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TO PROVIDE FOR THE YANKTON SIOUX TRIBE AND THE SANTEE SIOUX TRIBE OF NEBRASKA CERTAIN BENEFITS OF THE MISSOURI RIVER BASIN PICK-SLOAN PROJECT, AND FOR OTHER PURPOSES

AUGUST 25, 2000.—Ordered to be printed

Filed under authority of the order of the Senate of July 26, 2000

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

REPORT

[To accompany S. 1148]

The Committee on Indian Affairs, to which was referred the bill (S. 1148) to provide for the Yankton Sioux Tribe and the Santee Sioux Tribe of Nebraska certain benefits of the Missouri River Basin Pick-Sloan project, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSES

The purpose of S. 1148, the Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act, is to provide additional compensation to the Yankton and Santee Sioux Tribes for the acquisition by the United States of 3,240 acres of the Yankton Sioux Reservation for Fort Randall Dam and Reservoir and 1,007 acres of the Santee Sioux Reservation for Gavins Point Dam and Reservoir on the Missouri River.

BACKGROUND

Pursuant to the Treaty of April 19, 1858 (11 Stat. 743) a 430,405-acre reservation was established for the Yankton Sioux Indian Tribe along the east bank of the Missouri River in Charles Mix County, South Dakota. Approximately 40,000 acres of the reservation is currently in tribal or individual Indian trust status. In 1866, President Andrew Johnson signed an Executive Order setting aside

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four townships in northeastern Nebraska near the mouth of the Niobrara River as a permanent home for remnants for six Santee Sioux bands driver out of Minnesota following the so-called "Sioux Uprising of 1862". Although subsequent Executive Orders adjusted the boundaries and expanded the size of the reservation to 165,195 acres, only about 7,000 acres of that area remain in tribal or individual trust status.

Under the Flood Control Act of 1944 (33 U.S.C. 701 et seq.), the Congress authorized construction of five massive dam projects on the Missouri River as part of the Pick-Sloan program, the primary purpose of which was to provide flood control downstream, as well as improved navigation, hydro-power generation, improved water supplies, and enhanced recreation. The U.S. Army Corps of Engineers, which constructed and operates the dams, estimates that the projects' overall annual contribution to the national economy averages $1.9 billion. However, for the Yankton and Santee Sioux Tribes and other tribes along the Missouri, the human and economic costs of the projects have far outweighed any benefits received, since the lands affected by Pick-Sloan were, by and large, Indian lands, and entire tribal communities and their economies were destroyed.

Fort Randall Dam and Reservoir project, an integral part of the Pick-Sloan program, initially flooded 2,851 acres of Yankton Sioux tribal land and forced the relocation and resettlement of at least 20 families from the traditional and self-sustaining community of White Swan, one of four major settlement areas on the reservation. Unlike communities on other reservations that were relocated to higher ground to make way for Pick-Sloan projects, the White Swan community was completely dissolved and its residents were dispersed. In addition, since 1953 another 428 acres of trust land have been lost to erosion from the fluctuating waters in the reservoir, reducing the size and production of an irrigated tribal farm and necessitating the relocation of a housing development of twenty-five homes and the Yankton Sioux tribal office in Greenwood, South Dakota.[1]

In 1952, the U.S. District Court awarded the Yankton Sioux $121,210, or about $42 an acre, for the appraised value of the flooded land in condemnation proceedings in which neither the Tribe nor its affected members were represented by private counsel. Significantly, the appraised value of the lands on the Yankton Reservation was less than half the value that was established for comparable lands on four other Sioux reservations appraised in 1951. In 1954, the Congress appropriated $106,500 for severance damages for Yankton Sioux tribal members, but by August, 1956, when these funds were distributed to some, but not all, affected tribal families, nine years had passed since their land had been condemned and six years had passed since their families had been forced to move.

The Gavins Point Dam and Reservoir Project, also an integral part of the Pick-Sloan program, inundated 593 acres of Santee Sioux tribal and individual trust land near the main settlement area of the Indian village of Santee in Knox County, Nebraska.

[1] "Historical Analysis of the Impact of Missouri River Pick-Sloan Dam Projects on the Yankton And Santee Sioux Indian Tribes" by Michael Lawson, Ph.D., April, 1999.

This lost acreage, comprising about 8.5 percent of the reservation and considered among the best agricultural land on the Santee Sioux Reservation, included 380 acres of pastureland and 200 acres of cropland that was part of a tribal farm. In addition, the Corps of Engineers acquired Niobrara Island, a 414.12-acre island near the mouth of the Niobrara River, which had been part of the original Santee Sioux Reservation, as part of the Gavins Point project.

On or about January, 1958, the U.S. District Court awarded the Santee Sioux $52,000, or $87.67 an acre, for the appraised value of the inundated lands pursuant to a 1955 agreement between the Tribe and the Corps of Engineers. Records as to the actual distribution of these funds are not available. As was the case with the payment to the Yankton Sioux Tribe, the payment to the Santee Sioux Tribe, made years after the taking of their land, did not account for the inflation in property values between the time of the taking and the time of settlement. Significantly, within months of the award, the U.S. District Court in South Dakota ruled that the Army lacked congressional authorization to condemn tribal land for its Pick-Sloan projects.

In 1984, a joint Federal-Tribal study found that the compensation that was provided by the United States to tribes impacted by the Pick-Sloan projects greatly undervalued their losses. To provide more just compensation, in 1992 the Congress enacted legislation that established a trust fund of $149,200,000 for the Three Affiliated Tribes of the Fort Berthold Reservation related to the loss of 176,000 acres to the Garrison Dam project, and a trust fund of $90,600,000 for the Standing Rock Sioux Tribe related to the loss of 56,000 acres to the Oahe Dam project.[2] In 1996, the Congress established a $27.5 million Recovery Fund for the Crow Creek Sioux Tribe and a $39.9 million Recovery Fund for the Crow Creek Sioux Tribe and a $39.9 million Recovery Fund for the Lower Brule Sioux Tribe related to the loss of 15,693 and 22,296 acres of land, respectively, to the Fort Randall and Big Bend Dam projects.[3] In the 106th Congress, the Senate passed S.964, which would establish a Recovery Fund of $290 million for the Cheyenne River Sioux Tribe of South Dakota, which lost approximately 104,000 acres to the Oahe Dam project. As this report is written, S. 964 is pending in the House of Representatives.

The Fort Berthold, Cheyenne River, Standing Rock, Crow Creek, and Lower Brule Tribes all received initial settlements from Congress between 1947 and 1962 that included payment for direct property damages, severance damages (including the cost of relocation and reestablishment of affected tribal members), and rehabilitation for the entire reservation. In providing funds for rehabilitation, Congress recognized that the tribes as a whole and not just the tribal members within the taking areas were affected negatively by the loss of the bottomland environment and reservation infrastructure. Accordingly, the five settlements provided compensation for severance damages and rehabilitation that averaged four and a half times more than was paid for direct damages.

In 1960, a Bureau of Indian Affairs comparative study of the experience of six reservations impacted by Pick-Sloan dams found

[2] P.L. 102–575, title XXXV, 106 Stat. 4731 (Oct. 30, 1992).
[3] P.L. 104–223, 110 Stat. 3026 (Oct. 1, 1996) and P.L. 105–132, 111 Stat 2563 (Dec. 2, 1997).

that the average total payment per family within the taking area at Yankton was $5,605, whereas the payment averaged $16,680 on the other five reservations (Fort Berthold, Standing Rock, Cheyenne River, Crow Creek, and Lower Brule). Although the Yankton Sioux Tribe and the Santee Sioux Tribes received settlements for the appraised value of their property in condemnation proceedings and an amount for severance damages, neither tribe received any payments for direct property damages nor any funds for rehabilitation, even though a large number of tribal members residing outside the taking area on both tribes' reservations were also impacted by the dam projects.

The Committee recognizes that any attempt to measure the tangible and intangible values associated with the loss of tribal life and tradition along a free flowing river in monetary terms is necessarily subjective. Nevertheless, in view of the losses experienced by the Yankton Sioux Tribe and the Santee Sioux Tribe as a result of Pick-Sloan dams and reservoirs, and the precedents for providing additional compensation for other Missouri River tribes similarly affected, the Committee finds that it is appropriate to provide additional equitable compensation for the Yankton and Santee Sioux Tribes as would be provided by S. 1148.

S. 1148 SUMMARY OF PROVISIONS

S. 1148 would establish the Yankton Sioux Tribe Development Trust Fund in the U.S. Treasury. On the first day of the 11th fiscal year after the date of enactment, $34,323,743, together with interest accrued from the date of enactment, would be deposited into the Yankton Sioux Development Trust Fund, and $8,132,838, together with interest accrued from the date of enactment, would be deposited into the Santee Sioux Development Trust Fund. The Secretary of the Treasury is authorized and directed to invest these funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

Once both funds have been capitalized, the Secretary of the Treasury is authorized to transfer any accrued interest into separate accounts for transfer to the Secretary of the Interior, without fiscal year limitation on the availability of such funds. In turn, the Secretary of the Interior is authorized to make payments to the Tribes for use in carrying out projects and programs that would implement tribal plans for socio-economic recovery and cultural preservation.

The tribal councils, in consultation with the Secretary of the Interior and the Secretary of Health and Human Services, are to prepare the plans, which must set forth a combination of economic development, infrastructure development, educational, health, recreation and social welfare objectives. Each council must permit tribal members to review and comment on the initial plan, as well as on any proposed revisions to it. Activities carried out under these plans would be subject to existing requirements of the Office of Management and Budget for annual audits, and audit determinations would be required to be published together with tribal council proceedings. Per capita payments from the Funds are prohibited.

Payments from the trust funds to either Tribe could not be used as a basis for reducing or denying any service or program to which the Tribe or a tribal member is otherwise entitled, for subjecting

the Tribe or a tribal member to any Federal or State income tax; or for affecting Pick-Sloan Missouri River power rates. Finally, once the tribal trust funds have been fully capitalized, S. 1148 would extinguish all Yankton and Santee Sioux tribal claims against the United States for losses related to the construction of Fort Randall and Gavins Point dams and reservoirs.

LEGISLATIVE HISTORY

On May 27, 1999, Senator Daschle and Senator Kerrey of Nebraska introduced S. 1148 as the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska Development Trust Fund Act, which was referred to the Committee on Indian Affairs. Senator Johnson of South Dakota and Senator Hagel were added as cosponsors. The Committee held a hearing on S. 1148 on May 17, 2000. The Department of the Interior witness expressed the Administration's support for the bill if it were amended to address concerns regarding the manner in which the proposed trust funds would be funded, per capita payments, and waiver of claims. Both Tribes testified in strong support of the legislation.

On June 21, 2000, the Committee on Indian Affairs considered and adopted an amendment-in-the-nature-of-a-substitute to S. 1148 on behalf of the bill's sponsors. The substitute includes changes that (1) provide for capitalizing the trust funds from the General Fund of the Treasury, with interest, on the first day after the 11th year after the date of enactment of this Act; (2) prohibits per capita payments from the trust funds; (3) extinguishes all tribal claims for losses related to construction of the two dams once the tribal trust funds have been fully capitalized; (4) requires the tribes to consult with the Secretaries of Interior and Health and Human Services in preparing plans to use the trust funds; and, (5) includes plan activities under existing requirements of the Office of Management and Budget for annual audits of such activities and requires audit determinations to be published with tribal council proceedings. These changes address the concerns expressed by the Department of the Interior in its testimony and the Committee understands that they are acceptable to the Tribes.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on June 21, 2000, adopted an amendment-in-the-nature-of-a-substitute to S. 1148 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section cites the short title of S. 1148 as the "Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act".

Section 2—Findings

This section sets forth ten Congressional findings:

The first finding is that by enacting the Flood Control Act of 1944, Congress approved the Pick-Sloan Missouri River Basin program to promote the general economic development of the United States, provide for irrigation above Sioux City, Iowa, protect urban

and rural areas from devastating floods of the Missouri River, and for other purposes;

The second finding is that the water impounded for the Fort Randall and Gavins Point projects of the Pick-Sloan program inundated the fertile, wooded bottom lands along the Missouri River that constituted the most productive agricultural and pastoral lands of, and the homeland of, the members of the Yankton Sioux Tribe and the Santee Sioux Tribe.

The third finding is that the Fort Randall project, including the dam and reservoir, overlies the western boundary of the Yankton Sioux Reservation and caused the erosion of more than 400 acres of prime land on the Yankton Sioux Reservation adjoining the east bank of the Missouri River.

The fourth finding is that the Gavins Point project, including the dam and reservoir, overlies the eastern boundary of the Santee Sioux Tribe Reservation.

The fifth finding is that although the Fort Randall and Gavins Point projects are major components of the Pick-Sloan program, and contribute to the economy of the United States by generating a substantial amount of hydropower and impounding a substantial amount of water, the reservations of the Yankton Sioux Tribe and the Santee Sioux Tribe remain undeveloped.

The sixth finding is that the United States Army Corps of Engineers took the Indian lands used for the Fort Randall and Gavins Point projects by condemnation proceedings.

The seventh finding is that the Federal Government did not give the Yankton Sioux Tribe and the Santee Sioux Tribe an opportunity to receive compensation for direct damages from the Pick-Sloan program, even though the Federal Government gave 5 Indian tribes on reservations upstream from the Yankton and Santee tribes such an opportunity.

The eighth finding is that the Yankton and Santee Sioux Tribes did not receive just compensation for the taking through condemnation of their productive agricultural lands referred to in the sixth finding.

The ninth finding is that the settlement agreement that the United States entered into with the Yankton Sioux Tribe and the Santee Sioux Tribe to provide compensation for the taking by condemnation referred to in the sixth finding above did not take into account the increase in property values over the years between the date of taking and the date of settlement.

The tenth finding states that in addition to the financial compensation provided under the settlement agreements referred to in the ninth finding, (A) the Yankton Sioux Tribe should receive $34,323,743 for the loss value of 2,851.4 acres of land taken for the Fort Randall Dam and Reservoir and the use value of 408.4 acres lost as a result of stream bank erosion that has occurred since 1953, and (B) the Santee Sioux Tribe should receive $8,132,838 for the loss value of 593.1 acres of land near the Santee village and 414.12 acres on Niobrara Island taken for the Gavins Point Dam and Reservoir.

Section 3—Definitions

This section provides definitions for the terms “Indian Tribe”; “Yankton Sioux Tribe”; and Santee Sioux Tribe”.

Section 4—Yankton Sioux Tribe Development Trust Fund

Subsection (a) provides for the establishment in the United States Treasury a fund to be known as the "Yankton Sioux Tribe Development Trust Fund" ("Fund") that shall consist of any amounts deposited into it pursuant to this Act.

Subsection (b) provides that, on the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (a) $34,323,743, together with an amount which equals the amount of interest that would have accrued on this amount if it had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

The amount to be deposited into the Fund reflects a two-part calculation. The first part uses the per-acre amount of compensation provided to the Lower Brule Sioux Tribe in 1997 for inundated land ($1,763 per acre) multiplied by 2,851.4 (the number of acres of land flooded by the Fort Randall project), which equals $5,027,018, multiplied by 458 percent (the average of the sum paid by Congress for severance damages and rehabilitation over and above the sums paid for property damages in five initial tribal settlements between 1948 and 1962), for a total of $23,023,743. The second part of the calculation represents the value of the loss of the productive use, since 1953, of 408.4 acres of arable reservation land due to erosion caused by the Fort Randall project.[4] Valuations were based on potential use of the land, economic returns that could have been realized, investment of the economic returns from land use over the 45 year period, and the present day value of the land. Non-arable tracts totaling 23.2 acres of eroded land were included in the total valuation based on their present day value only. Potential returns were estimated by evaluating receipts from alfalfa cultivation less the cost of farming, based on primary data provided by the Cooperative Extension Service of South Dakota State University. Land charges and management fees were not included, because it was assumed that the Tribe owns the land and manages crop production. The resulting amount is $11,300,000, which, added to $23,023,743, totals $34,323,743.

Subsection (c) requires the Secretary of the Treasury to invest that portion of the Fund that in his judgement is not required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The Secretary of the Treasury shall deposit interest resulting from such investments into the Fund.

Subsection (d)(1) provides that, beginning on the first day of the 11th fiscal year after the date of enactment of this Act, and on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into

[4] See Pacific GeoScience, Missouri River Erosion, 1941–1988, Yankton Sioux Reservation, Marty, South Dakota (San Anselmo, CA: Pacific GeoScience, 1992) and Pacific GeoScience, Missouri River Erosion Update, 1941–1998, p. 2–1).

the Fund for the fiscal year and transfer that amount to the Secretary of the Interior for use, without fiscal year limitation, in accordance with paragraph (d)(2).

Subsection (d)(2) provides that the Secretary of the Interior shall use the amounts transferred under subsection (d)(1) only for the purpose of making payments to the Yankton Sioux Tribe as such payments are requested by the Tribe by tribal resolution, but only after the Tribe has adopted a tribal plan under section 6.

Subsection (e) bars the Secretary of the Treasury from transferring or withdrawing any amount deposited under subsection (b) of this section except as provided in subsections (c) and (d)(1) of this section.

Section 5—Santee Sioux Tribe Development Trust Fund

Subsection (a) provides for the establishment in the United States Treasury a fund to be known as the "Santee Sioux Tribe Development Trust Fund" ("Fund") that shall consist of any amounts deposited into it pursuant to this Act.

Subsection (b) provides that on the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (a) $8,132,838, together with an amount of interest that equals the amount of interest that would have accrued on this amount if such amount had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

The amount to be deposited into the Fund is calculated by combining the number of acres of land flooded by the Fort Randall project (593.1) and the number of acres of Niobrara Island (414.12) and multiplying the total (1,007.22) by the per-acre amount of compensation provided to the Lower Brule Sioux Tribe in 1997 for inundated land ($1,763), which equals $1,775,729. This amount, multiplied by 458 percent (the average of sum paid by Congress for severance damages and rehabilitation over and above sums paid for property damages in five initial tribal settlements between 1948 and 1962), equals $8,132,839.

Subsection (c) requires the Secretary of the Treasury to invest that portion of the Fund that in his judgment is not required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The Secretary of the Treasury shall deposit interest resulting from such investments into the Fund.

Subsection (d)(1) provides that, beginning on the first day of the 11th fiscal year after the date of enactment of this Act and on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into the Fund for the fiscal year and transfer that amount to the Secretary of the Interior for use, without fiscal year limitation, in accordance with subsection (d)(2).

Subsection (d)(2) provides that the Secretary of the Interior shall use the amounts deposited under subsection (d)(1) only for the pur-

pose of making payments to the Santee Sioux Tribe as such payments are requested by the Tribe by tribal resolution, but only after the Tribe has adopted a tribal plan under section 6.

Subsection (e) bars the Secretary of the Treasury from transferring or withdrawing any amount deposited into the Fund under subsection (b) of this section except as provided in subsections (c) and (d)(1) of this section.

Section 6—Tribal plans

Subsection (a) provides that, not later than 24 months after the date of enactment of this Act, the tribal councils of the Yankton Sioux and Santee Sioux Tribes shall each prepare a plan for the use of the payments made to each tribe under sections 4(d) or (5)(d) of this Act.

Subsection (b) requires that each tribal plan shall provide for the manner in which the tribe shall expend payments made to the tribe under subsection (5)(d) to promote (1) economic development, (2) infrastructure development, (3) educational, health, recreational, and social welfare objectives of the tribe and its members, or (4) any combination of such activities.

Subsection (c)(1) provides that the tribal councils of the Yankton Sioux and Santee Sioux Tribes shall make copies of their respective plans available to their members for review and comment before the tribal plan becomes final, in accordance with procedures established by the tribal council.

Subsection (c)(2) provides that each tribal council may, on an annual basis, revise and update its tribal plan. In revising the tribal plan, the tribal council shall provide the members of the tribe opportunity to review and comment on any proposed revision.

Subsection (c)(3) requires each tribal council to consult with the Secretary of the Interior and the Secretary of Health and Human Services in preparing its tribal plan and any revisions to update the plan.

Subsection (c)(4)(A) provides that the activities of the tribes in carrying out their respective tribal plans shall be audited as part of the annual single-agency audit that the tribes are required to prepare pursuant to the Office of Management and Budget circular numbered A–133.

Subsection (c)(4)(B) requires the auditors to determine whether funds received by each tribe for the period covered by the audits were expended to carry out the respective tribal plans consistent with this section, and to include such determinations in the written findings of the audits.

Subsection (c)(5)(C) requires that a copy of the written findings of the audits shall be inserted in the published minutes of each tribal council's proceedings for the session at which the audit is presented to the councils.

Subsection (d) prohibits any portion of any payment made under this Act from being distributed to any member of the Yankton Sioux Tribe or the Senate Sioux Tribe on a per capita basis.

Section 7—Eligibility of tribe for certain programs and services

Subsection (a) declares that no payment made to the Yankton Sioux Tribe or the Santee Sioux Tribe pursuant to this Act shall result in the reduction or denial of any service or program to

which, pursuant to Federal law, the Yankton Sioux Tribe or Santee Sioux Tribe is otherwise entitled because of the status of the tribe as a federally recognized Indian tribe, or any individual who is a member of either tribe because of that individual's status as a tribal member.

Subsection (b) provides that no payment made pursuant to this Act shall be subject to any Federal or State income tax.

Subsection (c) provides that no payment made pursuant to this Act shall affect Pick-Sloan Missouri River Basin power rates.

Section 8—Statutory construction

This section provides that nothing in this Act may be construed as diminishing or affecting any water right of an Indian tribe, except as specifically provided in another provision of this Act, any treaty right that is in effect on the date of enactment of this Act, or any authority of the Secretary of the Interior or the head of any other Federal agency under a law in effect on the date of enactment of this Act.

Section 9—Authorization of appropriations

This section authorizes to be appropriated such sums as are necessary to carry out this Act, including such sums as may be necessary for the administration of the Yankton Sioux Tribe Development Trust Fund under section 4 and the Santee Sioux Tribe Development Trust Fund under section 5.

Section 10—Extinguishment of claims

This section provides that all monetary claims that the Yankton Sioux Tribe or the Santee Sioux Tribe has or may have against the United States for loss of value or use of land related to lands described in section 2(a)(10) resulting from the Fort Randall and Gavins Point projects of the Pick-Sloan Missouri River Basin program shall be extinguished upon the deposit of funds under sections 4(b) and 5(b) of this Act.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1148, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 27, 2000.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1148, the Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Keith (for the federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments).

Sincerely,

ROBERT A. SUNSHINE
(For Dan L. Crippen, Director).

Enclosure.

S. 1148—Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act

Summary: S. 1148 would compensate the Yankton Sioux Tribe and the Santee Sioux Tribe for the taking of certain tribal lands by the federal government. CBO estimates that enacting this bill would have no significant impact on the federal budget over the 2001–2010 period. Enacting S. 1148 would increase direct spending by an estimated $75 million, but pay-as-you-go procedures would not apply because the spending would not occur until fiscal year 2011.

S. 1148 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Tribal governments might incur some costs as a result of the bill's enactment, but those costs would be voluntary.

Estimated cost to the Federal Government: CBO estimates that enacting S. 1148 would result in direct spending outlays of $75 million in 2011, but would have no significant impact on the federal budget before then. For this estimate, CBO assumes that S. 1148 will be enacted by the end of fiscal year 2000.

S. 1148 would provide compensation to the two tribes for the taking of 4,267 acres of land by the federal government for various water projects. The bill would establish the Yankton Sioux Tribe Development Trust Fund and the Santee Sioux Tribe of Nebraska Development Trust Fund and would direct the Secretary of the Treasury to deposit a total of $42 million into interest-bearing accounts to benefit the tribes on the first day of the 11th fiscal year that begins after the date of enactment. An additional deposit equal to the amount of interest that the fund would have earned if the fund had been capitalized and invested in 2001 would be made at the same time. CBO estimates that this additional payment would be $33 million, for a total deposit of $75 million in 2011. Once the Secretary pays these amounts, any monetary claims the tribes may have against the United States regarding this project would be extinguished. Starting in 2011, the bill would allow the tribes to spend amounts equivalent to the annual interest earned on the fund pursuant to a tribal spending plan.

Payments to certain trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited to the fund in 2011 would be recorded as budget authority and outlays in that year. Because the trust funds would be nonbudgetary, the subsequent use of such funds by the tribe would not affect federal outlays.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted. CBO estimates that enacting S. 1148 would not affect direct spending or receipts in any of those years.

Estimated impact on state, local, and tribal governments: S. 1148 contains no intergovernmental mandates as defined in UMRA, but it would impose some conditions on the affected tribes for receipt

of federal funds. The bill would require the tribes to prepare and adopt plans for using payments from the trust fund and to obtain audits of their expenditures. The tribes would receive significant benefits from enactment of this legislation.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 12, 2000, CBO transmitted a cost estimate for H.R. 2671, the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska Development Trust Fund Act, as ordered reported by the House Committee on Resources on June 28, 2000. H.R. 2671 would allow the tribes to spend $2 million to $3 million of annual interest earned from the trust funds beginning in 2001. Under S. 1148, no deposits to the trust fund would be made until fiscal year 2011 and there would be no budgetary impact before then.

Estimate prepared by: Federal Costs: Lanette J. Keith; Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the Private Sector: Sarah Sitarek.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The views of the Administration on S. 1148 are set forth in the following testimony of Terry Virden, Director, Office of Trust Responsibilities, Bureau of Indian Affairs, United States Department of the Interior, before the Committee's hearing on May 17, 2000.

STATEMENT OF TERRY VIRDEN, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES

Good afternoon, Mr. Chairman and Members of the Committee. I am pleased to be here today to present the Administration's views on S. 1148. I want to thank Senator Daschle for introducing this important bill that addresses impacts to the Yankton Sioux Tribe and the Santee Sioux Tribe of Nebraska resulting from the Pick-Sloan Missouri River Basin program and in particular the development of the Fort Randall and Gavins Point projects. If enacted, this bill would give the Tribes much deserved benefits to compensate for those impacts. While the Administration supports compensating the Tribes, we are concerned that the compensation figures on a per acre basis are significantly higher than those awarded previously to other Tribes that were compensated for losses resulting from the Pick-Sloan program. We look forward to working with the Committee to discuss these values and the rationale behind the amounts awarded under S. 1148.

S. 1148 is a continuation of the United States' honorable efforts to correct inequities resulting from a regional Federal project which severely affected Indian tribal homelands along the Missouri River. In the early 1990's the United States forthrightly addressed impacts to the Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation. In 1996 and 1997, respectively, it addressed the impacts to the Crow Creek Sioux Tribe

and the Lower Brule Sioux Tribe. S. 1148 addresses and mitigates the impacts of the Missouri River Basin Pick-Sloan Project on the remaining two Tribes.

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

The pre-project tribal economy, however, was based on working the rich wooded bottom lands along the Missouri River. These lands were flooded for the reservoir, and the Tribes have never seen the former economy again. In addition, the importance of cultural treasures lost to inundation is now well-known.

In the 1950's the Yankton Sioux Tribe and its affected tribal members received a total of $227,510 from the government for damages associated with the Fort Randall Project. Of this amount $121,210 was awarded them by the U.S. District Court for direct damages as the result of condemnation proceedings filed before the federal district court by the Army Corp of Engineers. Congress authorized the appropriation of an additional $106,500 in 1954 to be available for relocating the Yankton Sioux tribal members who resided on tribal and allotted lands. Unfortunately the Yankton Sioux Tribes did not receive any additional funding for a rehabilitation program. This bill proposes to provide them with $34.3 million in additional compensation for the loss value of 2,851.40 acres of land taken for the Fort Randall Dam and Reservoir, and for the use value of 408.40 acres of Indian land on the reservation that the Tribe lost as a result of stream bank erosion that has occurred since 1953.

Information concerning the amount paid to the Santee Sioux condemnation settlement is sketchy because the court docket records are missing from the records of the U.S. District Court in the National Archives. It appears that the tribe may have been paid $52,000 on the basis of the Tribe's 1955 agreement with the Army Corps of Engineers. We do not know when the settlement money may have been distributed to the individual landholders. Like Yankton, the Santee Sioux did not receive any rehabilitation program funds either. This bill proposes to provide them with $8.1 million in additional compensation for the loss value of 593.10 acres of land located near the Santee village, and for 414.12 acres on Niobrara Island of the Santee Sioux Tribe Indian Reservation used for the Gavins Point Dam and Reservoir.

The Administration could support S. 1148 with amendments. First, the funding mechanisms in section 4(b) for

the Yankton Sioux Tribe Development Trust Fund and in section 5(b) for the Santee Sioux Tribe of Nebraska Development Trust Fund would be subject to pay-as-you-go requirements of the Omnibus Budget and Reconciliation Act of 1990, as amended. The Administration is concerned that any amounts required to establish the Funds would need to be offset. As noted in our statement on the Cheyenne River Sioux Tribe Equitable Compensation Act during the 105th Congress, this type of financing mechanism appears to be without cost when in reality it is not free. A more straightforward approach would be to rely on the authorization/discretionary appropriations process to establish the Funds. We are willing to work with the Committee on developing a viable solution.

Second, we recommend that Section 6 be amended to add a subsection (d) which would prohibit per capita payments to tribal members. A similar prohibition was included in the earlier Pick-Sloan project compensation Acts. The suggested amendment is as follows:

Section 6(d)—Prohibition on Per Capita Payments.—No portion of any payment made under this Act may be distributed to any member of the Yankton Sioux Tribe or the Santee Sioux Tribe of Nebraska on a per capita basis.

Our final recommendation is to include a new section which would address any further claims of the Tribe against the United States. We submit the following:

SEC. 10. EXTINGUISHMENT OF CLAIMS

Upon the deposit of funds under sections 4(b) and 5(b), all monetary claims that the Tribe has or may have against the United States for loss of value or use of land related to funds described in Section 2(a)(10) resulting from the Fort Randall and Gavins Point projects of the Pick-Sloan Missouri River Basin program shall be extinguished.

This concludes my testimony on S. 1148. I will be happy to answer any questions you may have.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee finds that the regulatory impact of S. 1148, as amended, will be minimal.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws made by the bill are required to be set forth in the accompanying Committee report. The Committee finds that enactment of S. 1148 will not result in any changes in existing law.

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