

Calendar No. 623

109TH CONGRESS
2^D SESSION

S. 1535

[Report No. 109-343]

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.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2005

Mr. JOHNSON (for himself and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

SEPTEMBER 20, 2006

Reported by Mr. MCCAIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Cheyenne River Sioux
3 Tribe Equitable Compensation Amendments Act of 2005”.

4 **SEC. 2. FINDINGS.**

5 (a) FINDINGS.—Congress finds that—

6 (1) the Pick-Sloan Missouri River Basin pro-
7 gram, authorized by section 9 of the Act of Decem-
8 ber 22, 1944 (commonly known as the “Flood Con-
9 trol Act of 1944”) (58 Stat. 891), was intended to
10 promote the general economic development of the
11 United States;

12 (2) the Oahe Dam and Reservoir Project—

13 (A) is a major component of the Pick-
14 Sloan Missouri River Basin program; and

15 (B) contributes to the national economy;

16 (3) the Oahe Dam and Reservoir Project flood-
17 ed the fertile bottom land of the Cheyenne River
18 Sioux Reservation, which greatly damaged the econ-
19 omy and cultural resources of the Cheyenne River
20 Sioux Tribe and caused the loss of many homes and
21 communities of members of the Tribe;

22 (4) Congress has provided compensation to sev-
23 eral Indian tribes, including the Cheyenne River
24 Sioux Tribe, that border the Missouri River and suf-
25 fered injury as a result of 1 or more of the Pick-
26 Sloan projects;

1 “(A) the United States did not justify, or
 2 fairly compensate the Tribe and member land-
 3 owners for, the Oahe Dam and Reservation
 4 project, under which the United States acquired
 5 104,492 acres of land of the Tribe and member
 6 landowners; and

7 “(B) the Tribe and member landowners
 8 should be adequately compensated for that
 9 land;” and

10 (2) in subsection (b)(1), by inserting “and
 11 member landowners” after “Tribe” each place it ap-
 12 pears.

13 (b) DEFINITIONS.—Section 103 of the Cheyenne
 14 River Sioux Tribe Equitable Compensation Act (Public
 15 Law 106–511; 114 Stat. 2365) is amended—

16 (1) by redesignating paragraphs (1) and (2) as
 17 paragraphs (4) and (3), respectively, and moving the
 18 paragraphs so as to appear in numerical order; and

19 (2) by inserting before paragraph (3) (as redес-
 20 ignated by paragraph (1)) the following:

21 “(1) MEMBER LANDOWNER.—The term ‘mem-
 22 ber landowner’ means a member of the Tribe (or an
 23 heir of such a member) that owned land (including
 24 land allotted under the Act of February 8, 1887 (24
 25 Stat. 388, chapter 119)) located on the Cheyenne

1 River Sioux Reservation that was acquired by the
 2 United States for the Oahe Dam and Reservoir
 3 Project.

4 “(2) POWER PROGRAM.—The term ‘power pro-
 5 gram’ means the power program under the Pick-
 6 Sloan Missouri River Basin program.”.

7 (c) CHEYENNE RIVER SIOUX TRIBAL RECOVERY
 8 TRUST FUND.—Section 104 of the Cheyenne River Sioux
 9 Tribe Equitable Compensation Act (Public Law 106–511;
 10 114 Stat. 2365) is amended—

11 (1) by striking subsection (b) and inserting the
 12 following:

13 “(b) FUNDING.—

14 “(1) IN GENERAL.—The Secretary of the
 15 Treasury shall deposit into the Fund an amount
 16 equal to 25 percent of the amount deposited into the
 17 Treasury from the power program during the pre-
 18 ceeding fiscal year for the period—

19 “(A) beginning on October 1, 2004; and

20 “(B) ending on the last date of the fiscal
 21 year during which the total amount deposited
 22 into the Treasury from the power program
 23 equals the amount described in paragraph (2).

24 “(2) DESCRIPTION OF AMOUNT.—

1 “(A) IN GENERAL.—The amount referred
2 to in paragraph (1)(B) is an amount equal to
3 the sum of—

4 “(i) \$290,722,958; and

5 “(ii) an amount equal to the amount
6 of interest or earnings that would have ac-
7 crued on the amount described in clause (i)
8 if that amount had been invested in ac-
9 cordance with subsection (e) as of October
10 1, 2001.

11 “(B) CALCULATION OF INTEREST.—The
12 amount of interest and earnings described in
13 subparagraph (A)(ii) shall be determined by ap-
14 plying the Lehman Government Bond Index (or
15 a similar index, as determined by the Secretary
16 of the Treasury, in consultation with the Tribal
17 Council).”;

18 (2) in subsection (d)(1), by striking “Beginning
19 on the first day of the 11th fiscal year after the date
20 of enactment of this Act” and inserting “Beginning
21 on October 1, 2005,”; and

22 (3) in subsection (f)—

23 (A) by redesignating paragraphs (3) and
24 (4) as paragraphs (4) and (5), respectively; and

1 (B) by inserting after paragraph (2) the
2 following:

3 ~~“(3) MEMBER LANDOWNERS.—~~

4 ~~“(A) IN GENERAL.—The plan may provide~~
5 ~~for the payment of additional compensation to~~
6 ~~member landowners for acquisition of land by~~
7 ~~the United States for use in the Oahe Dam and~~
8 ~~Reservoir Project.~~

9 ~~“(B) PROVISION OF RECORDS.—To assist~~
10 ~~the Tribe in processing claims of heirs of mem-~~
11 ~~ber landowners for land acquired by the United~~
12 ~~States for use in the Oahe Dam and Reservoir~~
13 ~~Project, the Secretary of the Interior shall pro-~~
14 ~~vide to the Tribe any record requested by the~~
15 ~~Tribe to identify the heirs of member land-~~
16 ~~owners by the date that is 60 days after the~~
17 ~~date of receipt of a request from the Tribe.”.~~

18 (d) ~~ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS~~
19 ~~AND SERVICES.—Section 105 of the Cheyenne River Sioux~~
20 ~~Tribe Equitable Compensation Act (Public Law 106–511;~~
21 ~~114 Stat. 2365) is amended in the matter preceding para-~~
22 ~~graph (1) by inserting “or any member landowner” after~~
23 ~~“Tribe”.~~

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Cheyenne River Sioux*
3 *Tribe Equitable Compensation Amendments Act of 2006”.*

4 **SEC. 2. FINDINGS.**

5 *(a) FINDINGS.—Congress finds that—*

6 *(1) the Pick-Sloan Missouri River Basin pro-*
7 *gram, authorized by section 9 of the Act of December*
8 *22, 1944 (commonly known as the “Flood Control Act*
9 *of 1944”) (58 Stat. 891), was intended to promote the*
10 *general economic development of the United States;*

11 *(2) the Oahe Dam and Reservoir Project—*

12 *(A) is a major component of the Pick-Sloan*
13 *Missouri River Basin program; and*

14 *(B) contributes to the national economy;*

15 *(3) the Oahe Dam and Reservoir Project flooded*
16 *the fertile bottom land of the Cheyenne River Sioux*
17 *Reservation, which greatly damaged the economy and*
18 *cultural resources of the Cheyenne River Sioux Tribe*
19 *and caused the loss of many homes and communities*
20 *of members of the Tribe;*

21 *(4) Congress has provided compensation to sev-*
22 *eral Indian tribes, including the Cheyenne River*
23 *Sioux Tribe, that border the Missouri River and suf-*
24 *fered injury as a result of 1 or more of the Pick-Sloan*
25 *projects;*

1 “(A) the United States did not justly or
 2 *fairly compensate the Tribe and member land-*
 3 *owners for the Oahe Dam and Reservation*
 4 *project, under which the United States acquired*
 5 *104,492 acres of land of the Tribe and member*
 6 *landowners; and*

7 “(B) the Tribe and member landowners
 8 *should be adequately compensated for that*
 9 *land;”;* and

10 (2) in subsection (b)(1), by inserting “and mem-
 11 *ber landowners” after “Tribe” each place it appears.*

12 (b) *DEFINITIONS.—Section 103 of the Cheyenne River*
 13 *Sioux Tribe Equitable Compensation Act (Public Law 106–*
 14 *511; 114 Stat. 2365) is amended—*

15 (1) *by redesignating paragraph (1) as para-*
 16 *graph (3) and moving the paragraph so as to appear*
 17 *after paragraph (2); and*

18 (2) *by inserting before paragraph (2) the fol-*
 19 *lowing:*

20 “(1) *MEMBER LANDOWNER.—The term ‘member*
 21 *landowner’ means a member of the Tribe (or an heir*
 22 *of such a member) that owned land (including land*
 23 *allotted under the Act of February 8, 1887 (24 Stat.*
 24 *388, chapter 119)) located on the Cheyenne River*

1 *Sioux Reservation that was acquired by the United*
 2 *States for the Oahe Dam and Reservoir Project.”.*

3 (c) *CHEYENNE RIVER SIOUX TRIBAL RECOVERY*
 4 *TRUST FUND.*—*Section 104 of the Cheyenne River Sioux*
 5 *Tribe Equitable Compensation Act (Public Law 106–511;*
 6 *114 Stat. 2365) is amended—*

7 (1) *by striking subsection (b) and inserting the*
 8 *following:*

9 “(b) *FUNDING.*—*On the first day of the fiscal year be-*
 10 *ginning after the date of enactment of the Cheyenne River*
 11 *Sioux Tribe Equitable Compensation Amendments Act of*
 12 *2006 and on the first day of each of the following 4 fiscal*
 13 *years (referred to in this section as the ‘capitalization*
 14 *dates’), the Secretary of the Treasury shall deposit into the*
 15 *Fund, from amounts in the general fund of the Treasury—*

16 “(1) *\$58,144,591.60; and*

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

19 “(A) *the amount described in paragraph (1)*
 20 *had been—*

21 “(i) *credited to the principal account*
 22 *as described in subsection (c)(2)(B)(i)(I) on*
 23 *the first day of the fiscal year beginning Oc-*
 24 *tober 1, 2001; and*

1 “(ii) invested as described in sub-
 2 section (c)(2)(C) during the period begin-
 3 ning on the date described in clause (i) and
 4 ending on the last day of the fiscal year be-
 5 fore the fiscal year in which that amount is
 6 deposited into the Fund; and

7 “(B) the interest that would have accrued
 8 under subparagraph (A) during the period de-
 9 scribed in subparagraph (A)(ii) had been—

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

12 “(ii) invested during that period in ac-
 13 cordance with subsection (c)(2)(D)(i).”;

14 (2) by striking subsection (c) and inserting the
 15 following:

16 “(c) INVESTMENTS.—

17 “(1) ELIGIBLE OBLIGATIONS.—Notwithstanding
 18 any other provision of law, the Secretary of the Treas-
 19 ury shall invest the Fund only in interest-bearing ob-
 20 ligations of the United States issued directly to the
 21 Fund.

22 “(2) INVESTMENT REQUIREMENTS.—

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

1 “(B) *SEPARATE INVESTMENTS OF PRIN-*
2 *CIPAL AND INTEREST.—*—

3 “(i) *PRINCIPAL ACCOUNT.—The*
4 *amounts deposited into the Fund under sub-*
5 *section (b)(1) shall be—*

6 “*(I) credited to a principal ac-*
7 *count within the Fund (referred to in*
8 *this paragraph as the ‘principal ac-*
9 *count’); and*

10 “*(II) invested in accordance with*
11 *subparagraph (C).*

12 “(ii) *INTEREST ACCOUNT.—*

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

16 “*(aa) transferred to a sepa-*
17 *rate interest account within the*
18 *Fund (referred to in this para-*
19 *graph as the ‘interest account’);*
20 *and*

21 “*(bb) invested in accordance*
22 *with subparagraph (D).*

23 “*(II) CREDITING.—The interest*
24 *earned from investing amounts in the*
25 *interest account, and the amounts de-*

1 *posited into the Fund under subsection*
 2 *(b)(2), shall be credited to the interest*
 3 *account.*

4 “(C) *INVESTMENT OF PRINCIPAL AC-*
 5 *COUNT.—*

6 “(i) *INITIAL INVESTMENT.—Amounts*
 7 *in the principal account shall be initially*
 8 *invested in eligible obligations with the*
 9 *shortest available maturity.*

10 “(ii) *SUBSEQUENT INVESTMENTS.—*

11 “(I) *IN GENERAL.—On the date*
 12 *on which the amount in the principal*
 13 *account is divisible into 3 substan-*
 14 *tially equal portions, each portion*
 15 *shall be invested in eligible obligations*
 16 *that are identical (except for transfer-*
 17 *ability) to the next-issued publicly-*
 18 *issued Treasury obligations having a*
 19 *2-year maturity, a 5-year maturity,*
 20 *and a 10-year maturity, respectively.*

21 “(II) *MATURITY OF OBLIGA-*
 22 *TIONS.—As each 2-year, 5-year, and*
 23 *10-year eligible obligation under sub-*
 24 *clause (I) matures, the principal of the*
 25 *maturing eligible obligation shall be*

1 *initially invested in accordance with*
2 *clause (i) until the date on which the*
3 *principal is reinvested substantially*
4 *equally in the eligible obligations that*
5 *are identical (except for transfer-*
6 *ability) to the next-issued publicly-*
7 *issued Treasury obligations having 2-*
8 *year, 5-year, and 10-year maturities.*

9 “(iii) *DISCONTINUATION OF ISSUANCE*
10 *OF OBLIGATIONS.—If the Department of the*
11 *Treasury discontinues issuing to the public*
12 *obligations having 2-year, 5-year, or 10-*
13 *year maturities, the principal of any ma-*
14 *turing eligible obligation shall be reinvested*
15 *substantially equally in available eligible*
16 *obligations that are identical (except for*
17 *transferability) to the next-issued publicly-*
18 *issued Treasury obligations with maturities*
19 *of longer than 1 year.*

20 “(D) *INVESTMENT OF INTEREST AC-*
21 *COUNT.—*

22 “(i) *BEFORE EACH CAPITALIZATION*
23 *DATE.—For purposes of subsection*
24 *(b)(2)(B), amounts considered as if they*
25 *were in the interest account of the Fund*

1 *shall be invested in eligible obligations that*
2 *are identical (except for transferability) to*
3 *publicly-issued Treasury obligations that*
4 *have maturities that coincide, to the great-*
5 *est extent practicable, with the applicable*
6 *capitalization date for the Fund.*

7 “(i) *ON AND AFTER EACH CAPITALIZA-*
8 *TION DATE.—On and after each capitaliza-*
9 *tion date, amounts in the interest account*
10 *shall be invested and reinvested in eligible*
11 *obligations that are identical (except for*
12 *transferability) to publicly-issued Treasury*
13 *obligations that have maturities that coin-*
14 *cide, to the greatest extent practicable, with*
15 *the date on which the amounts will be with-*
16 *drawn by the Secretary of the Treasury and*
17 *transferred to the Secretary of the Interior*
18 *for use in accordance with subsection (d).*

19 “(E) *PAR PURCHASE PRICE.—*

20 “(i) *IN GENERAL.—To preserve in per-*
21 *petuity the amount in the principal ac-*
22 *count, the purchase price of an eligible obli-*
23 *gation purchased as an investment of the*
24 *principal account shall not exceed the par*
25 *value of the obligation.*

1 “(i) *TREATMENT.*—*At the maturity of*
2 *an eligible obligation described in clause (i),*
3 *any discount from par in the purchase*
4 *price of the eligible obligation shall be treat-*
5 *ed as interest paid at maturity.*

6 “(F) *HOLDING TO MATURITY.*—*Eligible ob-*
7 *ligations purchased pursuant to this paragraph*
8 *shall be held to their maturities.*

9 “(3) *ANNUAL REVIEW OF INVESTMENT ACTIVI-*
10 *TIES.*—*Not less frequently than once each calendar*
11 *year, the Secretary of the Treasury shall review with*
12 *the Tribe the results of the investment activities and*
13 *financial status of the Fund during the preceding cal-*
14 *endar year.*

15 “(4) *MODIFICATIONS.*—

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

23 “(B) *CONSULTATION.*—*Before making a*
24 *modification under subparagraph (A), the Sec-*

1 *retary of the Treasury shall consult with the*
2 *Tribe with respect to the modification.”;*

3 *(3) in subsection (d), by striking paragraph (1)*
4 *and inserting the following:*

5 “(1) *WITHDRAWAL OF INTEREST.—Beginning on*
6 *the first day of the fiscal year beginning after the date*
7 *of enactment of the Cheyenne River Sioux Tribe Eq-*
8 *uitable Compensation Amendments Act of 2006, and*
9 *on the first day of each fiscal year thereafter, the Sec-*
10 *retary of the Treasury shall withdraw and transfer*
11 *all funds in the interest account of the Fund to the*
12 *Secretary of the Interior for use in accordance with*
13 *paragraph (2), to be available without fiscal year*
14 *limitation.”; and*

15 *(4) in subsection (f)—*

16 *(A) by redesignating paragraphs (3) and*
17 *(4) as paragraphs (4) and (5), respectively; and*

18 *(B) by inserting after paragraph (2) the fol-*
19 *lowing:*

20 “(3) *MEMBER LANDOWNERS.—*

21 “(A) *ADDITIONAL COMPENSATION.—*

22 “(i) *IN GENERAL.—Except as provided*
23 *in clause (iii), the plan may provide for the*
24 *payment of additional compensation to*
25 *member landowners for acquisition of land*

1 *by the United States for use in the Oahe*
 2 *Dam and Reservoir Project.*

3 “(ii) *DETERMINATION OF HEIRS.*—*An*
 4 *heir of a member landowner shall be deter-*
 5 *mined in accordance with the probate code*
 6 *governing the estate of the member land-*
 7 *owner.*

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

12 *“(I) be deposited or transferred*
 13 *into—*

14 *“(aa) the Individual Indian*
 15 *Money account of the member*
 16 *landowner; or*

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

20 *“(II) exceed an amount equal to*
 21 *44.3 percent of the amount transferred*
 22 *by the Secretary of the Interior to the*
 23 *Tribe under paragraph (2).*

24 “(B) *PROVISION OF RECORDS.*—*To assist*
 25 *the Tribe in processing claims of heirs of member*

1 *landowners for land acquired by the United*
 2 *States for use in the Oahe Dam and Reservoir*
 3 *Project, the Secretary of the Interior shall pro-*
 4 *vide to the Tribe, in accordance with applicable*
 5 *laws (including regulations), any record re-*
 6 *quested by the Tribe to identify the heirs of mem-*
 7 *ber landowners by the date that is 90 days after*
 8 *the date of receipt of a request from the Tribe.”.*

9 *(d) ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS*
 10 *AND SERVICES.—Section 105 of the Cheyenne River Sioux*
 11 *Tribe Equitable Compensation Act (Public Law 106–511;*
 12 *114 Stat. 2365) is amended in the matter preceding para-*
 13 *graph (1) by inserting “or any member landowner” after*
 14 *“Tribe”.*

15 *(e) EXTINGUISHMENT OF CLAIMS.—Section 107 of the*
 16 *Cheyenne River Sioux Tribe Equitable Compensation Act*
 17 *(Public Law 106–511; 114 Stat. 2368) is amended to read*
 18 *as follows:*

19 **“SEC. 107. EXTINGUISHMENT OF CLAIMS.**

20 *“(a) IN GENERAL.—On the date on which the final*
 21 *payment is deposited into the Fund under section 104(b),*
 22 *all monetary claims that the Tribe has or may have against*
 23 *the United States for the taking by the United States of*
 24 *land and property of the Tribe for the Oahe Dam and Res-*

1 *ervoir Project of the Pick-Sloan Missouri River Basin pro-*
2 *gram shall be extinguished.*

3 “(b) *EFFECT OF ACCEPTANCE OF PAYMENT.—On ac-*
4 *ceptance by a member landowner or an heir of a member*
5 *landowner of any payment by the Tribe for damages result-*
6 *ing from the taking by the United States of land or property*
7 *of the Tribe for the Oahe Dam and Reservoir Project of the*
8 *Pick-Sloan Missouri River Basin program, all monetary*
9 *claims that the member landowner or heir has or may have*
10 *against the United States for the taking shall be extin-*
11 *guished.”.*

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109TH CONGRESS
2^D SESSION

S. 1535

[Report No. 109-343]

A BILL

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.

SEPTEMBER 20, 2006

Reported with an amendment