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109TH CONGRESS, *2d Session* | SENATE | REPORT 109–344

TRIBAL PARITY ACT

SEPTEMBER 20, 2006.—Ordered to be printed

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

R E P O R T

[To accompany S. 374]

The Committee on Indian Affairs, to which was referred the bill S. 374 to provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSE

S. 374 amends the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act to increase from $39.3 million to $129,822,085 the aggregate amount to be deposited into the Lower Brule Sioux Tribe Infrastructure Development Trust Fund by the Secretary of the Treasury to provide compensation to the Lower Brule Tribe of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River.

S. 374 also amends the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 to increase from $27.5 million to $69,222,084 the aggregate amount to be deposited into the Crow Creek Sioux Tribe Infrastructure Development Trust Fund by the Secretary to provide compensation to the Crow Creek Sioux Tribe of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River.

BACKGROUND

The Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe were impacted by the Fort Randall Dam and the Big Bend Dam, two significant dam construction projects located on the Missouri

River. Construction of the Fort Randall Project began in 1946 and of the Big Bend Project in 1960, and both projects resulted in the inundation of several thousands of acres of land on the reservations of these two Indian tribes.

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).

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 would be derived from a percentage of receipts deposited into the United States Treasury from the Pick-Sloan Missouri River basin power program, and each act authorized payments to the tribe of interest earned on the principal balance of the fund for use on specified projects and activities. The principal amount authorized to be deposited into the Crow Creek Sioux Tribe fund was $27,500,000, and the principal amount authorized to be deposited into the Lower Brule Sioux Tribe fund was $39,300,000.

OVERVIEW OF S. 374

S. 374 was introduced by Senator Thune on February 14, 2005, for himself and for Senator Johnson, and referred to the Committee on Indian Affairs. S. 374 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 power program into that tribe's trust fund from $39,300,000 to $186,822,140. It would also 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.

S. 374 was ordered to be reported without amendment favorably by the Committee on June 29, 2005. Shortly thereafter, a representative of the United States Government Accountability Office (GAO) expressed concern regarding language in the Findings section of the bill (section 2(7)) stating that a methodology determined appropriate by the General Accounting Office entitled the two tribes to additional compensation.

Accordingly, Chairman McCain requested the GAO assess whether the approach used in developing the amount of additional compensation in S. 374 followed the approach used in previous GAO reports for analyzing additional compensation for other tribes located along the Missouri River. In May 2006, the GAO issued the report requested by Chairman McCain. See GAO–06–517, Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes Additional Compensation Claims, attached to this report as Exhibit 1.

On June 14, 2006, the Committee held a hearing during which the GAO provided testimony on the report, and the tribes and their consultant provided their views. Briefly, the GAO testified that its research for the report indicated that the tribes' consultant devi-

ated in certain respects from the approach used in the previous GAO reports addressing additional compensation for other Indian tribes impacted by flood control/power projects on the Missouri River and concluded that the GAO's approach does not support the additional compensation amounts contained in S. 374. The tribes' consultant testified that his approach deviated in part to account for the inferior negotiating position of the tribes. He also testified that his original calculations did contain an error and provided new estimates for compensation based on his approach.

Based on the testimony provided, Senators Thune and Johnson prepared a substitute amendment which lowered the compensation for the Lower Brule Sioux Tribe from $186,822,140 to $129,822,085, and the compensation for the Crow Creek Sioux Tribe from $105,917,853 to $69,222,084. This substitute amendment was offered at the August 2, 2006, business meeting of the Committee and was approved by voice vote. The substitute amendment also added a provision clearly stating that the compensation provided in this bill is the full and final compensation for the Lower Brule Sioux Tribe and Crow Creek Sioux Tribe for claims related to the Pick-Sloan projects which impacted their reservations.

LEGISLATIVE HISTORY

S. 374 was introduced on February 14, 2005, by Senators Thune and Johnson and was referred to the Committee on Indian Affairs. On June 29, 2005, S. 374 was approved by the Committee by voice vote and ordered reported favorably; however, the bill was not reported to the full Senate. On June 14, 2006, a hearing was held by the Committee on the bill. On August 2, 2006, S. 374 was approved by the Committee, with an amendment in the nature of a substitute, and ordered reported favorably to the full Senate.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On August 2, 2006, the Committee, in an open business session, considered S. 374. By a voice vote, the Committee ordered the bill reported favorably, with an amendment in the nature of a substitute, to the full Senate with a recommendation that the bill do pass.

SECTION-BY-SECTION ANALYSIS OF THE SUBSTITUTE AMENDMENT

Section 1. Short title

Section 1 of the substitute amendment amends the title of S. 374 to the Lower Brule and Crow Creek Tribal Compensation Act.

Section 2. Findings

Section 2 of the substitute amendment amends the findings of S. 374 as introduced to strike the language "based on a methodology determined appropriate by the General Accounting Office" and "so as to provide parity among compensation received by all Missouri River Indian tribes."

Section 3. Lower Brule Sioux Tribe

Section 3 of the substitute amendment amends the amount of compensation in S. 374 as introduced that would amend the trust

fund amount created by current law. For the Lower Brule Sioux Tribe the substitute amendment reduces this amount from $186,822,140 in S. 374 to $129,822,085.

Section 4. Crow Creek Sioux Tribe

Section 4 of the substitute amendment amends the amount of compensation in S. 374 as introduced that would amend the trust fund amount created by current law. For the Crow Creek Sioux Tribe the substitute amendment reduces this amount from $105,917,853 in S. 374 to $69,822,084.

Section 5. Treatment as Final Compensation

Section 5 of the substitute amendment adds a provision to S. 374 as introduced to treat this act as final and full compensation to the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe for damages caused by construction of the Fort Randall Dam and the Big Bend Dam under the Pick-Sloan Missouri River Basin Program.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate for S. 374 is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 25, 2006.

Hon. JOHN MCCAIN,
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. 374, the Lower Brule and Crow Creek Tribal Compensation Act.

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

Sincerely,

ROBERT P. MURPHY
(For Donald B. Marron, Acting Director).

Enclosure.

S. 374—Lower Brule and Crow Creek Tribal Compensation Act

Summary: S. 374 would increase the size of two existing tribal trust funds established by the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act and the Cow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996. Congress created those funds as compensation for damages to the tribes caused by the Pick-Sloan Missouri River Basin project; this bill would constitute a final settlement of claims by the two tribes against the United States. CBO estimates that enacting S. 374 would increase direct spending by $66 million in 2007 and $169 million over the 2007–2016 period. Enacting the bill would not affect revenues.

S. 374 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. The payments authorized by this bill would benefit the Lower Brule Sioux and Crow Creek Sioux tribes.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 374 is shown in the table below. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal years, in millions of dollars—									
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
CHANGES IN DIRECT SPENDING										
Lower Brule and Crow Creek Funds Spending Under Current Law:										
Interest on Lower Brule Fund:										
Estimated Budget Authority	2	2	2	2	2	2	2	2	2	2
Estimated Outlays	2	2	2	2	2	2	2	2	2	2
Interest on Crow Creek Fund:										
Estimated Budget Authority	1	1	1	1	1	1	1	1	1	1
Estimated Outlays	1	1	1	1	1	1	1	1	1	1
Proposed Changes:										
Transfers to Lower Brule Fund:										
Estimated Budget Authority	0	130	0	0	0	0	0	0	0	0
Estimated Outlays	0	130	0	0	0	0	0	0	0	0
Transfers to Crow Creek Fund:										
Estimated Budget Authority	69	0	0	0	0	0	0	0	0	0
Estimated Outlays	69	0	0	0	0	0	0	0	0	0
Interest on Lower Brule Fund:										
Estimated Budget Authority	−2	−2	−2	−2	−2	−2	−2	−2	−2	−2
Estimated Outlays	−2	−2	−2	−2	−2	−2	−2	−2	−2	−2
Interest on Crow Creek Fund:										
Estimated Budget Authority	−1	−1	−1	−1	−1	−1	−1	−1	−1	−1
Estimated Outlays	−1	−1	−1	−1	−1	−1	−1	−1	−1	−1
Total Changes:										
Estimated Budget Authority	66	127	−3	−3	−3	−3	−3	−3	−3	−3
Estimated Outlays	66	127	−3	−3	−3	−3	−3	−3	−3	−3
Lower Brule and Crow Creek Tribal Funds Spending Under S. 374:										
Estimated Budget Authority	69	130	0	0	0	0	0	0	0	0
Estimated Outlays	69	130	0	0	0	0	0	0	0	0

Basis of estimate: CBO estimates that enacting this legislation would result in a net increase in direct spending of $66 million in 2007 and $169 million over the 2007–2016 period. By increasing the maximum funding level of two tribal trust funds and establishing a final settlement of certain tribal claims against the federal government, CBO estimates that enacting S. 374 would increase direct spending by $199 million over the 2007–2016 period. The bill also would reduce direct spending for interest payments made to the tribes by $30 million over the 2007–2016 period. For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2007 and that additional transfers to the trust funds would begin in that year.

Trust fund activity under current law

In 1996 and 1997, the Congress enacted legislation creating 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). Both acts authorized the Secretary of the Treasury to transfer certain proceeds from electricity sales made by the Western Area Power Administration (WAPA), the agency that manage the Pick-Sloan project, to each fund. Such transfers were made annually until the funds reached the maximum balances set forth in law. Consistent with the treatment of similar tribal trust funds, both funds are classified as

budgetary accounts because all claims against the federal government for related damages have not been extinguished. Thus, transfers to the funds made to date have been considered intragovernmental and have had no net effect on the federal budget.

Current law directs the Secretary to transfer any interest earned by the Crow Creek Fund and the Lower Brule Fund into separate accounts for the benefit of the tribes. Payments from these interest accounts may only occur after the trust fund has reached its maximum funding level. Given that both trust funds are currently at their maximum levels, CB0 estimates that such payments will total $3 million in 2007—$2 million from the Lower Brule Fund and $1 million from the Crow Creek Fund—and $30 million over the 2007–2016 period.

Trust fund activity under S. 374

S. 374 would increase the size of the Lower Brule Fund by $91 million (for a new maximum of $130 million), and the Crow Creek Fund by $42 million (for a new maximum of $69 million). Each fund would receive deposits equal to 25 percent of the gross revenues from the Pick-Sloan project from the previous year. Those annual deposit would continue until the total balance of the trust fund reaches the new maximum level. Based on information from WAPA, CBO estimates that gross electricity sales revenues from the Pick-Sloan project will be $318 million in 2006 and average approximately $34 million per year thereafter. Thus, CBO estimates that deposits to the Crow Creek Fund would reach its new maximum level in 2007, and the Lower Brule Fund would reach its new maximum level in 2008.

S. 374 would extinguish any future claims against the federal government by the two tribes upon full funding of their trust funds. Consistent with the treatment of similar tribal funds, the balances would thereafter be considered under tribal ownership. The federal budget excludes trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes, so CBO expects that the trust fund will be reclassified as nonbudgetary and the transfer of funds to the tribes would be recorded on the budget as new direct spending equal to the full balance of the trust fund. As a result, CBO estimates that enacting S. 374 would increase direct spending by $69 million in 2007 for the Crow Creek Fund, and by $130 million in 2008 for the Lower Brule Fund.

After those funds are transferred, any future interest earnings and payments would not be considered part of the federal budget. Additionally, because under the bill the Lower Brule Fund would fall below its maximum funding level in 2007, no interest payments would be made to the tribe in that year. As such, CBO estimates that enacting S. 3174 would reduce direct spending for interest payments to the tribes by $3 million in 2007 and $30 million over the 2007–2016 period.

Previous CBO estimate: On July 7, 2005, CBO transmitted a cost estimate for S. 374, the Tribal Parity Act, as ordered reported by the Senate Committee on Indian Affairs on June 29, 2005. That version of the legislation also would have increased deposits (by different amounts) to the Lower Brule Fund and the Crow Creek Fund. The July 7, 2005 version of the legislation however, would

not have extinguished all related claims against the federal governments directed in the August 2006 version of the legislation. CBO's current cost estimate reflects those differences.

Intergovernmental and private-sector impact: S. 374 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: Daniel Hoople. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Carla-Marie Ulerie.

Estimate approved by: Jeffrey M. Holland, Chief, Projections Unit.

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 to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of S. 374 will be de minimis.

EXECUTIVE COMMUNICATIONS

The Committee has received no official executive communications on S. 374.

EXHIBIT 1

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

United States Government Accountability Office

ANALYSIS OF THE CROW CREEK SIOUX AND LOWER BRULE SIOUX TRIBES' ADDITIONAL COMPENSATION CLAIMS

May 2006

United States Government Accountability Office

GAO

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

May 2006

INDIAN ISSUES

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



GAO-06-517

May 2006

GAO
Accountability·Integrity·Reliability
Highlights

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

INDIAN ISSUES

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

Why GAO Did This Study

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

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

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

What GAO Recommends

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

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

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

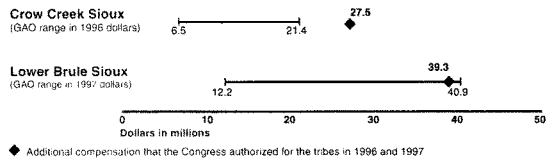
What GAO Found

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

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

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

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



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

Source: GAO.

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Abbreviations

MRBI Missouri River Basin Investigations Unit

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

May 19, 2006

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

Dear Mr. Chairman:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Results in Brief

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

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

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

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

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

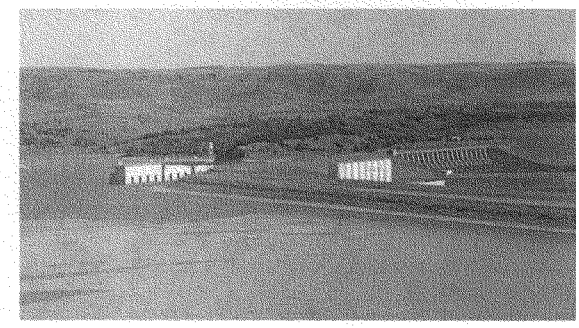
We recognize that compensation issues can be sensitive, complex, and controversial. While our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374, the Congress will ultimately decide whether additional compensation should be provided, and if so, how much it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

Background

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

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

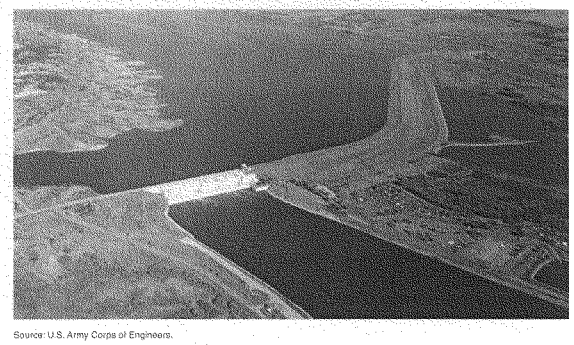
Figure 1: The Fort Randall Dam and Lake Case (February 2006)



Source: GAO.

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

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



Source: U.S. Army Corps of Engineers.

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

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

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

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

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

Sources: House and Senate reports.

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 2: Selected Settlement Proposals for the Fort Randall Dam

Current year dollars

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

Source: National Archives.

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

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

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

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

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

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

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

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

Table 3: Selected Settlement Proposals for the Big Bend Dam

Current year dollars

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

Source: National Archives.

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

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

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

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

[e]The amounts included in the damages category reflect the direct costs the tribes and government agreed on and the indirect costs proposed by the tribes.

See appendixes III and IV for a timeline summary of the settlement negotiations and compensation for the two dams for the Crow Creek Sioux and Lower Brule Sioux tribes, respectively.

Tribes at five other reservations affected by flood control projects along the Missouri River incurred losses ranging from about 600 acres to over 150,000 acres. These tribes received some compensation, primarily during the 1950s, for the damages they sustained. However, beginning in the 1980s, some of these tribes began requesting additional compensation. The Congress responded to their requests by authorizing the establishment of development trust funds. (See table 4.) The tribes at the Fort Berthold,

Standing Rock, and Cheyenne River reservations received compensation within the ranges we had suggested the Congress consider in our reviews of the tribes' additional compensation claims. The ranges were based on the current value of the difference between each tribes' final asking price and the amount that the Congress authorized. We were not asked to review the additional compensation claims for the Crow Creek Sioux and Lower Brule Sioux tribes in the 1990s or for the Santee Sioux and Yankton Sioux tribes in 2002.

Table 4: Additional Compensation Authorized by Congress for Tribes on the Missouri River

Current year dollars in millions

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

Source: GAO analysis of the additional compensation acts.

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

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

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

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

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

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

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

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

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

With respect to the Fort Randall Dam, the consultant used amounts from a variety of settlement proposals for damages and administrative expenses. To determine additional compensation, the consultant used a $2.2 million settlement proposal by the Crow Creek Sioux tribe and a $2.6 million settlement proposal by the Lower Brule Sioux tribe. (See table 5.) The Crow Creek proposal was from May 1957, and was the same as the tribe's final asking price requested about 1 year later, in February 1958. However, the Lower Brule proposal was from the first compensation bill introduced

in the Congress in July 1954, almost 4 years before the tribe's final asking price of about $1.8 million in March 1958—a difference of more than $850,000.

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

Current year dollars

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

Sources: National Archives and the consultant's analysis.

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

For the Big Bend Dam, the consultant also used amounts from different settlement proposals for damages and administrative expenses. To determine additional compensation, the consultant used amounts from congressional bills introduced in March 1961 for direct damages, but used amounts from proposed amendments to the bills in June 1961 for indirect damages. The tribes' asking prices from June 1961 can be considered their final asking prices because the proposed amendments are the last evidence of where the tribes requested specific compensation (indirect damages) or agreed to a compensation amount (direct damages). The consultant would have been more consistent had he used both the indirect and direct damage settlement figures in the proposed amendments from June 1961, rather than a mixture of these figures. As a result, the total amount for damages

the consultant used to calculate the difference between what the tribes requested and what it finally received is about $427,000 (in 1961 dollars) higher than if the tribes' final asking prices from June 1961 had been used consistently. (See table 6.)

Table 6: Comparison of the Settlement Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices for the Big Bend Dam

Current year dollars

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

Sources: National Archives legislative files and the consultant's analysis.

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

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

Lastly, the consultant did not use the tribes' final asking prices for the rehabilitation component of the settlement payment. The consultant used a $6.7 million rehabilitation figure that the Crow Creek Sioux tribe's negotiating committee proposed in May 1957 and a $6.3 million rehabilitation figure that was proposed in congressional bills in 1955 and

1957 for the Lower Brule Sioux tribe. (See table 7.) Both of these figures were developed during the negotiations for the Fort Randall Dam. However, the tribes agreed in their February and March 1958 proposals—their final asking prices for the Fort Randall Dam—to defer consideration of their rehabilitation proposals until after land acquisitions were made for the construction of the Big Bend Dam. The Big Bend Dam's installation would once again result in the flooding of their lands. In our view, the consultant should have used the final rehabilitation figures proposed by the tribes in 1961—that is, $4 million for the Crow Creek Sioux tribe and $2.7 million for the Lower Brule Sioux tribe.

Table 7: Comparison of Rehabilitation Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices

Current year dollars

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

Sources: National Archives and the consultant's analysis.

[a]The consultant's rehabilitation figure for the Crow Creek Sioux tribe was from H.R. 7758, 85th Cong., 1st Sess., (companion bill S. 2152) introduced on May 24, 1957. The figure was also presented by the tribe's negotiating committee in May 1957. The consultant's rehabilitation figure for the Lower Brule Sioux tribe was from H.R. 6589, 85th Cong., 1st Sess., introduced on April 2, 1957.

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

While rehabilitation was the largest component of the tribes' settlement proposals, we believe it should be considered separately from the comparison for damages because rehabilitation was not directly related to the damage caused by the dams. Funding for rehabilitation, which gained support in the late-1940s, was meant to improve the tribes' social and economic development and prepare some of the tribes for the termination

of federal supervision.[21] Funding for these rehabilitation programs came from both the government and from the tribes themselves. From the late-1940s through the early-1960s, the Congress considered several bills that would have provided individual tribes with rehabilitation funding. For example, between 1949 and 1950, the House passed seven bills for tribes totaling more than $47 million in authorizations for rehabilitation funding, and considered other bills, one of which would have provided $50 million to several Sioux tribes, including Crow Creek and Lower Brule. Owing to opposition from tribal groups, the termination policy began to lose support with the Congress in the late 1950s, and rehabilitation funding for individual tribes during this time was most often authorized by the Congress in association with compensation bills for dam projects on the Missouri River. However, the granting of rehabilitation funding for these tribes was inconsistent. Some tribes did not receive rehabilitation funding along with compensation for damages, while others did. (See table 8.)

Table 8: Rehabilitation Payments Authorized by Congress for Tribes on the Missouri River

Current year dollars in millions

Tribe	Year payment enacted	Total payment authorized	Rehabilitation payment authorized	Percentage
Three Affiliated Tribes of the Fort Berthold Reservation	1947 and 1949	$12.6	$0	0%
Cheyenne River Sioux	1954	10.6	5.2[a]	49
Yankton Sioux	1952 and 1954	0.2	0	0
Standing Rock Sioux	1958	12.2	7.0[a]	57
Santee Sioux	1958	0.05	0	0
Crow Creek Sioux	1958 and 1962	5.9	3.8	64
Lower Brule Sioux	1958 and 1962	4.3	1.9	45

Source: GAO analysis of the compensation acts.

[a]These amounts include relocation and reestablishment funds authorized for the tribes. For example, the Cheyenne River Sioux tribe expended $416,626 for relocating and reestablishing tribal members living in the area that was flooded.

[21]The policy of termination, which was initiated in the 1940s and ended in the early 1960s, was aimed at ending the U.S. government's special relationship with Indian tribes, with an ultimate goal of subjecting Indians to state and federal laws on exactly the same terms as other citizens.

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

In our two prior reports, we suggested that, for the tribes of Fort Berthold, Standing Rock, and Cheyenne River, the Congress consider a range of possible compensation based on the current value of the difference between the final asking price of each tribe and the amount that it received. In calculating the current value, we used two different rates to establish a range of additional compensation. For the lower end of the range, we used the inflation rate to estimate the amount the tribes would need to equal the purchasing power of the difference. For the higher range, we used an interest rate to estimate the amount the tribes might have earned if they had invested the difference in Aaa corporate bonds as of the date of the settlement.[22] The consultant did not follow this approach when he calculated the compensation estimates for the Crow Creek Sioux and Lower Brule Sioux tribes. Instead, he used the corporate bond rate to develop a single figure for each tribe, rather than a range.

The consultant justified using only the corporate bond rate to calculate the compensation figures for the Crow Creek Sioux and Lower Brule Sioux tribes by pointing out that the Congress authorized additional compensation of $149.2 million for the tribes of Fort Berthold and $290.7 million for the Cheyenne River Sioux tribe in 1992 and 2000, respectively, by using our estimates of the high end of the range for these tribes. The consultant contended that if the Congress also uses the corporate bond rate for the Crow Creek Sioux and Lower Brule Sioux tribes to determine compensation, it would ensure parity with the amounts the tribes of Fort Berthold and the Cheyenne River Sioux received. However, the Congress has not always chosen to use the highest value in the ranges we estimated. For example, in the case of the Standing Rock Sioux tribe, the Congress chose to provide additional compensation of $90.6 million in 1992—an amount closer to the lower end of the range we estimated.

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

Using the approach we followed in our prior reports, which was based on the tribes' final asking prices, we found that the additional compensation the Crow Creek Sioux and Lower Brule Sioux tribes received in the 1990s was either at the high end or above the range of possible additional compensation. For both tribes, we calculated the difference between the final asking prices and the compensation authorized in 1958 and 1962. We

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

then took the difference and adjusted it to account for the inflation rate and the Aaa corporate bond rate through either 1996 or 1997 to produce a possible range of additional compensation to compare it with the additional compensation the Congress authorized for the tribes in 1996 and 1997. For the Crow Creek Sioux tribe, we estimated that the difference adjusted to 1996 values for both dams would range from $6.5 million to $21.4 million (see table 9), compared with the $27.5 million the Congress authorized for the tribe in 1996. The $27.5 million in additional compensation already authorized for the Crow Creek Sioux tribe is therefore higher than the amount that we would have proposed in 1996 using our approach.

Table 9: Estimate of Additional Compensation Range for the Crow Creek Sioux Tribe

Current year dollars

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

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

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

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

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

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

For the Lower Brule Sioux tribe, we estimated that the difference adjusted to 1997 values for both dams would range from $12.2 million to $40.9 million (see table 10), compared with the $39.3 million the Congress authorized for the tribe in 1997. The $39.3 million falls toward the high end of the range that we would have proposed in 1997 using our approach.

Table 10: Estimate of Additional Compensation Range for the Lower Brule Sioux Tribe

Current year dollars

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

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

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

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

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

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

Our estimates of additional compensation for the two tribes vary significantly from the amounts calculated by the tribes' consultant. Our estimated range for the two tribes combined is from about $18.7 million to $62.3 million. The consultant calculated an additional compensation figure for the two tribes of $292.3 million (in 2003 dollars)—that is, $105.9 for the Crow Creek Sioux tribe and $186.4 for the Lower Brule Sioux tribe—before subtracting the amounts received by the tribes in 1996 and 1997, respectively. There are two primary reasons for the difference between our additional compensation amounts and the consultant's amounts.

- First, most of the difference is due to the different rehabilitation cost figures that were used. For the difference between the tribes' asking prices for rehabilitation and the amounts they actually received, we used $901,450 and the consultant used about $7.3 million (in 1961 and 1957 dollars, respectively). Once the $901,450 is adjusted to account for inflation and interest earned through 1996 and 1997, it results in a range of additional compensation for rehabilitation for the two tribes combined of about $4.8 million to $15.1 million. If the consultant's rehabilitation figure of about $7.3 million is adjusted through 1996 and 1997, his total for the two tribes is $120.9 million, or more than $105 million above our high estimate.

- Second, our dollar values were adjusted to account for inflation and interest earned only through 1996 and 1997 to compare them with what the two tribes received in additional compensation at that time. The consultant, however, adjusted for interest earned up through 2003. In addition, he then incorrectly adjusted for the additional compensation the tribes were authorized in the 1990s. Specifically, the consultant subtracted the $27.5 million and $39.3 million authorized for the Crow Creek Sioux and Lower Brule Sioux tribes in 1996 and 1997, respectively, from his additional compensation totals without first making the different estimates comparable. Since these amounts were in 1996 and 1997 dollar values, versus the 2003 dollar values for his current calculations, it was incorrect to subtract one from the other without any adjustment. In our view, the consultant should have adjusted his current calculations through 1996 and 1997, depending on the tribe, and then should have subtracted the additional compensation

provided the tribes at that time. If there was any remaining compensation due the tribes, the final step then would have been to adjust it to reflect 2003 dollar values. Using this approach, the additional compensation provided to the tribes in the 1990s would have been subtracted from comparable dollar values.

Observations

The additional compensation already authorized for the Crow Creek Sioux and Lower Brule Sioux tribes in 1996 and 1997, respectively, is consistent with the additional compensation authorized for the other tribes on the Missouri River. Rather than bringing the Crow Creek Sioux and Lower Brule Sioux tribes into parity with the other tribes, the two bills under consideration in the 109th Congress—H.R. 109 and S. 374—would have the opposite effect. Providing a third round of compensation to the Crow Creek Sioux and Lower Brule Sioux tribes, in the amounts proposed in the bills, would catapult them ahead of the other tribes and set a precedent for the other tribes to seek a third round of compensation. Our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374. Notwithstanding the results of our analysis, the Congress will ultimately decide whether additional compensation should be provided and, if so, how much it should be. Our analysis will assist the Congress in this regard.

Consultant's Comments and Our Evaluation

Because the consultant's analysis was the basis for the tribes' additional compensation claims and the consultant had asserted that the additional compensation amounts were based on a methodology deemed appropriate by GAO, we chose to provide the tribes' consultant with a draft of this report for review and comment. In commenting on the draft, the tribes' consultant (1) acknowledged that he had made a calculation error in his analysis, (2) proposed a range of additional compensation based on four different alternatives, and (3) discussed the complex issues of "asking price" in the context of the particular set of facts for the Crow Creek Sioux and Lower Brule Sioux tribes. In addition, the consultant commented "...that there has been no uniform or consistent approach, method, formula, or criteria for providing additional compensation. . ." to the seven tribes affected by Pick-Sloan dam projects on the Missouri River. Specifically, the consultant pointed out that the Congress has provided additional compensation to four tribes based on a per-acre analysis, while only three tribes have received additional compensation within the ranges we calculated in our two prior reports. As a result, the consultant believes

that there is a wide disparity in the total compensation that the seven tribes have received from the Congress. As discussed in detail below, we believe that our approach is reasonable, and we did not make any changes to the report based on the consultant's comments. The tribes' consultant provided written comments that are included in appendix V, along with our specific responses.

To address the perceived disparity in the total compensation amounts provided by the Congress, the consultant proposed four different alternatives for calculating additional compensation for the Crow Creek Sioux and Lower Brule Sioux tribes: (1) on a per-acre basis compared with the Cheyenne River Sioux tribe, (2) the consultant's original proposal (amended to correct for the calculation error), (3) on a per-acre basis compared with the Santee Sioux tribe, and (4) calculations based on using the tribes' highest asking prices. We do not believe that the consultant's amended original proposal nor the three new alternatives represent a sound approach for establishing the range of additional compensation. Our approach is to provide the Congress with a range of possible additional compensation based on the difference between the amount the tribes believed was warranted at the time of the taking and the final settlement amount. We then adjusted the differences using the inflation rate for the lower end of the range and the corporate bond rate for the higher end. The ranges of additional compensation we calculated in this report were calculated in exactly the same way we did in our 1991 and 1998 reports, and we believe our approach is reasonable. In our view, trying to compare the total compensation for the tribes on a per-acre basis—which are two of consultant's proposed alternatives—does not take into account the differences of what each tribe lost. For example, even if the individual resources such as timber, wildlife, and wild products would have all been valued the same for all of the tribes, if one tribe lost more of one resource than another, then their per-acre compensation values would be different. Also, about half of the payments to four of the tribes were for rehabilitation, which had no direct correlation to the acreage flooded by the dams, and the consultant did not make the different dollar amounts comparable before performing his per-acre calculations.

The tribes' consultant disagreed with our assumption that the tribes' final asking prices were based on the most up-to-date and complete information and that they were more realistic than their initial asking prices. Specifically, the consultant noted that the tribes' final asking prices "were made under conditions of extreme duress." We agree with the consultant that the tribes were not willing sellers of their land at the initial price that

the government offered for their land. However, we disagree that this factor invalidates the use of the tribes' final asking prices. The drawn out negotiations for the Fort Randall Dam and the amounts of the tribes' final asking prices do not support the conclusion that the tribes simply capitulated and accepted whatever the government offered. For example, for 12 of the 15 compensation components shown in tables 5, 6, and 7 of our report, the tribes' final asking prices were equal to, or higher than, their initial settlement proposals. We used a clearly defined and consistent approach, whereas, in his analysis, the consultant selected only certain numbers from a variety of tribal settlement proposals without providing any justification. While the tribes' consultant chose to use the Crow Creek Sioux tribes' offer from May 1957, he did not use the Lower Brule Sioux tribes' offer from the same time. Instead, the consultant chose to use the Lower Brule Sioux tribes' initial offer from 3 years earlier—July 1954—without any explanation. Furthermore, rather than consistently using the Lower Brule Sioux tribes' July 1954 offer, the consultant used the tribes' rehabilitation offer from April 1957, again without any explanation.

The tribes' consultant correctly points out that only three of the seven tribes have received additional compensation consistent with the ranges calculated in our two prior reports. Until this report, the Congress had only asked us to review these three tribes' additional compensation requests, and, each time, the Congress provided additional compensation within the ranges we calculated. Furthermore, our two prior reports dealt with the three highest tribal claims for additional compensation—all over $90 million—whereas, the four tribes that obtained additional compensation based on a per-acre calculation were all less than $40 million, and we were not asked to review those requests. As noted in this report, although the additional compensation already provided to the tribes in 1996 and 1997 was calculated on a per-acre basis, by coincidence, for the Lower Brule Sioux tribe it was within the range we would have proposed and for the Crow Creek Sioux tribe it was above our range. As such, should the Congress rely on our analysis in this report and not provide these two tribes a third round of compensation, then the additional compensation provided to five of the seven tribes would generally be within the ranges we have calculated, leaving only two tribes that would have had their additional compensation calculated based on a per-acre analysis and not analyzed by GAO. Accordingly, we believe our approach would provide more consistency among the tribes.

It is important to note that both the consultant's analysis and the two bills pending in the 109th Congress state that the additional compensation

amounts for the Crow Creek Sioux and Lower Brule Sioux tribes are based on a methodology deemed appropriate by GAO. We do not believe our analysis supports the additional compensation claims. We recognize that compensation issues can be a sensitive, complex, and controversial. Ultimately, it is up to the Congress to make a policy determination as to whether additional compensation should be provided and, if so, how much it should be. We amended our observations to reflect this reality.

We are sending copies of this report to interested congressional committees, the Secretary of the Interior, the tribes' consultant, the Crow Creek Sioux and Lower Brule Sioux tribes, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or nazzaror@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VI.

Robin M. Nazzaro

Robin M. Nazzaro
Director, Natural Resources
and Environment

Appendix I

Scope and Methodology

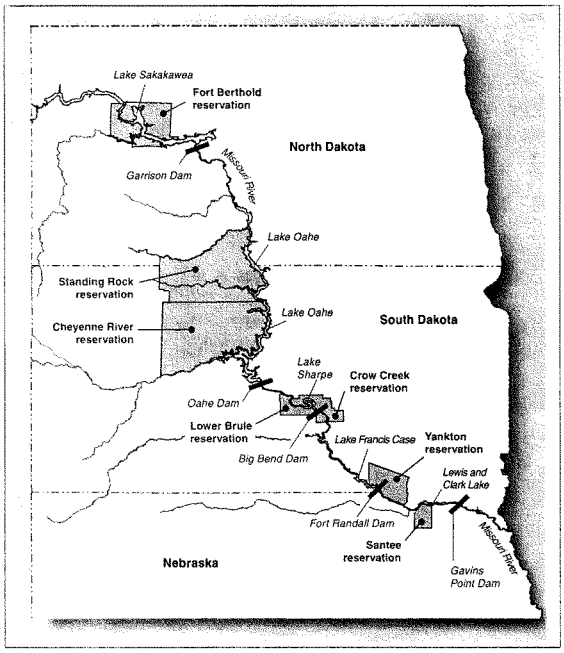
To assess the consultant's methods and analysis for determining additional compensation for the Crow Creek Sioux and Lower Brule Sioux tribes as a result of the flooding of 38,000 acres of their land and resources by the installation of the Fort Randall and Big Bend Dams, we used standard economic principles and the analysis we conducted in our two prior reports on additional compensation. We met with the tribes' consultant to determine how he used the method that we suggested the Congress adopt as the basis for granting additional compensation to other tribes and reviewed additional information he provided on how he arrived at his proposed compensation amounts.

In order to ensure that we obtained and reviewed all relevant data, we conducted a literature search for congressional, agency, and tribal documents at the National Archives and the Department of the Interior's (Interior) library. We used original documents to learn about the negotiation process and to identify the appraised land prices and various proposed settlement amounts. As a result, we determined that these data were sufficiently reliable for purposes of this report. Specifically, from the National Archives, we reviewed legislative files containing proposed House and Senate bills, public laws enacted, House and Senate reports, and hearings held on compensation for the tribes. In addition, from Interior's library, we obtained Missouri River Basin Investigations Unit documents to review information on early damage estimates as a result of installation of the Fort Randall Dam and on details regarding both informal and formal negotiations between the federal government and the two tribes. We also met with representatives of the two tribes on their reservations in South Dakota to (1) discuss the analysis, the actions taken with the compensation previously obtained, and plans for the additional compensation amounts requested and (2) review any records they might have on earlier compensation negotiations. The tribes, however, did not have any documentation on tribal discussions or decisions regarding either compensation negotiations or offers that took place in the 1950s and 1960s.

We performed our work from October 2005 to April 2006 in accordance with generally accepted government auditing standards.

Appendix II

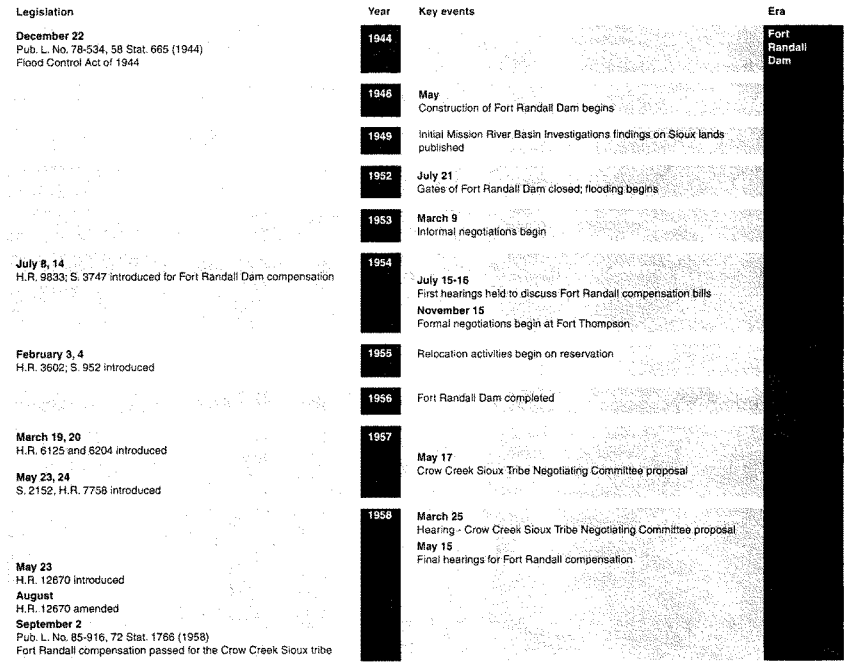
Map of Tribes and Dams on the Missouri River



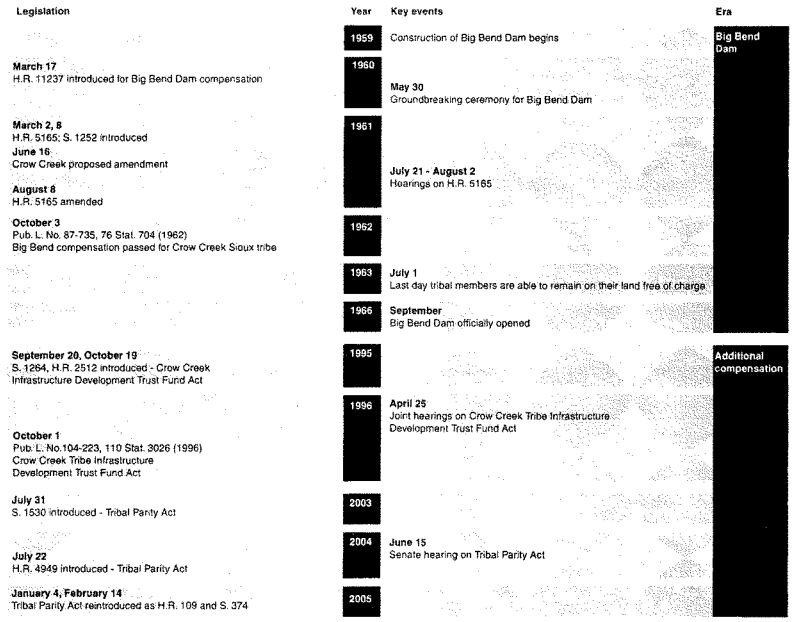
Sources: The National Atlas of the United States of America® and MapArt.

Appendix III

Timeline of Settlement Negotiations and Compensation for the Crow Creek Sioux Tribe



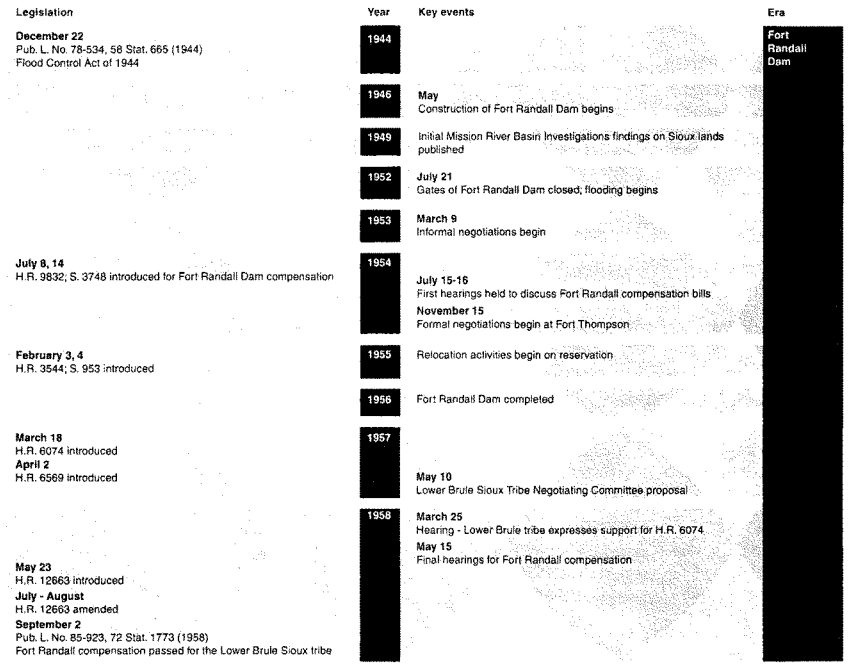
Appendix III
Timeline of Settlement Negotiations and Compensation for the Crow Creek Sioux Tribe



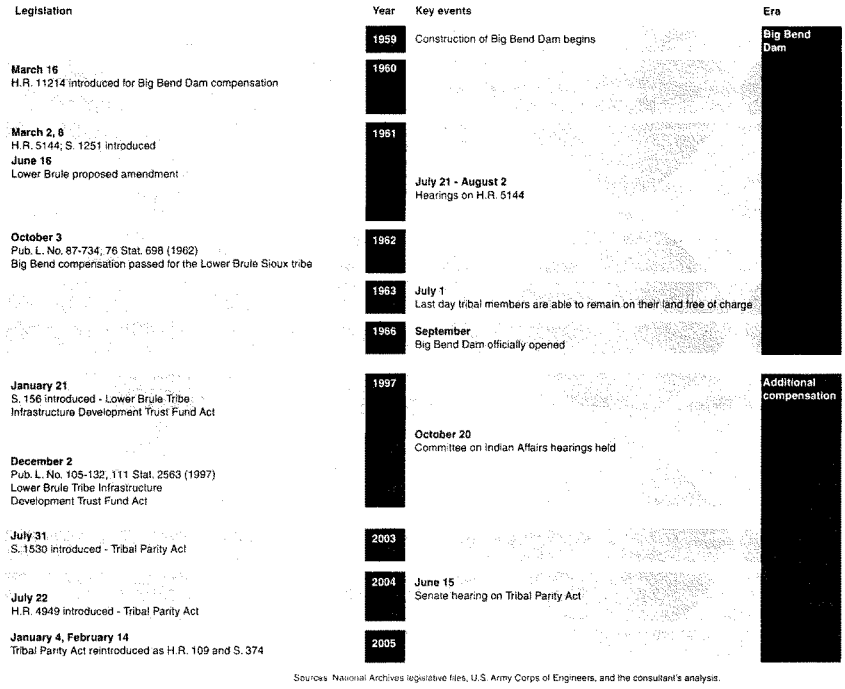
Sources: National Archives legislative files, U.S. Army Corps of Engineers, and the consultant's analysis.

Appendix IV

Timeline of Settlement Negotiations and Compensation for the Lower Brule Sioux Tribe



Appendix IV
Timeline of Settlement Negotiations and Compensation for the Lower Brule Sioux Tribe



Sources: National Archives legislative files, U.S. Army Corps of Engineers, and the consultant's analysis.

Appendix V

Comments from the Tribes' Consultant

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

MORGANANGEL
ASSOCIATES, LLC

April 27, 2006

Ms. Robin M. Nazarro
Director, Natural Resources and Environment
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Ms. Nazarro:

Thank you for providing me with the opportunity to review and comment on the Draft Report entitled *Indian Issues: Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes' Additional Compensation Claims* (GAO-06-517) (hereinafter referenced as GAO Draft Report). These comments are submitted on behalf of the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe, both sovereign treaty Tribes, myself, and counsel. We appreciate this opportunity to comment on your GAO Draft Report, the time you have invested in your review, and the field trip your staff made to South Dakota to discuss the issues with tribal representatives.

See comment 1.

See comment 2.

In the response that follows I have (1) acknowledged an error in my calculations; (2) proposed a range of additional compensation, including the Current Bills, per the suggestion in the GAO Draft Report; and (3) discussed the difficult issue of "asking price" in the context of this particular set of facts. The main point that I make is that there has been no uniform or consistent approach, method, formula, or criteria for providing additional compensation to the Missouri River Tribes impacted by the Pick-Sloan dam projects. Congress has used other approaches more often than it has followed the range methodology initially suggested by the General Accounting Office (GAO) in 1991 (now the Government Accountability Office but still the GAO). The result is that there remains a wide disparity in the total compensation that seven Tribes have received from Congress. We therefore seek your guidance and cooperation in proposing approaches that might solve this inequity and establish parity among the Tribes.

Calculation Error

The GAO Draft Report states that my calculations incorrectly adjusted for the additional compensation that the Crow Creek Sioux Tribe received in 1996 and the Lower Brule Sioux Tribe in 1997. Thank you. I acknowledge that I did, indeed, error by compounding the interest on the differences through 2003 and then subtracting the amount of additional compensation. I should have subtracted the amount of additional compensation from the accrued value in 1996 for the Crow Creek Sioux and that in 1997 for the Lower Brule Sioux. If there was a difference remaining on those dates, I should have compounded the interest on that difference from that time to the present to establish the total amount of additional compensation due. I have used this corrected approach in calculating those compensation alternatives proposed below that are based on annual corporate bond yields.

Range of Compensation

The GAO Draft Report is critical of the fact that I only proposed a single estimate of additional compensation instead of a range of possibilities, based on different computations and comparisons. It states that I deviated from the approach that the GAO suggested to Congress on two prior occasions "by providing a single estimate of additional compensation instead of a range (p. 5)." In response to this criticism, I have developed below a range of compensation that includes four alternatives. I have not included an alternative based on annual inflation rates rather than the annual corporate bond rate or compensation per-acre value because there is no precedent for Congress using the inflation rate as a basis for any of the additional compensation it has awarded to the seven Tribes since 1992. The four alternatives proposed below provide a range of additional compensation for the Lower Brule Sioux Tribe from **$20.6 million to $432.5 million** and for the Crow Creek Sioux Tribe from **$11.5 million to $93.8 million**.

TABLE 1: Alternative Range of Additional Compensation

Alternatives	I. *Based on Parity with Cheyenne River Sioux*	II. *Based on Current Bills Adjusted*	III. *Based on Parity with Santee Sioux of Nebraska*	IV. *Based on Highest Tribal Asking Prices*
LOWER BRULE	**$20,690,688**	**$129,822,085**	**$138,368,976**	**$432,547,830**
CROW CREEK	**$11,572,974**	**$69,222,084**	**$93,893,940**	**$70,685,862**

My book *Damned Indians: The Pick-Sloan Plan and the Missouri River Sioux* (University of Oklahoma Press, 1982, 1994) has provided much of the factual basis for the additional compensation Congress extended to six Sioux Tribes between 1992 and 2002. In that work, I pointed out that Congress was inconsistent and inequitable in the original settlements it provided to the Sioux Tribes between 1954 and 1962. While the Cheyenne River Sioux Tribe sustained the most damages, the Standing Rock Sioux Tribe received the best settlement. The Yankton Sioux Tribe suffered the least disruption (although one of its communities, White Swan, was never replaced) and also received the worst settlement. The Crow Creek and Lower Brule Sioux Tribes were dealt with most rudely in the Fort Randall negotiations, since settlement did not take place until after the dam was constructed and rehabilitation was deferred for another four years. However, these Tribes received what was comparatively the most generous funding for rehabilitation as part of the Big Bend settlement. As I also noted in *Dammed Indians*, "none of the [Sioux] Tribes considered their compensation to be adequate, but all suffered considerably less and received considerably more than the Fort Berthold Indians [Three Affiliated Tribes] had (p. 134)."

One of the goals of the Tribes in seeking additional compensation from Congress was that the inconsistency and inequity of the initial settlements could be corrected in such a way as to achieve parity among the Tribes. With the exception perhaps of the Santee Sioux Tribe of Nebraska, all of the Tribes suffered the same kinds of damages. They all lost a majority of their natural resources and reservation infrastructure. Similarly, they all were forced to remove,

relocate, and reestablish a significant proportion of their tribal membership and all or a large portion of their population centers. More importantly, they all lost a significant part of their traditional culture, including herbs and plants used for medicinal and religious purposes, when their riverine environment was inundated.

Since 1992, Congress has provided additional compensation to seven Tribes impacted by the Pick-Sloan projects. Yet, as demonstrated in Table 2 below, Congress has not achieved parity or equity in its total compensation to these Tribes.

See comment 3.

TABLE 2: Comparison of the Total Compensation Provided to Seven Tribes Impacted by the Missouri River Pick-Sloan Dam Projects on a Per-Acre Basis

Tribe(s)	Dam(s)	Acreage Lost	Total Compensation	Compensation Per Acre
Three Affiliated Tribes of Fort Berthold, ND	Garrison	152,360a	$161,805,625	$1,062
Standing Rock Sioux, ND & SD	Oahe	55,994a	$102,946,553	$1,839
Crow Creek Sioux, SD	Fort Randall Big Bend	15, 597a	$33,437,614	$2,144
Lower Brule Sioux, SD	Fort Randall Big Bend	22,296a	$43,645,988	$1,958
Cheyenne River Sioux, SD	Oahe	104,420a	$301,366,972	$2,886
Yankton Sioux, SD	Fort Randall	2,851a	$23,251,253	$8,155
Santee Sioux, NE	Gavins Point	593a	$4,841,010	$8,164

The tribal group that suffered the most damages, the Three Affiliated Tribes of Fort Berthold, has received the least amount of compensation on a per-acre basis ($1,062 per acre). At the same time, the Tribe that suffered the least damages, the Santee Sioux of Nebraska, has received the highest amount of compensation on a per-acre basis ($8,164 per acre).

Congress has used three different formulas in providing additional compensation to the seven Tribes since 1992. It applied the GAO-recommended range of compensation to establish additional trust funds for the Three Affiliated Tribes and the Standing Rock Sioux in 1992 and the Cheyenne River Sioux in 2000. Yet, Congress was not consistent with the Tribes in applying the same point of the range. The additional compensation provided the Standing Rock Sioux Tribe was towards the lower end of the GAO suggested range. In contrast, that provided the Three Affiliated Tribes and the Cheyenne River Sioux Tribe was at the very highest range suggested by the GAO. The Cheyenne River Sioux legislation in 2002 had the effect of skewing

See comment 4.

the additional compensation that had been appropriated for six other Missouri River Tribes prior to that time.

Congress used a different formula, one based on the per-acre value of the 1992 legislation, to compensate the Crow Creek Sioux in 1996 and the Lower Brule Sioux in 1997. It then used a separate formula, based on a per-acre valuation with a multiplier for rehabilitation, to compensate the Yankton and Santee Sioux Tribes in 2002. Thus, Congress has used a per-acre basis for additional compensation to the Missouri River Tribes more often (four times) than it has used the GAO-recommended range methodology (three times). As noted above, it has not been consistent in the application of the GAO suggested range, providing additional compensation to two Tribes at the highest end of the range and to another Tribe at the lower end of the range.

See comment 2.

The larger per-acre compensation provided to the Yankton and Santee Sioux Tribes may be justified by the fact that these Tribes were not given an opportunity to receive payment from Congress for direct damages or rehabilitation at the time their lands were taken. Neither does it appear that these Tribes would be eligible for the GAO-recommended range of compensation because they never made any tribal offers for settlement at the time of taking.

The total compensation package provided to the Cheyenne River Sioux was approximately 54 percent higher than that provided to the next highest recipient, the Three Affiliated Tribes, although the Fort Berthold Tribes lost approximately 32 percent more land. The only conclusion that can be drawn from this analysis is that Congress has been as erratic in providing additional compensation to the seven Tribes between 1992 and 2002 as it was in providing initial settlements with six of these Tribes between 1946 and 1962. The result is that the total compensation to Tribes suffering similar damages has not been equitable and has not achieved parity among them.

See comment 3.

Compensation Alternative I: Parity with the Cheyenne River Sioux Settlement of 2000 on a Per-Acre Basis

As one alternative for equitable additional compensation, the Crow Creek and Lower Brule Sioux Tribes request parity with the compensation on a per-acre basis provided to the Cheyenne River Sioux Tribe. Congress has established the precedent for providing additional compensation to the Missouri River Tribes on a per-acre basis in the trust funds it established for the Crow Creek Sioux Tribe in 1996, the Lower Brule Sioux Tribe in 1997, and the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska in 2002.

See comment 3.

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TABLE 3: Comparison of Total Compensation Provided to the Crow Creek and Lower Brule Sioux Tribes with that Provided to the Cheyenne River Sioux Tribe on a Per-Acre Basis

Tribe(s)	Dam(s)	Acreage Lost	Total Compensation	Compensation Per Acre
Cheyenne River Sioux, SD	Oahe	104,420a	$301,366,972	$2,886
Crow Creek Sioux, SD	Fort Randall Big Bend	15, 597a	$33,437,614	$2,144
Lower Brule Sioux, SD	Fort Randall Big Bend	22,296a	$43,645,988	$1,958

Crow Creek Sioux

The difference between the overall compensation provided to the Crow Creek Sioux Tribe and that provided to the Cheyenne River Sioux Tribe is $742 per acre. Multiplying this difference by the number of acres lost by the Crow Creek Sioux (15,597) results in a total of **$11,572,974**. This is the amount of additional compensation necessary to provide the Crow Creek Sioux Tribe parity with the overall compensation provided to the Cheyenne River Sioux Tribe on a per-acre basis.

Lower Brule Sioux

The difference between the overall compensation provided to the Lower Brule Sioux Tribe and that provided to the Cheyenne River Sioux Tribe is $928 per acre. Multiplying this difference by the number of acres lost by the Lower Brule Sioux (22,296) results in a total of **$20,690,688**. This is the amount of additional compensation necessary to provide the Lower Brule Sioux Tribe parity with the overall compensation provided to the Cheyenne River Sioux on a per-acre basis.

This alternative provides the lowest range of compensation for both Tribes.

Compensation Alternative II: Based on Present Bills Adjusted

A second alternative range is to use the base numbers of difference in the Current Bills between the asking prices considered by the Tribes to represent the "fair market values" of their damages and the amounts received from Congress in initial settlements.

TABLE 4: Compensation Based on Present Bill Adjusted to Reflect Accurate Interest Rate Calculation

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

*Difference in 1996-1997 Dollars and 2006 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. **Rounded to nearest dollar.

The consultant's appendixes are not included in this report.

For the calculations of these differences see Appendix 1 (A-D).

Crow Creek Sioux

If the compounded corporate interest rate value of the base amount is adjusted to reflect the $27.5 million compensation received by the Crow Creek Sioux Tribe in 1996, the result indicates that there was still a difference of $39.2 million at the time. If the annual corporate interest rate is added to the principal amount of $39.2 million from 1996 through 2005, the present value of the difference is **$69,222,084**. This alternative approach would provide the Crow Creek Sioux Tribe with more compensation than the Tribe would receive from a settlement based on the Cheyenne River per-acre amount, but slightly less than it would receive from one based on the Santee Sioux per-acre amount and significantly less than one based on the Tribe's highest asking prices.

Lower Brule Sioux

A similar adjustment to the accrued value of Lower Brule compensation based on asking prices in the Current Bills indicates that a difference of $78.9 million still remained after Congress awarded the Tribe $39.3 million in additional compensation in 1997. If the annual corporate interest rate is added to the principal amount of $78.9 million from 1997 through 2005, the present value of the difference is **$129,822,085.00**. This alternative approach would provide the Lower Brule Sioux Tribe with significantly more compensation than the Tribe would receive from a settlement based on the Cheyenne River per-acre amount, but less than it would receive from one based on the Santee Sioux per-acre amount and significantly less than one based on the Tribe's highest asking prices.

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See comment 3.

Compensation Alternative III: Parity with the Santee Sioux Settlement of 2002 on a Per-Acre Basis

As an alternative to parity with the Cheyenne River Sioux settlement, the Crow Creek and Lower Brule Sioux Tribes request parity with the Santee Sioux settlement of 2002. The Santee Sioux Tribe of Nebraska received the highest amount of total compensation on a per-acre basis ($8,164 per acre). Parity with this per-acre amount would result in a higher range of compensation; the highest range for the Crow Creek Sioux and the second highest for the Lower Brule Sioux. As noted previously, Congress has established the precedent for providing additional compensation to the Missouri River Tribes on a per-acre basis in the trust funds it established for the Crow Creek Sioux Tribe in 1996, the Lower Brule Sioux Tribe in 1997, and the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska in 2002.

TABLE 5: Comparison of the Total Compensation Provided to the Crow Creek and Lower Brule Sioux Tribes with that Provided to the Santee Sioux Tribe on a Per-Acre Basis

Tribe(s)	Dam(s)	Acreage Lost	Total Compensation	Compensation Per Acre
Santee Sioux, NE	Gavins Point	593a	$4,841,010	$8,164
Crow Creek Sioux, SD	Fort Randall Big Bend	15, 597a	$33,437,614	$2,144
Lower Brule Sioux, SD	Fort Randall Big Bend	22,296a	$43,645,988	$1,958

Crow Creek Sioux

The difference between the overall compensation provided to the Crow Creek Sioux Tribe and that provided to the Santee Sioux Tribe is $6,020 per acre. Multiplying this difference by the number of acres lost by the Crow Creek Sioux (15,597) results in a total of **$93,893,940.** This is the amount of additional compensation necessary to provide the Crow Creek Sioux Tribe parity with the overall compensation provided to the Santee Sioux Tribe on a per-acre basis.

Lower Brule Sioux

The difference between the overall compensation provided to the Lower Brule Sioux Tribe and that provided to the Santee Sioux Tribe is $6,206 per acre. Multiplying this difference by the number of acres lost by the Lower Brule Sioux (22,296) results in a total of **$138,368,976.** This is the amount of additional compensation necessary to provide the Lower Brule Sioux Tribe parity with the overall compensation provided to the Santee Sioux on a per-acre basis.

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See comment 5.

Compensation Alternative IV: Based on Highest Tribal Asking Prices

A fourth alternative for additional compensation to the Crow Creek and Lower Brule Sioux Tribes would be to base it on the difference between the highest amounts asked for by the Tribes for direct and indirect damages, negotiating expenses, and rehabilitation and the actual amounts provided to the Tribes by Congress. The Table below indicates that the total compensation based on these differences would be **$70,685,862** for the Crow Creek Sioux Tribe and **$432,547,830** for the Lower Brule Sioux Tribe. This is the highest range for the Lower Brule Sioux and the second highest range for the Crow Creek Sioux.

TABLE 6: Basis for Parity Compensation when Asking Price is Based on "Highest Asking Prices" Offered by the Tribes (1954-1961)

	Crow Creek	Lower Brule
Fort Randall Costs and Expenses Difference	$752,759.00	$1,826,045.00
Fort Randall Difference in 1996-1997 Dollars	$14,190,720.00	$36,923,065.00
Big Bend Costs and Expenses and Rehabilitation Difference	$3,360,903.00	$15,579,898.00
Big Bend Difference in 1996-1997 Dollars	$53,400,265.00	$265,515,472.00
Total Difference in 1996-1997 Dollars	$67,590,985.00	$302,438,537.00
Minus Amount Provided by Congress, 1996/1997	- $27,500,000.00	- $39,300,000.00
Difference Remaining in 1996-1997	$40,090,985.00	$263,138,537.00
Difference Remaining in 2006 Dollars**	**$70,685,862.00**	**$432,547,830.00**

*Difference in 1996-1997 Dollars and 2006 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period.
**Rounded to nearest dollar.

The consultant's appendixes are not included in this report.

For the calculation of these differences see Appendix 2 (A-D).

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The following table outlines the factual basis for determination of the highest tribal asking prices.

TABLE 7: Summary of Amounts and Dates of Highest Tribal Asking Prices

	Crow Creek	Lower Brule
FORT RANDALL DAM		
Direct Costs Amount and Date of Highest Asking Price	$685,138.00 March 1957	$912,000.00 May 1954
Indirect Costs Amount and Date of Highest Asking Price	$1,463,433.00 May 1957	$1,790,568.00 July 1954
Negotiating Expenses Amount and Date of Highest Asking Price	$100,000.00 March 1957	$200,000.00 May 1957, March 1958
Fort Randall Costs and Expenses Total	$2,248,571.00	$2,902,568.00
Compensation Received from Congress, September 1958	$1,495,812.00	$1,076,523.00
Difference Between Highest Tribal Asking Prices and Compensation Received in 1958	$752,759.00	$1,826,045.00

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Table 7 Continued

	Crow Creek	Lower Brule
BIG BEND DAM		
Direct Costs		
Amount and Date of Highest Asking Price	$494,890.00 March 1961	$1,111,910.00 March 1961
Indirect Costs		
Amount and Date of Highest Asking Price	$467,004.00 June 1961	$884,472.00 June 1961
Negotiating Expenses Amount and Date of Highest Asking Price	$125,000.00 March 1960-August 1961	$125,000.00 March 1960-Aug. 1961
New School Amount and Date of Highest Asking Price	Not Applicable	$350,000.00 March 1961
Big Bend Costs and Expenses Total	$1,086,894.00	$2,471,382.00
Compensation Received from Congress, October 1962	$639,302.00	$1,300,715.00
Difference Between Highest Tribal Asking Prices and Compensation Received in 1962	$447,592.00	$1,170,667.00

	Crow Creek	Lower Brule
FORT RANDALL and BIG BEND REHABILITATION Amount and Date of Highest Asking Price	$6,715,811.00 May 1957	$16,377,981.00 May 1957
Compensation for Rehabilitation Received from Congress, 1962	$3,802,500.00	$1,968,750.00
Difference Between Highest Tribal Asking Price for Rehabilitation and Amount Appropriated by Congress for that Purpose in 1962	$2,913,311.00	$14,409,231.00

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See comment 6.

Asking Prices

The GAO Draft Report concludes that I deviated from the approach used in prior GAO reports on additional compensation for Tribes impacted by the Missouri River Pick-Sloan dam projects "by not using the Tribes' final asking price as a starting point of the analysis (p. 5)." From my perspective, the GAO did not clarify in its previous reports that the final tribal asking price was the starting point of analysis. The GAO's 1998 report on additional compensation for the Cheyenne River Sioux, for example, does not make this clear. It suggested that the Congress "consider using the tribe's request for compensation at the time of the taking" of their lands. For the Crow Creek Sioux and Lower Brule Sioux Tribes that "time of taking" was in not in 1957 and 1961, when the Tribes were compelled to lower their asking price a final time. Rather, it was in 1952 and 1960 when the Army Corps of Engineers took title to their lands through condemnation.

If the GAO used the final asking price as the starting price of analysis in its prior reports, then we can no longer claim that the compensation amounts in the Current Bills "are based on a methodology deemed appropriate by GAO (p. 4)." This is because I did not use the final asking prices as the starting point for determining differences, as I explain below. However, my calculations did use the approach suggested by GAO in the two previous reports for establishing the high range of compensation based on the annual yields of AAA corporate bonds.

The GAO Draft Report indicates that the GAO used the tribe's final asking price "because we believed that it represented the most up-to-date and complete information and that their final position was more realistic than their initial asking price, which may have been inflated for negotiating purposes." I thoroughly disagree with this assumption.

I did not use the final tribal asking prices as a starting point because my historical research made it clear that those final tribal offers were not "more realistic," as the GAO Draft Report asserts. To the contrary, my findings revealed that these so-called "final offers" were made under conditions of extreme duress. The GAO's statement in its 1998 Cheyenne River Sioux report that "the Tribes may not have been willing sellers of their land" is an understatement. The historical record makes it clear that Tribal representatives were continually pressured to resign themselves to the Government's "take it or leave it" posture.

Neither the Crow Creek Sioux Tribe nor the Lower Brule Sioux Tribe was consulted prior to enactment of the Pick-Sloan Plan or the initial construction of the dams that impacted them. Congress in 1952 stipulated by law that negotiations with the Tribes would not be allowed to interfere with the scheduled construction of the dam projects. Thus, the Tribes were not in a position to hold firm to an asking price or walk out of negotiations if they were dissatisfied. Their lands were going to be flooded, and their tribal members relocated whether or not they agreed to settlement terms. The Government negotiators held all the advantages, but chief among those was the leverage of the "impending flood." The Tribes' best hope was to receive funding before the catastrophic events took place. But, in the end, the Crow Creek and Lower Brule Sioux Tribes were not afforded the opportunity to see the realization of even that hope.

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See comment 7.

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

The negotiations with the Tribes for settlement of Big Bend project damages proceeded on a more favorable timetable. However, at the time of the Tribe's "final offers" in March 1961, the tribal negotiators were still under duress as a result of the obvious inevitability of both the project's negative impact on their people and communities and the Government's ability to dictate the terms of settlement. A year before this, in March 1960, the Corps of Engineers had again illegally condemned tribal land. The groundbreaking for the Big Bend project had taken place two months after tribal lands were condemned. The Tribes had not received rehabilitation funds for the reestablishment of tribal members, some of whom had been forced to relocate more than eight years before. The prospect of dismantling the reservations' primary communities lay immediately ahead.

Because of these circumstances, I did not use the Tribes' final offers as a basis for additional compensation. Instead, I used tribal offers that were based on estimates by professional appraisers of the "fair market value" of tribal losses. In reviewing the historical documentation, I did not gain the sense at any time that initial or subsequent tribal asking prices were "inflated," as the GAO Draft Report assumes (p. 5), with the view in mind that they would be "dealt down" in later negotiations.

I did not use the highest offers in every case because I believed that some of those offers were skewed by special circumstances. For example, in May 1957, the Lower Brule Sioux Tribe requested $16,377,981 for tribal rehabilitation in exchange for its agreement to accept the termination of its Federal status. This offer came during the so-called "termination era" when many in Congress, as well as some top Government policymakers, sought to terminate the Federal relationship with as many Tribes as possible. The Lower Brule Sioux Tribe was reacting to the pressure it felt to conform to this policy. The fact that they were the only Tribe ever to volunteer to have their Federal relationship terminated reflected the desperation they felt generally about the negative impacts of the Fort Randall project and their negotiating position in particular.

The Federal status of several Tribes was in fact terminated, but Congress later disavowed this policy and restored most of the terminated Tribes to their former status as federally recognized tribal entities. The Government never seriously considered Lower Brule to be among the Tribes considered eligible for termination, and there was significant opposition to the proposal within the Tribe itself. As a result, the offer was subsequently taken off the table.

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Rehabilitation

In regard to the issue of rehabilitation funds, the GAO Draft Report states that:

> While rehabilitation was the largest component of the Tribes' settlement proposals, we believe it should be considered separately from the comparison for damages because rehabilitation was not directly related to the damage caused by the dams. Funding for rehabilitation, which gained support in the late-1940's, was meant to improve the tribe's social and economic development and prepare some of the Tribes for the termination of federal supervision (p. 5).

Now on pp. 20-21.

See comment 8.

I wholeheartedly disagree with this conclusion. It is true that general rehabilitation funding for Tribes was a component of Federal Indian policy beginning in the late 1940's and was part of the overall termination policy. However, in the context of the settlements made with Tribes impacted by the Pick-Sloan projects, Congress has consistently demonstrated the understanding that funds for rehabilitation were directly linked to the damages caused by the dams.

In establishing statutory guidelines for negotiations with the Cheyenne River and Standing Rock Sioux Tribes in 1950, Congress provided that the final settlements would pay the costs of "reestablishing the tribe . . .so that their economic, social, religious, and community life can be reestablished and protected." It was not expected that this provision could be accomplished solely from compensation provided for direct and indirect damages. In 1949, Congress provided funding for rehabilitation as part of an overall settlement with the Three Affiliated Tribes for damages caused by the Garrison Dam project. Subsequent Congressional settlements with four downriver Sioux Tribes between 1954 and 1962 followed suit by providing rehabilitation funding as part of the overall compensation package.

The largest portion of the rehabilitation funds provided in the initial settlements was used to improve the living conditions of families directly impacted by the dams. The second largest rehabilitation expenditure went for the reestablishment of farms and ranches. These new enterprises had to adjust to the fact that the reservoirs had flooded the most fertile soil and the best open grazing areas and natural shelters. The entire reservations were dependent on the natural resources of the bottomlands along the Missouri River. Most of the rehabilitation money was used to help tribal members adjust to the loss of those resources and the reservation infrastructure. In this context, rehabilitation was directly linked to the damages incurred and was therefore distinct from general rehabilitation funding that was appropriated for the social and economic approval of Tribes that had not suffered catastrophic losses of their environment.

Between 1992 and 2002, Congress provided additional compensation to seven Tribes impacted by Pick-Sloan projects. In each of these cases, it allowed rehabilitation funding to be considered as part of the basis for additional appropriations that established tribal trust funds. In the case of the Yankton and Santee Sioux, Congress in 2002 established a trust fund that compensated these Tribes for the fact that they had not received rehabilitation funding as part of their original settlements. This additional compensation was based on a formula that provided 458 percent more for rehabilitation than was paid for direct damages. This percentage was the

average ratio of rehabilitation to direct damage amounts previously paid by Congress to five other Tribes impacted by Pick-Sloan projects.

In 1992, Congress provided additional compensation to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, and in 2000 to the Cheyenne River Sioux Tribe, based on a range of compensation suggested by the GAO. In both of these cases, the GAO included rehabilitation, along with direct and indirect damages and negotiating expenses, as part of the tribal asking prices that served as the basis of difference between the amounts the Tribes requested and those they received from Congress in initial settlements.

I am not aware that the GAO has ever suggested separate consideration for rehabilitation funds previous to this GAO Draft Report. Congress has clearly established solid precedent for including rehabilitation as part of the basis for additional compensation.

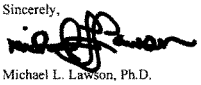
Summary and Conclusion

Congress has not maintained uniformity or consistency in providing additional compensation to the Missouri River Tribes impacted by the Pick-Sloan dam projects. It has used other approaches more often than it has followed the range methodology initially suggested by the GAO in 1991. In the three cases where it did utilize the GAO methodology, Congress was not consistent in applying the highest range of compensation. As a result, there remains a wide disparity in the total compensation that seven Tribes have received from Congress

. There are probably many approaches that could be considered to solve the problem of the continuing inconsistency and inequity of the several statutes that Congress has enacted to compensate the Missouri River Tribes for their considerable damages. My response to the GAO Draft Report has proposed a range of four alternative methods for providing additional compensation to the Lower Brule and Crow Creek Sioux Tribes. Two of those methods would achieve parity with Sioux Tribes that have received more generous settlements. Both my clients, the Lower Brule and Crow Creek Sioux Tribes, and I would appreciate the GAO's extensive evaluation of the alternative methods of compensation proposed in this letter. We also request that your Final Report provide guidance to Congress and to us by suggesting alternative approaches that would both solve the problem of the lack of parity in the settlements and bring final closure to the ongoing issue of additional compensation for Pick-Sloan damages.

I again thank you for giving me the opportunity to comment on the GAO Draft Report. I would also like to express my appreciation for the open dialogue your staff has maintained throughout this review.

Sincerely,



Michael L. Lawson, Ph.D.
Senior Associate

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The following are our comments on the Crow Creek Sioux and Lower Brule Sioux tribes' consultant's letter dated April 27, 2006.

GAO Comments

1. The tribes' consultant did not calculate a range of additional compensation as we suggested in our report. Our approach is to provide the Congress with a range of possible additional compensation based on the difference between the amounts the tribes believed was warranted at the time of the taking and the final settlement amount. We then adjusted the differences using the inflation rate for the lower end of the range and the corporate bond rate for the higher end. In deciding not to calculate a low-end value using the inflation rate, the consultant stated that "...there is no precedent for Congress using the inflation rate as a basis for any additional compensation it has awarded to the seven Tribes since 1992." While the consultant is correct in stating that the Congress has not provided any tribe with additional compensation at the lowest value in the ranges we have calculated, there is a precedent for the Congress providing an amount less than the highest value. In 1992, the Congress authorized $90.6 million in additional compensation for the Standing Rock Sioux tribe, which was toward the low end of the possible compensation range we calculated of $64.5 million to $170 million. Although the Congress did not select the lowest value, having a lower value provided the Congress with a range from which to select. We did not suggest that the consultant should propose a range of additional compensation using four different approaches.

2. Determining whether additional compensation is warranted is a policy decision for the Congress to decide. Nonetheless, if the Congress relies on our analysis in this report and does not provide a third round of compensation to the Crow Creek Sioux and Lower Brule Sioux tribes, the additional compensation provided to five of the seven tribes—the Cheyenne River Sioux tribe, the Crow Creek Sioux tribe, the Lower Brule Sioux tribe, the Standing Rock Sioux tribe, and the Three Affiliated Tribes of the Fort Berthold Reservation—would generally fall within the ranges we calculated using our approach, thereby leaving only two tribes—the Santee Sioux tribe and the Yankton Sioux tribe—that would have had their additional compensation calculated on a per-acre basis and not reviewed by GAO. As a result, we believe using our approach, which is based on the amounts that the tribes believed were warranted at the time of the taking, would provide more consistency among the tribes, rather than less.

3. The tribes' consultant did not make the amounts from different years comparable before making his per-acre calculations. The consultant did not adjust the original compensation amounts from 1947 through 1962 before adding them with the additional compensation amounts from 1992 through 2002. As a result, any comparisons made between the compensation amounts of the Crow Creek Sioux and Lower Brule Sioux tribes and other tribes, such as the Cheyenne River Sioux tribe or the Santee Sioux tribe, would be inaccurate. For example, for the Lower Brule Sioux tribe, the consultant added three amounts from 1958, 1962, and 1997 for a total of $43.6 million, without first adjusting the individual amounts to constant dollars. More importantly, we do not believe that an aggregate per-acre comparison among the tribes is appropriate. We agree with the tribes' consultant that the tribes all suffered similar damages, but similar does not mean exactly the same. Damages would have to be exactly the same among all tribes for there to be equal total compensation on a per-acre basis, and this was not the case. Products, such as buildings, timber, and wildlife, were valued differently depending on type and some tribes lost more of one resource than other tribes. As a result, their per-acre compensation values would be different. Also, about half of the payments to four of the tribes were for rehabilitation that was not directly linked to the acreage flooded by the dams.

4. We disagree that the additional compensation authorized for the Cheyenne River Sioux tribe in 2000 had a "skewing" effect on the additional compensation provided to the four other tribes prior to that time. The additional compensation authorized for the Cheyenne River Sioux tribe fell within the range we calculated, as did the additional compensation authorized for the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux tribe. Our range was based on the amount the Cheyenne Rive Sioux tribe believed was warranted at the time of the taking. Furthermore, as our analysis in this report demonstrates, although the Crow Creek Sioux and Lower Brule Sioux tribes were provided with additional compensation in 1996 and 1997 based on a per-acre analysis, the amounts were consistent with, or higher, than the ranges we calculated in this report.

5. As the tribes' consultant noted in his comments, he did not use the tribes' highest offers in every case in his original analysis because he believed that some of those offers, such as the $16 million rehabilitation figure requested by the Lower Brule Sioux tribe, were skewed by special circumstances. However, the consultant uses these same

highest asking prices in his fourth alternative, even though he believed them to be too unreasonable to include in his original analysis.

6. The tribes' consultant is correct in pointing out that we did not use the exact phrase "final asking price" in our two prior reports. However, the ranges we calculated in our 1991 and 1998 reports were based on the final asking price of the tribes and their final settlements. We used the phrase "at the time of the taking" as a general phrase to denote the time period when the tribes' were negotiating with the government for compensation for the damages caused by the dams. It is not intended to refer to a specific date.

7. We disagree with the tribes' consultant that tribal members were forced to relocate without funds for moving expenses. The tribes did receive initial funds based on the Missouri River Basin Investigations Unit appraisals to help cover relocation expenses 3 years before they made what we refer to as their final asking prices in March 1958. In March 1955, the Crow Creek Sioux tribe received $399,313 and the Lower Brule Sioux tribe received $270,611 from the court, with the understanding that negotiations between the tribes, the U.S. Army Corps of Engineers, and Interior would continue until settlements were achieved. Tribal committees were formed to plan relocation activities with these funds.

8. We disagree with the tribes' consultant regarding his characterization of the rehabilitation portion of the payment the tribes received. We state in this report that it should be considered separately from the comparison of the dams because it was not directly related to the damage caused by the dams. The tribes' consultant states that "...the Congress has consistently demonstrated the understanding that funds for rehabilitation were directly linked to the damages caused by the dams." We agree that funding for rehabilitation became intertwined with compensation for the dams, and we included rehabilitation in our analysis in this report, as shown in tables 9 and 10, as we did for the Cheyenne River Sioux tribe and the Standing Rock Sioux tribe. However, we disagree that rehabilitation is directly linked to the damages caused by the dams for the following three reasons. First, other tribes not affected by dam projects were also provided with rehabilitation funding. Second, rehabilitation funding was to improve the economic and social conditions of all tribal members, it was not limited to only those members directly affected by the dams. Third, it was clear during the negotiations that the government did not consider

rehabilitation funding to be compensation for the damages caused by the dams. In addition, in this report, as in our 1998 report, we show the breakout of each component in our analysis to provide the Congress with the most complete information.

Appendix VI

GAO Contact and Staff Acknowledgments

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Staff Acknowledgments

In addition to the individual named above, Jeffery D. Malcolm, Assistant Director; Greg Carroll; Timothy J. Guinane; Susanna Kuebler; and Carol Herrnstadt Shulman made key contributions to this report. Also contributing to the report were Omari Norman, Kim Raheb, and Jena Y. Sinkfield.

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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 S. 1535, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new language to be added in italic, existing law to which no change is proposed is shown in roman):

LOWER BRULE AND CROW CREEK COMPENSATION ACT

PUBLIC LAW 105–132; 111 STAT. 2565

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SEC. 4. ESTABLISHMENT OF LOWER BRULE SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND.

* * * * * * *

(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 *$129,822,085* **[**$39,300,000**]**, the Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.

PUBLIC LAW 104–223; 110 STAT. 3027

* * * * * * *

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

* * * * * * *

(b) FUNDING.—Beginning with fiscal year 1997, and for each fiscal year thereafter, until such time as the aggregate of the amounts deposited in the Fund is equal to *$69,222,084* **[**$27,500,000**]**, the Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.

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