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SENATE

{ REPORT
109-343

CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION AMENDMENTS ACT OF 2005

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. 1535]

The Committee on Indian Affairs, to which was referred the bill (S. 1535) to amend the Cheyenne River Sioux Tribe Equitable Compensation Act to provide compensation to members of the Cheyenne River Sioux Tribe for damage resulting from the Oahe Dam and Reservoir Project, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE

S. 1535 amends the Cheyenne River Sioux Tribe Equitable Compensation Act (P.L. 106-511) to allow the Tribe to compensate individual landowners from the interest on the Cheyenne River Sioux Tribe Equitable Compensation Fund; accelerate payments to the Cheyenne River Sioux Tribe Equitable Compensation Fund; and direct the Secretary of the Treasury to invest the Fund in interest bearing obligations of the United States.

BACKGROUND

In the late 1940s, the Army Corps of Engineers commenced construction of the Oahe Dam and Reservoir Project along the Missouri River. By the time it was dedicated in 1962, the dam had inundated thousands of acres of the Cheyenne River Sioux Tribe's reservation lands and displaced the populations of several Indian communities living near the river.

In 1984, the Secretary of the Interior established a Joint Tribal-Federal Advisory Committee (JTAC) to examine and make rec-

ommendations with respect to the effects of the impoundment of waters under the Pick-Sloan Program on the tribes along the Missouri River. The JTAC study concluded that the compensation that was provided to the tribes in the 1950's indeed was inadequate and did not take into account the full extent of the tribes' losses.

In 1993, the Cheyenne River Sioux Tribe began seeking additional compensation for the lands taken from it and its members and, in 2000, Congress passed Public Law 106-511. Title I of this law provided additional compensation in the amount of \$290,722,958 to the Tribe for 104,492 acres of land taken as a result of the Oahe Dam project. The law provided for the establishment in the U.S. Treasury of the Cheyenne River Sioux Tribal Recovery Trust Fund, into which \$290,722,958, plus interest, would be deposited in 2011. Beginning in 2011, the Tribe is authorized to withdraw the interest earned on the Fund pursuant to a plan that it is required to develop to promote the economic development, education, infrastructure development and/or social welfare of the Tribe and its members. The law prohibits the Tribe from withdrawing any amount of the principal or distributing the funds to members of the Tribe on a per capita basis.

S. 1535 recognizes that although the Cheyenne River Sioux Tribe was provided additional compensation in 2000, the individual members of the Tribe who lost their individually-owned lands were not. S. 1535 would amend Public Law 106-511 to authorize the Tribe to use funds from the Cheyenne River Sioux Tribal Recovery Trust Fund to provide additional compensation to its members whose lands were taken.

The bill would also require the Secretary of the Treasury to begin depositing monies into the Fund beginning on the first day of the fiscal year beginning after the date of enactment and would change the manner in which interest is accrued on the Fund by requiring that the Lehman Government Bond index—or a similar index determined by the Secretary of the Treasury, after consulting with the Tribe—be applied in determining the interest. Current law requires the Secretary of the Treasury to deposit into the Fund an amount that equals the amount of interest that would have accrued had the principal been deposited in 2001 and invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States. This provision was included in the substitute amendment after consultation with the Department of the Treasury with the support of the Department. See *infra* Letter from Department of the Treasury to Rep. Richard Pombo, September 8, 2006 (included herein under Executive Communications).

LEGISLATIVE HISTORY

S. 1535 was introduced on July 28, 2005, by Senator Johnson, for himself and for Senator Thune, and was referred to the Committee on Indian Affairs. On June 14, 2006, a hearing was held by the Committee. On August 2, 2006, S. 1535 was unanimously passed out of the Committee and ordered reported with amendment in the nature of the substitute.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On August 2, 2006, the Committee, in an open business session, considered S. 1535. By 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 in S. 1535 to “Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2006”.

Section 2. Findings

Section 2 of the substitute amendment makes findings that the Oahe Dam and Reservoir Project flooded the fertile bottom land of the Cheyenne River Sioux Reservation greatly damaging the economy and cultural resources of the Cheyenne River Sioux Tribe. The Tribe was provided additional compensation by Congress with the creation of the Cheyenne River Sioux Tribal Recovery Trust Fund Act, however, that act did not provide for additional compensation to individual landowners that lost land as a result of the Oahe Dam and Reservoir Project. The purposes of this Act are to allow the Cheyenne River Sioux Tribe to use funds from the Tribal Recovery Trust Fund to compensate individual land owners that lost land as a result of the Oahe Dam and Reservoir Project and to accelerate capitalization of the Cheyenne River Sioux Tribal Recovery Trust Fund.

Section 3. Cheyenne River Sioux Tribe Equitable Compensation

Section 3 amends the Cheyenne River Sioux Tribe Equitable Compensation Act to allow the Tribe to compensate individual landowners who lost land to the United States for the Oahe Dam and Reservoir Project from the Tribal Recovery Trust Fund. The amendments directs the Secretary of the Treasury to make five deposits to the Cheyenne River Sioux Tribal Recovery Trust Fund beginning the first fiscal year after enactment from the general fund of the Treasury. The amount to be deposited in each payment would be equal to \$58,144,591.60; and an additional amount equal to the interest that would have accrued if it had been credited on October 1, 2001, the first fiscal year after the Tribal Recovery Trust Fund was enacted by P.L. 106–511.

The Secretary of the Treasury is directed to invest the Fund only in interest bearing obligations of the United States and separate the investments made on the principal and on the interest into two separate accounts within the Tribal Recovery Trust Fund, the principal account and the interest account. The interest earned from investing amounts in the principal account will be transferred to the interest account.

The principal account will be invested in equally divisible portions in the next publicly issued Treasury obligations having a 2-year maturity, a 5-year maturity, and a 10-year maturity, respectively. The interest account shall be invested and reinvested in eligible obligations having the shortest available maturity until the

date on which the amounts are withdrawn by the Secretary of the Treasury and transferred to the Secretary of the Interior for use in accordance with the Act.

At least once each year, the Secretary of the Treasury shall review with the Tribe the results of the investment activities and financial status of the Fund during the preceding calendar year. Before making a modification to the investment structure as authorized by the Act, the Secretary of the Treasury shall consult with the Tribe with respect to the modification.

On the first day of the fiscal year after enactment, and on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw and transfer all funds in the interest account of the Fund to the Secretary of the Interior for use in accordance with the Act.

Payments of additional compensation to individual landowners or their heirs shall not be deposited or transferred into any member landowner's Individual Indian Money and shall not exceed an amount equal to 44.3 percent of the amount transferred by the Secretary of the Interior to the Tribe. The Secretary of the Interior shall provide to the Tribe any record requested by the Tribe to identify the heirs of member land-owners.

Section 3 also amends Section 7 of the underlying law to extinguish all claims of an individual landowner, or their heirs, on the acceptance of any payment by the Tribe for damages resulting from the taking by the United States for the Oahe Dam and Reservoir Project of the Pick-Sloan Missouri River Basin program.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate for S. 1535 is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 21, 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. 1535, the Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2006.

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

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

S. 1535—Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2006

Summary: S. 1535 would amend the Cheyenne River Sioux Tribe Equitable Compensation Act, which was enacted in 2000 to resolve a dispute between that tribe and the federal government. That act established a trust fund for the benefit of the tribe and specifies a schedule for federal deposits to the fund. S. 1535 would change

the timing and amount of those deposits. CBO estimates that enacting S. 1535 would increase direct spending by \$446 million over the 2007–2011 period (with most of that increase in 2011), but would decrease direct spending by \$442 million in 2012, for a net change in direct spending of \$4 million over the 2007–2016 period. Enacting the bill would not affect revenues.

S. 1535 contains no new 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. Enacting this legislation would benefit the Cheyenne River Sioux Tribe.

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

| | By fiscal year, in millions of dollars— | | | | | | | | | |
|---|---|------|------|------|------|------|------|------|------|------|
| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
| CHANGES IN DIRECT SPENDING | | | | | | | | | | |
| Spending Under Current Law: | | | | | | | | | | |
| Transfers to Cheyenne River Sioux Tribal Recovery Trust Fund: | | | | | | | | | | |
| Estimated Budget Authority | 0 | 0 | 0 | 0 | 0 | 442 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 0 | 0 | 0 | 0 | 0 | 442 | 0 | 0 | 0 | 0 |
| Proposed Changes: | | | | | | | | | | |
| Transfers to Cheyenne River Sioux Tribal Recovery Trust Fund: | | | | | | | | | | |
| Estimated Budget Authority | 0 | 0 | 0 | 0 | 407 | –442 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 0 | 0 | 0 | 0 | 407 | –442 | 0 | 0 | 0 | 0 |
| Expenditure of Interest Income: | | | | | | | | | | |
| Estimated Budget Authority | 4 | 8 | 12 | 15 | 0 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 4 | 8 | 12 | 15 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Changes: | | | | | | | | | | |
| Estimated Budget Authority | 4 | 8 | 12 | 15 | 407 | –442 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 4 | 8 | 12 | 15 | 407 | –442 | 0 | 0 | 0 | 0 |
| Spending Under S. 1535: | | | | | | | | | | |
| Estimated Budget Authority | 4 | 8 | 12 | 15 | 407 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 4 | 8 | 12 | 15 | 407 | 0 | 0 | 0 | 0 | 0 |

Basis of estimate: By changing the amount and timing of scheduled deposits to the affected tribal trust fund, CBO estimates that enacting S. 1535 would reduce net direct spending by \$35 million over the 2007–2016 period. We also estimate that allowing the tribe to spend interest earned on balances in the trust fund would increase direct spending by \$4 million in 2007 and \$39 million over the 2007–2016 period. Thus, CBO estimates that enacting the bill would increase net direct spending by \$4 million over the next 10 years. For this estimate, CBO assumes that S. 1535 will be enacted before the end of fiscal year 2006 and that deposits to the trust fund would begin in 2007.

Transfers to the trust fund under current law

In 2000, the Congress enacted the Cheyenne River Sioux Tribe Equitable Compensation Act to compensate the tribe for 104,492 acres of land acquired by the federal government for the Oahe Dam and Reservoir Project, which is part of the Pick-Sloan Missouri River Basin program. The act created the Cheyenne River Sioux Tribal Recovery Trust Fund and directs the Secretary of the Treasury to transfer into the trust fund \$291 million plus the amount of interest that would be accrued if the amount had been deposited in fiscal year 2002. This total transfer, which CBO estimates at approximately \$442 million, is set to occur in 2012 under current law. Once the Secretary completes the transfer, all monetary claims against the United States for the Oahe Dam and Reservoir Project will be extinguished. At that time, consistent with the treatment of similar tribal trust funds, amounts within the trust fund will 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. Because the affected trust fund will be considered nonbudgetary once it is fully capitalized, the scheduled deposit to the trust fund in 2012 will be considered direct spending for a transfer of funds to a nonfederal entity. Thereafter, subsequent cash flows related to the fund will have no effect on the federal budget.

Transfers to the trust fund under S. 1535

S. 1535 would direct the Secretary of the Treasury to begin deposits to the trust fund earlier than under current law. For each of the five years following enactment, the bill would direct the Secretary to transfer to the fund \$58 million plus the amount of interest that would have accrued had such a deposit been made in 2001. CBO estimates such transfers would total \$407 million over the 2007–2011 period—\$290 million for principal and \$117 million for forgone interest.

Because the conditions necessary to remove the fund from the federal budget (i.e. final extinguishment of claims against the federal government) would not be met until the final deposit is made, transfers to the fund during the first four years would be considered intragovernmental and would have no net effect on the federal budget. Upon the final deposit in 2011, however, the trust fund would become nonbudgetary. Reclassifying the trust fund at that time would be recorded in the budget as direct spending of the full balance of the fund—\$407 million.

By accelerating the schedule of payments to the trust fund, S. 1535 would eliminate the Secretary's current obligation to capitalize the trust fund in fiscal year 2012. As a result, CBO estimates that proposed changes to federal transfers would reduce direct spending by \$442 million in that year and by \$35 million over the 2007–2016 period.

Expenditure of interest income under S. 1535

Current law directs the Secretary to distribute any interest earned by the trust fund to the tribe. Under the current schedule, the fund will carry no balances and, therefore, will generate no interest until it is fully capitalized and reclassified as nonbudgetary

in 2012. Therefore, under current law, the federal budget does not include any direct spending for the tribe's use of interest. Under S. 1535, interest would accrue on deposits made in each of the four years prior to the reclassification of the trust fund in 2011. CBO estimates that distributing interest to the tribe in those years would increase direct spending by \$4 million in 2007 and \$39 million over the 2007–2016 period.

Estimated impact on state, local, and tribal governments: S. 1535 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal government. Enacting this legislation would benefit the Cheyenne River Sioux Tribe.

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

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

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. 1535 should be de minimis.

EXECUTIVE COMMUNICATIONS

The Committee has received the following executive communication on S. 1535.



UNDER SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D C

September 8, 2006

Dear Chairman Pombo:

The Department of the Treasury strongly supports the enclosed Herseith amendment to H.R. 3558, the "Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2005," concerning the investment of the Cheyenne River Sioux Tribal Recovery Trust Fund (the trust fund), under consideration by the House Committee on Resources. The amendment would provide a mechanism to compensate the Cheyenne River Sioux Tribe (the Tribe) and add clarity to the investment plan for the trust fund. This amendment would also allow the Tribe access to trust fund interest earnings earlier than under current law. S. 1535, the companion bill to H.R. 3558, was reported by the Senate Committee on Indian Affairs with the same language as is contained in the Herseith amendment.

We have worked closely with Representative Herseith and Senators Johnson and Thune, as well as with the Tribe, to develop the proposed amendment. If you have any questions or need additional information, please do not hesitate to contact me.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the program of the President.

Sincerely,

Randal K. Quarles

The Honorable Richard W. Pombo
Chairman
Committee on Resources
U. S. House of Representatives
Washington, D.C. 20515

Enclosure

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):

**CHEYENNE RIVER SIOUX TRIBE EQUITABLE
COMPENSATION AMENDMENTS ACT OF 2006**

PUBLIC LAW 106–511; 114 STAT. 2365

* * * * *

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) by enacting the Act of December 22, 1944 (58 Stat. 887, 665; 33 U.S.C. 701–1 et seq.), commonly known as the “Flood Control Act of 1944”, Congress approved the Pick-Sloan Missouri River Basin program referred to in this section as the “Pick-Sloan program”—

(A) to promote the general economic development of United States;

(B) to provide for irrigation above Sioux City, Iowa;

(C) to protect urban and rural areas from devastating floods of the Missouri River; and

(D) for other purposes;

(2) the Oahe Dam and Reservoir project—

(A) is a major component of the Pick-Sloan program, and contributes to the economy of the United States by generating a substantial amount of hydropower and

(B) overlies the eastern boundary of the Cheyenne River Sioux Indian Reservation; and

(C) has not only contributed little to the economy of the Tribe, but has severely damaged the economy of the Tribe and members of the Tribe by inundating the fertile, wooded bottom lands of the Tribe along the Missouri River that constituted the most productive agricultural and pastoral lands of the Tribe and the homeland of the members of the Tribe;

(3) the Secretary of the Interior appointed a Joint Tribal Advisory Committee that examined the Oahe Dam and Reservoir project and concluded that—

(A) *the United States did not justly or fairly compensate the Tribe and member landowners for the Oahe Dam and Reservoir project, under which the United States acquired 104,492 acres of land of the Tribe and member landowners; and*

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

[(A) the Federal Government did not justify, or fairly compensate the Tribe for, the Oahe Dam and Reservoir project when the Federal Government acquired acres of land of the Tribe for that project; and

[(B) the Tribe should be adequately compensated for the land acquisition described in subparagraph (A);]

* * * * *

(b) PURPOSES.—The purposes of this title are as follows:

(1) To provide for additional financial compensation to the Tribe *and member landowners* for the acquisition by the Federal Government of 104,492 acres of land of the Tribe *and member landowners* for the Oahe Dam and Reservoir project in a manner consistent with the determinations of the Comptroller General described in subsection (a)(4).

* * * * *

SEC. 103. DEFINITIONS.

In this title:

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

(2) *TRIBAL COUNCIL*.—The term “Tribal Council” means the governing body of the Tribe.

[(1)] (3) *TRIBE*.—The term “Tribe” means the Cheyenne River Sioux Tribe, which is comprised of the Itazipco, Siha Sapa, Minniconjou, and Oohenumpa bands of the Great Sioux Nation that reside on the Cheyenne River Reservation, located in central South Dakota.

* * * * *

SEC. 104. CHEYENNE RIVER SIOUX TRIBAL RECOVERY TRUST FUND.

* * * * *

(b) *FUNDING*.—On the first day of the fiscal year beginning after the date of enactment of the Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2006 and on the first day of each of the following 4 fiscal years (referred to in this section as the ‘capitalization dates’), the Secretary of the Treasury shall deposit into the Fund, from amounts in the general fund of the Treasury—

(1) \$58,144,591.60; and

(2) an additional amount equal to the amount of interest that would have accrued if—

(A) the amount described in paragraph (1) had been—

(i) credited to the principal account as described in subsection (c)(2)(B)(i)(I) on the first day of the fiscal year beginning October 1, 2001; and

(ii) invested as described in subsection (c)(2)(C) during the period beginning on the date described in clause (i) and ending on the last day of the fiscal year before the fiscal year in which that amount is deposited into the Fund; and

(B) the interest that would have accrued under subparagraph (A) during the period described in subparagraph (A)(ii) had been—

(i) credited to the interest account under subsection (c)(2)(B)(ii); and

(ii) *invested during that period in accordance with subsection (c)(2)(D)(I).*

[(b) FUNDING.—On the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (a)—

[(1) \$290,722,958; and

[(2) an additional amount that equals the amount of interest that would have accrued on the amount described in paragraph (1) if such amount had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.]]

* * * * *

(c) INVESTMENTS.—

(1) ELIGIBLE OBLIGATIONS.—*Notwithstanding any other provision of law, the Secretary of the Treasury shall invest the Fund only in interest-bearing obligations of the United States issued directly to the Fund.*

(2) INVESTMENT REQUIREMENTS.—

(A) IN GENERAL.—*The Secretary of the Treasury shall invest the Fund in accordance with this paragraph.*

(B) SEPARATE INVESTMENTS OF PRINCIPAL AND INTEREST.—

(i) PRINCIPAL ACCOUNT.—*The amounts deposited into the Fund under subsection (b)(1) shall be—*

(I) *credited to a principal account within the Fund (referred to in this paragraph as the ‘principal account’); and*

(II) *invested in accordance with subparagraph (C).*

(ii) INTEREST ACCOUNT.—

(I) IN GENERAL.—*The interest earned from investing amounts in the principal account shall be—*

(aa) *transferred to a separate interest account within the Fund (referred to in this paragraph as the ‘interest account’); and*

(bb) *invested in accordance with subparagraph (D).*

(II) CREDITING.—*The interest earned from investing amounts in the interest account, and the amounts deposited into the Fund under subsection (b)(2), shall be credited to the interest account.*

(C) INVESTMENT OF PRINCIPAL ACCOUNT.—

(i) Initial investment.—*Amounts in the principal account shall be initially invested in eligible obligations with the shortest available maturity.*

(ii) SUBSEQUENT INVESTMENTS.—

(I) IN GENERAL.—*On the date on which the amount in the principal account is divisible into 3 substantially equal portions, each portion shall be invested in eligible obligations that are identical (except for transferability) to the next-issued pub-*

licly-issued Treasury obligations having a 2-year maturity, a 5-year maturity, and a 10-year maturity, respectively.

(II) *MATURITY OF OBLIGATIONS.*—As each 2-year, 5-year, and 10-year eligible obligation under subclause (I) matures, the principal of the maturing eligible obligation shall be initially invested in accordance with clause (i) until the date on which the principal is reinvested substantially equally in the eligible obligations that are identical (except for transferability) to the next-issued publicly-issued Treasury obligations having 2-year, 5-year, and 10-year maturities.

(iii) *DISCONTINUATION OF ISSUANCE OF OBLIGATIONS.*—If the Department of the Treasury discontinues issuing to the public obligations having 2-year, 5-year, or 10-year maturities, the principal of any maturing eligible obligation shall be reinvested substantially equally in available eligible obligations that are identical (except for transferability) to the next-issued publicly-issued Treasury obligations with maturities of longer than 1 year.

(D) *INVESTMENT OF INTEREST ACCOUNT.*—

(i) *BEFORE EACH CAPITALIZATION DATE.*—For purposes of subsection (b)(2)(B), amounts considered as if they were in the interest account of the Fund shall be invested in eligible obligations that are identical (except for transferability) to publicly-issued Treasury obligations that have maturities that coincide, to the greatest extent practicable, with the applicable capitalization date for the Fund.

(ii) *ON AND AFTER EACH CAPITALIZATION DATE.*—On and after each capitalization date, amounts in the interest account shall be invested and reinvested in eligible obligations that are identical (except for transferability) to publicly-issued Treasury obligations that have maturities that coincide, to the greatest extent practicable, with the date on which the amounts will be withdrawn by the Secretary of the Treasury and transferred to the Secretary of the Interior for use in accordance with subsection (d).

(E) *PAR PURCHASE PRICE.*—

(i) *IN GENERAL.*—To preserve in perpetuity the amount in the principal account, the purchase price of an eligible obligation purchased as an investment of the principal account shall not exceed the par value of the obligation.

(ii) *TREATMENT.*—At the maturity of an eligible obligation described in clause (i), any discount from par in the purchase price of the eligible obligation shall be treated as interest paid at maturity.

(F) *HOLDING TO MATURITY.*—Eligible obligations purchased pursuant to this paragraph shall be held to their maturities.

(3) *ANNUAL REVIEW OF INVESTMENT ACTIVITIES.*—Not less frequently than once each calendar year, the Secretary of the Treasury shall review with the Tribe the results of the investment activities and financial status of the Fund during the preceding calendar year.

(4) *MODIFICATIONS.*—

(A) *IN GENERAL.*—If the Secretary of the Treasury determines that investing the Fund in accordance with paragraph (2) is not practicable or would result in adverse consequences to the Fund, the Secretary of the Treasury shall modify the requirements to the least extent necessary, as determined by the Secretary of the Treasury.

(B) *CONSULTATION.*—Before making a modification under subparagraph (A), the Secretary of the Treasury shall consult with the Tribe with respect to the modification.

[(c) *INVESTMENT OF TRUST FUND.*—It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in the Secretary of the Treasury's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The Secretary of the Treasury shall deposit interest resulting from such investments into the Fund.]

* * * * *

(d) *PAYMENT OF INTEREST TO TRIBE.*—

(1) *WITHDRAWAL OF INTEREST.*—Beginning on the first day of the fiscal year beginning after the date of enactment of the Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2006, and on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw and transfer all funds in the interest account of the Fund to the Secretary of the Interior for use in accordance with paragraph (2), to be available without fiscal year limitation.

[(1) *WITHDRAWAL OF INTEREST.*—Beginning on the first day of the 11th fiscal year after the date of enactment of this Act and, on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into the Fund for that fiscal year and transfer that amount to the Secretary of the Interior for use in accordance with paragraph (2). Each amount so transferred shall be available without fiscal year limitation.]

* * * * *

(f) *PLAN.*—

(1) *IN GENERAL.*—Not later than 18 months after the date of enactment of this Act, the governing body of the Tribe shall prepare a plan for the use of the payments to the Tribe under subsection (d) (referred to in this subsection as the “plan”).

(2) *CONTENTS OF PLAN.*—The plan shall provide for the manner in which the Tribe shall expend payments to the Tribe under subsection (d) to promote—

(A) economic development;

(B) infrastructure development; (C) the educational, health, recreational, and social welfare objectives of the

Tribe and its members; or (D) any combination of the activities described in subparagraphs (A) through (c).

(3) *MEMBER LANDOWNERS.*—

(A) *ADDITIONAL COMPENSATION.*—

(i) *IN GENERAL.*—*Except as provided in clause (iii), the plan may provide for the payment of additional compensation to member landowners for acquisition of land by the United States for use in the Oahe Dam and Reservoir Project.*

(ii) *DETERMINATION OF HEIRS.*—*An heir of a member landowner shall be determined in accordance with the probate code governing the estate of the member landowner.*

(iii) *EXCEPTION.*—*During any fiscal year, payments of additional compensation to a member landowner under clause (i) shall not—*

(I) *be deposited or transferred into—*

(aa) *the Individual Indian Money account of the member landowner; or*

(bb) *any other fund held by the United States on behalf of the member landowner; or*

(II) *exceed an amount equal to 44.3 percent of the amount transferred by the Secretary of the Interior to the Tribe under paragraph (2).*

(B) *PROVISION OF RECORDS.*—*To assist the Tribe in processing claims of heirs of member landowners for land acquired by the United States for use in the Oahe Dam and Reservoir Project, the Secretary of the Interior shall provide to the Tribe, in accordance with applicable laws (including regulations), any record requested by the Tribe to identify the heirs of member landowners by the date that is 90 days after the date of receipt of a request from the Tribe.”.*

[(3)] (4) *PLAN REVIEW AND REVISION.*—

(A) *IN GENERAL.*—*The Tribal Council shall make available for review and comment by the members of the Tribe a copy of the plan before the plan becomes final, in accordance with procedures established by the Tribal Council.*

(B) *UPDATING OF PLAN.*—*The Tribal Council may, on an annual basis, revise the plan to update the plan. In revising the plan under this subparagraph, the Tribal Council shall provide the members of the Tribe opportunity to review and comment on any proposed revision to the plan.*

(C) *CONSULTATION.*—*In preparing the plan and any revisions to update the plan, the Tribal Council shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.*

[(4)] (5) *Audit.*—

(A) *IN GENERAL.*—*The activities of the Tribe in carrying out the plan shall be audited as part of the annual single-agency audit that the Tribe is required to prepare pursuant to the Office of Management and Budget circular numbered A-133.*

(B) *DETERMINATION BY AUDITORS.*—*The auditors that conduct the audit described in subparagraph (A) shall—*

(i) determine whether funds received by the Tribe under this section for the period covered by the audit were expended to carry out the plan in a manner consistent with this section; and

(ii) include in the written findings of the audit the determination made under clause (i).

(C) INCLUSION OF FINDINGS WITH PUBLICATION OF PROCEEDINGS OF TRIBAL COUNCIL.—A copy of the written findings of the audit described in subparagraph (A) shall be inserted in the published minutes of the Tribal Council proceedings for the session at which the audit is presented to the Tribal Council.

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SEC. 105. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS AND SERVICES.

No payment made to the Tribe *or any member landowner* under this title shall result in the reduction or denial of any service or program with respect to which, under Federal law—

(1) the Tribe is otherwise entitled because of the status of the Tribe as a federally recognized Indian tribe; or

(2) any individual who is a member of the Tribe is entitled because of the status of the individual as a member of the Tribe.

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SEC. 107. EXTINGUISHMENT OF CLAIMS.

(a) *IN GENERAL.*—On the date on which the final payment is deposited into the Fund under section 104(b), all monetary claims that the Tribe has or may have against the United States for the taking by the United States of land and property of the Tribe for the Oahe Dam and Reservoir Project of the Pick-Sloan Missouri River Basin program shall be extinguished.

(b) *EFFECT OF ACCEPTANCE OF PAYMENT.*—On acceptance by a member landowner or an heir of a member landowner of any payment by the Tribe for damages resulting from the taking by the United States of land or property of the Tribe for the Oahe Dam and Reservoir Project of the Pick-Sloan Missouri River Basin program, all monetary claims that the member landowner or heir has or may have against the United States for the taking shall be extinguished.

[Upon the deposit of funds (together with interest) into the Fund under section 104(b), all monetary claims that the Tribe has or may have against the United States for the taking, by the United States, of the land and property of the Tribe for the Oahe Dam and Reservoir Project of the Pick-Sloan Missouri River Basin program shall be extinguished.**]**