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CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION ACT

NOVEMBER 8, 1999.—Ordered to be printed

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

REPORT

[To accompany S. 964]

The Committee on Indian Affairs, to which was referred the bill (S. 964) to provide for equitable compensation for the Cheyenne River Sioux Tribe, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 964, the Cheyenne River Sioux Tribe Equitable Compensation Act, is to provide additional compensation to the Cheyenne River Sioux Tribe (CRST) of South Dakota for the acquisition by the United States of 104,492 acres of land of the Tribe for the Oahe Dam and Reservoir on the Missouri River.

BACKGROUND

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

In 1948, the Army Corps of Engineers (ACE), took possession of CRST lands along the river and began construction of the Oahe

[1] See generally "Cheyenne River Sioux Tribe's Additional Compensation Claim for the Oahe Dam", GAO/RCED–98–39, January, 1998.

79–010

Dam and Reservoir project. By the time Oahe Dam was dedicated, in 1962, the accrued impacts of the dam and reservoir on the CRST were dramatic; four reservation communities had been flooded by the project, 104,492 acres of tribal lands had been inundated, and 181 families (30% of the tribal population) had been forced to relocate from the fertile bottom lands along the river to much less hospitable upland prairie.

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

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

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

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

It was not until 1954 that the Congress enacted legislation to provide compensation to the Tribe in exchange for the acquisition of the Tribe's lands. In settlement negotiations prior to enactment of this legislation, the CRST requested some $23.5 million as a compensation for lands taken and rehabilitation of tribal standards of living. However, the legislation authorized the payment of only $10.6 million for damages, rehabilitation and administrative expenses related to the settlement, less than half of what the Tribe requested and documented.[2] This amount did not include any compensation for the diminishment of the value of some 800,000 acres of grazing lands, which resulted from the loss of access to the bottom lands along the river as a result of the creation of the reservoir. As a rough indicator of under-compensation to the Tribe, non-Indians received an average of $49.22 per acre for their agricultural lands, while the Tribe received only $21.49 per acre.

When the Tribe learned that the Congress had passed legislation providing less than half of the amount of compensation which it had requested, it began a campaign to persuade President Eisenhower to veto the bill. However, it was dissuaded from doing so by the late Senator Karl Mundt (R–SD), who, writing in behalf of the South Dakota Congressional delegation, acknowledged that the settlement was less than it should have been, but promised to remedy the problem in the next session: "If the Tribe would accept the bill as it is now before the President, they would have the assurance that the South Dakota Congressional Delegation would cooperate fully to see that the necessary amendments to the law are introduced and acted upon during the next Congress * * * you may be sure that we will all do our level best to finish the job."[3] In the years that followed, however, no such amendments were introduced or acted upon.

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

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

[2] P.L. 83–776, 68 Stat. 1191 (Sept. 3, 1954).
[3] Letter from Karl E. Mundt to CRST Chairman Frank Ducheneaux, August 30, 1954.

sult of the building of the Garrison Dam and the amount the Tribes received in compensation in 1952. The GAO found numerous problems with these analyses and recommended, instead, that the Congress base its decision on how much to provide in additional compensation on a formula. This formula included a range of additional compensation predicated on the present value of the difference between the amount originally requested by the tribe and the amount received. The high end of the range was established by compounding the difference using the corporate interest rate; the low end was established by compounding the difference using the cost of living rate. The GAO did not consider whether additional compensation should be provided, or whether the original compensation was adequate.[4]

In view of the JTAC study findings and the GAO review, the Congress enacted legislation that acknowledged, first, that the U.S. government did not justly compensate the Tribes at Fort Berthold and Standing Rock when it acquired their lands and, second, that the Tribes were entitled to additional compensation. Accordingly, the legislation established a $149.2 million development trust fund for the Three Affiliated Tribes of the Fort Berthold Reservation and a $90.6 million development trust fund for the Standing Rock Sioux Tribe.[5] In arriving at these amounts, the Congress adopted the GAO formula using the corporate interest rate option. Both of these trust funds were capitalized in the U.S. Treasury with receipts deposited from the power program of the Pick-Sloan Program. The legislation provides that the Tribes may only spend interest earned on these trust funds.

In 1996, after considering extensive documentation which established that the Crow Creek Sioux Tribe had been adversely impacted by Pick-Sloan dam construction on the Missouri River and that the compensation received by the Tribe also did not bear a fair relationship to the adverse consequences suffered by the Tribe, the Congress enacted legislation establishing a $27.5 million trust fund as additional compensation for the Crow Creek Sioux Tribe.[6] In 1997, on the basis of a similar, well-documented historical record, the Congress enacted legislation establishing a $39.3 million trust fund for the Lower Brule Sioux Tribe.[7] These trust funds were funded in the same manner, and with similar restrictions, as were those established for Fort Berthold and Standing Rock.

In 1993, the Cheyenne River Siouix Tribal Council unanimously passed a resolution stating that the Tribe had not received adequate compensation for the damages resulting from construction of Oahe Dam and Reservoir. The Tribe hired a consultant to prepare a new economic analysis of the damages, which was published in July, 1994.[8] At the request of Senator Daschle, the GAO assessed this new economic analysis, which concluded that the Tribe should receive additional compensation in an amount between $279 million and $300.7 million for damages, rehabilitation and administra-

[4] Indian Issues: Compensation Claims Analyses Overstate Economic Losses (GAO/RCED–91–77, May 21, 1991).
[5] P.L. 102–575, title XXXV, 106 Stat. 4731 (Oct. 30, 1992).
[6] P.L. 104–223, 110 Stat. 3026 (Oct. 1, 1996).
[7] P.L. 105–132, 111 Stat. 2563 (Dec. 2, 1997).
[8] Cheyenne River Sioux Tribe's Additional Compensation claim for the Oahe Dam (GAO/RCED–98–39, Jan. 1998).

tive expenses. Using the 1991 formula, the GAO calculated the amount of additional compensation to be $290 million. The GAO noted that the amounts that comprised the $290 million figure cannot be readily compared with the amounts previously paid to the other Tribes, first, because the damage to each reservation was unique, depending on the acreage lost, the number of tribal members living in the takiing area, and the value of the resources located in the taking area. Also, the additional amounts for Fort Berthold and Standing Rock were based on 1990 values.

SUMMARY OF PROVISIONS

S. 964, as amended and reported by the Committee on October 13, 1999, contains two titles. Title I, the Cheyenne River Sioux Tribe Equitable Compensation Act, would provide additional compensation for the Cheyenne River Sioux Tribe pursuant to the GAO formula in an amount roughly proportionate to that provided for the Fort Berthold, Standing Rock, Crow Creek and Lower Brule tribes. The bill provides for the establishment in the U.S. Treasury of the Cheyenne River Sioux Tribal Recovery Trust Fund. On the first day of the 11th fiscal year that begins after the enactment of S. 964, the Secretary of the Treasury is directed to deposit into the Fund $290,722,958 from the General Fund of the Treasury, together with an additional amount that equals the amount of interest that would have accrued on that deposit had it been invested in interest-bearing 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. The Secretary is to invest these funds only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States, and to deposit interest from such investments in the Fund. Beginning on the first day of the eleventh fiscal year after enactment, and on the first day of each fiscal year thereafter, the Secretary of the Treasury shall transfer the aggregate amount of interest on the Fund to the Secretary of the Interior, who shall use the money to make payments to the Tribe pursuant to tribal resolution. The Tribe could spend the interest earned on the Fund to promote its economic and infrastructure development, and the educational, health, recreational and social welfare objectives of the Tribe and its members. No amount of the principal could be withdrawn nor could any of the interest be used to make per capita payments to tribal members. Upon the deposit of funds, together with interest, into the Fund, S. 964 would extinguish all monetary claims which the Tribe has or may have against the United States for the taking of its land and property by the United States for the Oahe Dam and Reservoir Project.

Title II of S. 964, as amended, entitled the "Bosque Redondo Memorial Act." This title would authorize $1,000,000 in fiscal year 2000 and $500,000 for each of fiscal years 2001 and 2002 for use as matching grants to the State of New Mexico to create a memorial to the nearly 9,000 Navajo Indians who were detained by the United States in 1863 and forced to march 350 miles to Bosque Redondo, New Mexico, where they were incarerated at Fort Sumner, together with members of the Mescalero Apache Tribe. In 1868, the

Navajo Nation signed a treaty with the United States, and the survivors of the "Long Walk" were allowed to return to their reservation after surviving five years of harsh living conditions. The grants and State matching funds would provide for the construction of a memorial and visitor/interpretive center at Fort Sumner State Monument in New Mexico that would offer all Americans opportunities to learn about and appreciate the significance of a painful episode in the history of the Navajo and Apache peoples' relationship with the United States Government.

LEGISLATIVE HISTORY

In the 105th Congress, on April 2, 1998, Senator Daschle (D–SD) introduced S. 1905, the Cheyenne River Sioux Tribe Equitable Compensation Act, which was referred to the Committee on Indian Affairs. The Committee held a hearing on S. 1905 on July 8, 1998, and marked up and reported the bill on July 15, 1998 (S. Rept. 105–363). The Congress adjourned without further action being taken on S. 1905.

On May 5, 1999, Senator Daschle introduced S. 964, which included the provisions of S. 1905 as reported by the Committee on Indian Affairs in the 105th Congress. On October 13, 1999, the Committee held a hearing on S. 964, at which representatives of the Tribe and the Administration iterated their support for the Cheyenne River Sioux Tribe Equitable Compensation Act. The Administration's testimony expressed concern regarding the bill's funding provisions. This concern is addressed in the amendment-in-the-nature-of-a-substitute to S. 964 adopted by the Committee, which provides that the principal of the Tribal Recovery Trust Fund, together with interest from the date of enactment of S. 964, will not be deposited into the Fund until the 11th fiscal year after enactment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on August 3, 1999, adopted an amendment-in-the-nature-of-a-substitute to S. 964 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS OF THE SUBSTITUTE AMENDMENT

TITLE I—CHEYENNE RIVER SIOUX TRIBE EQUITABLE COMPENSATION

Section 101—Short title

This section cites the short title of S. 964 as the "Cheyenne River Sioux Tribe Equitable Compensation Act".

Section 102—Findings and purposes

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

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

urban and rural areas from floods of the Missouri River; and for other purposes;

The second finding is that the Oahe Dam and Reservoir project: (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 impounding a substantial quantity of water; (B) overlies the eastern boundary of the Cheyenne River Sioux Indian Reservation; and, (C) not only has contributed little to the economy of the Cheyenne River Sioux Tribe but also has severely damaged the economy of the Tribe by inundating its most productive agricultural and pastoral lands;

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

The fourth finding is that the Comptroller General of the United States, after applying the same method of analysis used for the compensation of similarly situated Indian tribes, determined that the appropriate amount of compensation to pay the Tribe for the acquisition described in the sixth finding would be $290,722,958;

The fifth finding is that the Tribe is entitled to receive additional financial compensation for the acquisition described in the third finding in a manner consistent with the determination of the Comptroller General referred to in the fourth finding; and,

The sixth finding is that the establishment of a Tribal Recovery Trust fund (hereinafter the "Fund") with the amounts made available to the Tribe under this title is consistent with the principles of self-governance and self-determination.

Subsection (b) of section 2 states the purposes of this title as (1) to provide for additional financial compensation to the Tribe for the acquisition of 104,492 acres of tribal land for the Oahe Dam and Reservoir project in a manner consistent with the determination of the Comptroller General of the United States described in the fourth finding; and, (2) to provide for the establishment of the Cheyenne River Sioux Tribal Recovery Trust Fund to be managed by the Secretary of the Treasury to make payments to the Tribe to carry out projects under a plan prepared by the Tribe.

Section 103—Definitions

This section defines two terms used in title I: "Tribe" means the Itazipco, Siha Sapa Minniconjou, and Oohenumpa bands of the Great Sioux Nation that reside on the Cheyenne River Reservation, located in central South Dakota; and "Tribal Council" means the governing body of the Tribe.

Subsection 104—Cheyenne River Sioux Tribal Recovery Trust Fund

Subsection (a) establishes in the Treasury of the United States a fund to be known as the "Cheyenne River Sioux Tribal Recovery Trust Fund", which shall consist of any amounts deposited into the Fund under title I.

Subsection (b) requires the Secretary of the Treasury, on the first day of the 11th fiscal year that begins after the date of enactment of this Act, to deposit into the Fund, from the General Fund of the Treasury, $290,722,958, plus an additional amount that equals the amount of interest that would have accrued on the initial amount 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 enactment of this Act and compounded annually thereafter.

Subsection (c) requires the Secretary to invest such portion of the Fund as is not, in the Secretary'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.

Subsection (d)(1) requires the Secretary, 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, to 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. Subparagraph (2)(A) requires the Secretary of the Interior to use the amounts transferred under paragraph (1) only for the purpose of making payments to the Tribe, as such payments are requested by the Tribe pursuant to tribal resolution. Subparagraph (2)(B) bars the Secretary from making any payments under subparagraph (2)(A) until after the Tribe has adopted a plan under subsection (f). Subparagraph (2)(C) requires the Tribe to use the payments made under subparagraph (B) only for carrying out projects and programs under the plan prepared under subsection (f).

Subsection (e) provides that the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b) except as provided in subsections (c) and (d)(1).

Subsection (f)(1) requires that, no later than 18 months after the date of enactment of this Act, the governing body of the Tribe is to prepare a plan for the use of the payments made to the Tribe under subsection (d).

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

Subsection (f)(3) requires the Tribal Council to make available for review and comment by the members of the Tribe a copy of the plan before it becomes final, in accordance with procedures established by the Tribal Council. The Tribal Council may update the plan annually by revising it in a manner that provides the members of the Tribe to review and comment on any proposed revision. In preparing the Plan and any revisions to update it, the Tribal

Council shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.

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

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

Section 105—Eligibility of tribe for certain programs and services

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

Section 106—Authorization of appropriations

This section authorizes to be appropriated such funds as may be necessary to cover the administrative expenses of the Trust Fund.

Section 107—Extinguishment of claims

This section provides that, 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.

TITLE II—BOSQUE REDONDO MEMORIAL

Sec. 201. Short title

Section (a) of this section sets forth thirteen Congressional findings.

The first finding states that in 1863, the United States detained nearly 9,000 Navajo and forced their migration across nearly 350 miles of land to Bosque Redondo, a journey know as the "Long Walk".

The second finding states that Mescalero Apache people were also incarcerated at Bosque Redondo.

The third finding states that the Navajo and Mescalero Apache people labored to plant crops, dig irrigation ditches and build housing, but drought, cutworms, hail, and alkaline Pecos River water created severe living conditions for the captives.

The fourth finding states that the suffering endured by the Navajo and Mescalero people forged a new understanding of their strengths as Americans.

The fifth finding states that the Treaty of 1868, signed by the United States and the Navajo Tribes, recognizing the Navajo Nation as it exists today.

The sixth finding states that the State of New Mexico has appropriated a total of $123,000 for a planning study and for the design of the Bosque Redondo Memorial.

The seventh finding states that individuals and business in DeBaca County donated $6,000 toward the production of a brochure relating to the Bosque Redondo Memorial.

The eighth finding states that the Village of Fort Sumner donated 70 acres of land to the State of New Mexico contiguous to the existing 50 acres comprising Fort Sumner State Monument, contingent on the funding of the Bosque Redondo Memorial.

The ninth finding states that full architectural plans and the exhibit design for the Bosque Redondo Memorial have been completed.

The tenth finding states that the Bosque Redondo Memorial project has the encouragement of the President of the Navajo Nation and the President of the Mescalero Apache Tribe, who have each appointed tribal members to serve as project advisors.

The eleventh finding states that the Navajo Nation, the Mescalero Tribe and the National Park Service are collaborating to develop a symposium on the Bosque Redondo Long Walk and a curriculum for inclusion in the New Mexico school curriculum.

The twelfth finding states that the interpretive center would provide important educational and enrichment opportunities for all Americans.

The thirteenth finding states that Federal financial assistance is needed for the construction of a Bosque Redondo Memorial.

Subsection (b) sets forth the purposes of this title as (1) to commemorate the people who were interned at Bosque Redondo; (2) to pay tribute to the Native populations' ability to rebound from suffering and establish strong, living communities that have long been a major influence in the State of New Mexico and in the United States; (3) to provide Americans of all ages a place to learn about the Bosque Redondo experience and how it resulted in the establishment of strong American Indian Nations from once divergent bands; and, (4) to support the construction of the Bosque Redondo Memorial commemorating the detention of the Navajo and Mescalero Apache people at Bosque Redondo from 1863 to 1868.

Section 203. Definitions

This section defines two terms used in title II: "Memorial" means the building and grounds known as the Bosque Redondo Memorial, and "Secretary" means the Secretary of Defense.

Section 204. Bosque Redondo Memorial

Subsection (a) provides that, upon the request of the State of New Mexico, the Secretary is authorized to establish a Bosque Redondo Memorial within the boundaries of Fort Sumner State Monument in New Mexico. No memorial shall be established with-

out the consent of the Navajo Nation and the Mescalero Apache Tribe.

Subsection (b) provides that the components of the Memorial shall include: (1) exhibit space, a lobby area that represents design elements from traditional Mescalero and Navajo dwellings, administrative areas that include a resource room, library, workrooms and offices, restrooms, parking areas, sidewalks, utilities, and other visitor facilities; (2) a venue for public education programs; and, (3) a location to commemorate the Long Walk of the Navajo people and the healing that has taken place since that event.

Section 205. Construction of Memorial

Subsection (a) provides that the Secretary may award a grant to the State of New Mexico to provide up to 50 percent of the total cost of construction of the Memorial, and that the non-Federal share of construction costs of the Memorial shall include funds previously expended by the State for the planning and design of the Memorial, and by non-Federal entities for the production of a brochure relating to the Memorial.

Subsection (b) requires the State of New Mexico, to be eligible for a grant under this section, (1) to submit to the Secretary a proposal that provides assurances that the Memorial will comply with all applicable laws, including building codes and regulations, and includes such other information and assurances as the Secretary may require; and, (2) to enter into a Memorandum of Understanding with the Secretary that shall include a timetable for the completion of construction and the opening of the Memorial; assurances that construction contracts will be competitively awarded; assurances that the State or Village of Fort Sumner will make sufficient land available for the Memorial; the specifications of the Memorial which shall comply with all applicable Federal, State, and local building codes and laws; arrangements for the operation and maintenance of the Memorial upon completion of construction; a description of Memorial collections and educational programming; a plan for the design of exhibits including the collections to be exhibited, security, preservation, environmental controls, and presentations in accordance with professional standards; an agreement with the Navajo Nation and the Mescalero Tribe relative to the design and location of the Memorial; and, a financing plan developed by the State that outlines the long-term management of the Memorial, including the acceptance and use of funds developed from public and private sources to minimize the use of appropriated or borrowed funds, the payment of the operating costs of the Memorial through the assessment of fees or other income generated by the Memorial; a strategy for achieving financial self-sufficiency with respect to the Memorial by not later than 5 years after the date of enactment of this Act, and a description of the business activities that would be permitted at the Memorial and appropriate vendor standards that would apply.

Section 206. Authorization of appropriations

Subsection (a) authorizes to be appropriated to carry out this title $1,000,000 for fiscal year 2000 and $500,000 for each of fiscal years 2001 and 2002.

Subsection (b) provides that any funds made available under this section that are unexpended at the end of the fiscal year for which those funds are appropriated shall remain available for use by the Secretary through September 30, 2002 for the purposes for which those funds were made available.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 964, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 5, 1999.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 964, a bill to provide for equitable compensation for the Cheyenne River Sioux Tribe, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll (for federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 964—A bill to provide for equitable compensation for the Cheyenne River Sioux Tribe, and for other purposes

Summary: S. 964 would compensate the Cheyenne River Sioux Tribe—in 2011—for the taking of certain lands in South Dakota and would authorize appropriations for the construction of a memorial for the Navajo and Mescalero Apache people who were incarcerated at Bosque Redondo, New Mexico, in the 1800s. CBO estimates that implementing S. 964 would increase discretionary spending by $2 million over the 2000–2004 period, assuming appropriation of the specified amounts. Enacting S. 964 also would increase direct spending by an estimated $492 million, but pay-as-you-go procedures would not apply because the outlay would not occur until fiscal year 2011.

S. 964 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). State, local, and tribal governments might incur some costs as a result of the bill's enactment, but these costs would be voluntary.

Estimated cost to the Federal Government: For purposes of this estimate, CBO assumes that S. 964 will be enacted early in fiscal year 2000 and that the authorized appropriations will be provided as specified by the bill. Estimated outlays are based on historical spending patterns for similar activities.

Direct spending

Title I of S. 964 would provide additional compensation to the Cheyenne River Sioux Tribe for the taking of 104,492 acres of land by the federal government to construct the Oahe Dam and Reservoir project. Construction of the dam began in 1948 and compensation of about $10 million was paid to the tribute in 1955. The bill would establish the Cheyenne River Sioux Tribal Recovery Trust Fund and would direct the Secretary of the Treasury to deposit $291 million in the fund on the first day of fiscal year 2011. An additional deposit equal to the amount of interest that the fund would have earned if the fund had been capitalized and invested in 2001 would be made at the same time. CBO estimates that this additional payment would total $201 million, for a total deposit of $492 million in 2011. Once the Secretary pays these amounts, any monetary claims the tribe may have against the United States regarding this project would be extinguished. Starting in 2011, the bill would allow the tribe to spend amounts equivalent to the annual interest earned on the fund pursuant to a tribal spending plan.

As of the start of fiscal year 2000, the federal budget totals exclude trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes. Hence, deposits to the trust fund established under this bill would be treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited to the fund in 2011 would be recorded as budget authority and outlays in that year. Because the trust fund would be nonbudgetary, the subsequent use of such funds by the tribe would not affect federal outlays.

Spending subject to appropriation

Title I would authorize the appropriation of such sums as may be necessary to cover the administrative costs of the Cheyenne River Sioux Tribal Recovery Trust Fund. Based on information from the Department of the Interior, CBO estimates that these costs would not be significant in any year.

Title II would authorize the Secretary of Defense, upon the request of the state of New Mexico, to establish the Bosque Redondo Memorial within the boundaries of Fort Sumner State Monument. The bill would authorize appropriations totaling $2 million over the 2000–2002 period for the Secretary to make grants to New Mexico for up to 50 percent of the cost of constructing the monument. The bill would require the state to match the federal contribution to be eligible for the grants. Based on information from the state, CBO expects these matching funds to be provided during 2000. Assuming appropriation of the specified amounts, CBO estimates that the entire federal share of the cost of constructing the monument would be spent during the 2000–2004 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. For the purposes of enforcing pay-as-you-go procedures, only the effects in the budget year and the succeeding four years are counted. Although enacting this legislation would increase direct spending by an estimated

$492 million, pay-as-you-go procedures would not apply to the bill because the outlay would occur in fiscal year 2011.

Estimated impact on state, local, and tribal governments: S. 964 contains no intergovernmental mandates as defined in UMRA, but it would impose some conditions on the Cheyenne River Sioux and on the state of New Mexico for receipt of federal funds. Title I would require the tribe to prepare and adopt a plan for using payments from the trust fund and to obtain an audit of the funded expenditures. Based on information provided by tribal officials, CBO does not expect that these requirements would result in significant additional costs for the tribe. Title II would require New Mexico to contribute matching funds equal to 50 percent of the costs of constructing the Bosque Redondo Memorial.

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

Estimate prepared by: Federal costs: Megan Carroll. Impact on state, local, and tribal governments: Marjorie Miller.

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

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill, S. 964, as amended. The Committee finds that the regulatory impact of S. 964, as amended, will be minimal.

EXECUTIVE COMMUNICATIONS

The Committee received the statement of Terry Virden, Director, Office of Trust Responsibilities, Bureau of Indian Affairs, U.S. Department of the Interior, on August 3, 1999, regarding S. 964.

STATEMENT OF TERRY VIRDEN, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairman and members of the Committee. I am pleased to be here today to present the Department of the Interior's views on S. 964. I want to thank Senator Daschle for introducing this important bill that addresses impacts to the Cheyenne River Sioux Tribe resulting from the Pick-Sloan Missouri River Basin program and in particular the development of the Oahe Dam and Reservoir project. If enacted, this bill would give the Tribe much deserved benefits to compensate for those impacts.

S. 964 is a continuation of the United States' honorable efforts to correct inequities resulting from a regional Federal project which severely affected Indian tribal homelands along the Missouri River. In the early 1990's the United States forthrightly addressed impacts to the Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation and in 1996 and 1997, respectively, addressed the impacts to the Crow Creek Sioux Tribe and the Lower Brule Sioux Tribe.

In 1944, the United States undertook the challenge to reduce flooding in the lower Missouri River Basin through the construction of monumental dams capable of harnessing the seasonal raging flows of the Missouri River. In addition, these dams could generate electrical power and needed hundreds of thousands of acres of land to serve as reservoirs for the storage of water for timed release. So great was the water resource that a whole regional economy grew from the electric power generated by these dams.

The preproject tribal economy, however, was based on working the rich wooded bottom lands along the Missouri River. These lands were flooded for the reservoir and the Tribe has never seen the former economy again. In addition, the importance of cultural treasures lost to inundation is now well-known. These are impacts that bring special meaning to the word "recovery" used in Purpose Number 2 of S. 964.

While this is not the final chapter in addressing compensation for all of the river Tribes in the region, a step taken for the Cheyenne River Sioux Tribe will bring the United States closer to providing full equity to these Missouri River Tribes.

Although we support S. 964, we are still concerned about the pay-as-you-go implications concerning the payment scheme to be used to arrive at the total figure for the Cheyenne River Sioux compensation. Additionally, as noted in testimony on S. 1905 during the 105th Session, the Administration is concerned that this type of off-budget financing approach appears to be without cost. A more straightforward approach would be to rely on the authorization/discretionary appropriation process. We will be happy to work with the Committee on developing a viable solution.

This concludes my testimony in support of S. 964. I will be happy to respond to any questions you may have. Thank you.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are required to be set out in the accompanying Committee report. The Committee states that enactment of S. 964 will not result in any changes in existing law.

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