned by the tribe or individual Indians. According to the 2000 Census, the Lower Brule reservation has 1,355 residents, including several hundred who reside in the community of Lower Brule. Both reservations include some non-Indians, and both tribes have several hundred members who do not live on the reservations. The major economic activities for both the Crow Creek Sioux and Lower Brule Sioux tribes are cattle ranching and farming, and both tribes provide guided hunting for fowl and other game. Each tribe also operates a casino and a hotel. Both tribes are governed by a tribal council under their respective tribal constitutions, and each tribal council is led by a tribal chairman. The major employers on the reservations are the tribes, the casinos, the Bureau of Indian Affairs, and the Indian Health Service. In addition, the Lower Brule Sioux tribe provides employment through the Lower Brule Farm Corporation, which is the nation's number one popcorn producer. See appendix II for a map of the Crow Creek and Lower Brule

reservations and the locations of the previously mentioned dams and reservoirs.

The construction of the Fort Randall Dam caused the flooding of more than 17,000 acres of Crow Creek and Lower Brule reservation land and the displacement of more than 100 tribal families. After these two tribes sustained major damage from this project, the construction of the Big Bend Dam inundated over 20,000 additional acres of their reservations. This flooding displaced more families, some of whom had moved earlier as a result of flooding from the Fort Randall Dam. (See table 1.) Flooding from the installation of both dams resulted in the loss of valuable timber and pasture and forced families to move to less desirable land, which affected their way of life.

Table 1: Acreage Lost and Families Displaced by the Fort Randall and Big Bend Dams

	Fort Randall Dam		Big Bend Dam	
Tribe	Acreage lost	Number of families displaced	Acreage lost	Number of families displaced
Crow Creek Sioux	9,418	84	6,179	27
Lower Brule Sioux	7,997	35	14,299	62
Total	**17,415**	**119**	**20,478**	**89**

Sources: House and Senate reports.

During the early 1950s, the Corps; Interior, through its Missouri River Basin Investigations Unit (MRBI);[9] and the tribes—represented through tribal negotiating committees—developed their own estimates of the damages caused by the Fort Randall Dam. Discussions and informal negotiating conferences were held among the three parties in 1953 to try to arrive at acceptable compensation for damages.[10] At that point, the Fort Randall Dam had been closed since July 1952 and portions of the reservations were

[9]The Secretary of the Interior created this unit in 1945 to study the impact of the various Missouri River flood control projects.

[10]Damages fall into two categories—direct and indirect. In this context, direct damages primarily include values for land and improvements in the area affected by the dams' construction. Indirect damages include values for the loss of such things as timber, wildlife, and wild products in the taking area.

underwater. The MRBI's appraisal of damages was about $398,000 for Crow Creek and about $271,000 for Lower Brule, which was higher than the Corps' proposal.[11] Both the MRBI appraisal and the Corps' proposal were substantially lower than the tribes' settlement proposals, and the parties were unable to reach settlement. The Corps planned to take the land by condemnation, but in July 1954 decided against that action when the Congress authorized and directed the Corps and Interior to jointly negotiate separate settlements with the tribes.[12] Meanwhile, the tribes arranged to have settlement bills introduced in July 1954.[13] These bills requested $1.7 million for damages for the Crow Creek Sioux tribe and $2.5 million for damages for the Lower Brule Sioux tribe. Both of these bills also contained requests for about $2.5 million each for rehabilitation funds.[14] The first formal negotiating conference was held among the parties in November 1954, and further discussions continued over several more years after the bills were introduced, but, again, the parties could not reach settlement. In 1955, with negotiations stalled, the Corps requested and obtained an official declaration of taking. The tribes—with their lands now flooded—received funds based on the earlier MRBI appraisal figures, with the understanding that negotiations for additional funds would continue. The tribes continued to insist on receiving substantially higher compensation amounts for damages, and additional funds for rehabilitation, as part of the settlement. The amounts the tribes requested for rehabilitation fluctuated in tribal settlement proposals between 1954 and 1957, but both the Corps and the MRBI maintained that rehabilitation funding was not within the scope of the negotiations.

[11]MRBI estimates were based on studies it had conducted on the effect of the proposed reservoir on the two tribes. Included in these investigations were a timber assessment, an appraisal of all tribal members' properties in the reservoir area, and an analysis of indirect damages likely to be sustained by members of the tribe.

[12]Pub. L. No. 83-478, 68 Stat. 452 (1954).

[13]H.R. 9832 and H.R. 9833, 83rd Cong., 2nd Sess., introduced on July 8, 1954; and S. 3747 and S. 3748, 83rd Cong., 2nd Sess., introduced on July 14, 1954.

[14]Funds for rehabilitation were an attempt to bring the Indians' standard of living closer to that of their non-Indian neighbors through loans and welfare payments.

In March 1958, each tribe's negotiating committee submitted new proposals at compensation hearings for the Fort Randall Dam.[15] The Crow Creek Sioux tribe proposed compensation of about $2.2 million for damages and administrative expenses related to the settlement, and the Lower Brule Sioux tribe proposed compensation of about $1.8 million for damages and administrative expenses.[16] Neither proposal included funds for rehabilitation because both tribes agreed with the government's request to wait to procure these funds in the Big Bend Dam compensation request. In May 1958, bills were introduced in the Congress with amounts that were less than the tribes had proposed through their negotiating committees, with the amount for direct damages from Fort Randall Dam construction being substantially reduced.[17] According to House reports, both the tribes and the Corps agreed to the amounts proposed for damages.[18] Later that summer, amendments to the bills reduced the amount for indirect damages for both tribes. In September 1958, the Congress authorized a payment of about $1.5 million to the Crow Creek Sioux tribe, and almost $1.1 million to the Lower Brule Sioux tribe. See table 2 for a summary of selected settlement proposals related to the Fort Randall Dam.

[15]Statements and Estimates of the Crow Creek Tribal Council and Negotiating Committee, February 21, 1958, submitted at hearings held on March 25, 1958; and Proposed Program Submitted by the Lower Brule Sioux Tribe in Support of H.R. 6074, March 25, 1958.

[16]Administrative expenses for the Crow Creek Sioux tribe had been included earlier in H.R. 3602 and S. 952, 84th Cong., 1st Sess., introduced on February 3, 1955, and February 4, 1955, respectively, and no changes to the amount were proposed by the tribe in the March 1958 request or later requests.

[17]H.R. 12663 and H.R. 12670, 85th Cong., 2nd Sess., introduced on May 23, 1958.

[18]H.R. Rep. No. 2054, 85th Cong., 2nd Sess., at 3 (1958) and H.R. Rep. No. 2086, 85th Cong., 2nd Sess., at 3 (1958).

Table 2: Selected Settlement Proposals for the Fort Randall Dam

Current year dollars

Type of compensation, by tribe	Tribes' July 1954 request	House and Senate bills, 1955 and 1957[a]	Tribes' May 1957 request[b]	Tribes' Mar. 1958 request	House bills, May 1958[c]	Payment authorized, Sept. 1958[d]
Crow Creek Sioux						
Damages	$1,699,419	$1,817,590	$2,105,021	$2,105,021	$2,019,220	$1,395,812
Administrative expenses	0	100,000	100,000	100,000	100,000	100,000
Rehabilitation	2,560,000	5,686,036	6,715,311	0	0	0
Subtotal	**$4,259,419**	**$7,603,626**	**$8,920,332**	**$2,205,021**	**$2,119,220**	**$1,495,812**
Lower Brule Sioux						
Damages	$2,530,472	$1,497,397	$1,700,924	$1,560,902	$1,175,231	$976,523
Administrative expenses	0	100,000	200,000	200,000	100,000	100,000
Rehabilitation	2,530,000	6,348,316	16,377,981	0	0	0
Subtotal	**$5,060,472**	**$7,945,713**	**$18,278,905**	**$1,760,902**	**$1,275,231**	**$1,076,523**
Total	**$9,319,891**	**$15,549,339**	**$27,199,237**	**$3,965,923**	**$3,394,451**	**$2,572,335**

Source: National Archives.

[a]H.R. 3544 and H.R. 3602, 84th Cong., 1st Sess., introduced on February 3, 1955, and S. 952 and S. 953, 84th Cong., 1st Sess., introduced on February 4, 1955; H.R. 6074 and H.R. 6125, 85th Cong., 1st Sess., introduced on March 18, 1957, and March 19, 1957, respectively; and H.R. 6204, 85th Cong., 1st Sess., and H.R. 6569, 85th Cong., 1st Sess., introduced on March 20, 1957, and April 2, 1957, respectively.

[b]Statement and Estimates of the Crow Creek Sioux Tribe, Negotiating Committee, May 17, 1957; Lower Brule Sioux Tribe Negotiating Committee's Estimates and a Breakdown in Figures of All Damages Requested, May 10, 1957; and S. 2152, 85th Cong., 1st Sess., and H.R. 7758, 85th Cong., 1st Sess., introduced on May 23, 1957 and May 24, 1957, respectively.

[c]H.R. 12663 and H.R. 12670, 85th Cong., 2nd Sess., introduced on May 23, 1958.

[d]Crow Creek, Pub. L. No. 85-916, 72 Stat. 1766 (1958); and Lower Brule, Pub. L. No. 85-923, 72 Stat. 1773 (1958).

In contrast to the Fort Randall negotiations, the compensation for the construction of the Big Bend Dam was granted quickly. In bills introduced in March 1961, the Crow Creek Sioux tribe requested over $1 million for damages and administrative expenses as a result of the Big Bend Dam construction.[19] The Lower Brule Sioux tribe requested close to $2.4 million for damages, administrative expenses, and a new school. In addition, both tribes requested the rehabilitation funds that had not been included in the Fort Randall Dam settlement—that is, the Crow Creek Sioux tribe

[19]H.R. 5144 and H.R. 5165, 87th Cong., 1st Sess., introduced on March 2, 1961; and S. 1251 and S. 1252, 87th Cong., 1st Sess., introduced on March 8, 1961.

requested more than $4 million and the Lower Brule Sioux tribe requested about $2.7 million. In June 1961, the government and the tribes agreed to a reduction in direct damages, while the tribes requested an increase to the amount for indirect damages, bringing the total amount of compensation, including rehabilitation, requested by the Crow Creek Sioux and Lower Brule Sioux tribes to about $4.9 million for each tribe.[20] In subsequent bills over the next year, however, the Congress lowered indirect damages considerably and dropped the amount requested for a new school for Lower Brule. The amounts requested for administrative expenses and rehabilitation were also reduced. In October 1962, the Congress authorized a payment of $4.4 million to the Crow Creek Sioux tribe and about $3.3 million to the Lower Brule Sioux tribe. See table 3 for a summary of selected settlement proposals related to the Big Bend Dam.

[20]Proposed amendments to H.R. 5144 and H.R. 5165, prepared jointly by the Department of the Interior, the Department of the Army, and the Crow Creek Sioux and Lower Brule Sioux tribes.

Table 3: Selected Settlement Proposals for the Big Bend Dam

Current year dollars

Type of compensation, by tribe	House bills, Mar. 1960[a]	House and Senate bills, Mar. 1961[b]	U.S. and tribal proposed amendments, June 1961	House bills, Aug. 1961[c]	Payment authorized, Oct. 1962[d]
Crow Creek Sioux					
Damages	$0	$915,924	$822,004[e]	$564,302	$564,302
Administrative Expenses	125,000	125,000	125,000	125,000	75,000
Rehabilitation	2,790,000	4,002,000	4,002,000	4,002,000	3,802,500
Subtotal	**$2,915,000**	**$5,042,924**	**$4,949,004**	**$4,691,302**	**$4,441,802**
Lower Brule Sioux					
Damages	$0	$1,895,908	$1,709,472[e]	$1,225,715	$1,225,715
Administrative expenses	125,000	125,000	125,000	125,000	75,000
New school	0	350,000	350,000	0	0
Rehabilitation	1,620,000	2,670,300	2,670,300	2,670,300	1,968,750
Subtotal	**$1,745,000**	**$5,041,208**	**$4,854,772**	**$4,021,015**	**$3,269,465**
Total	**$4,660,000**	**$10,084,132**	**$9,803,776**	**$8,712,317**	**$7,711,267**

Source: National Archives.

[a]H.R. 11214 and H.R. 11237, 86th Cong., 2nd Sess., introduced on March 16, 1960, and March 17, 1960, respectively. These bills included a placeholder for damage amounts to be included at a later time.

[b]H.R. 5144 and H.R. 5165, 87th Cong., 1st Sess., introduced on March 2, 1961; and S. 1251 and S. 1252, 87th Cong., 1st Sess., introduced on March 8, 1961.

[c]H.R. 5144 and H.R. 5165, 87th Cong., 1st Sess., introduced on August 8, 1961.

[d]Crow Creek, Pub. L. No. 87-735, 76 Stat. 704 (1962); and Lower Brule, Pub. L. No. 87-734, 76 Stat. 698 (1962).

[e]The amounts included in the damages category reflect the direct costs the tribes and government agreed on and the indirect costs proposed by the tribes.

See appendixes III and IV for a timeline summary of the settlement negotiations and compensation for the two dams for the Crow Creek Sioux and Lower Brule Sioux tribes, respectively.

Tribes at five other reservations affected by flood control projects along the Missouri River incurred losses ranging from about 600 acres to over 150,000 acres. These tribes received some compensation, primarily during the 1950s, for the damages they sustained. However, beginning in the 1980s, some of these tribes began requesting additional compensation. The Congress responded to their requests by authorizing the establishment of development trust funds. (See table 4.) The tribes at the Fort Berthold,

Standing Rock, and Cheyenne River reservations received compensation within the ranges we had suggested the Congress consider in our reviews of the tribes' additional compensation claims. The ranges were based on the current value of the difference between each tribes' final asking price and the amount that the Congress authorized. We were not asked to review the additional compensation claims for the Crow Creek Sioux and Lower Brule Sioux tribes in the 1990s or for the Santee Sioux and Yankton Sioux tribes in 2002.

Table 4: Additional Compensation Authorized by Congress for Tribes on the Missouri River

Current year dollars in millions

Tribe	Dam(s)	Acreage lost	Year additional compensation enacted	Additional compensation authorized
Three Affiliated Tribes of the Fort Berthold Reservation	Garrison	152,360	1992[a]	$149.2
Standing Rock Sioux	Oahe	55,994	1992[a]	90.6
Crow Creek Sioux	Fort Randall; Big Bend	15,597	1996[b]	27.5
Lower Brule Sioux	Fort Randall; Big Bend	22,296	1997[c]	39.3
Cheyenne River Sioux	Oahe	104,420	2000[d]	290.7
Yankton Sioux	Fort Randall	2,851	2002[e]	23.0
Santee Sioux	Gavins Point	593	2002[e]	4.8

Source: GAO analysis of the additional compensation acts.

[a]Pub. L. No. 102-575, title XXXV, 106 Stat. 4600, 4731 (1992).

[b]Pub. L. No. 104-223, 110 Stat. 3026 (1996).

[c]Pub. L. No. 105-132, 111 Stat. 2563 (1997).

[d]Pub. L. No. 106-511, title I, 114 Stat. 2365 (2000). The development trust fund for the Cheyenne River Sioux tribe will not be created until the first day of the 11th fiscal year after enactment, or October 1, 2011.

[e]Pub. L. No. 107-331, title II, 116 Stat. 2834, 2838 (2002). The development trust funds for the Yankton Sioux and Santee Sioux tribes will not be created until the first day of the 11th fiscal year after enactment, or October 1, 2013.

Consultant's Compensation Analysis Differs from the Approach GAO Previously Used for Other Tribes

The Crow Creek Sioux and Lower Brule Sioux tribes' consultant differed from the approach we used in our prior reports. The consultant used a variety of settlement proposals, instead of consistently using the tribes' final asking prices, in calculating the difference between what the tribes asked for and what the Congress authorized. As a result, the consultant's proposed compensation estimates are higher than if he had consistently used the tribes' final asking prices. In addition, the consultant provided only the highest additional compensation value, rather than a range of possible additional compensation from which the Congress could choose.

Consultant Used Various Settlement Proposals, Rather Than Consistently Using the Tribes' Final Asking Prices

To arrive at an additional compensation estimate, the consultant did not consistently use the tribes' final asking prices when calculating the difference between what the tribes asked for and what they finally received. In determining possible additional compensation for the tribes at the Fort Berthold and Standing Rock reservations in 1991, and the Cheyenne River reservation in 1998, we used the tribes' final asking prices to calculate the difference between what the tribes asked for and what they received. In our prior reports, we used the tribes' final position because we believed that it represented the most up-to-date and complete information, and that their final position was more realistic than their initial asking prices. In contrast, the consultant used figures from a variety of settlement proposals—several of which were not the tribes' final asking prices—to estimate additional compensation for damages (including direct and indirect damages), administrative expenses, and rehabilitation. As a result, the consultant's estimate of the tribes' asking prices in the late 1950s and early 1960s was about $7.7 million higher than it would have been if he had consistently used the tribes' final asking prices. Choosing which settlement proposal to use to calculate the difference between what the tribe asked for and what it finally received is critically important, because a small numerical difference 50 years ago can result in a large difference today, once it is adjusted to reflect more current values.

With respect to the Fort Randall Dam, the consultant used amounts from a variety of settlement proposals for damages and administrative expenses. To determine additional compensation, the consultant used a $2.2 million settlement proposal by the Crow Creek Sioux tribe and a $2.6 million settlement proposal by the Lower Brule Sioux tribe. (See table 5.) The Crow Creek proposal was from May 1957, and was the same as the tribe's final asking price requested about 1 year later, in February 1958. However, the Lower Brule proposal was from the first compensation bill introduced

in the Congress in July 1954, almost 4 years before the tribe's final asking price of about $1.8 million in March 1958—a difference of more than $850,000.

Table 5: Comparison of the Settlement Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices for the Fort Randall Dam

Current year dollars

Type of compensation, by tribe	Settlement figure used by the tribes' consultant[a]	Date of settlement figure	Tribes' final asking prices	Date of final asking price	Difference
Crow Creek Sioux					
Direct damages	$641,588	May 1957	$641,588	Feb. 1958	$0
Indirect damages	1,463,433	May 1957	1,463,433	Feb. 1958	0
Administrative expenses	100,000	May 1957	100,000	Feb. 1958	0
Subtotal	**$2,205,021**		**$2,205,021**		**$0**
Lower Brule Sioux					
Direct damages	$739,904	July 1954	$771,998	Mar. 1958	($32,094)
Indirect damages	1,790,568	July 1954	788,904	Mar. 1958	1,001,664
Administrative expenses	100,000	Feb. 1955	200,000	Mar. 1958	(100,000)
Subtotal	**$2,630,472**		**$1,760,902**		**$869,570**
Total	**$4,835,493**		**$3,965,923**		**$869,570**

Sources: National Archives and the consultant's analysis.

[a]The consultant's figures for the Crow Creek Sioux tribe were from H.R. 7758, 85th Cong., 1st Sess., (companion bill S. 2152) introduced on May 24, 1957. The consultant's damage figures for the Lower Brule Sioux tribe were from H.R. 9832, 83rd Cong., 2nd Sess., (companion bill S. 3748) introduced on July 8, 1954. The administrative expenses figure for Lower Brule was from H.R. 3544, 84th Cong., 1st Sess., (companion bill S. 953) introduced on February 3, 1955. The direct damages in H.R. 3544 were reduced to $708,493.29, and the indirect damages were reduced to $788,904.

For the Big Bend Dam, the consultant also used amounts from different settlement proposals for damages and administrative expenses. To determine additional compensation, the consultant used amounts from congressional bills introduced in March 1961 for direct damages, but used amounts from proposed amendments to the bills in June 1961 for indirect damages. The tribes' asking prices from June 1961 can be considered their final asking prices because the proposed amendments are the last evidence of where the tribes requested specific compensation (indirect damages) or agreed to a compensation amount (direct damages). The consultant would have been more consistent had he used both the indirect and direct damage settlement figures in the proposed amendments from June 1961, rather than a mixture of these figures. As a result, the total amount for damages

the consultant used to calculate the difference between what the tribes requested and what it finally received is about $427,000 (in 1961 dollars) higher than if the tribes' final asking prices from June 1961 had been used consistently. (See table 6.)

Table 6: Comparison of the Settlement Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices for the Big Bend Dam

Current year dollars

Type of compensation, by tribe	Settlement figure used by the tribes' consultant[a]	Date of settlement figure	Tribes' final asking prices	Date of final asking price	Difference
Crow Creek Sioux					
Direct damages	$494,890	Mar. 1961	$355,000	June 1961	$139,890
Indirect damages	467,004	June 1961	467,004	June 1961	0
Administrative Expenses	125,000	Mar. 1961	125,000	June 1961[b]	0
Subtotal	**$1,086,894**		**$947,004**		**$139,890**
Lower Brule Sioux					
Direct damages	$1,111,910	Mar. 1961	$825,000	June 1961	$286,910
Indirect damages	884,472	June 1961	884,472	June 1961	0
Administrative expenses	125,000	Mar. 1961	125,000	June 1961[b]	0
New school	350,000	Mar. 1961	350,000	June 1961[b]	0
Subtotal	**$2,471,382**		**$2,184,472**		**$286,910**
Total	**$3,558,276**		**$3,131,476**		**$426,800**

Sources: National Archives legislative files and the consultant's analysis.

[a]The consultant used figures from H.R. 5165 (companion bill S. 1252) and H.R. 5144 (companion bill S. 1251) for direct damages and administrative expenses for the Crow Creek Sioux and Lower Brule Sioux tribes, respectively. The figure for the new school for the Lower Brule Sioux Tribe was also from H.R. 5144 (companion bill S. 1251). The figures for indirect damages were from proposed amendments to these bills. An Assistant Secretary for the Department of the Interior included a composite of the recommended amendments of the Secretary of the Interior, the Secretary of the Army, and the tribes to H.R. 5144 and H.R. 5165 in a letter to the Chairman of the House, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, on June 16, 1961.

[b]The tribes' final asking prices for administrative expenses and the new school for the Lower Brule Sioux tribe were represented in congressional bills introduced in March 1961. No changes were proposed to these figures in the proposed amendments to the bills, so we assumed these figures represented the tribes' final asking prices as of June 1961.

Lastly, the consultant did not use the tribes' final asking prices for the rehabilitation component of the settlement payment. The consultant used a $6.7 million rehabilitation figure that the Crow Creek Sioux tribe's negotiating committee proposed in May 1957 and a $6.3 million rehabilitation figure that was proposed in congressional bills in 1955 and

1957 for the Lower Brule Sioux tribe. (See table 7.) Both of these figures were developed during the negotiations for the Fort Randall Dam. However, the tribes agreed in their February and March 1958 proposals—their final asking prices for the Fort Randall Dam—to defer consideration of their rehabilitation proposals until after land acquisitions were made for the construction of the Big Bend Dam. The Big Bend Dam's installation would once again result in the flooding of their lands. In our view, the consultant should have used the final rehabilitation figures proposed by the tribes in 1961—that is, $4 million for the Crow Creek Sioux tribe and $2.7 million for the Lower Brule Sioux tribe.

Table 7: Comparison of Rehabilitation Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices

Current year dollars

Rehabilitation payment, by tribe	Settlement figure used by the tribes' consultant[a]	Date of settlement figure	Tribes' final asking prices	Date of final asking price	Difference
Crow Creek Sioux	$6,715,311	May 1957	$4,002,000	Mar. 1961	$2,713,311
Lower Brule Sioux	6,348,316	Apr. 1957[b]	2,670,300	Mar. 1961	3,678,016
Total	**$13,063,627**		**$6,672,300**		**$6,391,327**

Sources: National Archives and the consultant's analysis.

[a]The consultant's rehabilitation figure for the Crow Creek Sioux tribe was from H.R. 7758, 85th Cong., 1st Sess., (companion bill S. 2152) introduced on May 24, 1957. The figure was also presented by the tribe's negotiating committee in May 1957. The consultant's rehabilitation figure for the Lower Brule Sioux tribe was from H.R. 6569, 85th Cong., 1st Sess., introduced on April 2, 1957.

[b]The same rehabilitation figure was also included in settlement proposals from February 1955 (H.R. 3544 and S. 953) and March 1957 (H.R. 6074). As shown in table 5, the damage settlement figures the consultant used were from H.R. 9832 (companion bill S. 3748) in 1954, years earlier than the date of the rehabilitation figure that was used. In 1954, H.R. 9832 and S. 3748 both included a rehabilitation figure of $2.53 million—over $3.8 million less than the figure the consultant used.

While rehabilitation was the largest component of the tribes' settlement proposals, we believe it should be considered separately from the comparison for damages because rehabilitation was not directly related to the damage caused by the dams. Funding for rehabilitation, which gained support in the late-1940s, was meant to improve the tribes' social and economic development and prepare some of the tribes for the termination

of federal supervision.[21] Funding for these rehabilitation programs came from both the government and from the tribes themselves. From the late-1940s through the early-1960s, the Congress considered several bills that would have provided individual tribes with rehabilitation funding. For example, between 1949 and 1950, the House passed seven bills for tribes totaling more than $47 million in authorizations for rehabilitation funding, and considered other bills, one of which would have provided $50 million to several Sioux tribes, including Crow Creek and Lower Brule. Owing to opposition from tribal groups, the termination policy began to lose support with the Congress in the late 1950s, and rehabilitation funding for individual tribes during this time was most often authorized by the Congress in association with compensation bills for dam projects on the Missouri River. However, the granting of rehabilitation funding for these tribes was inconsistent. Some tribes did not receive rehabilitation funding along with compensation for damages, while others did. (See table 8.)

Table 8: Rehabilitation Payments Authorized by Congress for Tribes on the Missouri River

Current year dollars in millions

Tribe	Year payment enacted	Total payment authorized	Rehabilitation payment authorized	Percentage
Three Affiliated Tribes of the Fort Berthold Reservation	1947 and 1949	$12.6	$0	0%
Cheyenne River Sioux	1954	10.6	5.2[a]	49
Yankton Sioux	1952 and 1954	0.2	0	0
Standing Rock Sioux	1958	12.2	7.0[a]	57
Santee Sioux	1958	0.05	0	0
Crow Creek Sioux	1958 and 1962	5.9	3.8	64
Lower Brule Sioux	1958 and 1962	4.3	1.9	45

Source: GAO analysis of the compensation acts.

[a]These amounts include relocation and reestablishment funds authorized for the tribes. For example, the Cheyenne River Sioux tribe expended $416,626 for relocating and reestablishing tribal members living in the area that was flooded.

[21]The policy of termination, which was initiated in the 1940s and ended in the early 1960s, was aimed at ending the U.S. government's special relationship with Indian tribes, with an ultimate goal of subjecting Indians to state and federal laws on exactly the same terms as other citizens.

Consultant Developed a Single Compensation Estimate for Each Tribe, Rather Than a Range of Estimates

In our two prior reports, we suggested that, for the tribes of Fort Berthold, Standing Rock, and Cheyenne River, the Congress consider a range of possible compensation based on the current value of the difference between the final asking price of each tribe and the amount that it received. In calculating the current value, we used two different rates to establish a range of additional compensation. For the lower end of the range, we used the inflation rate to estimate the amount the tribes would need to equal the purchasing power of the difference. For the higher range, we used an interest rate to estimate the amount the tribes might have earned if they had invested the difference in Aaa corporate bonds as of the date of the settlement.[22] The consultant did not follow this approach when he calculated the compensation estimates for the Crow Creek Sioux and Lower Brule Sioux tribes. Instead, he used the corporate bond rate to develop a single figure for each tribe, rather than a range.

The consultant justified using only the corporate bond rate to calculate the compensation figures for the Crow Creek Sioux and Lower Brule Sioux tribes by pointing out that the Congress authorized additional compensation of $149.2 million for the tribes of Fort Berthold and $290.7 million for the Cheyenne River Sioux tribe in 1992 and 2000, respectively, by using our estimates of the high end of the range for these tribes. The consultant contended that if the Congress also uses the corporate bond rate for the Crow Creek Sioux and Lower Brule Sioux tribes to determine compensation, it would ensure parity with the amounts the tribes of Fort Berthold and the Cheyenne River Sioux received. However, the Congress has not always chosen to use the highest value in the ranges we estimated. For example, in the case of the Standing Rock Sioux tribe, the Congress chose to provide additional compensation of $90.6 million in 1992—an amount closer to the lower end of the range we estimated.

Amounts Calculated by GAO Are Similar to the Amounts Received by the Tribes in the 1990s

Using the approach we followed in our prior reports, which was based on the tribes' final asking prices, we found that the additional compensation the Crow Creek Sioux and Lower Brule Sioux tribes received in the 1990s was either at the high end or above the range of possible additional compensation. For both tribes, we calculated the difference between the final asking prices and the compensation authorized in 1958 and 1962. We

[22]Aaa is the highest grade of corporate bonds in the estimate of bond rating services, such as Moody's Investment Services.

then took the difference and adjusted it to account for the inflation rate and the Aaa corporate bond rate through either 1996 or 1997 to produce a possible range of additional compensation to compare it with the additional compensation the Congress authorized for the tribes in 1996 and 1997. For the Crow Creek Sioux tribe, we estimated that the difference adjusted to 1996 values for both dams would range from $6.5 million to $21.4 million (see table 9), compared with the $27.5 million the Congress authorized for the tribe in 1996. The $27.5 million in additional compensation already authorized for the Crow Creek Sioux tribe is therefore higher than the amount that we would have proposed in 1996 using our approach.

Table 9: Estimate of Additional Compensation Range for the Crow Creek Sioux Tribe

Current year dollars

				Additional compensation range (in 1996 dollars)	
Type of payment, by dam	**Tribes' final asking prices (1958 and 1961)[a]**	**Payment authorized (1958 and 1962)[b]**	**Difference**	**Low end (inflation rate)[c]**	**High end (interest rate)[d]**
Fort Randall Dam					
Damages	$2,105,021	$1,395,812	$709,209	$3,848,314	$13,369,732
Administrative expenses	100,000	100,000	0	0	0
Subtotal	**$2,205,021**	**$1,495,812**	**$709,209**	**$3,848,314**	**$13,369,732**
Big Bend Dam					
Damages	$822,004	$564,302	$257,702	$1,338,508	$4,094,541
Administrative expenses	125,000	75,000	50,000	259,701	794,433
Subtotal	**$947,004**	**$639,302**	**$307,702**	**$1,598, 209**	**$4,888,974**
Rehabilitation	$4,002,000	$3,802,500	$199,500	$1,036,206	$3,169,789
Total	**$7,154,025**	**$5,937,614**	**$1,216,411**	**$6,482,729**	**$21,428,495**

Source: GAO analysis of National Archives legislative files and the consultant's analysis.

[a]The damages figure for the Fort Randall Dam is from the Statement and Estimates of the Crow Creek Sioux Tribal Council and Negotiating Committee, dated February 21, 1958, presented at a hearing on H.R. 10786 before the House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, March 25, 1958. The tribe's final asking price for the damages caused by the Fort Randall Dam was embodied in H.R. 10786, 85th Cong., 2nd Sess., (companion bill S. 3225) introduced on February 18, 1958. The administrative expenses figure for the Fort Randall Dam is from H.R. 10786. The damage figure for the Big Bend Dam is from proposed amendments to H.R. 5165, dated June 16, 1961, and the figures for administrative expenses and rehabilitation are from H.R. 5165 (companion S. 1252) because the tribes did not ask for any changes to these components in the June 1961 proposed amendments.

[b]Fort Randall Dam, Pub. L. No. 85-916, 72 Stat. 1766 (1958); and Big Bend Dam, Pub. L. No. 87-735, 76 Stat. 704 (1962).

[c]Data in this column reflect the annual inflation rate (consumer price index for all items) from 1959 through 1996 for the Fort Randall Dam items and from 1962 through 1996 for the Big Bend Dam items and rehabilitation.

[d]Data in this column reflect the annual average rate of interest earned on investments in Aaa corporate bonds from 1959 through 1996 for the Fort Randall Dam items and from 1962 through 1996 for the Big Bend Dam items and rehabilitation.

For the Lower Brule Sioux tribe, we estimated that the difference adjusted to 1997 values for both dams would range from $12.2 million to $40.9 million (see table 10), compared with the $39.3 million the Congress authorized for the tribe in 1997. The $39.3 million falls toward the high end of the range that we would have proposed in 1997 using our approach.

Table 10: Estimate of Additional Compensation Range for the Lower Brule Sioux Tribe

Current year dollars

				Additional compensation range (in 1997 dollars)	
Type of payment, by dam	**Tribes' final asking prices (1958 and 1961)[a]**	**Payment authorized (1958 and 1962)[b]**	**Difference**	**Low end (inflation rate)[c]**	**High end (interest rate)[d]**
Fort Randall Dam					
Damages	$1,560,902	$976,523	$584,379	$3,243,892	$11,816,283
Administrative expenses	200,000	100,000	100,000	555,101	2,022,024
Subtotal	**$1,760,902**	**$1,076,523**	**$684,379**	**$3,798,993**	**$13,838,307**
Big Bend Dam					
Damages	$1,709,472	$1,225,715	$483,757	$2,570,431	$8,244,275
Administrative expenses	125,000	75,000	50,000	265,674	852,109
New school	350,000	0	350,000	1,859,716	5,964,764
Subtotal	**$2,184,472**	**$1,300,715**	**$883,757**	**$4,695,821**	**$15,061,148**
Rehabilitation	$2,670,300	$1,968,750	$701,550	$3,727,669	$11,955,943
Total	**$6,615,674**	**$4,345,988**	**$2,269,686**	**$12,222,483**	**$40,855,398**

Source: GAO analysis of National Archives legislative files and the consultant's analysis.

[a]The damages figure and administrative expenses for the Fort Randall Dam are from the Lower Brule Proposed Program in Support of H.R. 6074, which was presented at a hearing on H.R. 6074 before the House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, March 25, 1958. The tribe's final asking price for damages caused by the Fort Randall Dam was embodied in H.R. 6074, 85th Cong., 1st Sess., introduced on March 18, 1957. The damages figure for the Big Bend Dam is from proposed amendments to H.R. 5144, dated June 16, 1961, and the figures for administrative expenses and rehabilitation are from H.R. 5144 (companion bill S. 1251) because there were no changes requested by the tribe to these components in the June 1961 proposed amendments.

[b]Fort Randall Dam, Pub. L. No. 85-923, 72 Stat. 1773 (1958); and Big Bend Dam, Pub. L. No. 87-734, 76 Stat. 698 (1962).

[c]Data in this column reflect the annual inflation rate (consumer price index for all items) from 1959 through 1997 for the Fort Randall Dam items and from 1962 through 1997 for the Big Bend Dam items and rehabilitation.

[d]Data in this column reflect the annual average rate of interest earned on investments in Aaa corporate bonds from 1959 through 1997 for the Fort Randall Dam items and from 1962 through 1997 for the Big Bend Dam items and rehabilitation.

Our estimates of additional compensation for the two tribes vary significantly from the amounts calculated by the tribes' consultant. Our estimated range for the two tribes combined is from about $18.7 million to $62.3 million. The consultant calculated an additional compensation figure for the two tribes of $292.3 million (in 2003 dollars)—that is, $105.9 for the Crow Creek Sioux tribe and $186.4 for the Lower Brule Sioux tribe—before subtracting the amounts received by the tribes in 1996 and 1997, respectively. There are two primary reasons for the difference between our additional compensation amounts and the consultant's amounts.

- First, most of the difference is due to the different rehabilitation cost figures that were used. For the difference between the tribes' asking prices for rehabilitation and the amounts they actually received, we used $901,450 and the consultant used about $7.3 million (in 1961 and 1957 dollars, respectively). Once the $901,450 is adjusted to account for inflation and interest earned through 1996 and 1997, it results in a range of additional compensation for rehabilitation for the two tribes combined of about $4.8 million to $15.1 million. If the consultant's rehabilitation figure of about $7.3 million is adjusted through 1996 and 1997, his total for the two tribes is $120.9 million, or more than $105 million above our high estimate.

- Second, our dollar values were adjusted to account for inflation and interest earned only through 1996 and 1997 to compare them with what the two tribes received in additional compensation at that time. The consultant, however, adjusted for interest earned up through 2003. In addition, he then incorrectly adjusted for the additional compensation the tribes were authorized in the 1990s. Specifically, the consultant subtracted the $27.5 million and $39.3 million authorized for the Crow Creek Sioux and Lower Brule Sioux tribes in 1996 and 1997, respectively, from his additional compensation totals without first making the different estimates comparable. Since these amounts were in 1996 and 1997 dollar values, versus the 2003 dollar values for his current calculations, it was incorrect to subtract one from the other without any adjustment. In our view, the consultant should have adjusted his current calculations through 1996 and 1997, depending on the tribe, and then should have subtracted the additional compensation

provided the tribes at that time. If there was any remaining compensation due the tribes, the final step then would have been to adjust it to reflect 2003 dollar values. Using this approach, the additional compensation provided to the tribes in the 1990s would have been subtracted from comparable dollar values.

Observations

The additional compensation already authorized for the Crow Creek Sioux and Lower Brule Sioux tribes in 1996 and 1997, respectively, is consistent with the additional compensation authorized for the other tribes on the Missouri River. Rather than bringing the Crow Creek Sioux and Lower Brule Sioux tribes into parity with the other tribes, the two bills under consideration in the 109th Congress—H.R. 109 and S. 374—would have the opposite effect. Providing a third round of compensation to the Crow Creek Sioux and Lower Brule Sioux tribes, in the amounts proposed in the bills, would catapult them ahead of the other tribes and set a precedent for the other tribes to seek a third round of compensation. Our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374. Notwithstanding the results of our analysis, the Congress will ultimately decide whether additional compensation should be provided and, if so, how much it should be. Our analysis will assist the Congress in this regard.

Consultant's Comments and Our Evaluation

Because the consultant's analysis was the basis for the tribes' additional compensation claims and the consultant had asserted that the additional compensation amounts were based on a methodology deemed appropriate by GAO, we chose to provide the tribes' consultant with a draft of this report for review and comment. In commenting on the draft, the tribes' consultant (1) acknowledged that he had made a calculation error in his analysis, (2) proposed a range of additional compensation based on four different alternatives, and (3) discussed the complex issues of "asking price" in the context of the particular set of facts for the Crow Creek Sioux and Lower Brule Sioux tribes. In addition, the consultant commented "...that there has been no uniform or consistent approach, method, formula, or criteria for providing additional compensation. . ." to the seven tribes affected by Pick-Sloan dam projects on the Missouri River. Specifically, the consultant pointed out that the Congress has provided additional compensation to four tribes based on a per-acre analysis, while only three tribes have received additional compensation within the ranges we calculated in our two prior reports. As a result, the consultant believes

that there is a wide disparity in the total compensation that the seven tribes have received from the Congress. As discussed in detail below, we believe that our approach is reasonable, and we did not make any changes to the report based on the consultant's comments. The tribes' consultant provided written comments that are included in appendix V, along with our specific responses.

To address the perceived disparity in the total compensation amounts provided by the Congress, the consultant proposed four different alternatives for calculating additional compensation for the Crow Creek Sioux and Lower Brule Sioux tribes: (1) on a per-acre basis compared with the Cheyenne River Sioux tribe, (2) the consultant's original proposal (amended to correct for the calculation error), (3) on a per-acre basis compared with the Santee Sioux tribe, and (4) calculations based on using the tribes' highest asking prices. We do not believe that the consultant's amended original proposal nor the three new alternatives represent a sound approach for establishing the range of additional compensation. Our approach is to provide the Congress with a range of possible additional compensation based on the difference between the amount the tribes believed was warranted at the time of the taking and the final settlement amount. We then adjusted the differences using the inflation rate for the lower end of the range and the corporate bond rate for the higher end. The ranges of additional compensation we calculated in this report were calculated in exactly the same way we did in our 1991 and 1998 reports, and we believe our approach is reasonable. In our view, trying to compare the total compensation for the tribes on a per-acre basis—which are two of consultant's proposed alternatives—does not take into account the differences of what each tribe lost. For example, even if the individual resources such as timber, wildlife, and wild products would have all been valued the same for all of the tribes, if one tribe lost more of one resource than another, then their per-acre compensation values would be different. Also, about half of the payments to four of the tribes were for rehabilitation, which had no direct correlation to the acreage flooded by the dams, and the consultant did not make the different dollar amounts comparable before performing his per-acre calculations.

The tribes' consultant disagreed with our assumption that the tribes' final asking prices were based on the most up-to-date and complete information and that they were more realistic than their initial asking prices. Specifically, the consultant noted that the tribes' final asking prices "were made under conditions of extreme duress." We agree with the consultant that the tribes were not willing sellers of their land at the initial price that

the government offered for their land. However, we disagree that this factor invalidates the use of the tribes' final asking prices. The drawn out negotiations for the Fort Randall Dam and the amounts of the tribes' final asking prices do not support the conclusion that the tribes simply capitulated and accepted whatever the government offered. For example, for 12 of the 15 compensation components shown in tables 5, 6, and 7 of our report, the tribes' final asking prices were equal to, or higher than, their initial settlement proposals. We used a clearly defined and consistent approach, whereas, in his analysis, the consultant selected only certain numbers from a variety of tribal settlement proposals without providing any justification. While the tribes' consultant chose to use the Crow Creek Sioux tribes' offer from May 1957, he did not use the Lower Brule Sioux tribes' offer from the same time. Instead, the consultant chose to use the Lower Brule Sioux tribes' initial offer from 3 years earlier—July 1954—without any explanation. Furthermore, rather than consistently using the Lower Brule Sioux tribes' July 1954 offer, the consultant used the tribes' rehabilitation offer from April 1957, again without any explanation.

The tribes' consultant correctly points out that only three of the seven tribes have received additional compensation consistent with the ranges calculated in our two prior reports. Until this report, the Congress had only asked us to review these three tribes' additional compensation requests, and, each time, the Congress provided additional compensation within the ranges we calculated. Furthermore, our two prior reports dealt with the three highest tribal claims for additional compensation—all over $90 million—whereas, the four tribes that obtained additional compensation based on a per-acre calculation were all less than $40 million, and we were not asked to review those requests. As noted in this report, although the additional compensation already provided to the tribes in 1996 and 1997 was calculated on a per-acre basis, by coincidence, for the Lower Brule Sioux tribe it was within the range we would have proposed and for the Crow Creek Sioux tribe it was above our range. As such, should the Congress rely on our analysis in this report and not provide these two tribes a third round of compensation, then the additional compensation provided to five of the seven tribes would generally be within the ranges we have calculated, leaving only two tribes that would have had their additional compensation calculated based on a per-acre analysis and not analyzed by GAO. Accordingly, we believe our approach would provide more consistency among the tribes.

It is important to note that both the consultant's analysis and the two bills pending in the 109th Congress state that the additional compensation

amounts for the Crow Creek Sioux and Lower Brule Sioux tribes are based on a methodology deemed appropriate by GAO. We do not believe our analysis supports the additional compensation claims. We recognize that compensation issues can be a sensitive, complex, and controversial. Ultimately, it is up to the Congress to make a policy determination as to whether additional compensation should be provided and, if so, how much it should be. We amended our observations to reflect this reality.

We are sending copies of this report to interested congressional committees, the Secretary of the Interior, the tribes' consultant, the Crow Creek Sioux and Lower Brule Sioux tribes, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or nazzaror@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VI.

Robin M. Nazzaro

Robin M. Nazzaro
Director, Natural Resources
and Environment

Appendix I

Scope and Methodology

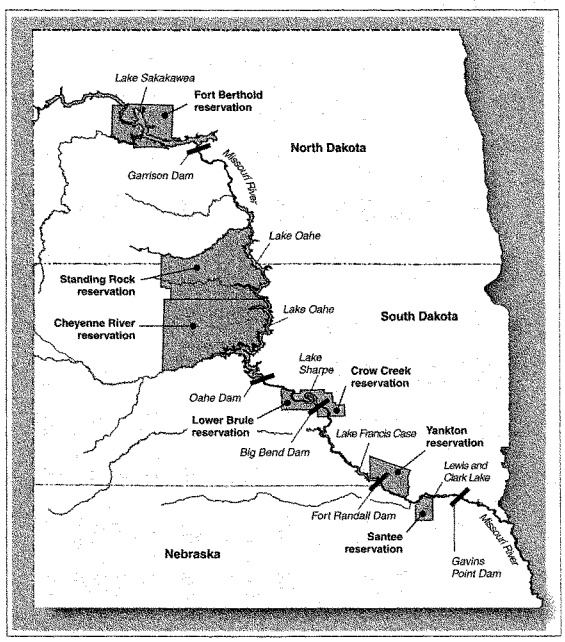
To assess the consultant's methods and analysis for determining additional compensation for the Crow Creek Sioux and Lower Brule Sioux tribes as a result of the flooding of 38,000 acres of their land and resources by the installation of the Fort Randall and Big Bend Dams, we used standard economic principles and the analysis we conducted in our two prior reports on additional compensation. We met with the tribes' consultant to determine how he used the method that we suggested the Congress adopt as the basis for granting additional compensation to other tribes and reviewed additional information he provided on how he arrived at his proposed compensation amounts.

In order to ensure that we obtained and reviewed all relevant data, we conducted a literature search for congressional, agency, and tribal documents at the National Archives and the Department of the Interior's (Interior) library. We used original documents to learn about the negotiation process and to identify the appraised land prices and various proposed settlement amounts. As a result, we determined that these data were sufficiently reliable for purposes of this report. Specifically, from the National Archives, we reviewed legislative files containing proposed House and Senate bills, public laws enacted, House and Senate reports, and hearings held on compensation for the tribes. In addition, from Interior's library, we obtained Missouri River Basin Investigations Unit documents to review information on early damage estimates as a result of installation of the Fort Randall Dam and on details regarding both informal and formal negotiations between the federal government and the two tribes. We also met with representatives of the two tribes on their reservations in South Dakota to (1) discuss the analysis, the actions taken with the compensation previously obtained, and plans for the additional compensation amounts requested and (2) review any records they might have on earlier compensation negotiations. The tribes, however, did not have any documentation on tribal discussions or decisions regarding either compensation negotiations or offers that took place in the 1950s and 1960s.

We performed our work from October 2005 to April 2006 in accordance with generally accepted government auditing standards.

Appendix II

Map of Tribes and Dams on the Missouri River



Sources: The National Atlas of the United States of America® and MapArt.

Timeline of Settlement Negotiations and Compensation for the Crow Creek Sioux Tribe

Legislation	Year	Key events	Era
December 22 Pub. L. No. 78-534, 58 Stat. 885 (1944) Flood Control Act of 1944	1944		Fort Randall Dam
	1946	**May** Construction of Fort Randall Dam begins	
	1949	Initial Missouri River Basin investigations findings on Sioux lands published	
	1952	**July 21** Gates of Fort Randall Dam closed; flooding begins	
	1953	**March 9** Informal negotiations begin	
July 8, 14 H.R. 9833; S. 3747 introduced for Fort Randall Dam compensation	1954	**July 15-16** First hearings held to discuss Fort Randall compensation bills **November 15** Formal negotiations begin at Fort Thompson	
February 3, 4 H.R. 3602; S. 952 introduced	1955	Relocation activities begin on reservation	
	1956	Fort Randall Dam completed	
March 19, 20 H.R. 6125 and 6204 introduced **May 23, 24** S. 2182, H.R. 7768 introduced	1957	**May 17** Crow Creek Sioux Tribe Negotiating Committee proposal	
May 23 H.R. 12670 introduced **August** H.R. 12670 amended **September 2** Pub. L. No. 85-916, 72 Stat. 1766 (1958) Fort Randall compensation passed for the Crow Creek Sioux tribe	1958	**March 25** Hearing - Crow Creek Sioux Tribe Negotiating Committee proposal **May 15** Final hearings for Fort Randall compensation	

Legislation	Year	Key events	Era
	1959	Construction of Big Bend Dam begins	Big Bend Dam
March 17 H.R. 11237 introduced for Big Bend Dam compensation	1960	**May 30** Groundbreaking ceremony for Big Bend Dam	
March 2, 6 H.R. 5165, S. 1252 introduced **June 16** Crow Creek proposed amendment **August 8** H.R. 5165 amended	1961	**July 21 - August 2** Hearings on H.R. 5165	
October 3 Pub. L. No. 87-735, 76 Stat. 704 (1962) Big Bend compensation passed for Crow Creek Sioux tribe	1962		
	1963	**July 1** Last day tribal members are able to remain on their land free of charge	
	1966	**September** Big Bend Dam officially opened	
September 20, October 18 S. 1264, H.R. 3312 introduced - Crow Creek Infrastructure Development Trust Fund Act	1995		Additional compensation
October 4 Pub. L. No. 104-223, 110 Stat. 3028 (1996) Crow Creek Tribe Infrastructure Development Trust Fund Act	1996	**April 25** Joint hearings on Crow Creek Tribe Infrastructure Development Trust Fund Act	
July 31 S. 1530 introduced - Tribal Parity Act	2003		
July 22 H.R. 4949 introduced - Tribal Parity Act	2004	**June 15** Senate hearing on Tribal Parity Act	
January 4, February 14 Tribal Parity Act reintroduced as H.R. 109 and S. 374	2005		

Sources: National Archives legislative files, U.S. Army Corps of Engineers, and the consultant's analysis.

Appendix IV

Timeline of Settlement Negotiations and Compensation for the Lower Brule Sioux Tribe

Legislation	Year	Key events	Era
December 22 Pub. L. No. 78-534, 58 Stat. 887 (1944) Flood Control Act of 1944	1944		Fort Randall Dam
	1946	**May** Construction of Fort Randall Dam begins	
	1949	Initial Mission River Basin Investigations findings on Sioux lands published	
	1952	**July 21** Gates of Fort Randall Dam closed; flooding begins	
	1953	**March 9** Informal negotiations begin	
July 8, 14 H.R. 9832, S. 3746 introduced for Fort Randall Dam compensation	1954	**July 15-16** First hearings held to discuss Fort Randall compensation bills **November 15** Formal negotiations begin at Fort Thompson	
February 9, 4 H.R. 3544; S. 953 introduced	1955	Relocation activities begin on reservation	
	1956	Fort Randall Dam completed	
March 18 H.R. 6074 introduced **April 2** H.R. 6569 introduced	1957	**May 19** Lower Brule Sioux Tribe Negotiating Committee proposal	
May 23 H.R. 12663 introduced **July - August** H.R. 12953 amended **September 2** Pub. L. No. 85-923, 72 Stat. 1774 (1958) Fort Randall compensation passed for the Lower Brule Sioux tribe	1958	**March 25** Hearing - Lower Brule tribe expresses support for H.R. 6074 **May 15** Final hearings for Fort Randall compensation	

Appendix IV
Timeline of Settlement Negotiations and Compensation for the Lower Brule Sioux Tribe

Legislation	Year	Key events	Era
	1959	Construction of Big Bend Dam begins	Big Bend Dam
March 16 H.R. 11214 introduced for Big Bend Dam compensation	1960		
March 2, 8 H.R. 5144, S. 1251 introduced **June 16** Lower Brule proposed amendment	1961	**July 21 - August 2** Hearings on H.R. 5144	
October 3 Pub. L. No. 87-734, 76 Stat. 698 (1962) Big Bend compensation passed for the Lower Brule Sioux tribe	1962		
	1963	**July 1** Last day tribal members are able to remain on their land free of charge	
	1966	**September** Big Bend Dam officially opened	
January 21 S. 156 introduced - Lower Brule Tribe Infrastructure Development Trust Fund Act **December 2** Pub. L. No. 105-132, 111 Stat. 2563 (1997) Lower Brule Tribe Infrastructure Development Trust Fund Act	1997	**October 20** Committee on Indian Affairs hearings held	Additional compensation
July 31 S. 1530 introduced - Tribal Parity Act	2003		
July 22 H.R. 4849 introduced - Tribal Parity Act	2004	**June 15** Senate hearing on Tribal Parity Act	
January 4, February 14 Tribal Parity Act reintroduced as H.R. 109 and S. 974	2005		

Sources: National Archives legislative files, U.S. Army Corps of Engineers, and the consultant's analysis.

Appendix V

Comments from the Tribes' Consultant

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

MORGANANGEL
ASSOCIATES, LLC

April 27, 2006

Ms. Robin M. Nazarro
Director, Natural Resources and Environment
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Ms. Nazarro:

Thank you for providing me with the opportunity to review and comment on the Draft Report entitled *Indian Issues: Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes' Additional Compensation Claims* (GAO-06-517) (hereinafter referenced as GAO Draft Report). These comments are submitted on behalf of the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe, both sovereign treaty Tribes, myself, and counsel. We appreciate this opportunity to comment on your GAO Draft Report, the time you have invested in your review, and the field trip your staff made to South Dakota to discuss the issues with tribal representatives.

See comment 1.

See comment 2.

In the response that follows I have (1) acknowledged an error in my calculations; (2) proposed a range of additional compensation, including the Current Bills, per the suggestion in the GAO Draft Report; and (3) discussed the difficult issue of "asking price" in the context of this particular set of facts. The main point that I make is that there has been no uniform or consistent approach, method, formula, or criteria for providing additional compensation to the Missouri River Tribes impacted by the Pick-Sloan dam projects. Congress has used other approaches more often than it has followed the range methodology initially suggested by the General Accounting Office (GAO) in 1991 (now the Government Accountability Office but still the GAO). The result is that there remains a wide disparity in the total compensation that seven Tribes have received from Congress. We therefore seek your guidance and cooperation in proposing approaches that might solve this inequity and establish parity among the Tribes.

Calculation Error

The GAO Draft Report states that my calculations incorrectly adjusted for the additional compensation that the Crow Creek Sioux Tribe received in 1996 and the Lower Brule Sioux Tribe in 1997. Thank you. I acknowledge that I did, indeed, error by compounding the interest on the differences through 2003 and then subtracting the amount of additional compensation. I should have subtracted the amount of additional compensation from the accrued value in 1996 for the Crow Creek Sioux and that in 1997 for the Lower Brule Sioux. If there was a difference remaining on those dates, I should have compounded the interest on that difference from that time to the present to establish the total amount of additional compensation due. I have used this corrected approach in calculating those compensation alternatives proposed below that are based on annual corporate bond yields.

Range of Compensation

The GAO Draft Report is critical of the fact that I only proposed a single estimate of additional compensation instead of a range of possibilities, based on different computations and comparisons. It states that I deviated from the approach that the GAO suggested to Congress on two prior occasions "by providing a single estimate of additional compensation instead of a range (p. 5)." In response to this criticism, I have developed below a range of compensation that includes four alternatives. I have not included an alternative based on annual inflation rates rather than the annual corporate bond rate or compensation per-acre value because there is no precedent for Congress using the inflation rate as a basis for any of the additional compensation it has awarded to the seven Tribes since 1992. The four alternatives proposed below provide a range of additional compensation for the Lower Brule Sioux Tribe from **$20.6 million to $432.5 million** and for the Crow Creek Sioux Tribe from **$11.5 million to $93.8 million**.

TABLE 1: Alternative Range of Additional Compensation

Alternatives	I. *Based on Parity with Cheyenne River Sioux*	II. *Based on Current Bills Adjusted*	III. *Based on Parity with Santee Sioux of Nebraska*	IV. *Based on Highest Tribal Asking Prices*
LOWER BRULE	**$20,690,688**	**$129,822,085**	**$138,368,976**	**$432,547,830**
CROW CREEK	**$11,572,974**	**$69,222,084**	**$93,893,940**	**$70,685,862**

My book *Damned Indians: The Pick-Sloan Plan and the Missouri River Sioux* (University of Oklahoma Press, 1982, 1994) has provided much of the factual basis for the additional compensation Congress extended to six Sioux Tribes between 1992 and 2002. In that work, I pointed out that Congress was inconsistent and inequitable in the original settlements it provided to the Sioux Tribes between 1954 and 1962. While the Cheyenne River Sioux Tribe sustained the most damages, the Standing Rock Sioux Tribe received the best settlement. The Yankton Sioux Tribe suffered the least disruption (although one of its communities, White Swan, was never replaced) and also received the worst settlement. The Crow Creek and Lower Brule Sioux Tribes were dealt with most rudely in the Fort Randall negotiations, since settlement did not take place until after the dam was constructed and rehabilitation was deferred for another four years. However, these Tribes received what was comparatively the most generous funding for rehabilitation as part of the Big Bend settlement. As I also noted in *Dammed Indians*, "none of the [Sioux] Tribes considered their compensation to be adequate, but all suffered considerably less and received considerably more than the Fort Berthold Indians [Three Affiliated Tribes] had (p. 134)."

One of the goals of the Tribes in seeking additional compensation from Congress was that the inconsistency and inequity of the initial settlements could be corrected in such a way as to achieve parity among the Tribes. With the exception perhaps of the Santee Sioux Tribe of Nebraska, all of the Tribes suffered the same kinds of damages. They all lost a majority of their natural resources and reservation infrastructure. Similarly, they all were forced to remove,

relocate, and reestablish a significant proportion of their tribal membership and all or a large portion of their population centers. More importantly, they all lost a significant part of their traditional culture, including herbs and plants used for medicinal and religious purposes, when their riverine environment was inundated.

Since 1992, Congress has provided additional compensation to seven Tribes impacted by the Pick-Sloan projects. Yet, as demonstrated in Table 2 below, Congress has not achieved parity or equity in its total compensation to these Tribes.

See comment 3.

TABLE 2: Comparison of the Total Compensation Provided to Seven Tribes Impacted by the Missouri River Pick-Sloan Dam Projects on a Per-Acre Basis

Tribe(s)	Dam(s)	Acreage Lost	Total Compensation	Compensation Per Acre
Three Affiliated Tribes of Fort Berthold, ND	Garrison	152,360a	$161,805,625	$1,062
Standing Rock Sioux, ND & SD	Oahe	55,994a	$102,946,553	$1,839
Crow Creek Sioux, SD	Fort Randall Big Bend	15, 597a	$33,437,614	$2,144
Lower Brule Sioux, SD	Fort Randall Big Bend	22,296a	$43,645,988	$1,958
Cheyenne River Sioux, SD	Oahe	104,420a	$301,366,972	$2,886
Yankton Sioux, SD	Fort Randall	2,851a	$23,251,253	$8,155
Santee Sioux, NE	Gavins Point	593a	$4,841,010	$8,164

The tribal group that suffered the most damages, the Three Affiliated Tribes of Fort Berthold, has received the least amount of compensation on a per-acre basis ($1,062 per acre). At the same time, the Tribe that suffered the least damages, the Santee Sioux of Nebraska, has received the highest amount of compensation on a per-acre basis ($8,164 per acre).

Congress has used three different formulas in providing additional compensation to the seven Tribes since 1992. It applied the GAO-recommended range of compensation to establish additional trust funds for the Three Affiliated Tribes and the Standing Rock Sioux in 1992 and the Cheyenne River Sioux in 2000. Yet, Congress was not consistent with the Tribes in applying the same point of the range. The additional compensation provided the Standing Rock Sioux Tribe was towards the lower end of the GAO suggested range. In contrast, that provided the Three Affiliated Tribes and the Cheyenne River Sioux Tribe was at the very highest range suggested by the GAO. The Cheyenne River Sioux legislation in 2002 had the effect of skewing

See comment 4.

3

the additional compensation that had been appropriated for six other Missouri River Tribes prior to that time.

Congress used a different formula, one based on the per-acre value of the 1992 legislation, to compensate the Crow Creek Sioux in 1996 and the Lower Brule Sioux in 1997. It then used a separate formula, based on a per-acre valuation with a multiplier for rehabilitation, to compensate the Yankton and Santee Sioux Tribes in 2002. Thus, Congress has used a per-acre basis for additional compensation to the Missouri River Tribes more often (four times) than it has used the GAO-recommended range methodology (three times). As noted above, it has not been consistent in the application of the GAO suggested range, providing additional compensation to two Tribes at the highest end of the range and to another Tribe at the lower end of the range.

See comment 2.

The larger per-acre compensation provided to the Yankton and Santee Sioux Tribes may be justified by the fact that these Tribes were not given an opportunity to receive payment from Congress for direct damages or rehabilitation at the time their lands were taken. Neither does it appear that these Tribes would be eligible for the GAO-recommended range of compensation because they never made any tribal offers for settlement at the time of taking.

The total compensation package provided to the Cheyenne River Sioux was approximately 54 percent higher than that provided to the next highest recipient, the Three Affiliated Tribes, although the Fort Berthold Tribes lost approximately 32 percent more land. The only conclusion that can be drawn from this analysis is that Congress has been as erratic in providing additional compensation to the seven Tribes between 1992 and 2002 as it was in providing initial settlements with six of these Tribes between 1946 and 1962. The result is that the total compensation to Tribes suffering similar damages has not been equitable and has not achieved parity among them.

See comment 3.

Compensation Alternative I: Parity with the Cheyenne River Sioux Settlement of 2000 on a Per-Acre Basis

See comment 3.

As one alternative for equitable additional compensation, the Crow Creek and Lower Brule Sioux Tribes request parity with the compensation on a per-acre basis provided to the Cheyenne River Sioux Tribe. Congress has established the precedent for providing additional compensation to the Missouri River Tribes on a per-acre basis in the trust funds it established for the Crow Creek Sioux Tribe in 1996, the Lower Brule Sioux Tribe in 1997, and the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska in 2002.

4

TABLE 3: Comparison of Total Compensation Provided to the Crow Creek and Lower Brule Sioux Tribes with that Provided to the Cheyenne River Sioux Tribe on a Per-Acre Basis

Tribe(s)	Dam(s)	Acreage Lost	Total Compensation	Compensation Per Acre
Cheyenne River Sioux, SD	Oahe	104,420a	$301,366,972	$2,886
Crow Creek Sioux, SD	Fort Randall Big Bend	15, 597a	$33,437,614	$2,144
Lower Brule Sioux, SD	Fort Randall Big Bend	22,296a	$43,645,988	$1,958

Crow Creek Sioux

The difference between the overall compensation provided to the Crow Creek Sioux Tribe and that provided to the Cheyenne River Sioux Tribe is $742 per acre. Multiplying this difference by the number of acres lost by the Crow Creek Sioux (15,597) results in a total of **$11,572,974**. This is the amount of additional compensation necessary to provide the Crow Creek Sioux Tribe parity with the overall compensation provided to the Cheyenne River Sioux Tribe on a per-acre basis.

Lower Brule Sioux

The difference between the overall compensation provided to the Lower Brule Sioux Tribe and that provided to the Cheyenne River Sioux Tribe is $928 per acre. Multiplying this difference by the number of acres lost by the Lower Brule Sioux (22,296) results in a total of **$20,690,688**. This is the amount of additional compensation necessary to provide the Lower Brule Sioux Tribe parity with the overall compensation provided to the Cheyenne River Sioux on a per-acre basis.

This alternative provides the lowest range of compensation for both Tribes.

Compensation Alternative II: Based on Present Bills Adjusted

A second alternative range is to use the base numbers of difference in the Current Bills between the asking prices considered by the Tribes to represent the "fair market values" of their damages and the amounts received from Congress in initial settlements.

The consultant's appendixes are not included in this report.

TABLE 4: Compensation Based on Present Bill Adjusted to Reflect Accurate Interest Rate Calculation

	Crow Creek	Lower Brule
Fort Randall Costs and Expenses Difference	$709,208.61	$1,170,667.00
Fort Randall Difference in 1996-1997 Dollars	$13,368,444.64	$23,688,898.72
Big Bend Costs and Expenses and Rehabilitation Difference	$3,360,403.50	$5,550,233.00
Big Bend Difference in 1996-1997 Dollars	$53,392,328.20	$94,588,086,19
Total Difference in 1996-1997 Dollars	$66,760,772.84	$118,276,984.90
Minus Amount Provided by Congress, 1996/1997	- $27,500,000.00	- $39,300,000.00
Difference Remaining in 1996-1997	$39,260,772.84	$78,976,984.90
Difference Remaining in 2006 Dollars**	**$69,222,084**	**$129,822,085**

*Difference in 1996-1997 Dollars and 2006 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. **Rounded to nearest dollar.

For the calculations of these differences see Appendix 1 (A-D).

Crow Creek Sioux

If the compounded corporate interest rate value of the base amount is adjusted to reflect the $27.5 million compensation received by the Crow Creek Sioux Tribe in 1996, the result indicates that there was still a difference of $39.2 million at the time. If the annual corporate interest rate is added to the principal amount of $39.2 million from 1996 through 2005, the present value of the difference is **$69,222,084**. This alternative approach would provide the Crow Creek Sioux Tribe with more compensation than the Tribe would receive from a settlement based on the Cheyenne River per-acre amount, but slightly less than it would receive from one based on the Santee Sioux per-acre amount and significantly less than one based on the Tribe's highest asking prices.

Lower Brule Sioux

A similar adjustment to the accrued value of Lower Brule compensation based on asking prices in the Current Bills indicates that a difference of $78.9 million still remained after Congress awarded the Tribe $39.3 million in additional compensation in 1997. If the annual corporate interest rate is added to the principal amount of $78.9 million from 1997 through 2005, the present value of the difference is **$129,822,085.00**. This alternative approach would provide the Lower Brule Sioux Tribe with significantly more compensation than the Tribe would receive from a settlement based on the Cheyenne River per-acre amount, but less than it would receive from one based on the Santee Sioux per-acre amount and significantly less than one based on the Tribe's highest asking prices.

6

See comment 3.

Compensation Alternative III: Parity with the Santee Sioux Settlement of 2002 on a Per-Acre Basis

As an alternative to parity with the Cheyenne River Sioux settlement, the Crow Creek and Lower Brule Sioux Tribes request parity with the Santee Sioux settlement of 2002. The Santee Sioux Tribe of Nebraska received the highest amount of total compensation on a per-acre basis ($8,164 per acre). Parity with this per-acre amount would result in a higher range of compensation; the highest range for the Crow Creek Sioux and the second highest for the Lower Brule Sioux. As noted previously, Congress has established the precedent for providing additional compensation to the Missouri River Tribes on a per-acre basis in the trust funds it established for the Crow Creek Sioux Tribe in 1996, the Lower Brule Sioux Tribe in 1997, and the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska in 2002.

TABLE 5: Comparison of the Total Compensation Provided to the Crow Creek and Lower Brule Sioux Tribes with that Provided to the Santee Sioux Tribe on a Per-Acre Basis

Tribe(s)	Dam(s)	Acreage Lost	Total Compensation	Compensation Per Acre
Santee Sioux, NE	Gavins Point	593a	$4,841,010	$8,164
Crow Creek Sioux, SD	Fort Randall Big Bend	15, 597a	$33,437,614	$2,144
Lower Brule Sioux, SD	Fort Randall Big Bend	22,296a	$43,645,988	$1,958

Crow Creek Sioux

The difference between the overall compensation provided to the Crow Creek Sioux Tribe and that provided to the Santee Sioux Tribe is $6,020 per acre. Multiplying this difference by the number of acres lost by the Crow Creek Sioux (15,597) results in a total of **$93,893,940.** This is the amount of additional compensation necessary to provide the Crow Creek Sioux Tribe parity with the overall compensation provided to the Santee Sioux Tribe on a per-acre basis.

Lower Brule Sioux

The difference between the overall compensation provided to the Lower Brule Sioux Tribe and that provided to the Santee Sioux Tribe is $6,206 per acre. Multiplying this difference by the number of acres lost by the Lower Brule Sioux (22,296) results in a total of **$138,368,976.** This is the amount of additional compensation necessary to provide the Lower Brule Sioux Tribe parity with the overall compensation provided to the Santee Sioux on a per-acre basis.

7

See comment 5.

Compensation Alternative IV: Based on Highest Tribal Asking Prices

A fourth alternative for additional compensation to the Crow Creek and Lower Brule Sioux Tribes would be to base it on the difference between the highest amounts asked for by the Tribes for direct and indirect damages, negotiating expenses, and rehabilitation and the actual amounts provided to the Tribes by Congress. The Table below indicates that the total compensation based on these differences would be **$70,685,862** for the Crow Creek Sioux Tribe and **$432,547,830** for the Lower Brule Sioux Tribe. This is the highest range for the Lower Brule Sioux and the second highest range for the Crow Creek Sioux.

TABLE 6: Basis for Parity Compensation when Asking Price is Based on "Highest Asking Prices" Offered by the Tribes (1954-1961)

	Crow Creek	Lower Brule
Fort Randall Costs and Expenses Difference	$752,759.00	$1,826,045.00
Fort Randall Difference in 1996-1997 Dollars	$14,190,720.00	$36,923,065.00
Big Bend Costs and Expenses and Rehabilitation Difference	$3,360,903.00	$15,579,898.00
Big Bend Difference in 1996-1997 Dollars	$53,400.265.00	$265,515,472.00
Total Difference in 1996-1997 Dollars	$67,590,985.00	$302,438,537.00
Minus Amount Provided by Congress, 1996/1997	- $27,500,000.00	- $39,300,000.00
Difference Remaining in 1996-1997	$40,090,985.00	$263,138,537.00
Difference Remaining in 2006 Dollars**	**$70,685,862.00**	**$432,547,830.00**

*Difference in 1996-1997 Dollars and 2006 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.
**Rounded to nearest dollar.

The consultant's appendixes are not included in this report.

For the calculation of these differences see Appendix 2 (A-D).

8

The following table outlines the factual basis for determination of the highest tribal asking prices.

TABLE 7: Summary of Amounts and Dates of Highest Tribal Asking Prices

	Crow Creek	Lower Brule
FORT RANDALL DAM *Direct Costs* Amount and Date of Highest Asking Price	$685,138.00 March 1957	$912,000.00 May 1954
Indirect Costs Amount and Date of Highest Asking Price	$1,463,433.00 May 1957	$1,790,568.00 July 1954
Negotiating Expenses Amount and Date of Highest Asking Price	$100,000.00 March 1957	$200,000.00 May 1957, March 1958
Fort Randall Costs and Expenses Total	$2,248,571.00	$2,902,568.00
Compensation Received from Congress, September 1958	$1,495,812.00	$1,076,523.00
Difference Between Highest Tribal Asking Prices and Compensation Received in 1958	$752,759.00	$1,826,045.00

9

Table 7 Continued

	Crow Creek	Lower Brule
BIG BEND DAM		
Direct Costs		
Amount and Date of Highest Asking Price	$494,890.00 March 1961	$1,111,910.00 March 1961
Indirect Costs		
Amount and Date of Highest Asking Price	$467,004.00 June 1961	$884,472.00 June 1961
Negotiating Expenses Amount and Date of Highest Asking Price	$125,000.00 March 1960-August 1961	$125,000.00 March 1960-Aug. 1961
New School Amount and Date of Highest Asking Price	Not Applicable	$350,000.00 March 1961
Big Bend Costs and Expenses Total	$1,086,894.00	$2,471,382.00
Compensation Received from Congress, October 1962	$639,302.00	$1,300,715.00
Difference Between Highest Tribal Asking Prices and Compensation Received in 1962	$447,592.00	$1,170,667.00

	Crow Creek	Lower Brule
FORT RANDALL and BIG BEND REHABILITATION Amount and Date of Highest Asking Price	$6,715,811.00 May 1957	$16,377,981.00 May 1957
Compensation for Rehabilitation Received from Congress, 1962	$3,802,500.00	$1,968,750.00
Difference Between Highest Tribal Asking Price for Rehabilitation and Amount Appropriated by Congress for that Purpose in 1962	$2,913,311.00	$14,409,231.00

10

See comment 6.

Asking Prices

The GAO Draft Report concludes that I deviated from the approach used in prior GAO reports on additional compensation for Tribes impacted by the Missouri River Pick-Sloan dam projects "by not using the Tribes' final asking price as a starting point of the analysis (p. 5)." From my perspective, the GAO did not clarify in its previous reports that the final tribal asking price was the starting point of analysis. The GAO's 1998 report on additional compensation for the Cheyenne River Sioux, for example, does not make this clear. It suggested that the Congress "consider using the tribe's request for compensation at the time of the taking" of their lands. For the Crow Creek Sioux and Lower Brule Sioux Tribes that "time of taking" was in not in 1957 and 1961, when the Tribes were compelled to lower their asking price a final time. Rather, it was in 1952 and 1960 when the Army Corps of Engineers took title to their lands through condemnation.

If the GAO used the final asking price as the starting price of analysis in its prior reports, then we can no longer claim that the compensation amounts in the Current Bills "are based on a methodology deemed appropriate by GAO (p. 4)." This is because I did not use the final asking prices as the starting point for determining differences, as I explain below. However, my calculations did use the approach suggested by GAO in the two previous reports for establishing the high range of compensation based on the annual yields of AAA corporate bonds.

The GAO Draft Report indicates that the GAO used the tribe's final asking price "because we believed that it represented the most up-to-date and complete information and that their final position was more realistic than their initial asking price, which may have been inflated for negotiating purposes." I thoroughly disagree with this assumption.

I did not use the final tribal asking prices as a starting point because my historical research made it clear that those final tribal offers were not "more realistic," as the GAO Draft Report asserts. To the contrary, my findings revealed that these so-called "final offers" were made under conditions of extreme duress. The GAO's statement in its 1998 Cheyenne River Sioux report that "the Tribes may not have been willing sellers of their land" is an understatement. The historical record makes it clear that Tribal representatives were continually pressured to resign themselves to the Government's "take it or leave it" posture.

Neither the Crow Creek Sioux Tribe nor the Lower Brule Sioux Tribe was consulted prior to enactment of the Pick-Sloan Plan or the initial construction of the dams that impacted them. Congress in 1952 stipulated by law that negotiations with the Tribes would not be allowed to interfere with the scheduled construction of the dam projects. Thus, the Tribes were not in a position to hold firm to an asking price or walk out of negotiations if they were dissatisfied. Their lands were going to be flooded, and their tribal members relocated whether or not they agreed to settlement terms. The Government negotiators held all the advantages, but chief among those was the leverage of the "impending flood." The Tribes' best hope was to receive funding before the catastrophic events took place. But, in the end, the Crow Creek and Lower Brule Sioux Tribes were not afforded the opportunity to see the realization of even that hope.

11

See comment 7.

By the time of the Tribes' "final offers" in March 1958, which the draft report uses as a starting point for analysis, the damages from the Fort Randall project had already been incurred. The Army had closed the floodgates of the dam in 1952 and had proceeded to condemn tribal lands illegally without Congressional authorization. Tribal members had been forced to relocate almost three years earlier without funds to cover their moving expenses. The Fort Randall Dam had been completed and dedicated nineteen months earlier. This was obviously not a negotiating situation in which the parties had equal standing. In essence, the Tribes had no bargaining power.

The negotiations with the Tribes for settlement of Big Bend project damages proceeded on a more favorable timetable. However, at the time of the Tribe's "final offers" in March 1961, the tribal negotiators were still under duress as a result of the obvious inevitability of both the project's negative impact on their people and communities and the Government's ability to dictate the terms of settlement. A year before this, in March 1960, the Corps of Engineers had again illegally condemned tribal land. The groundbreaking for the Big Bend project had taken place two months after tribal lands were condemned. The Tribes had not received rehabilitation funds for the reestablishment of tribal members, some of whom had been forced to relocate more than eight years before. The prospect of dismantling the reservations' primary communities lay immediately ahead.

Because of these circumstances, I did not use the Tribes' final offers as a basis for additional compensation. Instead, I used tribal offers that were based on estimates by professional appraisers of the "fair market value" of tribal losses. In reviewing the historical documentation, I did not gain the sense at any time that initial or subsequent tribal asking prices were "inflated," as the GAO Draft Report assumes (p. 5), with the view in mind that they would be "dealt down" in later negotiations.

I did not use the highest offers in every case because I believed that some of those offers were skewed by special circumstances. For example, in May 1957, the Lower Brule Sioux Tribe requested $16,377,981 for tribal rehabilitation in exchange for its agreement to accept the termination of its Federal status. This offer came during the so-called "termination era" when many in Congress, as well as some top Government policymakers, sought to terminate the Federal relationship with as many Tribes as possible. The Lower Brule Sioux Tribe was reacting to the pressure it felt to conform to this policy. The fact that they were the only Tribe ever to volunteer to have their Federal relationship terminated reflected the desperation they felt generally about the negative impacts of the Fort Randall project and their negotiating position in particular.

The Federal status of several Tribes was in fact terminated, but Congress later disavowed this policy and restored most of the terminated Tribes to their former status as federally recognized tribal entities. The Government never seriously considered Lower Brule to be among the Tribes considered eligible for termination, and there was significant opposition to the proposal within the Tribe itself. As a result, the offer was subsequently taken off the table.

12

Rehabilitation

In regard to the issue of rehabilitation funds, the GAO Draft Report states that:

> While rehabilitation was the largest component of the Tribes' settlement proposals, we believe it should be considered separately from the comparison for damages because rehabilitation was not directly related to the damage caused by the dams. Funding for rehabilitation, which gained support in the late-1940's, was meant to improve the tribe's social and economic development and prepare some of the Tribes for the termination of federal supervision (p. 5).

Now on pp. 20-21.

See comment 8.

I wholeheartedly disagree with this conclusion. It is true that general rehabilitation funding for Tribes was a component of Federal Indian policy beginning in the late 1940's and was part of the overall termination policy. However, in the context of the settlements made with Tribes impacted by the Pick-Sloan projects, Congress has consistently demonstrated the understanding that funds for rehabilitation were directly linked to the damages caused by the dams.

In establishing statutory guidelines for negotiations with the Cheyenne River and Standing Rock Sioux Tribes in 1950, Congress provided that the final settlements would pay the costs of "reestablishing the tribe . . .so that their economic, social, religious, and community life can be reestablished and protected." It was not expected that this provision could be accomplished solely from compensation provided for direct and indirect damages. In 1949, Congress provided funding for rehabilitation as part of an overall settlement with the Three Affiliated Tribes for damages caused by the Garrison Dam project. Subsequent Congressional settlements with four downriver Sioux Tribes between 1954 and 1962 followed suit by providing rehabilitation funding as part of the overall compensation package.

The largest portion of the rehabilitation funds provided in the initial settlements was used to improve the living conditions of families directly impacted by the dams. The second largest rehabilitation expenditure went for the reestablishment of farms and ranches. These new enterprises had to adjust to the fact that the reservoirs had flooded the most fertile soil and the best open grazing areas and natural shelters. The entire reservations were dependent on the natural resources of the bottomlands along the Missouri River. Most of the rehabilitation money was used to help tribal members adjust to the loss of those resources and the reservation infrastructure. In this context, rehabilitation was directly linked to the damages incurred and was therefore distinct from general rehabilitation funding that was appropriated for the social and economic approval of Tribes that had not suffered catastrophic losses of their environment.

Between 1992 and 2002, Congress provided additional compensation to seven Tribes impacted by Pick-Sloan projects. In each of these cases, it allowed rehabilitation funding to be considered as part of the basis for additional appropriations that established tribal trust funds. In the case of the Yankton and Santee Sioux, Congress in 2002 established a trust fund that compensated these Tribes for the fact that they had not received rehabilitation funding as part of their original settlements. This additional compensation was based on a formula that provided 458 percent more for rehabilitation than was paid for direct damages. This percentage was the

average ratio of rehabilitation to direct damage amounts previously paid by Congress to five other Tribes impacted by Pick-Sloan projects.

In 1992, Congress provided additional compensation to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, and in 2000 to the Cheyenne River Sioux Tribe, based on a range of compensation suggested by the GAO. In both of these cases, the GAO included rehabilitation, along with direct and indirect damages and negotiating expenses, as part of the tribal asking prices that served as the basis of difference between the amounts the Tribes requested and those they received from Congress in initial settlements.

I am not aware that the GAO has ever suggested separate consideration for rehabilitation funds previous to this GAO Draft Report. Congress has clearly established solid precedent for including rehabilitation as part of the basis for additional compensation.

Summary and Conclusion

Congress has not maintained uniformity or consistency in providing additional compensation to the Missouri River Tribes impacted by the Pick-Sloan dam projects. It has used other approaches more often than it has followed the range methodology initially suggested by the GAO in 1991. In the three cases where it did utilize the GAO methodology, Congress was not consistent in applying the highest range of compensation. As a result, there remains a wide disparity in the total compensation that seven Tribes have received from Congress

. There are probably many approaches that could be considered to solve the problem of the continuing inconsistency and inequity of the several statutes that Congress has enacted to compensate the Missouri River Tribes for their considerable damages. My response to the GAO Draft Report has proposed a range of four alternative methods for providing additional compensation to the Lower Brule and Crow Creek Sioux Tribes. Two of those methods would achieve parity with Sioux Tribes that have received more generous settlements. Both my clients, the Lower Brule and Crow Creek Sioux Tribes, and I would appreciate the GAO's extensive evaluation of the alternative methods of compensation proposed in this letter. We also request that your Final Report provide guidance to Congress and to us by suggesting alternative approaches that would both solve the problem of the lack of parity in the settlements and bring final closure to the ongoing issue of additional compensation for Pick-Sloan damages.

I again thank you for giving me the opportunity to comment on the GAO Draft Report. I would also like to express my appreciation for the open dialogue your staff has maintained throughout this review.

Sincerely,

Michael L. Lawson, Ph.D.
Senior Associate

14

The following are our comments on the Crow Creek Sioux and Lower Brule Sioux tribes' consultant's letter dated April 27, 2006.

GAO Comments

1. The tribes' consultant did not calculate a range of additional compensation as we suggested in our report. Our approach is to provide the Congress with a range of possible additional compensation based on the difference between the amounts the tribes believed was warranted at the time of the taking and the final settlement amount. We then adjusted the differences using the inflation rate for the lower end of the range and the corporate bond rate for the higher end. In deciding not to calculate a low-end value using the inflation rate, the consultant stated that "...there is no precedent for Congress using the inflation rate as a basis for any additional compensation it has awarded to the seven Tribes since 1992." While the consultant is correct in stating that the Congress has not provided any tribe with additional compensation at the lowest value in the ranges we have calculated, there is a precedent for the Congress providing an amount less than the highest value. In 1992, the Congress authorized $90.6 million in additional compensation for the Standing Rock Sioux tribe, which was toward the low end of the possible compensation range we calculated of $64.5 million to $170 million. Although the Congress did not select the lowest value, having a lower value provided the Congress with a range from which to select. We did not suggest that the consultant should propose a range of additional compensation using four different approaches.

2. Determining whether additional compensation is warranted is a policy decision for the Congress to decide. Nonetheless, if the Congress relies on our analysis in this report and does not provide a third round of compensation to the Crow Creek Sioux and Lower Brule Sioux tribes, the additional compensation provided to five of the seven tribes—the Cheyenne River Sioux tribe, the Crow Creek Sioux tribe, the Lower Brule Sioux tribe, the Standing Rock Sioux tribe, and the Three Affiliated Tribes of the Fort Berthold Reservation—would generally fall within the ranges we calculated using our approach, thereby leaving only two tribes—the Santee Sioux tribe and the Yankton Sioux tribe—that would have had their additional compensation calculated on a per-acre basis and not reviewed by GAO. As a result, we believe using our approach, which is based on the amounts that the tribes believed were warranted at the time of the taking, would provide more consistency among the tribes, rather than less.

3. The tribes' consultant did not make the amounts from different years comparable before making his per-acre calculations. The consultant did not adjust the original compensation amounts from 1947 through 1962 before adding them with the additional compensation amounts from 1992 through 2002. As a result, any comparisons made between the compensation amounts of the Crow Creek Sioux and Lower Brule Sioux tribes and other tribes, such as the Cheyenne River Sioux tribe or the Santee Sioux tribe, would be inaccurate. For example, for the Lower Brule Sioux tribe, the consultant added three amounts from 1958, 1962, and 1997 for a total of $43.6 million, without first adjusting the individual amounts to constant dollars. More importantly, we do not believe that an aggregate per-acre comparison among the tribes is appropriate. We agree with the tribes' consultant that the tribes all suffered similar damages, but similar does not mean exactly the same. Damages would have to be exactly the same among all tribes for there to be equal total compensation on a per-acre basis, and this was not the case. Products, such as buildings, timber, and wildlife, were valued differently depending on type and some tribes lost more of one resource than other tribes. As a result, their per-acre compensation values would be different. Also, about half of the payments to four of the tribes were for rehabilitation that was not directly linked to the acreage flooded by the dams.

4. We disagree that the additional compensation authorized for the Cheyenne River Sioux tribe in 2000 had a "skewing" effect on the additional compensation provided to the four other tribes prior to that time. The additional compensation authorized for the Cheyenne River Sioux tribe fell within the range we calculated, as did the additional compensation authorized for the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux tribe. Our range was based on the amount the Cheyenne Rive Sioux tribe believed was warranted at the time of the taking. Furthermore, as our analysis in this report demonstrates, although the Crow Creek Sioux and Lower Brule Sioux tribes were provided with additional compensation in 1996 and 1997 based on a per-acre analysis, the amounts were consistent with, or higher, than the ranges we calculated in this report.

5. As the tribes' consultant noted in his comments, he did not use the tribes' highest offers in every case in his original analysis because he believed that some of those offers, such as the $16 million rehabilitation figure requested by the Lower Brule Sioux tribe, were skewed by special circumstances. However, the consultant uses these same

highest asking prices in his fourth alternative, even though he believed them to be too unreasonable to include in his original analysis.

6. The tribes' consultant is correct in pointing out that we did not use the exact phrase "final asking price" in our two prior reports. However, the ranges we calculated in our 1991 and 1998 reports were based on the final asking price of the tribes and their final settlements. We used the phrase "at the time of the taking" as a general phrase to denote the time period when the tribes' were negotiating with the government for compensation for the damages caused by the dams. It is not intended to refer to a specific date.

7. We disagree with the tribes' consultant that tribal members were forced to relocate without funds for moving expenses. The tribes did receive initial funds based on the Missouri River Basin Investigations Unit appraisals to help cover relocation expenses 3 years before they made what we refer to as their final asking prices in March 1958. In March 1955, the Crow Creek Sioux tribe received $399,313 and the Lower Brule Sioux tribe received $270,611 from the court, with the understanding that negotiations between the tribes, the U.S. Army Corps of Engineers, and Interior would continue until settlements were achieved. Tribal committees were formed to plan relocation activities with these funds.

8. We disagree with the tribes' consultant regarding his characterization of the rehabilitation portion of the payment the tribes received. We state in this report that it should be considered separately from the comparison of the dams because it was not directly related to the damage caused by the dams. The tribes' consultant states that "...the Congress has consistently demonstrated the understanding that funds for rehabilitation were directly linked to the damages caused by the dams." We agree that funding for rehabilitation became intertwined with compensation for the dams, and we included rehabilitation in our analysis in this report, as shown in tables 9 and 10, as we did for the Cheyenne River Sioux tribe and the Standing Rock Sioux tribe. However, we disagree that rehabilitation is directly linked to the damages caused by the dams for the following three reasons. First, other tribes not affected by dam projects were also provided with rehabilitation funding. Second, rehabilitation funding was to improve the economic and social conditions of all tribal members, it was not limited to only those members directly affected by the dams. Third, it was clear during the negotiations that the government did not consider

rehabilitation funding to be compensation for the damages caused by the dams. In addition, in this report, as in our 1998 report, we show the breakout of each component in our analysis to provide the Congress with the most complete information.

Appendix VI

GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the individual named above, Jeffery D. Malcolm, Assistant Director; Greg Carroll; Timothy J. Guinane; Susanna Kuebler; and Carol Hermstadt Shulman made key contributions to this report. Also contributing to the report were Omari Norman, Kim Raheb, and Jena Y. Sinkfield.

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PREPARED STATEMENT OF LESTER THOMPSON, CHAIRMAN, CROW CREEK SIOUX TRIBE

Mr. Chairman, members of the committee, thank you very much for the opportunity to testify on the Tribal Parity Act, S. 374. I am Lester Thompson, the chairman of the Crow Creek Sioux Tribe. It is an honor for me to be here with Chairman Mike Jandreau. Chairman Jandreau is the most senior chairman in our State and in the Great Sioux Nation. I am the most junior chairman in the Sioux Nation, having been elected chairman in April. I took office, along with a new tribal council, in May 2006.

I also would like to thank Senator Thune for introducing the Tribal Parity Act and Senator Johnson for cosponsoring. This legislation before you is of extraordinary importance to our tribe. I am delighted that it is the subject of my first appearance before Congress.

The members of the Crow Creek Sioux Tribe were relocated after Little Crow's War in Minnesota. People were transported on barges from Minnesota stopping at Santee and then we moved on to Crow Creek. Many lives were lost along the way. We are members of the Isanti and lhanktowan divisions of the Great Sioux Nation. We speak Dakota and Nakota dialects. We have three districts on the reservation, and are a treaty tribe.

The Crow Creek Sioux Tribe consists of 225,000 acres located in Central South Dakota. Our Western boundary is the Missouri River. In 1944, when the Congress enacted the Flood Control Act and authorized implementation of the Missouri River Basin Pick Sloan Plan for water control, two of the dams, Fort Randall and Big Bend, flooded over 16,000 acres of our best and most productive bottom land. It was also the very land where a majority of our people lived. The cost to Crow Creek in human terms, and economically, was astronomical.

We lost:

- Our hospital;
- Housing units;
- Tribal Buildings and other structures;
- Schools;
- Businesses;
- Roads;
- Acres of waterbed and timberland, and domestic and ranch water systems;
- Food sources, such as fishing, hunting, and subsistence farming; and
- Ceremonial grounds and traditional medicines.

Our way of life was altered irreparably. Before the dams, the lifestyle was simple. The people worked in a community garden. In the evenings, the people would gather to share that day's catch of fish and the food gathered. They would meet to visit, pray, sing, and dance where the Bureau officials could not observe. The children attended boarding school within walking distance of their homes and family. The way of life, the social interactions, the camaraderie and sense of being one people—one tribe, was destroyed by the environmental changes and forced relocation. The hospital and school were never replaced. The traditional medicine that grew solely in the waterbed and the Ceremonial Grounds are irreplaceable.

When the relocation took place, some purchased homes with the $500 compensation received. Others received homes in low rent housing—a project constructed of 50 units in an area smaller than a city block.

The elders observed that this is when the change occurred. People started to watch each other, argue with each other, begrudge each other, and become disgruntled. With the loss our school, the next option was the Immaculate Conception Boarding School, 13 miles away. The students were no longer able to walk to their homes and families on a daily basis, and those teaching were not people who believed in the heritage, culture, and customs of the students. Abuses that occurred in Catholic Boarding Schools are well documented historically, and I will not expand, except to say that the loss of our school negatively impacted our people on a much larger scale. This impact on the social development of our people has rippled down through generations.

Our reservation is in Buffalo County, SD. Buffalo County is the POOREST COUNTY IN AMERICA, and also has the highest cancer rate in the Nation. Many Elders believe that the building of the dam and disturbing the earth and the water flow released death in the air.

Chairman Jandreau has spoken eloquently regarding the desire to join the global market and seeking economic parity with the rest of America. I strongly agree and support those goals. But at Crow Creek, we must first achieve parity with Chamberlain, SD, just 25 miles away. A small town of just 3,000 people, Chamberlain's un-

employment rate is approximately the State average—5 percent, while the rate at Crow Creek is over 80 percent.

For us to move forward, we must improve our infrastructure and create an environment that is conducive to human and economic progress. The Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act enacted in 1996 [Public Law 104–223] awarded $27.5 million to the Crow Creek Sioux Tribe. Of the $27.5 million, the tribe is allowed to utilize the interest. The Tribal Parity Act would greatly enhance the trust fund, thus increasing our available moneys and allowing us to leverage with the private sector. The first year of the trust fund, we received slightly over 1 million dollars. Due to fluctuating interest rates, the yield has now dwindled to slightly over $700,000, and is not a set or guaranteed yearly amount. We have utilized the interest to do a number of things to improve the situation of our people, including the following:

- Purchase a small school with a gymnasium in the Big Bend District—the furthest outlying district. We are able to provide Kindergarten through 6th grade education to students in that area, preventing the necessity of an hour-long bus ride each way to and from school;
- Construct a Community Building in the Crow Creek District, providing a place to gather for socializing, celebrations, and funerals;
- Construct a Community Building in the Fort Thompson District, utilized for community events, program presentations, wakes, weddings, dance, meetings, and as a polling place;
- Set a higher education program to assist students in college;
- Purchase land to increase the land base; and
- Improve damaged roads and upgrade our water plant.

These initiatives just begin to scratch the surface. The legislation we are discussing today, S. 374, is intended to supplement our existing trust fund. As you know, it passed the Senate three times in the 108th Congress, both as a stand-alone bill and as an amendment. All three times the measure died in the House. The Tribal Parity Act was again reported by this committee on June 29, 2006, but has yet to come before the Senate for consideration.

The Army Corps of Engineers has estimated that the Pick-Sloan Project's overall contribution to the U.S. economy averages $1.27 billion annually. According to the Western Area Power Administration, the agency that administers the Pick-Sloan Project, receipts from the project in 2006 are likely to total $119 million and the same every year after. The $69 million dollar increase to the trust fund requested in S. 374 [as amended] would bring the trust fund balance to $96 million—less than 1 year's receipts the Government receives from the Pick-Sloan Project.

The expanded trust fund would enable the Crow Creek Sioux Tribe to make not just significant, but magnificent strides in growth and development. Economic development and environmental improvements would change the lives of our people, our children, and all future generations of Crow Creek Sioux. It would assist in putting reservations on parallel ground, enabling us to compete economically, with Chamberlain and the rest of the United States, as opposed to remaining in our current state, operating below the standards of most Third World Countries.

The recent GAO report entitled "Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes' Additional Compensation Claims" criticizes the tribes for not using "a final asking price." Mr. Chairman, there is not a tribe or tribal member that could possibly place a monetary value on the loss and detrimental impact the Pick-Sloan Project has had on our people. "Official" documents use terms such as "Lake Sharpe" or "Lake Francis Case" to identify the land overtaken by the Pick-Sloan Project. In the every-day language of the tribal people, the land is called "taken area" or "taken land." Because it was taken. The land taken was the richest portion of our reservation. There were no offers or deals made to sell the land, and no assessment done to determine the value of the land. Even if there had been an assessment, the medicinal plants grown on the land and the Ceremonial Grounds hold a higher, non-monetary value. The devastation this has wrought still remains today for all to see.

The Crow Creek Sioux Tribe is consulting with experts such as Dr. Mike Lawson to estimate a monetary value, but his name or expertise is not mentioned in the GAO report. The compensation listed for Crow Creek Sioux Tribe in the Tribal Parity Act is not based on the highest asking price, or based on the price for the Santee Sioux, the Lower Brule Sioux, or any other tribe. Each tribe is unique, but what binds us together is our sovereignty. We are asking for the ability to maintain our sovereignty.

A Christian group visited the Crow Creek Sioux Tribe, stating that they had read about the poverty on the reservations and the fact that Crow Creek is in the poorest

county in the America. After visiting, the group called the situation a National Shame. As chairman of the Crow Creek Sioux Tribe, I want to see the deplorable statistics change. I do not want our situation to remain a national shame. We are not asking for charity, for a handout, or even for your pity. We are not even asking for a helping hand. We are simply asking for fair and just compensation.

For the men, women, and children of the Crow Creek and Lower Brule Sioux Tribes, there is nothing more important right now than moving forward with the Tribal Parity Act. The new Tribal Council, including myself as chairman, understands the challenges that lie ahead. Our reason for running for office and our daily motivation is to improve the situation and make a positive difference for the people of the Crow Creek Sioux Tribe. The Tribal Parity Act is an essential step in our efforts to reverse the downward trend and move forward. We urge the committee to file the report and bring S. 374 to the Senate floor for consideration as soon as possible.

Thank you for the opportunity to testify before your committee, and I will be happy to answer any questions you might have.

Testimony Before the Senate Committee on Indian Affairs

On S. 1535

The Cheyenne River Sioux Tribe Equitable Compensation Amendments Act

June 14, 2006

Good afternoon Mr. Chairman, Mr. Vice-Chairman, and other members of the Committee. I would like to thank you for the opportunity to provide supportive testimony for the Tribe's efforts to obtain immediate access to its funds under Public Law 106-511 -- which I will refer to as "JTAC funds" -- to implement the Tribe's JTAC Plan.

My name is Sharon Vogel; I am an enrolled member of the Cheyenne River Sioux Tribe and am the Administrative Manager for the Tribal Ventures Project. Tribal Ventures is a planning project between the CRST and the Northwest Area Foundation to develop a 10-year plan to reduce poverty and increase prosperity for the families residing on our reservation.

For the past two years, we have been engaged in an inclusive planning process which encouraged the participation of all reservation residents, especially those living in poverty. The results have been astounding. With resources form the Northwest Area Foundation, are eyes were really opened about the state of poverty on the reservation—and what we could do to address it. We will take this testimony to review the state of our reservation, and the ways we are ready to improve it.

Poverty Assessment

In order for us to begin to plan poverty reduction strategies we first had to understand the nature and extent of poverty on our reservation. We found that poverty is widespread, but there isn't a "one size fits all" definition. According to the latest statistics, 46 percent of Indians on the Reservation live in poverty, making it one of the poorest in the Nation. What's worse, 60 percent of Native families with small children live in poverty, starting those children off on the wrong foot with regard to economic success later in life.

There are many categories of poverty definition – all of which apply to Cheyenne River. Below is a summary of those types of poverty which I will reference later in my testimony.

- **Structural Poverty**: This results from underlying conditions of the economy.
- **Incidental Poverty**: This results from changing events in people's lives, also known as situational poverty.
- **Generational Poverty**: This is defined as being in poverty for two or more generations.
- **Poverty of Place**: For decades our reservation has faced a declining economy which has created a poverty of place. The 2000 US Census data ranked Ziebach County as the poorest county in the State of South Dakota.
- **Poverty related to people**: Because we have had ongoing decades of persistent poverty we have seen a steady increase in the number of social, medical and economic problems; this has been compounded with the emerging new threats to the well-being of our families.
- **Forced Relocation** and **Loss of Personal Assets**: Forced relocation is extremely disruptive on both economic and emotional levels. Sudden loss of personal assets can have the effect of plunging families into poverty overnight. Individuals on our Reservation experienced both of these due to the Oahe Dam project, and its repercussions on our community are still felt today.

Our families are suffering from the effects of persistent poverty. The high poverty rate has impacted our families who suffer from despair, hopelessness, lack of opportunities, disparities in health conditions creating an additional burden of illness, impacting our children's education, and perpetuating the impoverished conditions of our reservation.

Suggested Programs and Services to Alleviate Community Poverty

Through the Tribal Ventures planning activities we hosted a series of community conversations that were held in each of our 19 tribal communities. These community conversation meetings allowed us to gather ideas on what our 10 year poverty reduction plan should have in it. Ultimately, we recognized our need to respond directly to the people on the reservation, so these meetings enabled us to identify our people's priorities. In other words, we got it straight from the horse's mouth.

We found that the people who participated in the Tribal Venture planning activities were united on common themes regardless of their age or community residency. Their comments were compiled and sorted into categories, which we then organized into common themes. What we found was that our community was thinking about its own future, and came up with suggestions that grouped roughly into ten themes. Under those themes, we filed the suggestions tribal members produced, and came up with what follows:

1. Promoting Life Long Learning and Training

Leadership	Community Education
Life skills	Individual Development
Social skills	Parenting
Job Training	

2. Restoring individual and Community Wellness

Healthy lifestyles	Exercise
Health Promotion	Nutrition
Disease Prevention	

3. Preserving Cultural Teaching & Values

Language	Arts & Crafts
Storytelling	History
Genealogy	Horse Culture

4. Creating Economic Engines

Partnerships	Tourism
Legislation	Entrepreneurship
Investments	Chamber of Commerce

5. Improving Community Relations

Peacemaking	School-Parent
Race Relations	Health Care-Patient

Conflict Resolution	Community Radio
6. Maintaining Community Safety	
Quality of Life	Community Policing
Safe and Nurturing	Animal Control
Environment	Vandalism
7. Building Reservation Infrastructure	
Transportation	Multi-purpose
Expansion of Water	Community Buildings
System	Mixed Use Housing
Commercial Buildings	Development
	Land Use Planning
8. Strengthening Families	
Parenting	Mediation-Family
Financial Literacy	Conferencing
Spirituality	Homeownership
	Life Coaches
9. Enhancing Agricultural Resources	
Expansion of Packing	Fish Hatcheries
Plant	Organic farming
Indian-owned Livestock	Tree farm
Program	Value Added Products
10. Valuing Education	
Alternative Education	Community College
Programs	Tribal Department of
Community-based	Education
services	Scholarships
Vocational Education	

As you can see, our community was quite diverse and thorough in the way it perceived the Tribes. Though it may seem like too many undertakings, they are merely examples of programs or services the Tribe can pursue with JTAC funds. In the time since the reservation study and today, Tribal Ventures has created a plan for how to address the reservation's poverty and to implement our community's ideas.

Plans for Tribal Resources

Despite the Tribe's needs and current social condition, I don't want to leave you with the impression that we are sitting idly until the Government meets our needs; we know better

than to do that. Instead, the Tribe is ready to implement programs and invest in businesses aimed at alleviating poverty on the reservation.

We have a diverse array of business and program development projects underway, ready to be expanded, or in the planning stages. Below are a few quick examples of these initiatives and how increased resources will help them along.

Lakota Thrifty Mart

The Tribe took over the grocery store on the reservation—Lakota Thrifty Mart—fifteen years ago. Since then, we have upgraded the facilities there to include a fresh bakery and a food court to serve the residents of Eagle Butte. The Thrifty Mart currently employs 57 people, and is consistently turning a profit. In an effort to serve other areas of the reservation, the Tribe plans to expand the Thrifty Mart to both Cherry Creek (on the west end of the reservation) and LaPlant (on the east) in the next couple of years. This will not only expand services to our residents in those parts of the reservation, but it will also create 45 new jobs. While we are producing a profit at the Lakota Thrifty Mart, it isn't large enough to get the other stores off the ground as soon as we'd like. JTAC funds would enable us to get these projects going sooner.

Diabetes Treatment Center

Like many reservations, Cheyenne River has a very high incidence of diabetes among our people. Despite the IHS responsibility to provide health care to our community, diabetes is at epidemic proportions. Accordingly, the Tribe plans to construct and operate a diabetes treatment center alongside our wellness facilities. We are currently in the planning stages of the project, but are ready to begin construction and service delivery as soon as we can put capital into the project. Waiting until 2011 for JTAC funding would prevent us from moving forward to provide a solution to one our reservation's major problems.

Education

We've identified our two priorities as infrastructure development and education. When we were holding our planning sessions, we spoke to almost all the young adults on our reservation. We found that they wanted to stay at home, but that the job prospects and educational opportunities were too limiting. As a result, we'd like to use our funding to train our young people — provide them an education — as an inducement to stay on the reservation. Our population is overwhelmingly young — almost half are under 25 years-old — we must act as soon as possible to ensure that we don't lose a generation because of lack of opportunity.

Infrastructure Development

We have identified that economic development requires infrastructure. While the federal government has an obligation to the Tribe to provide roads, drinking water, water treatment, and other infrastructure, the Tribe has a role too, and the JTAC funds could be used to leverage infrastructure improvements. For example, the Tribe has initiated discussions with Merrill Lynch to use JTAC funds to finance an advance funded roads construction effort, similar to an advanced funded road project that the Standing Rock Sioux Tribe did using some of its JTAC funds.

Of course, there are just examples of the several plans we are ready to implement. We hope to create a cultural center, to enter the energy industry with wind turbines, to start a credit union, to expand our hotel, to develop tourism, and to create partnerships with private entrepreneurs who realize the opportunity Cheyenne River presents. We can no longer wait to develop our economy, communities, and families in a piecemeal fashion. We must have multiple strategies that are linked to establishing a stable economy, reducing poverty and improving the quality of life for our reservation families; we need access to the resources promised under JTAC.

Specifically the JTAC funds when applied to strategic activities/projects will result in

- Increasing the assets of the Tribe, community and our families
- Creating economic opportunities for our families
- Creating education opportunities for our tribal members
- Development of comprehensive social and health programs
- Continuing to increase the capacity of our tribal government to develop long-term strategies that will result in sustainable economic, community and social development.

I would like to note, however, that payments to individual landowners that the Tribe is seeking will also do a lot to alleviate poverty on the reservation. Obviously, the payments will directly counteract the "loss of assets" aspect of poverty and—combined with financial literacy education and other advising—will serve to alleviate both situational and generational poverty as well. Tribal landowners and the heirs who receive these payments will have the capital to invest in both their families and their communities. Some may choose to become business owners that employ other tribal members, and some may choose to use the funds for their or their family's education. As President Kennedy said, "a rising tide lifts all boats."

Mr. Chairman and members of the Tribal Council thank you for scheduling this hearing and gathering recommendations from tribal entities and tribal members regarding the urgent need for accessing our JTAC funds.

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