

105TH CONGRESS
2D SESSION

S. 1905

To provide for equitable compensation for the Cheyenne River Sioux Tribe,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 2, 1998

Mr. DASCHLE introduced the following bill; which was read twice and referred
to the Committee on Indian Affairs

A BILL

To provide for equitable compensation for the Cheyenne
River Sioux Tribe, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Cheyenne River Sioux Tribe Equitable Compensation
6 Act”.

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—The Congress finds that—

9 (1) Congress approved the Pick-Sloan Missouri
10 River Basin program by passing the Act of Decem-

1 ber 22, 1944, commonly known as the “Flood Con-
2 trol Act of 1944” (58 Stat. 887, chapter 665; 33
3 U.S.C. 701–1 et seq.)—

4 (A) to promote the general economic devel-
5 opment of the United States;

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

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

10 (D) for other purposes;

11 (2) the Oahe Dam and Reservoir project is a
12 major component of the Pick-Sloan program, and
13 contributes to the economy of the United States by
14 generating a substantial amount of hydropower and
15 impounding a substantial quantity of water;

16 (3) notwithstanding the contributions referred
17 to in paragraph (1), the Oahe Dam and Reservoir
18 project has contributed little to the economy of the
19 Tribe;

20 (4) the Oahe Dam and Reservoir project over-
21 lies the eastern boundary of the Crow Creek Indian
22 Reservation;

23 (5) the Oahe Dam and Reservoir project has—

24 (A) inundated the fertile, wooded bottom
25 lands of the Tribe along the Missouri River that

1 constituted the most productive agricultural
2 and pastoral lands of the Tribe and the home-
3 land of the members of the Tribe; and

4 (B) as a result of that inundation, severely
5 damaged the economy of the Tribe and the
6 members of the Tribe;

7 (6) the Secretary appointed a Joint Tribal Ad-
8 visory Committee that examined the Oahe Dam and
9 Reservoir project and that advisory committee cor-
10 rectly concluded that—

11 (A) the Federal Government did not jus-
12 tify, or fairly compensate the Tribe for, the
13 Oahe Dam and Reservoir project when the Fed-
14 eral Government acquired 104,492 acres of land
15 of the Tribe for that project; and

16 (B) the Tribe should be adequately com-
17 pensated for the taking described in subpara-
18 graph (A); and

19 (7) after applying the same method of analysis
20 used for the compensation of similarly situated In-
21 dian tribes, the Comptroller General of the United
22 States determined the amount of compensation for
23 the taking described in paragraph (6) and deter-
24 mined that the appropriate amount of compensation

1 to pay the Tribe for the taking would be
2 \$290,722,958;

3 (8) the Tribe is entitled to receiving additional
4 financial compensation for the taking described in
5 paragraph (6)(A) in a manner consistent with the
6 determination of the Comptroller General under
7 paragraph (7); and

8 (9) the establishment of a dual cash account
9 with the amounts made available to the Tribe under
10 this Act is consistent with the principles of self-gov-
11 ernance and self-determination.

12 (b) PURPOSES.—The purposes of this Act are as fol-
13 lows:

14 (1) To provide for additional financial com-
15 pensation to the Tribe for the taking of 104,402
16 acres of land of the Tribe for the Oahe Dam and
17 Reservoir project in a manner consistent with the
18 determination of the Comptroller General of the
19 United States described in subsection (a)(7).

20 (2) To provide for the establishment of the
21 Cheyenne River Sioux Recovery Account, a dual
22 cash account to be managed by the Office in order
23 to make payments to the Tribe to carry out projects
24 under a plan prepared by the Tribe.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) ACCOUNT.—The term “account” means the
4 Cheyenne River Sioux Recovery Account established
5 under section 4.

6 (2) CHEYENNE RIVER SIOUX TRIBE; TRIBE.—
7 The term “Cheyenne River Sioux Tribe” or “Tribe”
8 means the Itazipco, Siha Sapa, Minnicoujou, and
9 Oohenumpa bands of the Great Sioux Nation that
10 reside on the Cheyenne Reservation, located in cen-
11 tral South Dakota.

12 (3) FUND ACCOUNT.—The term “Fund Ac-
13 count” means a consolidated account for tribal trust
14 funds in the Treasury of the United States that—

15 (A) is managed by the Secretary, through
16 the Office, in accordance with applicable law;
17 and

18 (B) as of the date of enactment of this
19 Act, is numbered 14X8365.

20 (4) OFFICE.—The term “Office” means the Of-
21 fice of Trust Fund Management within the Depart-
22 ment of the Interior.

23 (5) PROGRAM.—The term “Program” means
24 the power program of the Pick-Sloan Missouri River
25 Basin program, administered by the Western Area
26 Power Administration.

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior.

3 **SEC. 4. CHEYENNE RIVER SIOUX TRIBAL RECOVERY AC-**
4 **COUNT.**

5 (a) CHEYENNE RIVER SIOUX TRIBAL RECOVERY AC-
6 COUNT.—The Secretary of the Treasury shall establish in
7 the Fund Account a dual cash account to be known as
8 the “Cheyenne River Sioux Tribal Recovery Account”.
9 The dual cash account shall have a principal component
10 and an interest component. The interest component of the
11 account shall be used to make payments to the Tribe in
12 accordance with this Act. The principal component of the
13 account may not be expended. The corpus and the income
14 of the account may be invested in accordance with applica-
15 ble law.

16 (b) FUNDING.—

17 (1) IN GENERAL.—Subject to paragraphs (2)
18 and (3), beginning with fiscal year 1999, and for
19 each fiscal year thereafter, until such time as the ag-
20 gregate of the amounts deposited is \$290,722,958,
21 the Secretary of the Treasury shall deposit into the
22 fund an amount equal to 10 percent of the receipts
23 from the deposits to the Treasury of the United
24 States for the preceding fiscal year from the Pro-
25 gram.

1 (2) PERCENTAGE AMOUNT.—Beginning with
2 fiscal year 2004, if no other law provides for the
3 compensation to parties in conjunction with an ap-
4 plicable plan for the Program, the Secretary of the
5 Treasury shall deposit into the fund an amount
6 equal to 25 percent of the receipts from the deposits
7 to the Treasury of the United States for the preced-
8 ing fiscal year from the Program, until such time as
9 the aggregate of the amounts deposited into the
10 fund from such receipts and receipts deposited under
11 paragraph (1) equals the amount specified in para-
12 graph (1).

13 (3) ADDITIONAL INTEREST.—If, by the date
14 that is 60 days after the end of a fiscal year, the
15 Secretary of the Treasury fails to deposit into the
16 fund an amount determined under paragraph (1) or
17 (2), the Secretary of the Treasury shall deposit, in
18 addition the applicable amount required to be depos-
19 ited under paragraph (1) or (2), interest on the
20 amount required to be deposited, determined for the
21 period beginning on the day after the termination of
22 that 60-day period and ending on the date on which
23 the amount determined under paragraph (1) or (2)
24 is deposited, and based on a rate of interest that is

1 commonly referred to as the Treasury overnight
2 rate.

3 (c) WITHDRAWAL.—

4 (1) IN GENERAL.—Subject to paragraph (2), in
5 accordance with section 202 of the American Indian
6 Trust Fund Management Reform Act of 1994 (25
7 U.S.C. 4022), the Tribe may, in accordance with
8 that Act, voluntarily withdraw some or all of the
9 funds held in trust for the Tribe by the United
10 States and managed by the Secretary through the
11 Office.

12 (2) LIMITATION.—No amount of principal with-
13 drawn under this subsection may be expended by the
14 Tribe. The Tribe may withdraw funds under this
15 subsection on the condition that the Tribe may ex-
16 pend only the interest earned on the principal.

17 (e) PAYMENT OF INTEREST TO TRIBE.—In accord-
18 ance with this Act, the Secretary, acting through the Of-
19 fice, and in a manner consistent with the first section of
20 the Act of June 24, 1938 (52 Stat. 1037 et seq., chapter
21 648; 25 U.S.C. 162a) shall make payments to the Tribe
22 from the interest credited to the interest component of the
23 account, beginning at the end of the first fiscal year dur-
24 ing which interest is credited to the account. The Tribe
25 shall use the payments made under this subsection only

1 for carrying out projects and programs pursuant to the
2 plan prepared under subsection (f).

3 (f) PLAN.—

4 (1) IN GENERAL.—The governing body of the
5 Tribe shall, not later than 18 months after the date
6 of enactment of this Act, prepare a plan for the use
7 of the payments made to the Tribe under subsection
8 (e).

9 (2) CONTENTS OF PLAN.—The plan developed
10 under this subsection shall provide for the manner
11 in which the Tribe will expend the payments referred
12 to in paragraph (1) to promote—

13 (A) economic development;

14 (B) infrastructure development;

15 (C) the educational, health, recreational,
16 and social welfare objectives of the Tribe and
17 its members; or

18 (D) any combination of the activities re-
19 ferred to in subparagraphs (A) through (C).

20 (3) PLAN REVIEW AND REVISION.—The Tribal
21 Council of the Tribe shall make available for review
22 and comment by the members of the Tribe a copy
23 of the plan before the plan becomes final, in accord-
24 ance with procedures established by the Tribal
25 Council. The Tribal Council may, on an annual

1 basis, update the plan by revising the plan in a man-
2 ner that provides the members of the Tribe to review
3 and comment on any proposed revision.

4 (4) AUDIT.—The activities of the Tribe in car-
5 rying out the plan under this subsection shall be au-
6 dited as part of an annual audit conducted for the
7 Tribe. The auditors that conduct the audit shall in-
8 clude in the written findings of that audit a deter-
9 mination whether the funds received by the Tribe
10 under this section were expended in a manner con-
11 sistent with this section to carry out the plan under
12 this subsection.

13 (g) TRANSFERS; LIMITATIONS.—

14 (1) WITHDRAWAL AND TRANSFER OF FUNDS.—
15 In a manner consistent with the requirements of this
16 Act, upon request of the Secretary of the Interior,
17 the Secretary of the Treasury shall withdraw
18 amounts in the interest component of the account
19 and transfer such amounts to the Secretary of the
20 Interior for use in accordance with paragraph (2).
21 The Secretary of the Treasury may only withdraw
22 funds from the account for the purpose specified in
23 paragraph (2).

24 (2) PAYMENTS TO TRIBE.—The Secretary of
25 the Interior shall use the amounts transferred under

1 paragraph (1) only for the purpose of making an-
2 nual payments to the Tribe.

3 (4) PROHIBITION ON PER CAPITA PAYMENTS.—

4 No portion of any payment made under this sub-
5 section may be distributed to any member of the
6 Tribe on a per capita basis.

7 **SEC. 5. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS**
8 **AND SERVICES.**

9 (a) IN GENERAL.—No payment made to the Tribe
10 pursuant to this Act shall result in the reduction or denial
11 of any service or program to which, pursuant to Federal
12 law—

13 (1) the Tribe is otherwise entitled because of
14 the status of the Tribe as a federally recognized In-
15 dian tribe; or

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

19 (b) EXEMPTIONS FROM TAXATION.—No payment
20 made pursuant to this Act shall be subject to any Federal
21 or State income tax.

22 (c) POWER RATES.—No payment made pursuant to
23 this Act shall affect Pick-Sloan Missouri River Basin
24 power rates.

1 **SEC. 6. SALE OF WESTERN AREA POWER AUTHORITY.**

2 (a) IN GENERAL.—If, before the amount specified in
3 section 4(b)(1) is deposited into the Fund, the United
4 States sells or otherwise transfers title to the assets and
5 income of the Western Area Power Authority to an entity
6 other than the United States—

7 (1) an amount of the proceeds from that sale
8 equal to the difference between the amount specified
9 in section 4(b)(1) and the aggregate amount that, as
10 of the sale of power authority, had been paid into
11 the Fund, shall be deposited in the Fund; or

12 (2) the purchaser may assume responsibility for
13 making payments to the Treasury of the United
14 States for deposit in the Fund in amounts deter-
15 mined under section 4(b)(1).

16 (b) SECURITY.—If a purchaser assumes the respon-
17 sibility for making the payments and shall provide the
18 Tribe with appropriate security to secure those payments.

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