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SENATE

{ REPORT
{ 105-363

PROVIDING FOR EQUITABLE COMPENSATION FOR THE CHEYENNE RIVER SIOUX TRIBE, AND FOR OTHER PUR- POSES

OCTOBER 2, 1998.—Ordered to be printed

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

REPORT

[To accompany S. 1905]

The Committee on Indian Affairs, to which was referred the bill (S. 1905) to provide for equitable compensation for the Cheyenne River Sioux Tribe, 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.

PURPOSE

The purpose of S. 1905, the Cheyenne River Sioux Tribe Equitable Compensation Act, is to provide for additional compensation to the Cheyenne River Sioux Tribe (CRST) for the acquisition by the United States of 104,492 acres of land of the Tribe for the Oahe Dam and Reservoir on the Missouri River.

BACKGROUND

In 1944, Congress enacted the Flood Control Act, 33 U.S.C. 701-1, et seq., which included the Pick-Sloan Missouri River Basin Program to increase economic development and to provide an array of benefits to the Missouri River Basin and its residents. The Pick-Sloan project was designed to provide low-cost hydro-power; irrigation; flood control; navigation benefits; and recreational opportunities.

In 1948, as part of the program, the federal government, through the Army Corps of Engineers (ACE), took possession of CRST lands along the river and began construction of the Oahe Dam and Reservoir project. By the time Oahe Dam was dedicated, in 1962, the

accrued impacts of the dam and reservoir on the CRST were dramatic; four reservation communities had been flooded by the project, 104,492 acres of tribal lands had been inundated, and 181 families (30% of the tribal population) had been forced to relocate from the fertile bottom lands along the river to much less hospitable upland prairie.

The CRST and its members had long used the fertile bottom lands of the river basin for agricultural purposes; for cattle and livestock; as a source of timber for home construction, fuel and construction purposes; and as a ready source of potable water. With construction of the dam and creation of the reservoir, however, the once-thriving tribal cattle and agricultural sectors were devastated, with an average annual loss of cattle projected at 500 head. During the winter of 1996–97, CRST members lost 30,000 head of livestock that in all likelihood would not have been lost had they had access to the flood and shelter previously available in the now-flooded bottom lands. These losses can be expected to continue into the future. Similarly, the loss of access to traditional hunting, gathering and ceremonial grounds is permanent.

The CRST lost some 90% of its timber as a result of the construction of the dam and creation of the reservoir. Timber provided a viable source of commercial revenues for the tribe as well as a source of wood for subsistence needs such as home fence and corral construction, fuel and heating, and related needs. The bottom lands provided the CRST a source of potable water, whereas currently water is scarce, brackish or both.

The losses suffered by the Tribe were keenly felt, no less so for the fact that the Tribe and its members did not receive any of the benefits which the Pick-Sloan plan was designed to bring to the other residents of the Missouri River Valley. Unlike many South Dakota communities that received allocations of low-cost hydropower which they were able to turn into a source of revenue for their activities, the Tribe's request for such an allocation was denied. Nor did the Tribe receive any low-cost power for its own use. Instead, despite the generation of large amounts of hydropower from the Pick-Sloan power program, the cost of electricity on the CRST reservation has remained among the highest in the United States, burdening an already impoverished membership and serving as a barrier to economic development.

The Tribe also received no flood control benefits from the Pick-Sloan dams, as it had never suffered flooding problems from the Missouri River, nor did it benefit from the increased navigation made possible by the Project. With respect to recreation, rather than providing increased recreational opportunities for the Tribe, the Project decreased such opportunities by depriving the Tribe of access to the river from tribal lands. With respect to irrigation, the Tribe receives no Project water to irrigate any of the land of the Tribe or its members. Thus, the Tribe not only suffered a permanent loss of lands and incurred major adverse impacts to its way of life, its economy and culture, but also failed to receive the benefits which the Project was to provide other citizens and communities in the Missouri River Basin.

It was not until 1954 that the Congress enacted legislation to provide compensation to the Tribe in exchange for the acquisition

of the Tribe's lands. In settlement negotiations prior to enactment of this legislation, the CRST requested some \$23.5 million as compensation for lands taken and rehabilitation of tribal standards of living. However, the legislation authorized the payment of only \$10.6 million for damages, rehabilitation and administrative expenses related to the settlement, less than half of what the Tribe requested and documented.¹ This amount did not include any compensation for the diminishment of the value of some 800,000 acres of grazing lands, which resulted from the loss of access to the bottom lands along the river as a result of the creation of the reservoir. As a rough indicator of under-compensation to the Tribe, non-Indians received an average of \$49.22 per acre for their agriculture lands, while the Tribe received only \$21.49 per acre.

When the Tribe learned that the Congress had passed legislation providing less than half of the amount of compensation which it had requested, it began a campaign to persuade President Eisenhower to veto the bill. However, it was dissuaded from doing so by the late Senator Karl Mundt (R-SD), who, writing on behalf of the South Dakota Congressional Delegation, acknowledged that the settlement was less than it should have been, but promised to remedy the problem in the next session: "If the Tribe would accept the bill as it is now before the President, they would have the assurance that the South Dakota Congressional Delegation would cooperate fully to see that the necessary amendments to the law are introduced and acted upon during the next Congress . . . you may be sure that we will all do our level best to finish the job."² In the years that followed, however, no such amendments were introduced or acted upon.

In the early 1980's, other tribes whose reservations on the Missouri River had been adversely affected by flooding caused by the construction of Pick-Sloan project dams sought additional compensation to rectify what they also considered to have been woefully inadequate compensation in view of their actual losses. In 1984, the Secretary of the Interior established a Joint Tribal-Federal Advisory Committee (JTAC) to examine and make recommendations with respect to the effects of the impoundment of waters under the Pick-Sloan Missouri River Basin Program (Oahe and Garrison Reservoirs) on the Fort Berthold and Standing Rock Indian Reservations. The Secretary's action implemented a recommendation in the Final Report of the Garrison Diversion Unit Commission established pursuant to Public Law 98-360, section 207.

The JTAC study concluded that the compensation that was provided to the tribes in the 1950's indeed was inadequate and did not take into account the full extent of the tribes' losses. In 1990, the Congress asked the General Accounting Office (GAO) to review economic analyses prepared by consultants for the Fort Berthold and Standing Rock Tribes that documented what the tribes considered to be the difference between the actual losses suffered as a result of the building of the Garrison Dam and the amount the tribes received in compensation in 1952. The GAO found numerous prob-

¹ P.L. 83-776, 68 Stat. 1191 (Sept. 3, 1954).

² Letter from Karl E. Mundt to CRST Chairman Frank Ducheneaux, August 30, 1954.

lems with these analyses and recommended, instead, that the Congress base its decision on how much to provide in additional compensation on a formula. This formula included a range of additional compensation predicated on the present value of the difference between the amount originally requested by the tribe and the amount received. The high end of the range was established by compounding the difference using the corporate interest rate; the low end was established by compounding the difference using the cost of living rate. The GAO did not consider whether additional compensation should be provided, or whether the original compensation was adequate.³

In view of the JTAC study findings and the GAO review, the Congress enacted legislation that acknowledged, first, that the U.S. government did not justly compensate the tribes at Fort Berthold and Standing Rock when it acquired their lands and, second, that the tribes were entitled to additional compensation. Accordingly, the legislation established a \$149.2 million development trust fund for the Three Affiliated Tribes of the Fort Berthold Reservation and a \$90.6 million development trust fund for the Standing Rock Sioux Tribe.⁴ In arriving at these amounts, the Congress adopted the GAO formula using the corporate interest rate option. Both of these trust funds were capitalized in the U.S. Treasury with receipts deposited from the power program of the Pick-Sloan Program. The legislation provides that the tribes may only spend interest earned on these trust funds.

In 1996, after considering extensive documentation which established that the Crow Creek Sioux Tribe had been adversely impacted by Pick-Sloan dam construction on the Missouri River and that the compensation received by the Tribe also did not bear a fair relationship to the adverse consequences suffered by the Tribe, the Congress enacted legislation establishing a \$27.5 million trust fund as additional compensation for the Crow Creek Sioux Tribe.⁵ In 1997, on the basis of a similar, well-documented historical record, the Congress enacted legislation establishing a \$39.3 million trust fund for the Lower Brule Sioux Tribe.⁶ These trust funds were funded in the same manner, and with similar restrictions, as were those established for Fort Berthold and Standing Rock.

In 1993, the Cheyenne River Sioux Tribal Council unanimously passed a resolution stating that the tribe had not received adequate compensation for the damages resulting from construction of Oahe Dam and Reservoir. The tribe hired a consultant to prepare a new economic analysis of the damages, which was published in July 1994.⁷ At the request of Senator Daschle, the GAO assessed this new economic analysis, which concluded that the Tribe should receive additional compensation in an amount between \$279 million and \$300.7 million for damages, rehabilitation and administrative expenses. Using the 1991 formula, the GAO calculated the amount of additional compensation to be \$290 million. The GAO

³Indian Issues: Compensation Claims Analyses Overstate Economic Losses (GAO/RCED-91-77, May 21, 1991).

⁴P.L. 102-575, title XXXV, 106 Stat. 4731 (Oct. 30, 1992).

⁵P.L. 104-223, 110 Stat. 3026 (Oct. 1, 1996).

⁶P.L. 105-132, 111 Stat. 2563 (Dec. 2, 1997).

⁷Cheyenne River Sioux Tribe's Additional Compensation claim for the Oahe Dam (GAO/RCED-98-39, Jan. 1998).

noted that the amounts that comprised the \$290 million figure cannot be readily compared with the amounts previously paid to the other tribes, first, because the damage to each reservation was unique, depending on the acreage lost, the number of tribal members living in the taking area, and the value of the resources located in the taking area. Also, the additional amounts for Fort Berthold and Standing Rock was based on 1990 values.

S. 1905 would provide additional compensation for the Cheyenne River Sioux Tribe in a manner consistent with that provided for the Fort Bethold, Standing Rock, Crow Creek and Lower Brule tribes. The bill provides for the establishment in the U.S. Treasury of the Cheyenne River Sioux Tribal Recovery Account (the "Account"). For the five fiscal years beginning with fiscal year 1999, 10 percent of deposits to the Treasury from the preceding fiscal year from the power program of the Pick-Sloan Missouri River Basin program would be credited to the Account. Beginning in Fiscal year 2004, if no other law provides a similar plan for such deposit, 25 percent of deposits from the power program would be deposited to the credit of the Account until the aggregate of deposits equals \$290,722,958. The Tribe would be authorized to spend interest earned on the Account to promote the economic development, education, infrastructure development and/or social welfare of the tribe and its members. No amount of the principal could be withdrawn nor could any of the interest be used to make per capita payments to tribal members.

LEGISLATIVE HISTORY

On April 2, 1998, Senator Daschle and Senator Johnson of South Dakota introduced S. 1905, the Cheyenne River Sioux Equitable Compensation Act, which was referred to the Committee on Indian Affairs. The Committee held a hearing on S. 1905 on July 8, 1998. The Department of the Interior witness expressed support for the legislation if it were amended to more closely resemble previous legislation providing additional compensation to other tribes that lost lands as a result of construction of Pick-Sloan dams on the Missouri River. The Cheyenne River Sioux Tribe's testimony was in strong support of S. 1905. The Committee also received a letter of support for S. 1905 from the Governor of South Dakota.

On July 15, 1998, the Committee on Indian Affairs considered and adopted an amendment in the nature of a substitute to S. 1905 on behalf of Senator Daschle and Senator Johnson (D-SD). The substitute made technical modifications in S. 1905 and included changes that (1) clarify that the tribe must consult with the Bureau of Indian Affairs and the Indian Health Service in preparing its plans for expending interest from the trust fund set up under the bill; (2) clarifies that expenditures of interest on the fund by the tribe are to be audited under the "single agency" audit required of tribes by the Office of Management and Budget; (3) eliminates a provision that would have enabled the tribe to remove the principal of the trust fund from the Treasury so as to greatly reduce direct spending as defined by the Congressional Budget Act; and, (4) limits the tribe's ability to pledge future income from the trust for security for loans to 40 percent of such income and only for the purchase of land or other capital assets. These changes address

concerns raised by the Department and the Committee understands that they are acceptable to the tribe.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on July 15, 1998, adopted an amendment-in-the-nature-of-a-substitute to S. 1905 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This session cites the short title of S. 1905 as the “Cheyenne River Sioux Tribe Equitable Compensation Act”.

Section 2—Findings and purposes

Subsection (a) of this section sets forth nine Congressional findings:

The first finding is that Congress approved the Pick-Sloan Missouri River Basin program by passing the Flood Control Act of 1944 to promote the general economic development of the United States; to provide for irrigation above Sioux City, Iowa; to protect urban and rural areas from floods of the Missouri River; and for other purposes;

The second finding is that the Oahe Dam and Reservoir project is a major component of the Pick-Sloan program, and contributes to the economy of the United States by generating a substantial amount of hydropower and impounding a substantial quantity of water;

The third finding is that, notwithstanding the contributions referred to in the first finding, the Oahe Dam and Reservoir project has contributed little to the economy of the Cheyenne River Sioux Tribe;

The fourth finding is that the Oahe Dam and Reservoir project overlies the eastern boundary of the Cheyenne River Sioux Indian Reservation;

The fifth finding is that the Oahe Dam and Reservoir project has inundated the fertile wooded bottom lands of the Tribe along the Missouri River that constituted the most productive agricultural and pastoral lands of the tribe and the homeland of the members of the tribe; as a result of that inundation, the project severely damaged the economy of the tribe and the members of the tribe;

The sixth finding is that the Secretary appointed a Joint Tribal Advisory Committee that examined the Oahe Dam and Reservoir project and that advisory committee concluded that (A) the Federal Government did not justify, or fairly compensate the tribe for, the Oahe Dam and Reservoir project when the Federal Government acquired 104,492 acres of land of the tribe for that project; and, (B) the tribe should be adequately compensated for the acquisition described in (A);

The seventh finding is that the Comptroller General of the United States, after applying the same method of analysis used for the compensation of similarly situated Indian tribes, determined

that the appropriate amount of compensation to pay the tribe for acquisition described in the sixth finding would be \$290,722,958;

The eighth finding is that the tribe is entitled to receive additional financial compensation for the acquisition described in the sixth finding in a manner consistent with the determination of the Comptroller General referred to in the seventh finding; and,

The ninth finding is that the establishment of a dual cash account with the amounts made available to the tribe under this Act is consistent with the principles of self-governance and self-determination.

Subsection (b) of section 2 states the purposes of the Act as (1) to provide for additional financial compensation to the tribe for the acquisition of 104,492 acres of tribal land for the Oahe Dam and Reservoir project in a manner consistent with the determination of the Comptroller General of the United States described in the seventh finding; and, (2) to provide for the establishment of the Cheyenne River Sioux Tribal Recovery Account, a dual cash account to be managed by the Office of Trust Fund Management of the Department of the Interior in order to make payments to the tribe to carry out projects under a plan prepared by the tribe.

Section 3—Definitions

This section defines the seven terms used in the Act: “Account” means the Cheyenne River Sioux Tribal Recovery Account established under section 4; “Cheyenne River Sioux Tribe; Tribe” means the Itazipco, Siha Sapa, Minniconjou, and Oohenumpa bands of the Great Sioux Nation that reside on the Cheyenne River Reservation, located in central South Dakota; “Fund” means a consolidated account numbered 14X8365 for tribal trust funds in the United States Treasury that is managed by the Secretary, through the Office of Trust Fund Management within the Department of the Interior; “Program” means the power program of the Pick-Sloan Missouri River Basin program, administered by the Western Area Power Administration; “Secretary” means the Secretary of the Interior; and “Tribal Council” means the governing body of the Tribe.

Section 4—Cheyenne River Sioux Tribal Recovery Account

Subsection (a) requires the Secretary of the Treasury to establish in the Fund a dual cash account to be known as the “Cheyenne River Sioux Tribal Recovery Account”. The interest component of the account shall be used to make payments to the tribe in accordance with this Act; the principal component of the account may not be expended. The corpus and the income of the account may be invested in accordance with applicable law.

Subsection (b)(1) requires the Secretary of the Treasury, beginning with fiscal year 1999, and for each year thereafter until the aggregate of deposits is \$290,722,958, to deposit into the Fund, to the credit of the Recovery Account, 10 percent of the receipts from the deposits to the Treasury for the preceding fiscal year from the Program;

Subsection (b)(2) requires that, beginning with fiscal year 2004, if no other law provides for the compensation to parties in conjunction with an applicable plan for the Program, the Secretary of the Treasury shall deposit into the Fund 25 percent of the receipts

from the deposits to the Treasury for the preceding fiscal year from the Program, until the aggregate of deposits equals \$290,722,958.

Subsection (b)(3) provides that if, within 60 days after the end of a fiscal year, the Secretary of the Treasury fails to deposit into the Fund the amount described in subsection (b)(1) or (b)(2), the Secretary of the Treasury shall deposit interest on such amount, determined for the period beginning on the day after the termination of the 60-day period and ending on the date in which the amount described on (b)(1) or (b)(2) is deposited, at a rate of interest commonly referred to as the Treasury overnight rate.

Subsection (c)(1) requires the Secretary, acting through the Office, upon the request of the tribe, to make payments to the tribe from the interest credited to the interest component of the account, beginning at the end of the first fiscal year during which interest is credited to the account.

Subsection (c)(2) requires the tribe to use the payments made under this subsection only for carrying out projects and programs pursuant to the plan prepared under subsection (d).

Subsection (c)(3) requires that each request by the tribe under subsection (c)(1) to withdraw funds shall be accompanied by a resolution from the Tribal Council authorizing the withdrawal of funds in a manner that complies with the terms of this Act.

Subsection (d)(1) requires that the Tribal Council, no later than 18 months after the date of enactment of this Act, prepare a plan for the use of the payments made to the tribe under subsection 4(c).

Subsection (d)(2) requires that the plan developed under this subsection to provide for the manner in which the tribe will expend the payments referred to in subsection (d)(1) to promote economic development, infrastructure development, educational, health, recreational, and social welfare objectives of the tribe and its members, or any combination of these activities.

Subsection (d)(3) requires the Tribal Council to make available for review and comment by the members of the tribe a copy of the plan before it becomes final, in accordance with procedures established by the Tribal Council. The Tribal Council may update the plan annually by revising it in a manner that provides the members of the tribe to review and comment on any proposed revision. In preparing the plan and any revisions to update it, the Tribal Council shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.

Subsection (d)(4) provides that the activities of the tribe in carrying out the plan under this subsection shall be audited as part of the annual single-agency audit that the tribe is required to prepare pursuant to the Office of Management and Budget circular numbered A-133, that the audit shall include written findings as to whether the funds received by the tribe under this subsection to carry out the plan were expended in a manner consistent with this section, and that a copy of these findings shall be inserted in the published minutes of the Tribal Council proceedings for the session at which the audit is presented to the Tribal Council.

Subsection (e) prohibits any portion of any payment made under this section from being distributed to any member of the Tribe on a per capita basis.

Subsection (f)(1) provides that the tribe may enter into an agreement under which the tribe pledges future interest from the account as security for a loan or other financial transaction.

Subsection (f)(2) provides that the Tribe may enter into an agreement under subsection (f)(1) only in connection with the purchase of land or other capital assets, but may not pledge, for any year under such agreement, an amount greater than 40 percent of the income from interest from the account.

Section 5—Eligibility of tribe for certain programs and services

Subsection 5(a) states that no payment made to the tribe pursuant to this Act shall result in the reduction or denial of any service or program to which, pursuant to Federal law, (1) the tribe is otherwise entitled because of the status of the tribe as a federally recognized Indian Tribe or (2) any individual who is a member of the tribe is entitled because of the status of the individual as a member of the tribe.

Subsection (5)(b) states that no payment made pursuant to this Act shall be subject to any Federal or State income tax.

Subsection (5)(c) states that no payment made pursuant to this Act shall affect Pick-Sloan Missouri River Basin power rates.

Section 6—Sale of western area power authority

Subsection 6(a) provides that if, before the amount specified in section 4(b)(1) is deposited into the Fund, the United States sells or otherwise transfers title to the assets and income of the Western Area Power Administration (WAPA) to an entity other than the United States, (1) an amount of the proceeds from that sale equal to the difference between the amount specified in section 4(b)(1) and the aggregate amount that has been paid into the Fund as of the date of the sale of the WAPA, shall be deposited in the Fund; or (2) the purchaser may assume responsibility for making payments to the Treasury for deposit in the Fund in amounts determined under section 4(b)(1).

Subsection (6)(b) provides that, if a purchaser assumes the responsibility for making the payments described in 6(a)(2), the purchaser shall provide the tribe with appropriate security to secure those payments.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1905, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 10, 1998.

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. 1905, the Cheyenne River 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 Mark Hadley (for fed-

eral costs), and Marjorie Miller (for the impact on state, local, and tribal governments).
Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

S. 1905—Cheyenne River Sioux Tribe Equitable Compensation Act

Summary: The federal government acquired 104,492 acres of land from the Cheyenne River Sioux to construct the Oahe Dam and Reservoir project. The Comptroller General determined that about \$291 million would be the appropriate amount of compensation to pay the Cheyenne River Sioux for the taking. To provide compensation for the taking, S. 1905 would establish a tribal recovery fund for the Cheyenne River Sioux. Beginning with the year in which S. 1905 is enacted, the bill would direct the Secretary of the Treasury to deposit specified portions of the previous year's receipts from the Pick-Sloan Missouri River basin program into a separate account in the U.S. Treasury on behalf of the Cheyenne River Sioux. Once a total of \$291 million is deposited, no further principal deposits would be made.

The bill would require that principal amounts be invested in interest-bearing Treasury securities and that the fund's interest earnings be made available to the Cheyenne River Sioux without fiscal year limitation or the need for further appropriation. CBO estimates that disbursements of those earnings would increase direct spending by \$13 million over the 1999–2003 period. Implementing S. 1905 also would increase the administrative costs of the Departments of the Treasury and the Interior, but CBO estimates that any such costs would not be significant.

Because S. 1905 would affect direct spending, pay-as-you-go procedures would apply. The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1905 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

[By fiscal year, in millions of dollars]

	1999	2000	2001	2002	2003
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	0	1	2	4	6
Estimated Outlays	0	1	2	4	6

Note: Implementing S. 1905 also would increase discretionary spending, but the amounts involved would be less than \$500,000 a year.

Basis of estimate: For the purposes of this estimate, CBO assumes that S. 1905 will be enacted near the beginning of fiscal year 1999.

Beginning with the year in which S. 1905 is enacted, the bill would direct the Secretary of the Treasury to deposit 10 percent of the previous year's receipts from the Pick-Sloan Missouri River basin program into a separate account in the U.S. Treasury on behalf of the Cheyenne River Sioux. Beginning in 2004, the bill would

direct the Secretary of the Treasury to deposit 25 percent of the previous year's receipts into the account. Once a total of \$291 million is deposited, no further principal deposits would be made. The bill would direct that the deposits be invested in interest-bearing Treasury securities and that the fund's interest earnings be made available to the Cheyenne River Sioux without fiscal year limitation or the need for further appropriation.

Based on information from the Western Area Power Administration—which markets electricity produced from the Pick-Sloan Missouri River Basin—CBO estimates that receipts from the Pick-Sloan project will total about \$250 million annually over the next several years. On that basis, CBO estimates that, if S. 1905 is enacted in fiscal year 1999, the fund would be fully capitalized in fiscal year 2006. The deposits to the trust fund would be intragovernmental transfers, and thus, no net outlays would be associated with them.

S. 2131 would make the fund's interest earnings available to the tribe and the state. For the purpose of this estimate, CBO assumes that deposits into the fund will be made by December 1 of each year, the initial deposit would be made by December 1, 1998, and earn interest for 10 months of fiscal year 1999. Interest earnings would first become available for spending in fiscal year 2000. We assume that the balance in the fund would earn interest at an annual rate of about 6 percent, which is CBO's baseline projection of the interest rate on 30-year Treasury bonds. Unspent interest in the accounts also would earn interest, but at a lower (short-term) rate of about 5 percent.

As a result, CBO estimates that interest earnings in the following amounts would be made available to the Cheyenne River Sioux: \$1 million in 2000, \$2 million in 2001, \$4 million in 2002, and \$6 million in 2003. The interest earnings would increase as the fund is fully capitalized, so that in 2009, and each year thereafter, about \$19 million would be made available to the tribe, assuming that the interest earnings are withdrawn each year.

It is possible that enacting S. 2131 would allow the United States to avoid future costs from possible claims by the Cheyenne River Sioux related to the taking of tribal lands. Because the bill would provide for compensating the Cheyenne River Sioux for the complete value of the taking, CBO estimates that enacting the bill would probably be more costly than any potential judgment (which might provide for only partial compensation). However, CBO has no basis for estimating the likelihood, timing, or amount of any judgment.

S. 1905 would increase the administrative costs of the Departments of the Interior and the Treasury. CBO estimates that any such amounts would be less than \$500,000 each year and would be subject to appropriation action.

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. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. (The bill would not affect governmental 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.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	0	1	2	4	6	7	10	14	17	18
Changes in receipts						Not applicable					

Estimated impact on State, local, and tribal governments: S. 1905 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would, however, impose some conditions on the tribe for receipt of the authorized payments. It would require the tribe to prepare a plan for use of the payments and to obtain an audit of the funded expenditures. Based on information provided by tribal officials, CBO does not expect that these conditions would result in significant additional costs for the tribe.

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

Estimate prepared by: Federal Costs: Mark Hadley. Impact on State, Local, and Tribal Governments: Marjorie Miller.

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

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 S. 1905, as amended. The Committee finds that the regulatory impact of S. 1905, as amended, will be minimal.

STATEMENT OF MICHAEL ANDERSON, DEPUTY ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and members of the Committee. I am pleased to be here today to present the Department of the Interior's views on S. 1905, the "Cheyenne River Sioux Tribe Equitable Compensation Act." If enacted, this bill would provide to the Cheyenne River Sioux Tribe much deserved benefits of the Missouri River Basin Pick-Sloan Program. We could support this legislation, if amended.

I wish to thank Senator Daschle for introducing the bill which addresses long standing problems regarding development in the Missouri River Basin and its impacts on Indian tribes residing in the region.

S. 1905 is a continuation of the United States efforts to correct inequities of a regional Federal development project which affected several Tribes. The Pick-Sloan Missouri River Basin Program, or Pick-Sloan, is a major Federal program that provides for economic development, irrigation, and flood control in the Missouri River Basin. One of the major components of Pick-Sloan is the Oahe Dam

and Reservoir, which had a devastating impact on the Cheyenne River Sioux Tribe, its culture, and its economy.

Fifty years ago the Oahe Dam and Reservoir flooded over 104,402 acres of Tribal homelands. This required most of the Tribe's residents to relocate from historical cultural homelands and fertile river lands. These lands were taken and permanently sacrificed to provide for the general welfare of the United States, and this Tribe along with others in the area were never properly compensated.

S. 1905 allows the Cheyenne River Sioux Tribe to be fully compensated for its sacrifices and share in the economic development it has provided over the past fifty years.

S. 1905 currently drafted has significant pay-as-you-go implications. Unlike two previously enacted bills, whose direct spending was limited to annual interest on the "trusts," S. 1905 as currently drafted includes direct spending of the amount of the "trust" that accrues through 2002 (about \$100 million) and would therefore require an offsetting decrease in direct spending or increase in receipts. The Administration could support enactment of S. 1905 if it were redrafted in a manner similar to the bills passed for the Lower Brule and Crow Creek Tribes, with some additional technical modifications. However, the Administration is concerned that this type of off-budget financing approach appears to be without cost. A more straight forward approach would be to rely on the authorization/discretionary appropriation process. The Department would be happy to work with the Committee in this regard.

This concludes my testimony in support of S. 1905. I will be happy to respond to any questions you may have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are required to be set in the accompanying Committee report. The Committee states that enactment of S. 1998 will not result in any changes in existing law.

