

## Calendar No. 710

108TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
108-355

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PROVIDING 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

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SEPTEMBER 21, 2004.—Ordered to be printed

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

### R E P O R T

[To accompany S. 1530]

The Committee on Indian Affairs to which was referred the bill (S. 1530) to provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River having considered the same, reports favorably thereon with an amendment(s) and recommends that the bill (as amended) do pass.

#### PURPOSE

The purpose of S. 1530 is to amend section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (P.L. 104-223) and section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (P.L. 105-132) by increasing the aggregate authorized amounts of deposits from the Pick-Sloan Missouri River power program into the tribal trust funds established under those acts.

S. 1530, as amended, would increase the maximum aggregate deposit in the Lower Brule Sioux infrastructure development trust fund from \$39,300,000 to \$186,822,140 and would increase the maximum aggregate deposit in the Crow Creek Sioux Tribe infrastructure development trust fund from \$27,500,000 to \$105,917,853. These increases are intended to bring the total amount of compensation provided to these two Indian tribes for impacts caused by the Pick-Sloan Missouri River program into parity with the compensation provided by Congress to other Indian tribes for such impacts.

## 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. The dam construction projects undertaken pursuant to the Pick-Sloan Program impacted several tribes whose reservation lands were located within the Missouri River basin. Two of these tribes, the Crow Creek Sioux Tribe and the Lower Brule Sioux Tribe, were impacted by two significant dam construction projects located on the Missouri River—the Fort Randall Dam and the Big Bend Dam. Construction of the Fort Randall Project began in 1946 and that of the Big Bend Project in 1960. Both projects resulted in the inundation of several thousands of acres of land on the reservations of the two Indian tribes.<sup>1</sup>

Although Congress attempted to mitigate the impacts of these two projects on the two reservations and the Indian people who were living on them by enacting, in 1962, the Big Bend Recovery Act (P.L. 87–735), the insufficiency of the Government’s mitigation efforts pursuant to that act eventually led to the enactment of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (P.L. 104–223) and, one year later, the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (P.L. 105–132).<sup>2</sup>

P.L. 104–223 and P.L. 105–132 each created an infrastructure development trust fund for the respective tribe, the principal balance of which was to be derived from a percentage of the annual receipts deposited into the United States Treasury from the Pick-Sloan Missouri River basin power program. Each act authorized payments to the tribe of the interest earned on the principal balance of the trust fund for expenditure on projects and activities specified in the legislation. The aggregate principal amount authorized to be deposited into the Crow Creek Sioux Tribe infrastructure development trust fund was \$27,500,000, and the aggregate principal amount authorized to be deposited into the Lower Brule Sioux Tribe infrastructure development trust fund was \$39,300,000.

On June 15, 2004, the Committee held a hearing on S. 1530 and received testimony of several witnesses, including the bill’s sponsor, Senator Daschle, and an expert witness who stated that the compensation levels authorized by P.L. 104–223 and P.L. 105–132 for the Crow Creek and Lower Brule Sioux Tribes, respectively, were based on the “per acre value of the 1992 Fort Berthold/Standing Rock legislation (Public Law 102–575),” in contrast to the methodology recommended in a 1991 General Accounting Office (GAO) report that was used to calculate compensation for other tribes that sustained Pick-Sloan related damages.<sup>3</sup>

<sup>1</sup>The construction of the Fort Randall and Big Bend Dams inundated over 15,000 acres of land on the Crow Creek Indian Reservation and over 22,000 acres of land on the Lower Brule Indian Reservation. See S. Rept. 104–362 and S. Rept. 105–146.

<sup>2</sup>Overviews of the impacts that the Fort Randall and Big Bend Dams had on the Indian people living on the Crow Creek and Lower Brule Indian Reservations are included in the House and Senate committee reports accompanying the two enactments (H. Rept. 104–765, S. Rept. 104–362, and S. Rept. 105–146).

<sup>3</sup>See, Indian Issues: Compensation Claims Analyses Overstate Economic Losses (GAO/RCED–91–77, May 21, 1991).

The Committee's hearing record includes the testimony and a report<sup>4</sup> by Michael L. Lawson, Ph.D., regarding the impacts of the Pick-Sloan Plan on several tribes within the Missouri River basin and comparing the compensation levels that have been provided to date to those tribes, including the Lower Brule and Crow Creek Sioux Tribes. This testimony and report analyze the compensation levels of the Lower Brule and Crow Creek Sioux Tribes for their respective Pick-Sloan Program damages pursuant to P.L. 87-735, P.L. 104-223 and P.L. 105-132, compared to the compensation authorized for the Three Affiliated Tribes of Fort Berthold and the Standing Rock Sioux in 1992 pursuant to P.L. 102-575 and for the Cheyenne River Sioux Tribe in 2000 pursuant to title I of P.L. 106-511,<sup>5</sup> and concludes that compensation has not been provided to the tribes in a consistent manner. In supplemental testimony provided to the Committee, Dr. Lawson points out that before the Cheyenne River Sioux legislation in 2000, the 1991 GAO formula had not been applied to any tribe in South Dakota. Using the 1991 GAO "AAA corporate bond rate formula" to calculate the additional amounts due to the Lower Brule and Crow Creek Sioux Tribes through 2004, Dr. Lawson informed the Committee that the two tribes' respective development funds should be increased to \$186,822,140.00 (Lower Brule Sioux Tribe) and \$105,917,853 (Crow Creek Sioux Tribe).

#### SUMMARY OF PROVISIONS

Section 1 of 5.1530 sets forth the short title, "Tribal Parity Act."

Section 2, the findings section, recognizes that several tribes along the Missouri River have suffered injury and received compensation as the result of Pick-Sloan projects—including the Lower Brule and Crow Creek Sioux Tribes—but that the compensation provided to the tribes has not been consistent. The intent of the bill is to bring the compensation made available to the Lower Brule and Crow Creek Sioux Tribes into parity with that made available to the other tribes that have been compensated for impacts caused by Pick-Sloan Projects.

<sup>4</sup>The Lower Brule and Crow Creek Sioux Tribes of South Dakota: Parity Compensation for Losses from Missouri River Pick-Sloan Dam Projects, by Michael L. Lawson, Ph.D., June 15, 2004.

<sup>5</sup>The committee reports for the House and Senate both noted that the Cheyenne River Sioux legislation enacted in 2000 utilized the 1991 GAO report formula. See, H. Rept. 106-944 and S. Rept. 106-217.

As amended,<sup>6</sup> section 3 of S. 1530 would amend section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (P.L. 105–132) by increasing the aggregate authorized amount of deposits from the Pick-Sloan Missouri River power program into that tribe’s trust fund from \$39,300,000 to \$186,822,140. Section 4 would amend section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (P.L. 104–223) by increasing the aggregate authorized amount of such deposits into the Crow Creek Sioux Tribe’s trust fund from \$27,500,000 to \$105,917,853.

#### LEGISLATIVE HISTORY

S. 1530 was introduced by Senator Daschle on July 31, 2003, and referred to the Committee on Indian Affairs. Senator Johnson joined as a cosponsor on February 12, 2004. The Committee held a hearing on the bill on June 15, 2004, and at a business meeting held on July 14, 2004, approved the bill with the amendments described above.

#### COMMITTEE RECOMMENDATION

The Committee on Indian Affairs, at a business meeting held on July 14, 2004, approved S. 1530 with the above-described amendments to the dollar amounts set forth in sections 3 and 4 of the bill and ordered the bill, as amended, to be reported favorably to the Senate.

#### SECTION-BY-SECTION ANALYSIS OF S. 1530 (AS AMENDED)

Section 1 of S. 1530 sets forth the short title, “Tribal Parity Act.”  
Section 2 sets forth the Congressional findings.

Section 3, with the Committee amendment, amends section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act by increasing the maximum aggregate amount of deposits into the tribe’s infrastructure development trust fund from \$39,300,000 to \$186,822,140.

Section 4, with the Committee amendment, amends section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund by increasing the maximum aggregate amount of deposits into the tribe’s infrastructure development trust fund from \$27,500,000 to \$105,917,853.

#### COST AND BUDGETARY CONCERNS

The costs estimate for S. 1530, as provided by the Congressional Budget Office, is set forth below.

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<sup>6</sup>At the Committee’s business meeting held on July 14, 2004, the Committee approved the bill with two amendments: section 3 of S. 1530 would be amended to provide for an aggregate deposit of \$186,822,140.00 into the Lower Brule Sioux Tribe Infrastructure Development Trust Fund, and section 4 of S. 1530 would be amended to provide for an aggregate deposit of \$105,917,853.00 into the Crow Creek Sioux Tribe Infrastructure Development Trust Fund. The bill as introduced stated compensation levels through the year 2003; the Committee amendments are intended to provide an additional year’s interest under the 1991 GAO formula.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 25, 2004.*

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. 1530, the Tribal Parity Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mike Waters.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*S. 1530—Tribal Parity Act*

Summary: S. 1530 would increase the total amounts to be transferred from the Treasury into two existing Indian tribal trust funds. Those funds were created to compensate the Crow Creek Sioux and Lower Brule Sioux tribes for damages caused by the Pick-Sloan water projects along the Missouri River. CBO estimates that enacting S. 1530 would increase direct spending by \$226 million over the 2004–2014 period. Enacting the bill would not affect revenues.

S. 1530 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. 1530 is shown in the table below. The costs of this legislation fall within budget function 450 (community and regional development).

Basis of Estimate: For this estimate, CBO assumes that the bill will be enacted this fall and that payments to the two tribes will begin in fiscal year 2005.

		By fiscal years, in millions of dollars—										
		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	
CHANGES IN DIRECT SPENDING												
Payments to Crow Creek Sioux Tribe Infrastructure Development Trust Fund:												
Estimated Budget Authority .....		28	30	20	0	0	0	0	0	0	0	
Estimated Outlays .....		28	30	20	0	0	0	0	0	0	0	
Payments to Lower Brule Sioux Tribe Infrastructure Development Trust Fund:												
Estimated Budget Authority .....		28	30	30	30	30	0	0	0	0	0	
Estimated Outlays .....		28	30	30	30	30	0	0	0	0	0	
Total Payments to Both Funds												
Estimated Budget Authority .....		56	60	50	30	30	0	0	0	0	0	
Estimated Outlays .....		56	60	50	30	30	0	0	0	0	0	

The Crow Creek Sioux Tribe Infrastructure Development Trust Fund (Crow Creek Fund) and the Lower Brule Sioux Tribe Infrastructure Development Trust Fund (Lower Brule Fund) were created by Congress in 1996 and 1997 to compensate the Crow Creek and Lower Brule Sioux tribes for damages caused by the Pick-Sloan water projects along the Missouri River. The Crow Creek Fund was fully capitalized to its authorized size with one payment of \$28 million in 1997. The Lower Brule Fund was fully capitalized to its authorized size with one payment of \$39 million in 1998.

S. 1530 would increase the maximum size of each fund, with the additional deposits to be derived from proceeds from the sale of electric power from the Pick-Sloan Missouri River Basin project. Each fund would receive an amount equal to 25 percent of the annual proprietary receipts from that project until deposits reach the new maximum levels specified in the bill. Under this bill, the Crow Creek Fund would increase by \$78 million (for a new maximum of \$106 million), and the Lower Brule Fund by \$148 million (for a new maximum of \$187 million).

According to the Western Area Power Administration (WAPA), the agency that administers the Pick-Sloan project, receipts from the Pick-Sloan project are likely to total \$110 million in 2005 and average about \$119 million a year thereafter. That suggests that up to \$30 million would be deposited in each fund each year until the new ceilings are met. At those levels, CBO estimates that it would take about three years to reach the new maximum level for the Crow Creek fund and five years for the Lower Brule Fund.

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. Thus, under this bill, CBO expects that the entire amount deposited to either fund in any year 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.

Intergovernmental and private-sector impact: S. 1530 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Enacting this legislation would benefit the two tribes.

Estimate prepared by: Federal Costs: Mike Waters; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Selena Caldera.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no executive communications relating to S. 1530.

#### REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that the regulatory and paperwork impacts of S. 1530 will be minimal.

#### CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee has determined that the enactment of S. 1530 will effect the following changes in existing law:

Section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act ( P.L. 105–132; 111 Stat. 2565):

(b) FUNDING.—Beginning with fiscal year 1998, and for each fiscal year thereafter, until such time as the aggregate of the amounts deposited in the Fund is equal to **【\$39,300,000】** *\$186,822,140*, the Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.

Section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (P.L. 104–223; 110 Stat. 3027):

(b) FUNDING.—Beginning with fiscal year 1997, and for each fiscal year thereafter, until such time as the aggregate of the amounts deposited in the Fund is equal to **【\$27,500,000】** *\$105,917,853*, the Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.