

S. HRG. 104-500

**CROW CREEK SIOUX TRIBE INFRASTRUCTURE  
DEVELOPMENT TRUST FUND ACT OF 1995**

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**JOINT HEARING**  
BEFORE THE  
**COMMITTEE ON INDIAN AFFAIRS**  
**UNITED STATES SENATE**  
AND THE  
**SUBCOMMITTEE ON NATIVE AMERICAN  
AND INSULAR AFFAIRS**  
OF THE  
**COMMITTEE ON RESOURCES**  
**UNITED STATES HOUSE OF  
REPRESENTATIVES**  
**ONE HUNDRED FOURTH CONGRESS**  
**SECOND SESSION**  
ON  
**S. 1264 and H.R. 2512**

TO PROVIDE FOR CERTAIN BENEFITS OF THE MISSOURI RIVER BASIN  
PICK-SLOAN PROJECT TO THE CROW CREEK SIOUX TRIBE

APRIL 25, 1996  
WASHINGTON, DC



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# **CROW CREEK SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND ACT OF 1995**

**THURSDAY, APRIL 25, 1996**

**U.S. SENATE, COMMITTEE ON INDIAN AFFAIRS, MEETING  
JOINTLY WITH THE SUBCOMMITTEE ON NATIVE AMERICANS  
AND INSULAR AFFAIRS OF THE COMMITTEE ON RESOURCES,  
U.S. HOUSE OF REPRESENTATIVES,**

*Washington, DC.*

The committees met, pursuant to notice, at 9:07 a.m. in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (vice chairman of the Committee on Indian Affairs) presiding.

Present from the Committee on Indian Affairs: Senators Inouye and Thomas.

Present from the Subcommittee on Native Americans and Insular Affairs: Representatives Faleomavaega, Kildee, and Metcalf.

## **STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS**

Senator INOUE. Good morning. The Senate Committee on Indian Affairs and the Subcommittee on Native Americans and Insular Affairs of the House Resources Committee meet in joint session today to receive testimony on S. 1264 and its House companion measure, H.R. 2512, bills to provide certain benefits of the Missouri River Pick-Sloan Project to the Crow Creek Sioux Tribe.

One of the early hearings in my first year in service as chairman of this committee was an oversight hearing on a report with regard to the devastating impacts of the Missouri River Basin Pick-Sloan project on the Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation.

This morning the committees will receive testimony on the similarly devastating impacts the Pick-Sloan project has had on the Crow Creek Sioux Tribe; the failure of the Congress to act in a timely and appropriate manner to mitigate these impacts; and the failure of the Federal agencies charged with the responsibilities of relocation, rehabilitation, and construction of replacement housing, health care and educational facilities and irrigation works, the re-siting of cemeteries and the reburial of disinterred human remains, to perform their statutory duties.

This is a very sad tale of a Native people whose ancestral lands, the rich and fertile bottomlands of the Missouri River basin, were inundated as a result of the construction of earthen dams which

flooded their lands and forced their removal to less-hospitable upland areas that could not support the traditional subsistence way of life that they had enjoyed, such as harvesting timber in densely-populated woodlands, hunting and trapping the wildlife that roamed there, farming the rich bottomlands, fishing, and gathering fruits and berries for ceremonial and medicinal purposes, as well as for their sustenance. This is a way of life that was lost to them forever.

Today, however, we hope to conclude this dark chapter in the history of the Crow Creek Sioux people with authorities and the financial resources that will enable them to reinvigorate their economy, provide for long-promised, but never delivered, educational and health care facilities, as well as the construction, operation, and maintenance of a municipal, rural, and industrial water system for their reservation.

[Text of S. 1264 and H.R. 2512 follows:]

104TH CONGRESS  
1ST SESSION

# S. 1264

To provide for certain benefits of the Missouri River basin Pick-Sloan project to the Crow Creek Sioux Tribe, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20 (legislative day, SEPTEMBER 5), 1995

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

---

## A BILL

To provide for certain benefits of the Missouri River basin Pick-Sloan project to the Crow Creek 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 This Act may be cited as the “Crow Creek Sioux  
5 Tribe Infrastructure Development Trust Fund Act of  
6 1995”.

7 **SEC. 2. FINDINGS.**

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

9 (1) the Congress approved the Missouri River  
10 basin Pick-Sloan project by passing the Act of De-

1 cember 22, 1944, commonly known as the "Flood  
2 Control 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 Fort Randall and Big Bend projects are  
12 major components of the Pick-Sloan project, and  
13 contribute to the national economy by generating a  
14 substantial amount of hydropower and impounding a  
15 substantial quantity of water;

16 (3) the Fort Randall and Big Bend projects  
17 overlie the western boundary of the Crow Creek In-  
18 dian Reservation, having inundated the fertile, wood-  
19 ed bottom lands of the Tribe along the Missouri  
20 River that constituted the most productive agricul-  
21 tural and pastoral lands of the Tribe and the home-  
22 land of the members of the Tribe;

23 (4) Public Law 85-916 (72 Stat. 1766 et seq.)  
24 authorized the acquisition of 9,418 acres of Indian  
25 land on the Crow Creek Indian Reservation for the

1 Fort Randall project and Public Law 87-735 (76  
2 Stat. 704 et seq.) authorized the acquisition of  
3 6,179 acres of Indian land on Crow Creek for the  
4 Big Bend project;

5 (5) Public Law 87-735 (76 Stat. 704 et seq.)  
6 provided for the mitigation of the effects of the Fort  
7 Randall and Big Bend projects on the Crow Creek  
8 Indian Reservation, by directing the Secretary of the  
9 Army to—

10 (A) replace, relocate, or reconstruct—

11 (i) any existing essential governmental  
12 and agency facilities on the reservation, in-  
13 cluding schools, hospitals, offices of the  
14 Public Health Service and the Bureau of  
15 Indian Affairs, service buildings, and em-  
16 ployee quarters; and

17 (ii) roads, bridges, and incidental mat-  
18 ters or facilities in connection with such fa-  
19 cilities;

20 (B) provide for a townsite adequate for 50  
21 homes, including streets and utilities (including  
22 water, sewage, and electricity), taking into ac-  
23 count the reasonable future growth of the town-  
24 site; and

1           (C) provide for a community center con-  
2           taining space and facilities for community gath-  
3           erings, tribal offices, tribal council chamber, of-  
4           fices of the Bureau of Indian Affairs, offices  
5           and quarters of the Public Health Service, and  
6           a combination gymnasium and auditorium;

7           (6) the Secretary of the Army and the Sec-  
8           retary of the Interior have failed to meet the re-  
9           quirements under Public Law 87-735 (76 Stat. 704  
10          et seq.) with respect to the mitigation of the effects  
11          of the Fort Randall and Big Bend projects on the  
12          Crow Creek Indian Reservation;

13          (7) although the national economy has benefited  
14          from the Fort Randall and Big Bend projects, the  
15          economy on the Crow Creek Indian Reservation re-  
16          mains underdeveloped, in part as a consequence of  
17          the failure of the Federal Government to fulfill the  
18          obligations of the Federal Government under the  
19          laws referred to in paragraph (4);

20          (8) the economic and social development and  
21          cultural preservation of the Crow Creek Sioux Tribe  
22          will be enhanced by increased tribal participation in  
23          the benefits of the Fort Randall and Big Bend com-  
24          ponents of the Pick-Sloan project; and

1           (9) the Crow Creek Sioux Tribe is entitled to  
2           additional benefits of the Missouri River basin Pick-  
3           Sloan project, including hydropower revenues and in-  
4           frastructure development.

5 **SEC. 3. DEFINITIONS.**

6           For the purposes of this Act, unless the context im-  
7           plies otherwise, the following definitions shall apply:

8           (1) **FUND.**—The term “Fund” means the Crow  
9           Creek Sioux Tribe Infrastructure Development  
10          Trust Fund established under section 4(a).

11          (2) **PLAN.**—The term “plan” means the plan  
12          for socioeconomic recovery and cultural preservation  
13          prepared under section 5.

14          (3) **PROGRAMS.**—The term “Programs” means  
15          the integrated programs of the Eastern Division of  
16          the Missouri River basin Pick-Sloan program, ad-  
17          ministered by the Western Area Power Administra-  
18          tion, as determined by the Secretary.

19          (4) **SECRETARY.**—The term “Secretary” means  
20          the Secretary of the Interior.

21          (5) **TRIBE.**—The term “Tribe” means the Crow  
22          Creek Sioux Tribe.

1 **SEC. 4. ESTABLISHMENT OF CROW CREEK SIOUX TRIBE IN-**  
2 **FRASTRUCTURE DEVELOPMENT TRUST**  
3 **FUND.**

4 (a) CROW CREEK SIOUX TRIBE INFRASTRUCTURE  
5 DEVELOPMENT TRUST FUND.—There is established in  
6 the Treasury of the United States a fund to be known  
7 as the “Crow Creek Sioux Tribe Infrastructure Develop-  
8 ment Trust Fund”.

9 (b) FUNDING.—Beginning with fiscal year 1997, and  
10 for each fiscal year thereafter, until such time as the ag-  
11 gregate of the amounts deposited in the Fund is equal to  
12 \$27,500,000, the Secretary of the Treasury shall deposit  
13 into the Fund an amount equal to 25 percent of the re-  
14 ceipts from the deposits to the Treasury of the United  
15 States for the preceding fiscal year from the Programs.

16 (c) INVESTMENTS.—The Secretary of the Treasury  
17 shall invest the amounts deposited under subsection (b)  
18 only in interest-bearing obligations of the United States  
19 or in obligations guaranteed as to both principal and inter-  
20 est by the United States.

21 (d) PAYMENT OF INTEREST TO TRIBE.—

22 (1) ESTABLISHMENT OF ACCOUNT AND TRANS-  
23 FER OF INTEREST.—The Secretary of the Treasury  
24 shall, in accordance with this subsection, transfer  
25 any interest that accrues on amounts deposited  
26 under subsection (b) into a separate account estab-

1 lished by the Secretary of the Treasury in the Treas-  
2 ury of the United States.

3 (2) PAYMENTS.—

4 (A) IN GENERAL.—Beginning with the fis-  
5 cal year immediately following the fiscal year  
6 during which the aggregate of the amounts de-  
7 posited in the Fund is equal to the amount  
8 specified in subsection (b)(2), and for each fis-  
9 cal year thereafter, all amounts transferred  
10 under paragraph (1) shall be available, without  
11 fiscal year limitation, to the Secretary of the In-  
12 terior for use in accordance with subparagraph  
13 (C).

14 (B) WITHDRAWAL AND TRANSFER OF  
15 FUNDS.—For each fiscal year specified in sub-  
16 paragraph (A), the Secretary of the Treasury  
17 shall withdraw amounts from the account estab-  
18 lished under such paragraph and transfer such  
19 amounts to the Secretary of the Interior for use  
20 in accordance with subparagraph (C). The Sec-  
21 retary of the Treasury may only withdraw  
22 funds from the account for the purpose speci-  
23 fied in this paragraph.

24 (C) PAYMENTS TO TRIBE.—The Secretary  
25 of the Interior shall use the amounts trans-

1           ferred to the Secretary under subparagraph (B)  
2           only for the purpose of making payments to the  
3           Tribe.

4           (D) USE OF PAYMENTS BY TRIBE.—The  
5           Tribe shall use the payments made under sub-  
6           paragraph (C) only for carrying out projects  
7           and programs pursuant to the plan prepared  
8           under section 5.

9           (3) PROHIBITION ON PER CAPITA PAYMENTS.—  
10          No portion of any payment made under this sub-  
11          section may be distributed to any member of the  
12          Tribe on a per capita basis.

13          (e) TRANSFERS AND WITHDRAWALS.—

14           (1) AMOUNTS DEPOSITED IN THE FUND.—Ex-  
15           cept as provided in subsection (d)(1), the Secretary  
16           of the Treasury may not transfer or withdraw any  
17           amount deposited under subsection (b).

18           (2) AMOUNTS TRANSFERRED TO ACCOUNT.—  
19           Except as provided in subsection (d)(2), the Sec-  
20           retary of the Treasury may not transfer or withdraw  
21           any amounts transferred to the account established  
22           under subsection (d)(1).

23 **SEC. 5. PLAN FOR SOCIOECONOMIC RECOVERY AND CUL-**  
24 **TURAL PRESERVATION.**

25          (a) PLAN.—

1           (1) IN GENERAL.—The Secretary of the Inte-  
2           rior, acting through the Bureau of Indian Affairs, in  
3           cooperation with the Secretary of Health and  
4           Human Services, acting through the Indian Health  
5           Service, and the Crow Creek Tribal Council, shall  
6           prepare a plan for the use of payments made to the  
7           Tribe under section 4(d)(2).

8           (2) REQUIREMENTS FOR PLAN COMPONENTS.—  
9           The plan shall, with respect to each component of  
10          the plan—

11                   (A) identify the costs and benefits of that  
12                   component; and

13                   (B) provide plans for that component.

14          (3) APPROVAL OF CROW CREEK TRIBAL COUN-  
15          CIL.—The plan shall be subject to the approval of  
16          the Crow Creek Tribal Council.

17          (4) SUBMITTAL TO CONGRESS.—Not later than  
18          2 years after the date of enactment of this Act, the  
19          Secretary shall submit the plan to Congress.

20          (b) CONTENT OF PLAN.—The plan shall include the  
21          following programs and components:

22                   (1) EDUCATIONAL FACILITY.—The plan shall  
23                   provide for an educational facility to be located on  
24                   the Crow Creek Indian Reservation.

1           (2) COMPREHENSIVE INPATIENT AND OUT-  
2 PATIENT HEALTH CARE FACILITY.—The plan shall  
3 provide for a comprehensive inpatient and outpatient  
4 health care facility to provide essential services that  
5 the Secretary, in consultation with the individuals  
6 and entities referred to in subsection (a)(1), deter-  
7 mines to be—

8                   (A) needed; and

9                   (B) unavailable through existing facilities  
10 of the Indian Health Service on the Crow Creek  
11 Indian Reservation at the time of the deter-  
12 mination.

13           (3) WATER SYSTEM.—The plan shall provide  
14 for the construction, operation, and maintenance of  
15 a municipal, rural, and industrial water system for  
16 the Crow Creek Indian Reservation.

17           (4) IRRIGATION FACILITIES.—The plan shall  
18 provide for irrigation facilities for not less than  
19 1,792 acres.

20           (5) RECREATIONAL FACILITIES.—The plan  
21 shall provide for recreational facilities suitable for  
22 high-density recreation at Lake Sharpe at Big Bend  
23 Dam in South Dakota.

24           (6) OTHER PROJECTS AND PROGRAMS.—The  
25 plan shall provide for such other projects and pro-

1       grams for the educational, social welfare, economic  
2       development, and cultural preservation of the Tribe  
3       as the Secretary, in consultation with the individuals  
4       and entities referred to in subsection (a)(1), consid-  
5       ers to be appropriate.

6       **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

7       There are authorized to be appropriated such funds  
8       as may be necessary to carry out this Act, including such  
9       funds as may be necessary to cover the administrative ex-  
10      penses of the Crow Creek Sioux Tribe Infrastructure De-  
11      velopment Trust Fund established under section 4.

12      **SEC. 7. EFFECT OF PAYMENTS TO TRIBE.**

13      (a) IN GENERAL.—No payment made to the Tribe  
14      pursuant to this Act shall result in the reduction or denial  
15      of any service or program to which, pursuant Federal  
16      law—

17              (1) the Tribe is otherwise entitled because of  
18              the status of the Tribe as a federally recognized In-  
19              dian tribe; or

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

23      (b) EXEMPTIONS; STATUTORY CONSTRUCTION.—

1           (1) POWER RATES.—No payment made pursu-  
2           ant to this Act shall affect Missouri River basin  
3           Pick-Sloan power rates.

4           (2) STATUTORY CONSTRUCTION.—Nothing in  
5           this Act may be construed as diminishing or affect-  
6           ing—

7                   (A) any right of the Tribe that is not oth-  
8                   erwise addressed in this Act; or

9                   (B) any treaty obligation of the United  
10           States.

104TH CONGRESS  
1ST SESSION

# H. R. 2512

To provide for certain benefits of the Missouri River basin Pick-Sloan project to the Crow Creek Sioux Tribe, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 19, 1995

Mr. JOHNSON of South Dakota introduced the following bill; which was referred to the Committee on Resources

---

## A BILL

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2 *tives of the United States of America in Congress assembled,*

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5 Tribe Infrastructure Development Trust Fund Act of  
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1 cember 22, 1944, commonly known as the "Flood  
2 Control 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 Fort Randall and Big Bend projects are  
12 major components of the Pick-Sloan project, and  
13 contribute to the national economy by generating a  
14 substantial amount of hydropower and impounding a  
15 substantial quantity of water;

16 (3) the Fort Randall and Big Bend projects  
17 overlie the western boundary of the Crow Creek In-  
18 dian Reservation, having inundated the fertile, wood-  
19 ed bottom lands of the Tribe along the Missouri  
20 River that constituted the most productive agricul-  
21 tural and pastoral lands of the Tribe and the home-  
22 land of the members of the Tribe;

23 (4) Public Law 85-916 (72 Stat. 1766 et seq.)  
24 authorized the acquisition of 9,418 acres of Indian  
25 land on the Crow Creek Indian Reservation for the

1 Fort Randall project and Public Law 87-735 (76  
2 Stat. 704 et seq.) authorized the acquisition of  
3 6,179 acres of Indian land on Crow Creek for the  
4 Big Bend project;

5 (5) Public Law 87-735 (76 Stat. 704 et seq.)  
6 provided for the mitigation of the effects of the Fort  
7 Randall and Big Bend projects on the Crow Creek  
8 Indian Reservation, by directing the Secretary of the  
9 Army to—

10 (A) replace, relocate, or reconstruct—

11 (i) any existing essential governmental  
12 and agency facilities on the reservation, in-  
13 cluding schools, hospitals, offices of the  
14 Public Health Service and the Bureau of  
15 Indian Affairs, service buildings, and em-  
16 ployee quarters; and

17 (ii) roads, bridges, and incidental mat-  
18 ters or facilities in connection with such fa-  
19 cilities;

20 (B) provide for a townsite adequate for 50  
21 homes, including streets and utilities (including  
22 water, sewage, and electricity), taking into ac-  
23 count the reasonable future growth of the town-  
24 site; and

1           (C) provide for a community center con-  
2           taining space and facilities for community gath-  
3           erings, tribal offices, tribal council chamber, of-  
4           fices of the Bureau of Indian Affairs, offices  
5           and quarters of the Public Health Service, and  
6           a combination gymnasium and auditorium;

7           (6) the Secretary of the Army and the Sec-  
8           retary of the Interior have failed to meet the re-  
9           quirements under Public Law 87-735 (76 Stat. 704  
10          et seq.) with respect to the mitigation of the effects  
11          of the Fort Randall and Big Bend projects on the  
12          Crow Creek Indian Reservation;

13          (7) although the national economy has benefited  
14          from the Fort Randall and Big Bend projects, the  
15          economy on the Crow Creek Indian Reservation re-  
16          mains underdeveloped, in part as a consequence of  
17          the failure of the Federal Government to fulfill the  
18          obligations of the Federal Government under the  
19          laws referred to in paragraph (4);

20          (8) the economic and social development and  
21          cultural preservation of the Crow Creek Sioux Tribe  
22          will be enhanced by increased tribal participation in  
23          the benefits of the Fort Randall and Big Bend com-  
24          ponents of the Pick-Sloan project; and

1           (9) the Crow Creek Sioux Tribe is entitled to  
2           additional benefits of the Missouri River basin Pick-  
3           Sloan project, including hydropower revenues and in-  
4           frastructure development.

5 **SEC. 3. DEFINITIONS.**

6           For the purposes of this Act, unless the context im-  
7           plies otherwise, the following definitions shall apply:

8           (1) **FUND.**—The term “Fund” means the Crow  
9           Creek Sioux Tribe Infrastructure Development  
10          Trust Fund established under section 4(a).

11          (2) **PLAN.**—The term “plan” means the plan  
12          for socioeconomic recovery and cultural preservation  
13          prepared under section 5.

14          (3) **PROGRAMS.**—The term “Programs” means  
15          the integrated programs of the Eastern Division of  
16          the Missouri River basin Pick-Sloan program, ad-  
17          ministered by the Western Area Power Administra-  
18          tion, as determined by the Secretary.

19          (4) **SECRETARY.**—The term “Secretary” means  
20          the Secretary of the Interior.

21          (5) **TRIBE.**—The term “Tribe” means the Crow  
22          Creek Sioux Tribe.

1 **SEC. 4. ESTABLISHMENT OF CROW CREEK SIOUX TRIBE IN-**  
2 **FRAS**TRUCTURE DEVELOPMENT TRUST  
3 **FUND.**

4 (a) CROW CREEK SIOUX TRIBE INFRASTRUCTURE  
5 DEVELOPMENT TRUST FUND.—There is established in  
6 the Treasury of the United States a fund to be known  
7 as the “Crow Creek Sioux Tribe Infrastructure Develop-  
8 ment Trust Fund”.

9 (b) FUNDING.—Beginning with fiscal year 1997, and  
10 for each fiscal year thereafter, until such time as the ag-  
11 gregate of the amounts deposited in the Fund is equal to  
12 \$27,500,000, the Secretary of the Treasury shall deposit  
13 into the Fund an amount equal to 25 percent of the re-  
14 ceipts from the deposits to the Treasury of the United  
15 States for the preceding fiscal year from the Programs.

16 (c) INVESTMENTS.—The Secretary of the Treasury  
17 shall invest the amounts deposited under subsection (b)  
18 only in interest-bearing obligations of the United States  
19 or in obligations guaranteed as to both principal and inter-  
20 est by the United States.

21 (d) PAYMENT OF INTEREST TO TRIBE.—

22 (1) ESTABLISHMENT OF ACCOUNT AND TRANS-  
23 FER OF INTEREST.—The Secretary of the Treasury  
24 shall, in accordance with this subsection, transfer  
25 any interest that accrues on amounts deposited  
26 under subsection (b) into a separate account estab-

1 lished by the Secretary of the Treasury in the Treas-  
2 ury of the United States.

3 (2) PAYMENTS.—

4 (A) IN GENERAL.—Beginning with the fis-  
5 cal year immediately following the fiscal year  
6 during which the aggregate of the amounts de-  
7 posited in the Fund is equal to the amount  
8 specified in subsection (b)(2), and for each fis-  
9 cal year thereafter, all amounts transferred  
10 under paragraph (1) shall be available, without  
11 fiscal year limitation, to the Secretary of the In-  
12 terior for use in accordance with subparagraph  
13 (C).

14 (B) WITHDRAWAL AND TRANSFER OF  
15 FUNDS.—For each fiscal year specified in sub-  
16 paragraph (A), the Secretary of the Treasury  
17 shall withdraw amounts from the account estab-  
18 lished under such paragraph and transfer such  
19 amounts to the Secretary of the Interior for use  
20 in accordance with subparagraph (C). The Sec-  
21 retary of the Treasury may only withdraw  
22 funds from the account for the purpose speci-  
23 fied in this paragraph.

24 (C) PAYMENTS TO TRIBE.—The Secretary  
25 of the Interior shall use the amounts trans-

1           ferred to the Secretary under subparagraph (B)  
2           only for the purpose of making payments to the  
3           Tribe.

4           (D) USE OF PAYMENTS BY TRIBE.—The  
5           Tribe shall use the payments made under sub-  
6           paragraph (C) only for carrying out projects  
7           and programs pursuant to the plan prepared  
8           under section 5.

9           (3) PROHIBITION ON PER CAPITA PAYMENTS.—  
10          No portion of any payment made under this sub-  
11          section may be distributed to any member of the  
12          Tribe on a per capita basis.

13          (e) TRANSFERS AND WITHDRAWALS.—

14           (1) AMOUNTS DEPOSITED IN THE FUND.—Ex-  
15           cept as provided in subsection (d)(1), the Secretary  
16           of the Treasury may not transfer or withdraw any  
17           amount deposited under subsection (b).

18           (2) AMOUNTS TRANSFERRED TO ACCOUNT.—  
19           Except as provided in subsection (d)(2), the Sec-  
20           retary of the Treasury may not transfer or withdraw  
21           any amounts transferred to the account established  
22           under subsection (d)(1).

23 **SEC. 5. PLAN FOR SOCIOECONOMIC RECOVERY AND CUL-**  
24 **TURAL PRESERVATION.**

25          (a) PLAN.—

1           (1) IN GENERAL.—The Secretary of the Inte-  
2           rior, acting through the Bureau of Indian Affairs, in  
3           cooperation with the Secretary of Health and  
4           Human Services, acting through the Indian Health  
5           Service, and the Crow Creek Tribal Council, shall  
6           prepare a plan for the use of payments made to the  
7           Tribe under section 4(d)(2).

8           (2) REQUIREMENTS FOR PLAN COMPONENTS.—  
9           The plan shall, with respect to each component of  
10          the plan—

11                   (A) identify the costs and benefits of that  
12                   component; and

13                   (B) provide plans for that component.

14          (3) APPROVAL OF CROW CREEK TRIBAL COUN-  
15          CIL.—The plan shall be subject to the approval of  
16          the Crow Creek Tribal Council.

17          (4) SUBMITTAL TO CONGRESS.—Not later than  
18          2 years after the date of enactment of this Act, the  
19          Secretary shall submit the plan to Congress.

20          (b) CONTENT OF PLAN.—The plan shall include the  
21          following programs and components:

22                   (1) EDUCATIONAL FACILITY.—The plan shall  
23                   provide for an educational facility to be located on  
24                   the Crow Creek Indian Reservation.

1           (2) **COMPREHENSIVE INPATIENT AND OUT-**  
2 **PATIENT HEALTH CARE FACILITY.**—The plan shall  
3 provide for a comprehensive inpatient and outpatient  
4 health care facility to provide essential services that  
5 the Secretary, in consultation with the individuals  
6 and entities referred to in subsection (a)(1), deter-  
7 mines to be—

8                   (A) needed; and

9                   (B) unavailable through existing facilities  
10 of the Indian Health Service on the Crow Creek  
11 Indian Reservation at the time of the deter-  
12 mination.

13           (3) **WATER SYSTEM.**—The plan shall provide  
14 for the construction, operation, and maintenance of  
15 a municipal, rural, and industrial water system for  
16 the Crow Creek Indian Reservation.

17           (4) **IRRIGATION FACILITIES.**—The plan shall  
18 provide for irrigation facilities for not less than  
19 1,792 acres.

20           (5) **RECREATIONAL FACILITIES.**—The plan  
21 shall provide for recreational facilities suitable for  
22 high-density recreation at Lake Sharpe at Big Bend  
23 Dam in South Dakota.

24           (6) **OTHER PROJECTS AND PROGRAMS.**—The  
25 plan shall provide for such other projects and pro-

1       grams for the educational, social welfare, economic  
2       development, and cultural preservation of the Tribe  
3       as the Secretary, in consultation with the individuals  
4       and entities referred to in subsection (a)(1), consid-  
5       ers to be appropriate.

6       **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

7       There are authorized to be appropriated such funds  
8       as may be necessary to carry out this Act, including such  
9       funds as may be necessary to cover the administrative ex-  
10      penses of the Crow Creek Sioux Tribe Infrastructure De-  
11      velopment Trust Fund established under section 4.

12      **SEC. 7. EFFECT OF PAYMENTS TO TRIBE.**

13      (a) **IN GENERAL.**—No payment made to the Tribe  
14      pursuant to this Act shall result in the reduction or denial  
15      of any service or program to which, pursuant Federal  
16      law—

17              (1) the Tribe is otherwise entitled because of  
18      the status of the Tribe as a federally recognized In-  
19      dian tribe; or

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

23      (b) **EXEMPTIONS; STATUTORY CONSTRUCTION.**—

1           (1) POWER RATES.—No payment made pursu-  
2           ant to this Act shall affect Missouri River basin  
3           Pick-Sloan power rates.

4           (2) STATUTORY CONSTRUCTION.—Nothing in  
5           this Act may be construed as diminishing or affect-  
6           ing—

7                   (A) any right of the Tribe that is not oth-  
8                   erwise addressed in this Act; or

9                   (B) any treaty obligation of the United  
10           States.

Senator INOUE. The sponsors of this important measure are with us today, and because their time with us is short, I would like to call upon them, but before I do, I am pleased to have with us a senior Member of the House committee, the Honorable Eni Faleomavaega of American Samoa.

**STATEMENT OF HON. ENI FALEOMAVAEGA, U.S. DELEGATE  
FROM AMERICAN SAMOA**

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I am pleased to support the legislation introduced by my good friend, Representative Tim Johnson, and the senior Senator from South Dakota, Senator Daschle.

I would also like to extend my greetings to the chairman of the Crow Creek Tribe, Duane Big Eagle, who has traveled across the country to be with us here today.

The legislation before us will rightly compensate the Crow Creek Sioux Tribe for the massive and devastating impact of the Pick-Sloan plan, which authorized the construction of two dams, the Big Bend and the Fort Randall dams, on the best lands of the Crow Creek Tribe.

The dams flooded 15,000 acres of the tribe's best grazing and woodlands and displaced entire communities against their will. Although Congress was aware of the extent of the damage, it passed legislation in 1962 to replace lost tribal infrastructures, buildings, and roads, the Army Corps of Engineers and the BIA never carried the laws out.

I agree with Congressman Johnson that it is time we followed through on our promises to the tribe. I'm sure that everyone in this room is aware that we have had a rather poor history of keeping our promises to the Indian tribes. For example, we've broken the Fort Laramie treaties of 1851 and 1868, treaties which the Crow Creek Sioux Tribe signed.

I was shocked, Mr. Chairman, to read about the deplorable conditions that exist on the Indian reservations today. For instance, on reservation the average life expectancy of Indians is 31 years less than the life expectancy of all Americans. Reservations have a poverty rate of more than 30 percent and unemployment rates have soared to 45 percent.

What I find troubling, Mr. Chairman, is that many times the Federal Government has contributed through its actions to the problems reflected in these statistics; thus, we not only have a trust obligation to protect and help Indian tribes, but we have a moral obligation to do what's right and make restitution to the tribes of what we took away. The bills before us do exactly that.

I'm proud of the fact that I serve in the House of Representatives with Representative Tim Johnson, because I know how hard he works on behalf of his constituents. This bill is just one example.

We made a promise to the tribe almost 35 years ago that we would help them because of all the damage that we inflicted upon them.

As ranking member of the House Subcommittee on Native American and Insular Affairs, I intend to do everything I can within my power to see that we honor those promises to the tribe.

Again, Mr. Chairman, thank you for the opportunity to make this statement.

Senator INOUE. I thank you very much, Congressman.

Now it's my pleasure to call upon the distinguished Senator from Wyoming, Senator Thomas.

**STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING**

Senator THOMAS. Thank you very much. I look forward to the testimony. I, frankly, have not been involved in this particular issue, even though I was on the House committee for some time, but I'm interested for a number of reasons. Obviously one is fairness in terms of Native Americans. Another is we're involved closely with the Pick-Sloan program in Wyoming and have, indeed, had some hearings on some other matters related to it.

And, of course, I came to hear my friends, my neighbors from South Dakota who have an interest.

By the way, Fort Laramie, of course, is in Wyoming.

At any rate, I won't take time. I am very, very interested in this issue, however, and I'm glad that we're talking about it this morning.

Thank you, Mr. Chairman.

Senator INOUE. May I now call upon the distinguished Member of the Michigan Congressional delegation, the Honorable Dale Kildee.

**STATEMENT OF HON. DALE E. KILDEE, U.S. REPRESENTATIVE FROM MICHIGAN**

Mr. KILDEE. Thank you very much, Senator. I'll be very brief.

I enjoyed working with you for 20 years, Senator, on matters affecting Native Americans and their justice, based upon treaties and civil law and natural law and deeply-rooted in their own sovereignty. I look forward to this hearing this morning.

Senator INOUE. Thank you very much.

Now it's my pleasure to call upon the first two witnesses, the distinguished Senator from South Dakota, a former member of this committee, and now the esteemed democratic leader of the U.S. Senate, The Honorable Tom Daschle; and the Honorable Tim Johnson, a very distinguished Representative from the State of South Dakota, U.S. House of Representatives.

Gentlemen.

**STATEMENT OF HON. THOMAS A. DASCHLE, U.S. SENATOR FROM SOUTH DAKOTA**

Senator DASCHLE. Mr. Chairman and my colleagues, thank you very much for giving us the opportunity to come before you this morning. We appreciate your interest and attention to this issue.

I want to thank all the members of the Senate Indian Affairs Committee and the House Native American and Insular Affairs Committee for conducting this joint hearing on 1264, the Crow Creek Infrastructure Development Trust Fund Act.

I'm very pleased to also have Duane Big Eagle, the chairman of the Crow Creek Tribe immediately behind me. I know that he and

his delegation will share with you their thoughts on this very important bill, as well.

I'm pleased we're at long last moving forward with this innovative legislation. It's a very important issue for South Dakota and the Crow Creek Tribe, and I commend these two committees for their leadership in promoting its consideration.

I want to thank all of the members of the Crow Creek Tribe and the leadership of Chairman Big Eagle for the work that they have done in bringing us to this point. The tribe has worked closely with the South Dakota Congressional delegation to shape this legislative initiative that would, at long last, provide for the development of infrastructure projects outlined in the Big Bend Act of over 30 years ago.

It is instructive to review the long, historic journey that has brought us to this point.

The Flood Control Act of 1944 created five massive earthen dams on the Missouri River. This public works project, known as the Pick-Sloan plan, provides a series of important public benefits, including flood control, irrigation, recreation, and hydropower. Four of the five Pick-Sloan dams are located in our State. Their construction, which took place in the late 1950's, inundated prime bottomland and dislocated communities all along the Missouri River.

As a result, in 1962 Congress passed the Big Bend Act, requiring the Federal Government to compensate the affected landowners for their losses that resulted from the construction of these dams.

Despite passage of the Big Bend Act, the Crow Creek Tribe has never been adequately compensated for all of its loss. Many of the projects on the Big Bend list still have not been completed, are not adequately completed. This bill will finally enable the Government to make good on the promise that it made to the tribe now more than three decades ago.

The Crow Creek Infrastructure Development Trust Fund Act would use a small—let me emphasize small—percentage, 25 percent of the revenues from the eastern division of the Missouri River basin's Pick-Sloan program to establish a \$27.5 million trust fund.

The revenues would be deposited in a federally-approved, interest-bearing account. Deposits would accrue until \$27.5 million had been collected. The tribe would begin to receive the interest the year after the fund reaches \$27.5 million. The tribe's share would then be used for developing and implementing an infrastructure plan.

Some concerns initially expressed included the possibility that this legislation would increase power rates or involve land transfers. It does not increase power rates, nor does it involve any land transfer provisions.

This bill honors commitments made when the Pick-Sloan dams were constructed in a fiscally-sound manner, while helping local entities determine their own priorities for fiscal investment.

This legislation not only benefits the tribe, but the entire State of South Dakota, since a sound tribal infrastructure is essential to economic development overall.

Again, let me commend the tribe and its leadership for its efforts to address the unresolved issues relating to the Pick-Sloan projects.

I'm delighted by the widespread support of the State government and tribal leaders. I'm pleased to sponsor this innovative legislation on behalf of the Crow Creek Tribe, and I urge all of my colleagues to look favorably on its swift passage in the committee and on the floor of the House and the Senate.

Again, thank you, Mr. Chairman and my colleagues.

Senator INOUE. I thank you very much, Mr. Leader. I'm well aware of your very heavy schedule this morning, but I'd just reemphasize some of the points you've made.

It does not increase power rates?

Senator DASCHLE. The chairman is correct. It does not increase power rates, nor does it involve land transfers.

Senator INOUE. And so it will not disrupt the infrastructure of the moment here?

Senator DASCHLE. That is correct.

Senator THOMAS. Mr. Chairman, just what sort of—and I don't want you to take this as if I have a different feeling about it, but the money now is all committed. I presume if you're going to put \$25 million into something, it has to come from somewhere else. What will get less, or how is there more income created?

Senator DASCHLE. There isn't. Obviously, the increase in revenues projected over the coming years is something we anticipate because of the growth in the economy and the growth in demand. As we continue to see that growth, what we hope to do is to earmark a very small percentage of that growth, \$27.5 million in the overall share of the additional growth to be accumulated, for the dedication and resolving the construction funds.

Senator THOMAS. I see.

Senator DASCHLE. We would not use the money except for the fact that we would be using the interest on that money. So it's not money taken away from anything as much as it is put in a trust fund for purposes of infrastructure development.

Again, I emphasize, it will not be taken from the current pool, but taken from the growth as we anticipate the funds to be generated in the coming years.

Senator THOMAS. I see. So the corpus of the trust would come from growth in the future?

Senator DASCHLE. That's correct.

Senator THOMAS. Thank you.

Senator INOUE. Congressman Faleomavaega.

Mr. FALEOMAVAEGA. Just a quick question, Mr. Leader.

As a consequence of this tribe becoming the sacrificial lamb for this Pick-Sloan plan, have you—has there been any statistical study on the economic value of the Pick-Sloan plan to benefit the community surrounding the tribe? Over the course of the years, what are we talking about in terms of economic contributions that this tribe has given to the surrounding communities as a result of this plan?

Senator DASCHLE. Chairman Big Eagle can address that much more adequately than I can, but let me just say there are at least three areas that I can imagine would be helpful right from the beginning.

First of all, all this new construction generates tax revenue. That tax revenue goes as much to the State as it does to the tribes.

Second, it creates jobs. All of those jobs are not necessarily going to be jobs for the reservations. They will bring in contractors that will come from all over the State. So in terms of job creation, there are also additional opportunities.

Finally, many of these facilities will generate new business, new economic activity, which will create the ripple effect that many of these infrastructure projects have created in the past.

So we see a greater economic force within the area—in an area where we might see unemployment today, an opportunity for real employment, and then clearly opportunities for tax revenue generated at both the tribal as well as the State levels.

Mr. FALEOMAVAEGA. My point, Mr. Leader, is that I was just wanting to see if there were any studies done in terms of the result of the plan, the Pick-Sloan plan, on how much benefit has been given to the surrounding communities, if any. I'm just trying to make a contrast. The tribe is contributing to the economic well-being of the State, as well as the surrounding communities, and, as a result, they are only asking for a pittance, just to restore some of the things that they've lost in the course of the past 35 years.

Senator DASCHLE. I misunderstood your point. I thought you were asking about what economic repercussions there will be as a result of the construction of these new infrastructure projects.

You're absolutely right. There has been a tremendous boom to the economy, a tremendous opportunity for the entire region, not just South Dakota, as a result of the Pick-Sloan projects. Unfortunately, some gave a great deal in order for that economic activity and profit to be realized.

Again, we are all very proud of the fact that we have these infrastructure capabilities and all that it has meant to the State since the dams were constructed, but obviously there was an understanding when they were constructed that we would all have the opportunity to share the benefits.

Mr. FALEOMAVAEGA. Right.

Senator DASCHLE. Some gave more than others in order for this to exist, and I think that's what we've got to deal with and come to terms with as we're attempting to do this bill.

Mr. FALEOMAVAEGA. Mr. Leader, if there is such a report of some sort, my guess is it would probably be ten to one that the benefits have been to the surrounding communities, and what the Congress is trying to redress really is just to restore what was lost to the tribe.

I think what they give, in contrast, is tremendously—ten-fold or even more, in my estimate.

I would really appreciate it if some kind of a study was made to that effect to be made part of the record.

Senator DASCHLE. We will see that that happens.

Mr. FALEOMAVAEGA. Thank you, Mr. Leader.

Senator INOUYE. May I now call on Congressman Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

Just a brief question. Tom, how long do you anticipate it will take to accrue or reach that \$27.5 million in the future growth of the projects?

Senator DASCHLE. It's estimated that it would take 2 years, about 24 months, Dale, for the fund to be accrued. So it wouldn't take very long.

Mr. KILDEE. That's important to me, because if it was going to take a longer time than that, I would think we should advance them the money somehow and let that be paid back. But if it's going to take 24 months, perhaps that's time enough then, but I wouldn't want it to go over a longer period of time.

Senator DASCHLE. I'm glad to hear you say that. I wouldn't want to take it any longer than that either.

Mr. KILDEE. Thank you very much. Thank you, Mr. Chairman.

Senator INOUYE. It is my pleasure to welcome the distinguished Member of the Washington delegation, Congressman Metcalf.

Mr. METCALF. Thank you very much, Mr. Chairman. I don't have a question at this time.

Senator INOUYE. Thank you, sir.

Thank you very much, Mr. Leader.

Senator DASCHLE. Thank you, Mr. Chairman.

Senator INOUYE. And now it is my pleasure to call upon the distinguished representative of the State of South Dakota, the Honorable Tim Johnson.

**STATEMENT OF HON. TIM JOHNSON, U.S. REPRESENTATIVE,  
FROM SOUTH DAKOTA**

Mr. JOHNSON. Thank you, Mr. Chairman. Let me thank the members of the Senate Indian Affairs Committee and my colleagues in the House Native American and Insular Affairs Subcommittee for holding this joint hearing on S. 1264 and H.R. 2512, the Crow Creek Sioux Tribe Infrastructure and Development Act.

This legislation is particularly important to the Crow Creek Tribe and to my entire State of South Dakota, and I sincerely appreciate the efforts your committees have made to move this initiative forward—an initiative that has been endorsed by our Republican Governor, Bill Janklow, by Senator Daschle, myself, as well as supported by our rural electric programs in the State of South Dakota, so we have a very broad-based, unified coalition of support for this legislative initiative from our home State of South Dakota.

I also want to welcome the many members of the Crow Creek Tribe who are with us today, including newly-reelected Chairman Duane Big Eagle. Your presence here is testament to the serious priority the tribe has placed on this innovative legislation, and we're here today because of the many years of hard work that you have put in on this initiative.

I've been privileged to work with the tribe and with Senator Daschle on this bill, and I'm confident that the committees will look favorably on the initiative to move these bills swiftly toward House and Senate passage.

Also with us today are other Native American leaders from around the State and from the Crow Creek Tribe, that including Michael Jandreau, who is chairman of our Lower Brule Tribe, a neighboring tribe to the Crow Creek Tribe in South Dakota.

The Crow Creek Sioux Tribe Infrastructure and Development Act would establish a trust fund with the Department of the Treasury for the development of certain tribal infrastructure projects for the

Crow Creek Tribe. These projects were outlined in previous legislation but were never completed due to limited funding resources.

The Crow Creek development trust fund would be capitalized from a small percentage of hydropower revenues and would be capped at \$27.5 million. Language included in the bill would expressly prohibit any increase in power rates in connection with the trust fund. The tribe would then receive the interest from the fund, to be used according to a development plan based on legislation previously passed by Congress and prepared in conjunction with the BIA and IHS.

As you know, the Flood Control Act of 1944 created five massive earthen dams along the Missouri River. Known as the Pick-Sloan plan, this public works project has since provided much-needed flood control, irrigation, and hydropower for communities along the Missouri. Four of the Pick-Sloan dams are located in South Dakota, and the benefits of the project have proven indispensable to the people of my State, as well as the people throughout the Missouri basin all across the mid-section of the United States.

Unfortunately, construction of the Big Bend and Fort Randall dams, in particular, was severely detrimental to economic and agricultural development for the Crow Creek Tribe. Over 15,000 acres of the tribe's most fertile and productive land were inundated as a direct result of construction. The tribal community has still not yet been adequately compensated for the economic deprivation caused by Pick-Sloan.

Through the Big Bend Act of 1962, Congress directed the U.S. Army Corps of Engineers and the Department of the Interior to take certain actions to alleviate the problems caused by the destruction of tribal resources and displacement of entire communities, yet, these directives were either carried out inadequately or not at all.

Congress established precedent for the Infrastructure and Development Act with the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act of 1992, which set up a recovery fund financed entirely from a percentage of Pick-Sloan power revenues to compensate the tribes for lands lost to Pick-Sloan.

The Crow Creek Sioux Tribe Infrastructure Development Fund Act of 1995 will enable the Crow Creek Tribe finally to address and improve their infrastructure and will provide the needed resources for further economic development at the Crow Creek Indian Reservation, a development which will benefit not only the Crow Creek tribal members, but the entire State of South Dakota.

This legislation has broad support in our State. South Dakota Governor Bill Janklow strongly endorses the funding mechanism to develop infrastructure, and the South Dakota Rural Electric Association has supported this effort, as well.

I'm proud to have introduced this legislation on behalf of the Crow Creek Tribe, but I urge my committee colleagues to support this vitally-important legislation and to correct a historic injustice against the Crow Creek Sioux Tribe.

I thank the members of the committees.

Senator INOUE. Thank you very much, Congressman. I'm pleased that this matter has the support of your Governor.

Thank you very much.

Mr. JOHNSON. Thank you.

Senator INOUE. Congressman Faleomavaega.

Mr. FALEOMAVAEGA. Just a quick question, Congressman Johnson. Was there ever any thought of actually returning or securing replacement lands for the tribe when these lands were given for the Pick-Sloan project?

Mr. JOHNSON. The bulk of the land lost, the 15,000 acres, are simply inundated under the huge reservoir. There are some issues which remain about whether there is excess take lands or not. That is a controversial issue and one that needs to be dealt with.

But this issue taken up in this bill does not deal with land takings, does not deal with rate increase. It simply creates a trust fund which would allow for the tribe to work on the infrastructure development that is so badly needed.

Currently, school, health care, water, sewer, and other facilities are in great need of upgrade, if not altogether new construction, and this trust fund would give tremendous impetus to the tribe to restore the economic health and well-being of the entire tribe and the area.

Recognizing that there may be additional issues that are not resolved by this bill, it, nonetheless, has broad-based support and would go a long way toward reinstating a good level of economic health for the entire area.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Senator INOUE. Senator Thomas.

Senator THOMAS. Just briefly. Tim, this land was purchased, wasn't it, by the project?

Mr. JOHNSON. There was a purchase and payment made to individual land owners and some compensation to the tribe; however, there also were assurances of replacement of schools, medical facilities, housing, and other infrastructure work which, although the promise was made, simply was not carried out.

Senator THOMAS. I see. I suspect you won't be here when—I notice in the testimony of the Corps that they feel as if they've completed their work and done it satisfactorily. How do you react to that?

Mr. JOHNSON. Well, if anybody has traveled through the Crow Creek Reservation, as I have repeatedly, it is a cause, to me, of shame that we have done so poorly at replacing the infrastructure for this reservation.

I think you have to personally view the circumstances that the tribe has struggled under to fully appreciate the lack of compensation. The school is far removed from the main community. It is in very bad physical condition. There is no hospital. There is just a huge backlog of additional problems that need to be dealt with.

I think this relatively modest trust fund would go a long way toward providing long-term help to the area.

I would disagree [with the Corps], and obviously Governor Janklow and Senator Daschle and I have been in agreement that this makes some sense.

Senator THOMAS. Finally, briefly, what is the position of the administration, Interior Department?

Mr. JOHNSON. I'm not aware that the administration has taken a formal position on the legislation. I could be corrected on that. Senator THOMAS. Thank you.

Senator INOUE. Congressman Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

I have not seen the infrastructure, myself. I know of the school. But having traveled out to Indian country for about 20 years now, when I was on the Education and Labor Committee—still on that committee, although it's renamed now in the House—I found a number of Indian schools that a Federal judge would not allow us to keep prisoners in in Michigan.

As a matter of fact, we had to close down our county jail about 10 years ago because a Federal judge said it was not an appropriate place in which to keep prisoners, and I've seen Indian schools that were in far worse condition than that and we were still allowing students to be educated in them.

I think that we have a backlog of some capital outlay for the Indian tribes strictly in the field of education. I don't know what that school is like, the one you described, but I know I saw many schools that were just—would have moved a Federal judge to remove prisoners from that type of building.

Thank you, Mr. Chairman.

Senator INOUE. Thank you.

Congressman Metcalf.

Mr. METCALF. No questions. Thank you.

Senator INOUE. Thank you very much.

Mr. JOHNSON. Thank you, Mr. Chairman and members of the committees.

I have a markup pending in Resources Committee on the House side dealing with not only the Indian Child Welfare Act, but with some very contentious range management issues, and I am going to have to excuse myself to attend that hearing there, but I do know that the quality of the testimony from the tribe, itself, will, I think, be very enlightening and very helpful to this committee.

Thank you.

Senator INOUE. Thank you, sir.

Before proceeding, I have been asked by the chairman of the Senate Committee to place in the record his statement. Without objection, so ordered.

[Prepared statement of Senator McCain appears in appendix.]

Senator INOUE. I would like to read two sentences from this.

These tribes saw much of their best farmland flooded, long-established communities relocated, families disrupted, and a way of life changed forever. The human price they paid is beyond calculation.

Now it is my pleasure to call upon the second panel of witnesses. May I call upon the special assistant, Dr. Catherine Vandemoer, and the district commander of the U.S. Corps of Engineers, Colonel Michael Mueleners.

Dr. Vandemoer.

**STATEMENT OF CATHERINE VANDEMOER, SPECIAL ASSISTANT FOR WATER AND NATURAL RESOURCES, DEPARTMENT OF THE INTERIOR**

Ms. VANDEMOER. Good morning, Mr. Chairman and members of the committees. I am pleased to be here today to present the Department of the Interior's views on S. 1264 and its companion bill, H.R. 2512, the Crow Creek Tribe Infrastructure Development Trust Fund Act of 1995.

I'd like to personally thank Senator Inouye for inviting our participation today.

If enacted, the bill would provide benefits of the Missouri River Pick-Sloan project to the Crow Creek Sioux Tribe. I wish to thank Senator Daschle for introducing the bill, the Crow Creek Sioux Tribe and its advisers for working so diligently to craft legislation which creatively addresses and solves a longstanding problem regarding water development in the Missouri River basin and its impacts on Indian tribes. I would also like to thank Chairman McCain and Vice Chairman Inouye for holding this hearing.

The purpose of my testimony today is not only to comment in support of S. 1264, but to present a historical perspective on the issue this bill seeks to address and why the provisions of this bill represent an appropriate resolution.

In addition, I would like to highlight certain key provisions of this bill that have implications and provide guidelines for other similar resolutions to tribal water, land, and rights issues in the Missouri River basin.

In presenting this discussion, I will also describe the basis for and content of suggested changes to the legislation, which the department feels will strengthen and enhance its implementation.

Before I begin, may I direct your attention to the map attached testimony. The map should provide you with a physical picture of the places we're talking about.

The Crow Creek Sioux Tribe is a constituent band of the Great Sioux Nation and a signatory of the Fort Laramie treaties of 1851 and 1868. The tribe resides on their 258,000-acre reservation in central South Dakota. The Missouri River, as you can see by the map, cuts through the western boundary of the reservation.

The Pick-Sloan program, as you've already heard, constructed five earthen dams on the Missouri River. The resources of the Missouri River for the Crow Creek Tribe provided food, water, wood for shelter and fuel, forage for cattle and wildlife, and plants for medicinal purposes. These resources were literally destroyed with the dam construction on the Missouri River to meet the purposes of flood control, navigation, recreation, irrigation, municipal and industrial uses, and hydropower generation.

The impacts of the dam construction on the Crow Creek Sioux Reservation have been devastating. I need not repeat these at this point—in fact, I would prefer to defer to the tribe on these—but the tribe lost rich acres of prime bottomlands, whole towns were inundated, key governmental services, hospitals, and facilities were moved many miles from the reservation. Yet, despite this hardship, the Crow Creek Tribe continued their efforts to work constructively with the Congress, the Department of the Interior, and the Army

Corps of Engineers to achieve passage of specific legislation aimed at increasing compensation to the tribe for the loss of their land.

It was a Congressional action that provided for relocation expenses and the replacement of facilities and infrastructure lost as a result of dam construction.

Specifically, in 1962 Public Law 87-735, the Big Bend Settlement Act, was enacted, and Congress then acknowledged the devastating impact of these projects on the people of the Crow Creek Reservation.

Section 5 of the act stated,

The Secretary of the Army is authorized and directed, out of funds appropriated for the Big Bend project, other than funds provided by this act, to protect, replace, relocate, or reconstruct any existing essential governmental and agency facilities on the reservation, including schools, hospitals, Public Health Service, and Bureau of Indian Affairs offices, facilities, service buildings, et cetera, et cetera.

Section 6 also provided that the Secretary of the Army, under plans approved by the Secretary of the Interior, after consultation with the Crow Creek Tribal Council, to use funds to locate and construct on tribal land—again, with approval of the Secretary of Interior—a town site adequate for 50 homes, utilities, streets, water, sewage, and electricity.

This is very significant and strong language; yet, despite this language, Mr. Chairman, and the Congressional intent to right a wrong, it has taken more than 30 years since the passage of the Big Bend Act to fulfill the full intent of the legislation.

Neither the BIA nor the U.S. Army Corps of Engineers provided the necessary assistance or followup to accomplish this earlier legislation.

I would like to point out, however, Mr. Chairman, in the last several years, that the coordination between the Army Corps of Engineers and the BIA has greatly improved. It is due, in large part, to the movement of the tribes seeking to take control of their own resources by following the road to self-determination and self-governance.

Through tribal persistence and perseverance, our two agencies have learned and have been encouraged to work more cooperatively.

About S. 1264: The administration could support the bills if amended to remedy potential problems of direct appropriations that, in turn, may cause pay-as-you-go problems. The Department is presently preparing a report and will soon transmit it to you, Mr. Chairman, which would provide the administration's proposed amendments that will address any potential problems that might exist in the appropriations area.

In general, we view S. 1264 as an implementation tool through which the tribe may finally realize the mandate expressed by Congress in 1962.

As you've already heard, the bill authorizes the Secretary of the Interior to build for the tribe key infrastructure components envisioned by the Big Bend Act. The bill directs the Secretary to deposit an amount equal to 25 percent of the receipts from the deposit to the Treasury from the Pick-Sloan power revenues of the previous year to capitalize a trust fund, whose interest will be used to finance the infrastructure development.

The bill is structured according to the provisions contained in the Three Affiliated Tribes and Standing Rock Sioux Tribe equitable compensation program, 106-4731, and uses the same formula Congress employed in that bill to provide benefits for the Missouri River Pick-Sloan program.

Using this formula, a trust fund in the amount of \$27.5 million has been determined to be an appropriate sum to provide additional compensation to the tribe for lands that were lost, relocation, and infrastructure.

Mr. Chairman, I will not repeat the specifics of the bill in terms of what it does and how the Treasury Secretary is required to invest the funds, except to say that, after the fund is capitalized, the interest payments would be made available to the tribe without fiscal year limitations for infrastructure improvements and development.

We'd also like to point out that the proposed legislation contains provisions which prohibit the use of funds for per capita payments and prohibits the Secretary of the Interior from using the funds for any other purpose than the Crow Creek Sioux Tribe infrastructure development.

A plan for infrastructure development is required so the funds can be directed toward achieving the goals of this and previous legislation.

In the construction of the dams, not only were essential food-stuffs, wildlife, forage, and timber resources lost, but the use of water for other purposes—the opportunity, if you will, to develop Indian water for Indian economic gain—was largely missed. Now most of that water, which could be reasonably claimed by the tribes under existing Federal laws and doctrines, is used to generate electricity, navigation flows, irrigation, and recreational lake levels.

It seems that the time is right to ensure that we provide the tribes with a real and tangible benefit from the projects which have affected their lands, resources, water rights, and communities.

The Department of the Interior is presently preparing and will soon transmit a report presenting the administration's proposed amendments to the bill. These amendments would: No. 1, correct the definition of programs and other drafting errors; No. 2, provide for the remedy of potential appropriations problems; No. 3, delete unnecessary language pertaining to withdrawal and transfer of funds; No. 4, authorize the tribe to prepare the plan; and, No. 5, provide for the cost of operation and maintenance of the new school facility.

There is, however, one revision we would like to highlight.

Section 5 of the proposed legislation calls for the Secretary of the Interior, in cooperation with the BIA, the IHS, and the tribe, to develop a plan for infrastructure development. I suggest that it might be more effective for the tribe, and not the Secretary of the Interior, to be responsible for initially developing an infrastructure plan. We understand that the tribe has already made significant progress in developing such a plan, including cost estimates, engineering components and other aspects.

In addition, we believe that, with the move toward self-governance and to provide all means of allowing tribes to obtain self-determination, it is fitting that we put the responsibility in the hands

of the Crow Creek Sioux Tribe. Indeed, this bill is an important tool in the advancement of self-governance of the tribe.

The administration would, however, appreciate the opportunity to review the plan.

Mr. Chairman, the Missouri River Pick-Sloan program has provided significant benefit to the national and regional economy. The benefits of flood control, navigation, hydropower generation, recreation, irrigation, and municipal and industrial uses contribute approximately \$1.3 billion annually to the national economy, of which approximately one-half is revenue generated from hydropower operations.

Proposed legislation would allow the tribe to benefit from the Pick-Sloan plan, after losing lands and resources and waiting more than 50 years to realize promises made by the Federal Government. Now is the time to rectify this situation.

Mr. Chairman, this concludes my testimony in support of S. 1264. I would be happy to respond to any questions.

Senator INOUE. I thank you very much, Doctor.

[Prepared statement of Ms. Vandemoer appears in appendix.]

Senator INOUE. I will first call upon the Colonel, and when both are finished we will have questions.

Colonel.

**STATEMENT OF COLONEL MICHAEL MEULENERS, DISTRICT COMMANDER, U.S. ARMY CORPS OF ENGINEERS, OMAHA, NE, ACCOMPANIED BY RICK NOEL, OMAHA DISTRICT REAL ESTATE OFFICE**

Colonel MEULENERS. Good morning, Mr. Chairman and members of the committees. I am Colonel Michael Meuleners, Commander of the Omaha District of the Army Corps of Engineers. Accompanying me today is Rick Noel of the Omaha District's real estate office. He is seated to my immediate right.

We are pleased to appear today to provide views of the Department of the Army on S. 1264 and H.R. 2512.

I would like to summarize my statement and have the full statement included in the record.

Senator INOUE. Without objection.

Colonel MEULENERS. The Fort Randall and Big Bend Dam projects are two of the multi-purpose reservoir projects along the main stem of the Missouri River. They were authorized by the Flood Control Act of 1944 as part of the Pick-Sloan Missouri Basin Program commonly referred to as the Pick-Sloan plan.

The Corps of Engineers manages the project lands of these and other main stem projects for the purposes of flood control, navigation, hydropower, water supply, irrigation, fish and wildlife, recreation, and water quality control.

In the original acts which authorized land acquisition for the Fort Randall and Big Bend projects, Congress addressed the question of compensation to the tribes for the losses suffered in connection with these projects.

The Corps was designated as the agent of the Secretary of the Interior in carrying out certain provisions of the acts. These provisions provided for: First, replacement, relocation, or reconstruction of Governmental and agency facilities designated by the Secretary

of the Interior; and, second, the construction of a community center and a town site, including infrastructure.

A memorandum of agreement between the Corps and the BIA addressed the governmental and agency facilities to be replaced and the town site facilities and infrastructure to be constructed. We believe that the Army Corps of Engineers fully executed the provisions of that agreement.

Regarding S. 1264 and H.R. 2512, the Army defers to the Department of the Interior and other appropriate administration officials for comments on sections 4, 6, and 7.

Regarding section 5, which addresses the plan for socioeconomic recovery and cultural protection, the Army notes that it may be restrictive by specifying recreation development only at Lake Sharpe. We suggest that specific reference to Lake Sharpe be deleted to allow for recreation development at other locations.

I would also like to add that the Omaha District has a very active and productive working relationship with the Crow Creek Sioux Tribe and its members. We view the program that we have developed and continue to develop as one of good partners and good neighbors. We enjoy a longstanding partnership program with the tribe in all aspects of managing the resources of the Big Bend Dam-Lake Sharpe project. We have developed a joint wildlife and natural resource management program, one that directly involves employing and training local tribal members, as well as enhancing the resources of the project.

We recognize and share the tribe's concern over cultural resources of the area and are working with the tribe to develop a historic properties management plan that will identify and prioritize protection of important cultural sites that are threatened by erosion.

We are also working with the tribe in their efforts to develop the recreation potential of the area.

The Omaha District places a high priority on improving our working relationship with the Crow Creek Sioux Tribe and all the tribes in the Missouri River basin.

We view these efforts as essential in developing and managing the resources of the Lake Sharpe project for the benefit of the tribe and all the residents of South Dakota.

Mr. Chairman, this concludes my statement. I'd be pleased to respond to any questions.

Senator INOUE. I thank you very much, Colonel.

[Prepared statement of Colonel Meuleners appears in appendix.]

Senator INOUE. If I may, I would like to now ask Dr. Vandemoer a few questions.

What is the basis for claiming that the tribes involved in this bill have rights to benefits in the Missouri River system?

Ms. VANDEMOER. Senator, there are at least three major points I would like to make in this regard.

First, the 1908 Winters' decision established the principle that when the United States set aside a reservation for Indian tribes, it implicitly reserved an amount of water sufficient to fulfill the purposes of the reservation.

Each and every one of the 28 tribes in the Missouri River basin have similar treaties, and therefore are entitled to Winters' rights.

Presently, these rights, are largely unclaimed; however, any calculation of the amount of water that could be claimed under the Winters' Doctrine is significant.

The second reason we believe that the tribes have benefits in the Missouri River system are reflected in the language of the Flood Control Act, itself, the Pick-Sloan program and essentially additional coordination between the Departments of the Interior and Defense.

On April 26, 1944, the Assistant Commissioner of the Office of Indian Affairs, William Zimmerman, expressed his belief that the report set forth in Senate document 191 regarding Indian irrigation and power interests, should include language providing that the actual control of the reservoirs serving Indian land should fall under the jurisdiction of the Office of Indian Affairs.

In order to accomplish this goal, the commissioner suggested specific language implementing this recommendation for the construction and operation of such works.

The commissioner suggested that such modifications were necessary in order to protect the Indian interests under the *Winters'* decision.

In responding to the assistant commissioner's proposal, the commissioner of reclamation concurred with the commissioner of Indian Affairs and recommended that the report should recognize the authority and the responsibility of the Office of Indian Affairs in the matter of irrigating Indian lands.

Although Congress did not adopt these recommendations, the tribes' extensive *Winters'* rights were left intact.

Specifically, at appendix 4 of Senate document 191, the U.S. Geological Survey noted that its current program of water resource investigations was in cooperation with all the States, the Corps of Engineers, the Office of Indian Affairs, and the State Department.

Consequently, we believe there is significant legislative language to indicate that tribes were contemplated as being beneficiaries of the Pick-Sloan program.

Finally, the third point is that when one calculates the amount of water in the Missouri River system that could be attributable to or claimed by tribes, tribal water resources generate a significant amount of the electricity and benefits that accrue to the Missouri River basin communities.

We believe, therefore, that the tribe must receive value for their benefits.

Senator INOUE. I note that both bills, House and Senate, have the number \$27.5 million for the trust fund. How did you reach that number?

Ms. VANDEMOER. Mr. Chairman, we understand that the \$27.5 million are proportional to the land and the resources lost. It follows the similar formula outlined in the GAO report regarding the Three Affiliated Tribes and the Standing Rock Sioux Tribe equitable compensation program.

In that situation, they lost more land compared to the Crow Creek Sioux Tribe; however, the Crow Creek Sioux Tribe lost more of a concentration of resources because they were concentrated along the river.

Our second understanding of the origin of the \$27.5 million is that a reasonable rate of return on that investment would provide adequate and consistent funding to support the infrastructure development planned for the tribe.

Senator INOUE. I presume you have concerns about appropriations. What are they?

Ms. VANDEMOER. Yes, sir; currently the hydropower revenues are used to repay the Pick-Sloan debt. Capitalizing the trust fund out of these revenues would, for one time only, remove \$27.5 million from debt repayment. Additionally, the interest generated on the \$27.5 million would not be available for repayment of the construction debt.

In our understanding of the Big Bend and Fort Randall projects, the benefits that they develop produced from hydro resources are about \$100 million.

Without going into more detail, Mr. Chairman, these are concerns that the Office of Management and Budget has raised. The Department of the Interior, will be looking at options for alleviating these concerns and eliminating them.

In fact, these issues basically delay the repayment of the Pick-Sloan program.

Senator INOUE. I presume that, once this bill becomes law, and if it does, that there will be a permanent or continuous payment to the tribes?

Ms. VANDEMOER. That is what we understand the bill to say at this point. Our reasoning for supporting this is—

Senator INOUE. I would like to know what the justification would be for this permanent payment.

Ms. VANDEMOER. The justification is that the tribe was not adequately compensated in the initial Big Bend Act and so forth. Although the grand plans for developing the infrastructure were there, there was never enough money appropriated to realize that infrastructure development.

The GAO report on the Three Affiliated Tribes bill also indicated that the tribes in the Missouri River basin were not been compensated appropriately; consequently, there is a need to rebuild the infrastructure in order to move forward.

In terms of a continued payment, the tribal water resources—which, again, could be reasonably claimed under existing doctrines—are now used to generate hydropower. That water still flows. Nothing about this bill is going to prevent that water from continuing to flow and producing benefits.

With the Absence of a specific quantification of water rights, this is a reasonable approach to providing real benefits from a resource that continues to produce a revenue stream.

Senator INOUE. As you've indicated, Doctor, payments would begin only after the full amount of \$27.5 million has been deposited in the fund. How long is it going to take for the \$27.5 million to be accumulated? Senator Daschle said 2 years. What is your understanding?

Ms. VANDEMOER. If we look specifically at the Big Bend and Fort Randall projects the amount of revenue generated by those two facilities constitutes 29 percent of the power generation in the Missouri River system.

That 29 percent generates more than \$100 million a year in benefits. We would anticipate, depending on how the Congress decided to capitalize the fund, that it could be capitalized in 1 year, or it could be capitalized according to how Congress wants to do it. We believe that 1 year is appropriate.

Senator INOUE. And, finally, in your statement you indicated that the total benefits to the surrounding area from these projects amounted to a sum in excess of \$1.3 billion a year?

Ms. VANDEMOER. That's correct.

Senator INOUE. Thank you very much.

Ms. VANDEMOER. Thank you, Senator.

Senator INOUE. Congressman Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I have just a couple of questions.

Dr. Vandemoer, you suggested in your testimony that the responsibility of providing a plan for the infrastructure should rest with the tribe rather than with the Department of the Interior, and I would like to ask—I suspect that the tribe is financially strapped—can you suggest how the tribe is going to get the resources to develop this kind of plan if this is the position of the department?

Ms. VANDEMOER. First of all, the BIA has been providing funds to the tribe in support of this work and so forth as a part of our routine water resources and economic development funding, so we presume it will continue.

We would expect that the funds that accrue would be used to assist the tribe in developing that.

The main point is really that, given the history of our inaction we felt that it would be more appropriate for the tribe to move on, have us be in the background, and they could take the lead.

So the real point is not a financial concern. The point is to put control of the tribe's own destiny in their own hands.

Mr. FALEOMAVAEGA. I appreciate the fact that it seems to be the spirit of the Administration to pursue not only the letter but the spirit of the Self-Governance Act that Congress had seen fit.

I think it's most appropriate for tribes to take this kind of initiative with that assistance, I hope—

Ms. VANDEMOER. Yes.

Mr. FALEOMAVAEGA [continuing]. And the help of the BIA.

I think your recommendations are constructive, and certainly we will look at it, and hopefully to receive from the administration your proposed suggestions and the amendments to the bill. I think that would be well taken.

Colonel Meuleners, you indicated that, according to the 1964 memorandum that was drafted between the Corps of Engineers and the BIA, that, as far as you're concerned, all your commitments and obligations are fulfilled. Was there any consultation with the tribe when this MOU was drawn up between the BIA and the Corps of Engineers?

Colonel MEULENERS. I don't know that there was direct consultation between the Corps and the tribe. I believe there was consultation between the tribe and the BIA directly.

Mr. FALEOMAVAEGA. How is it that, according to reports, the elementary schools, the high schools, the hospital, and all these infrastructures were poorly constructed? I don't understand. Is that the

responsibility of the Corps, or was that given to another Federal agency to—

Colonel MEULENERS. Well, I can't attest to the quality of the construction at the time, only to what exists today. They were constructed according to plans and specifications that were drawn up at the time and approved in coordination between the two agencies.

Mr. FALEOMAVAEGA. According to the map that I have from Dr. Vandemoer, it seems to me that the most essential elements of the whole two dams—the Big Bend Dam and the Fort Randall dam—are right in the central location of the Crow Creek Reservation, and without this reservation this project would never have gone through. Would you agree with me on that? I mean, could we have side-stepped the reservation to fulfill the whole project of the Pick-Sloan plan?

Colonel MEULENERS. I don't believe that would have been possible.

Mr. FALEOMAVAEGA. Yes; and I'm still raising the question of economic benefit that has been derived as a result of this Indian reservation giving its most prime land to provide for this project to be carried out.

How much of an economic benefit has it been for the surrounding communities if the reservation had never agreed to give this 15,000 acres for this project to be put through?

In other words, Colonel, how much more do we have to pay for the Pick-Sloan project anyway? Are we still in debt and is there a continuing obligation to pay for the project?

Colonel MEULENERS. I can't respond to that now. I can certainly provide that.

Mr. FALEOMAVAEGA. Can you submit that for the record?

[Information to be supplied follows:]

Construction of the Missouri River Reservoir system commenced in 1933. The system provides benefits under four major project purposes: flood control, recreation, navigation, and hydropower. Hydropower is the only project purpose, however, for which there is a specific repayment required. The repayment schedule for hydropower is shown on the following table:

| Project      | Total Investment (\$ millions) | Repayment (\$ millions) | Balance (\$ millions) |
|--------------|--------------------------------|-------------------------|-----------------------|
| Fort Peck    | 122.8                          | 39.8                    | 83.0                  |
| Garrison     | 206.4                          | 77.6                    | 128.8                 |
| Oahe         | 238.1                          | 89.6                    | 148.5                 |
| Big Bend     | 115.7                          | 49.4                    | 66.2                  |
| Fort Randall | 138.0                          | 60.6                    | 77.4                  |
| Gavins Point | 49.0                           | 20.8                    | 28.2                  |
| Total System | 870.0                          | 337.8                   | 532.1                 |

Mr. FALEOMAVAEGA. On an annual basis, as a result of these two dams being in operation, what is the economic value to the surrounding communities because of the fulfillment of this project.

Colonel MEULENERS. We can provide that at a later time.

[Information to be supplied follows:]

Benefits provided by the Missouri River Reservoir system are not available on a per-project or on an area-specific basis. We cannot, therefore, provide the economic value of the projects to the surrounding communities.

Mr. FALCOMAVAEGA. It's almost like—I'm saying that, as a result of the tribe giving its lands, you're getting a \$1 billion economic benefit to the surrounding communities, and it seems like the only thing the tribes are asking is a measly \$27 million to help build an infrastructure. You see my concern?

Colonel MUELENER. I understand and share your concern. Yes.

Mr. FALCOMAVAEGA. Do you think the Corps of Engineers might have the similar concern that I have? If the tribe is giving its ultimate sacrifice, as far as I'm concerned, do you think that perhaps the Corps could be a little more constructive in saying that perhaps there were some areas that, on those days, when they carried out this project, that it wasn't just fulfilled properly?

Colonel MUELENER. I think I would characterize our position as being not that necessarily what was required at the time or authorized at the time was equitable, but that the Corps did fulfill its obligation, as was coordinated with the Bureau of Indian Affairs at that time.

Mr. FALCOMAVAEGA. I would appreciate if you could submit for the record exactly what the value of the Pick-Sloan plan has been for the past several years and what the Congress is trying to do to rectify this very serious problem, as far as I'm concerned, and what we've done to this tribe.

[Information to be supplied follows:]

The following table presents the benefits that the system provides to the Nation, for the various project purposes for the years 1990-1995 and cumulatively for the period from 1934-1995:

| Year              | Recreation<br>(\$ millions) | Navigation<br>(\$ millions) | Hydropower<br>(\$ millions) | Flood Control<br>(\$ millions) | Total<br>(\$ millions) |
|-------------------|-----------------------------|-----------------------------|-----------------------------|--------------------------------|------------------------|
| 1990              | 53.2                        | 5.2                         | 432.8                       | 22.2                           | 513.4                  |
| 1991              | 56.9                        | 6.0                         | 423.4                       | 165.6                          | 651.9                  |
| 1992              | 58.0                        | 5.4                         | 417.2                       | 47.5                           | 528.1                  |
| 1993              | 65.4                        | 6.0                         | 312.0                       | 4,445.5                        | 4,828.9                |
| 1994              | 70.2                        | 7.1                         | 541.4                       | 198.0                          | 816.6                  |
| 1995              | 75.8                        | 6.0                         | 588.6                       | 1,840.6                        | 2,510.9                |
| Total (1934-1995) | 959.7                       | 185.4                       | 11,721.6                    | 9,451.9                        | 22,318.6               |

Mr. FALCOMAVAEGA. Thank you, Mr. Chairman.

Senator INOUE. Congressman Kildee.

Mr. KILDEE. Mr. Chairman, my beeper just went off, indicating there's a vote on the floor of the House. Unfortunately, because they changed the rules this year, Mr. Falcomavaega cannot cast the vote any more, but I'll go out and cast it for both of us.

Mr. FALCOMAVAEGA. Well, I appreciate Dr. Vandemoer's elevation. She called me a Senator. [Laughter.]

I'm just a little delegate, Dr. Vandemoer, but I appreciate your kind thoughts on that.

Mr. Chairman, I thank you.

Senator INOUE. If I may, I would like to ask a few questions of the colonel, but before doing that I think I should note that this did not occur on your watch.

Colonel MEULENER. That's correct, sir.

Senator INOUE. I think it is very important that this occurred at a time when the policies of the United States admittedly were

not too friendly with Native Americans. It is a bleak chapter, but we are trying our best to illuminate it and do some rectifying of it.

So we are not in any way suggesting that your activities or the present Corps did wrong, but you indicated that it is your opinion that the Corps had done what it was called upon to do; is that correct?

Colonel MEULENERS. Yes, Mr. Chairman; that's what I indicated.

Senator INOUE. I have here the bill, itself, Public Law 87-735, and section 5 of that says,

The Secretary of the Army is authorized and directed, out of funds appropriated for the Big Bend project, other than funds provided by this act, to protect, replace, relocate, or reconstruct any existing essential governmental and agency facilities on the reservation, including schools, hospitals, Public Health Service, BIA offices, facilities, service buildings, employees' quarters, roads, bridges, and incidental matters of facilities and connection therewith.

The testimony that we have seen and reports suggest that there were no hospitals built, for example; that the schools were built, but were of obvious inadequate condition. Do you consider that the intent of the Congress was fully carried out by your predecessors?

Colonel MEULENERS. No; I would say it was not my argument that what was done was equitable or fully complied with the intent; my implication was that the Army did what it was, not necessarily directed, but coordinated with the BIA to construct at that time. We took our direction from the Bureau as to what facilities to construct and where they would be constructed.

In response to the hospital, it's my understanding that an analysis at the time by the BIA showed that there was not sufficient usage to construct a hospital at that location and that they would use other BIA facilities that were available at the time.

Senator INOUE. So I think the record should show that the high school was never replaced and the hospital was never built, and, if I may reconstruct what had happened in the appropriations process—this was a long time ago. Now, as it was at that time, funds were inadequate and the Army was called upon to set up a priority list, and this was on the bottom of their priority list. When that time came along, funds were not adequate.

Will that not be the situation? I think the record shows that the funds were woefully inadequate to carry out the intent of Congress.

Colonel MEULENERS. The only comment I would make is that I believe the BIA established the priority and what facilities should be constructed with the funds available.

Senator INOUE. So, all in all, I am certain you will agree that the intent of Congress was not fully carried out.

Colonel MEULENERS. I personally would agree with that, Mr. Chairman.

Senator INOUE. I thank you very much sir.

Mr. FALCOMVAEGA. Would the chairman yield?

Senator INOUE. Yes.

Mr. FALCOMVAEGA. I really appreciate the chairman's keen observations, and not in any way to imply to the good colonel that he's responsible for the past sins of our Federal Government, but I do appreciate very much the colonel's statement. Certainly I'm

very sensitive to that notion that you're not to blame for whatever may have happened in the past. Maybe I was a little energetic in projecting some questions and thoughts as to why perhaps some of these things were never fulfilled.

I appreciate the chairman noting that fact and want to assure the colonel that this was never any personal reflection on his character and his demeanor in fulfilling his responsibilities as the branch leader of the Corps of Engineers of this area of the country.

Thank you.

Senator INOUE. Dr. Vandemoer and Colonel, I thank you very much, and I want you to know that I was in the Army, also, sir.

Colonel MEULENERS. Thank you, Mr. Chairman.

Ms. VANDEMOER. Thank you, Mr. Chairman.

Mr. FALEOMAVAEGA. So was I, Colonel. I was in Vietnam and he was in Europe.

Senator INOUE. Thank you very much.

Now it is my high privilege and honor to call upon the chairman of the Crow Creek Sioux Tribe of Fort Thompson, South Dakota, Duane Big Eagle; and the tribal leader of the Crow Creek Sioux Tribe, Ambrose McBride.

And may I ask all of the tribal members who have traveled this long distance to witness this event to stand, just so the record will show that you are here.

[Whereupon, tribal leaders stood.]

Senator INOUE. I would like to welcome all of you elders and members. This is a historic day, and we hope that with this hearing we will begin the process that will finally bring some justice to your tribe.

Thank you very much.

Chief Big Eagle.

**STATEMENT OF DUANE BIG EAGLE, CHAIRMAN, CROW CREEK SIOUX TRIBE, FORT THOMPSON, SD, ACCOMPANIED BY PETER CAPOSSELA, TRIBAL ATTORNEY**

Mr. BIG EAGLE. Thank you, Mr. Chairman and fellow committee members, for this opportunity.

Mr. Chairman, my name is Duane Big Eagle, and I serve as chairman of the Crow Creek Sioux Tribe on the Crow Creek Reservation in Fort Thompson, SD. Accompanying me this morning are Ambrose McBride, a respected member of our community and a spokesman for our tribal elders; Peter Capossela, our tribal attorney, who is here to answer any questions the committee members may have; Dr. Michael Lawson, a historian who has written extensively about the Pick-Sloan; and Dr. Morgan Rees, formerly the deputy assistant secretary of the Army for the civil works, now consulting with the tribe on these issues. They are also here this morning to comment on why this legislation is needed.

On behalf of the Crow Creek Sioux Tribal Council and our tribal membership, let me take this opportunity to express our sincere appreciation for the consideration of the Crow Creek Infrastructure Development Trust Fund Act. The tribe has worked for over 30 years to address our claims to mitigate the terrible losses we suffered for the Missouri River dams.

I am honored to represent the tribe on this occasion to present the testimony in support of this legislation.

The impacts of the Missouri River dams on our reservation have been devastating. The two Pick-Sloan dams, Fort Randall and Big Bend, flooded the reservation bottomlands, and we lost over 15,000 acres of our best land. Our entire community, which included over 100 families, had to be relocated.

The river bottoms had supported our community. Our entire way of life was disrupted, and we lost our entire wooded area, the best pasturelands, best wildlife lands, and our community infrastructure was destroyed.

The big game was unbelievable. The deer and the antelope were very abundant. I remember hunting in the bottomlands with my father as a boy. Now we live on a range high above the river. It is completely different now when I take my boys hunting from when I was growing up along the river. There is very little shelter and water. The deer and the antelope are nowhere near as abundant as they used to be.

The dams destroyed our economic and social way of life.

Congress directed the Corps of Engineers and Department of the Interior to replace the lost infrastructure: Tribal and Federal Government facilities, schools, hospitals, a community center, roads, and utilities. But our community simply has not been rebuilt. That is why S. 1264 is necessary.

S. 1264 uses existing resources, revenues from the sale of hydroelectricity at the Missouri River dams, to finance the infrastructure and mitigation projects contemplated in the Big Bend Act.

A share of the annual revenues returned to the U.S. Treasury may be allocated to the Crow Creek Sioux Tribe to rebuild our community and to provide funding for the tribal programs to overcome the impact of the lands taking.

South Dakota's Governor Janklow, the Assistant Secretary of the Interior for Indian Affairs, and other agencies are supporting this legislation.

Our tribal members unanimously support this bill, as is shown by the fact the over 15 tribal elders have traveled from South Dakota by bus to be here and to show their support.

I respectfully request that the committees refer this legislation to the full Senate and House with a recommendation that it be passed and sent to President Clinton.

Mr. Chairman, the Crow Creek Sioux Tribe has awaited for over 30 years for the resources to rebuild our community. We have contributed our very best reservation lands for the prosperity of the United States.

In closing, I am reminded of the very many elders of our community who have served in tribal government and have worked for a better future for our children.

In the past years we have suffered the loss of many of our elders, including former Chairman Joe Wounded Knee, and our Traditional Chief William Bird. These cherished members of our tribe grew up along the river speaking our Native language and living in harmony with nature and with one another in old Fort Thomp-

son. They witnessed first-hand the terrible changes that have been brought by the Missouri River dams.

In their later years, they wanted very baldly for the United States to honor its commitments to our tribe. They spoke often of the need to overcome these changes for the future of our children. These were my friends and my grandparents and uncles and aunts.

I respectfully urge you, Mr. Chairman, to take positive action on this legislation, not because my descendants have lived to see our tribe turn our terrible dilemma around, but because there could be no better honor to their memory.

Thank you.

Senator INOUE. I thank you very much, Mr. Chairman.

[Prepared statement of Mr. Big Eagle appears in appendix.]

Senator INOUE. Now may I call upon the distinguished tribal elder, Mr. McBride.

**STATEMENT OF AMBROSE McBRIDE, TRIBAL ELDER, CROW  
CREEK SIOUX TRIBE, FORT THOMPSON, SD**

Mr. McBRIDE. Thank you very much, Mr. Chairman and members of the Senate Committee on Indian Affairs and the House Native American Affairs Subcommittee, for the opportunity to testify today in support of S. 1264.

My name is Ambrose McBride, and I am enrolled member of the Hunkpati Dakota Nation, or the Crow Creek Sioux Tribe.

I served as a member of the Crow Creek Sioux Tribal Council from 1974 until 1984. I appear today on behalf of the tribal elders who, for all practical purposes, are unanimous in their support of this bill.

The tribal elders at Crow Creek remember growing up and living in the bottomlands along the Missouri River. We remember the higher quality of life that existed when our community was located in the wooded area along the Missouri River.

Our families lived modestly, but well. There was no welfare or dependence on public assistance. With the assistance of the BIA, we sold bushels of corn and alfalfa from the community gardens and community farm, and we had an adequate harvest to provide a great deal of produce to our tribal members.

Nearly every family had horses and some cattle, because all of the families had a tract of land.

I grew up, as a boy, in the woods along the river in the part of the community known as the Hollywood area. We children picked and ate plums, berries, and currants. Learning how to swim was a must, and it was a relaxation that carried on the rest of the summer. The boys in the era went barefoot all summer long, and everyone was ready to go swimming at any time.

Everything was by paths. There was no bus route but at the edge of the woods, but it didn't go into the woods.

It was of such beauty and serenity down there in grass and trees along the river. The natural beauty and greenery that surrounded us was truly stunning. Living there was a privilege.

There was no such thing as vandalism or even littering. Everything was recyclable. We had burlap bags when we went to the store or took our own containers. We, as a community, truly lived

in harmony with the Missouri River, living off the resources it provided us.

The only situation that became a nuisance was in June. That was only something that came once a year, but everyone expected it. It was called the "June rise." When the Missouri River went over the banks, the elderly were helped over to the hill where their furniture, beds were put up. The older men would watch the river.

When the river came up, then they would move out. When the water went down, we would all go back down there. That was only time I remember we would have flooding down there.

It wasn't like a real flood. The water just rise little at a time. It was something that was expected, and we just dealt with it. It was something everyone anticipated. We waited with excitement.

When it was over, everyone would go down and clean their place up. Hollywood usually got flooded out.

Our community members went fishing all the time. We used dual lines. Most of the men had set lines. We would set them out all night and then we'd catch catfish.

The environment was clean. There used to be place where the teams could pull in the water and you could get your drinking water there and not get sick and not polluted like it is now.

I served in the Korean Conflict during the early 1950's. At Crow Creek we have a proud tradition of serving our country. In fact, my father served in World War I. Although we Indians did not become citizens until the Citizenship Act of 1924, he served even though he was not a U.S. citizen.

Of course, the Congress enacted the Flood Control Act of December 22, 1944, which authorized the construction of the dams that flooded us out. While so many of our men were fighting for our country in World War II, this is what was being done here in Congress. A lot of them were called to arms and they did not hesitate, but yet they were conspiring against us, I guess, with the Flood Control Act.

In any event, around 1955, after I came back from the service, we had to start moving. I got out of the service when I was 21. First Congress passed the Fort Randall Act and my family had to move from our place. Then Congress passed the Big Bend Act, so we had to move again.

We got hurt from two moves. At least 50 homes had to move in the Hollywood area. In a few hours, everything was covered up by the rising level of the river. The river, the lifeline of our community, had become a big lake.

Overnight we went from our community that lived and worked in the wooded area of the Missouri River into public housing areas on the plains above the dam. The social impacts were dramatic. Unemployment, alcoholism, and crime, none of which were major problems prior to our relocation, became rampant. Many families had to leave the reservation altogether. My family moved to Huron, South Dakota, into tents. A lot of Indians moved to urban areas. Our community members scattered to Pierre, Huron, and Rapid City, South Dakota.

The replacement housing at Fort Thompson was inadequate. We still have a very serious housing shortage in Fort Thompson today,

and it dates back to our relocation for the dams and the lake, 1950's.

The elders didn't complain much, though. We've been oppressed so much we just had to take it in order to survive, just like the Trail of Tears.

I remember my father tore down our house and divided up the lumber. Everyone at the time was very, very frustrated. We lost our entire community. We lost our old hospital, the BIA, and the bachelor's apartment and dormitory for boarding students.

There was a big elementary school for grades one through 12. The school had a big gymnasium. We lost the school farm where we operated an agricultural program.

We lost the tribal offices, three stores, four churches, and, of course, our homes and a lot of good farming land. We had a water plant and electric generator.

The Big Bend Act of 1962 was supposed to ensure that the Corps of Engineers rebuilt our community. The only thing the Corps of Engineers did was build the tribal building. We lost everything we had. That is why S. 1264 is so important to our tribal elders at Crow Creek.

The relocation of our community for the Fort Randall and Big Bend dams was a tragic turning point in the history of our tribe. We suffered a great deal. We have never recovered from the destruction of our community and relocation of our families. Our community was never rebuilt.

Other problems have resulted, as well. The strip of land on our reservation along the Missouri River is now owned by the Corps of Engineers. We have jurisdictional disputes with the State over hunting and fishing on this land. Before they built the dams, it was unheard of to see the State game wardens along the river on our reservation.

Other problems have resulted, as well. In addition, by changing the river, the Corps of Engineers impacted our treaty boundary. Under the treaty of Fort Laramie of 1868 the east bank of the Missouri constitutes the boundary of our treaty land. Now the east bank of the old Missouri River is underwater.

As elders, the treaties are very, very important to us. I truly hope that the problems I have seen on our reservation in my lifetime can be solved.

S. 1264 will provide the Crow Creek Sioux Tribe with the resources to rebuild our community. My people, the Oyate, have suffered much on the Crow Creek, and I hope there is a light at the end of the tunnel.

Many of our elders are passing on. They want to see this issue resolved before there are none of us left who remember our good life along the river. We want to see things improve for our children, our grandchildren. It is a difficult life on the Crow Creek Reservation for them. We have inadequate schools and facilities for them. Our economy is under-developed because there is no adequate infrastructure.

Let us work together to get S. 1264 passed into law so we can turn things around for the future generations.

Thank you.

[Native words.]

Senator INOUE. Elder McBride, I thank you very much for your moving statement.

[Prepared statement of Mr. McBride appears in appendix.]

Senator INOUE. I can assure you, sir, that we on this committee will do our best to expedite the passage of this matter, but we cannot speak for the Congress, but we will do our best. So if you and your fellow elders will just hang on for a little while longer, just two years more, I think you'll see the results of your work. You have waited for over three decades. Two more years and we will do it.

I have a question for Chief Big Eagle.

As you know, this measure calls for a 2-year time limit. Within that time, tribal leaders, together with the BIA and IHS, will have to come up with a infrastructure plan, and that plan will have to be approved by the three of you and passed on to the Congress, and, in turn, the Congress will have to approve that. All this will have to be done in two years.

The experts here have suggested that it will take about 2 years for the \$27.5 million to be accumulated, but before any moneys can be passed on to the tribe, this infrastructure plan must be approved within this 2-year time limit.

Do you have sufficient resources to carry out the necessary planning that has to be done to prepare this infrastructure plan?

Mr. BIG EAGLE. Mr. Chairman, I would like to have our legal adviser answer that question, please.

Senator INOUE. Please.

Mr. CAPOSSELA. Thank you, Mr. Chairman Big Eagle and Vice Chairman Inouye.

In fact, Senator Inouye, I have been reviewing the statement of Administrator Shafer, who submitted a written statement for the record this morning—Administrator Shafer of the Western Area Power Administration, which markets the hydroelectricity generated at the Missouri River dams. His interpretation of the timing that would be required to capitalize the trust fund adds to the urgency a little bit more, I think.

Administrator Shafer, in his statement, anticipates that the trust fund would be capitalized out of Western Area Power revenues in less than one year.

So the capitalization of the trust fund, given the modest amounts involved, would be done fairly quickly, according to the Department of Energy.

In response to your question, though, the tribe has already begun to do some of the preliminary planning in anticipation that we may make some substantial progress on these issues.

Senator INOUE. So you have the necessary resources to carry out this plan?

Mr. CAPOSSELA. Definitely it would require some more resources, and I appreciated Dr. Vandemoer's statement this morning that the thrust of the plan should be performed by the tribe. Clearly, we're going to need additional resources from the Department of the Interior to finalize the plans. We started it. Without additional resources from the BIA, it would be very difficult to fully, for example, design a new rural water system and to fully design a hospital.

We have done some preliminary planning. We're hoping to work with BIA to get some resources from BIA to finish that. But I do believe it's the wishes of the tribal council to play the primary role to make sure that things get done right this time.

Senator INOUYE. Elder McBride, I note that you served in the U.S. Army in Korea. I think I should note at this juncture that in all of the wars, beginning with World War I, more Indians on a per capita basis served in uniform than any other ethnic group in the United States, so you have paid your dues and it is about time you got your dividends.

Mr. MCBRIDE. Thank you, Mr. Chairman.

Senator INOUYE. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I have no questions. I'd only offer my compliments to Chief Big Eagle and Elder McBride for their most profound statements. I just wish that there were more members of both sides of the aisle as far as both committees are concerned.

To tell you quite frankly, I've been to South Dakota with Congressman Johnson, and he did show me the areas that we are talking about and the devastation it has caused, not only to the economic well-being of the tribe, but certainly to the social consequences of what we have done to the Crow Creek Tribe. So I can certainly appreciate what these two gentleman have discussed with us this morning, and I really, really appreciate their statements.

Thank you, Mr. Chairman.

Senator INOUYE. Thank you very much.

One clarification. Elder McBride, in your statement you said that you are an enrolled member of the Hunkpati Nation. Is that the same as the Hunkpapa?

Mr. MCBRIDE. The Hunkpapa are up at the Standing Rock, under Standing Rock. We are called the Lower Yanktonai and they are the Upper Yanktonai. Somewhere in history we kind of parted away from them, our band, so we are called Hunkpati Dakota. They are Hunkpapa Dakota or Lakota.

Senator INOUYE. So you are not in Sitting Bull's tribe, then?

Mr. MCBRIDE. I suppose I could, but just to—if I write a book maybe I could. [Laughter.]

Senator INOUYE. Thank you very much.

Mr. MCBRIDE. Thank you, Chairman.

Mr. BIG EAGLE. Thank you.

Senator INOUYE. And now may I call upon the third panel, consisting of the president of Rees Engineering and Environmental Services, Dr. Morgan Rees; representing the Historical Research Associates of Arlington, Dr. Michael Lawson; and the executive director of Mni-Sose Intertribal Water Rights Coalition of Rapid City, Mr. Richard Bad Moccasin.

Dr. Rees.

**STATEMENT OF MORGAN REES, PRESIDENT, REES ENGINEERING AND ENVIRONMENTAL SERVICES, ALEXANDRIA, VA**

Mr. REES. Thank you, Mr. Chairman.

Mr. Chairman and members of the committees, it is indeed a pleasure to appear before these committees today for the first time as a private citizen. I testified before both committees several times

in previous Congresses in my former capacity as deputy assistant secretary of the Army, where part of my responsibility was to oversee the Indian Affairs program of the Army Corps of Engineers.

I retired from the Federal Government just over 1 year ago, and last fall Chairman Big Eagle asked me to review the actions of the Army Corps of Engineers in connection with the Corps fulfilling its responsibilities to the Crow Creek Sioux Tribe under several laws associated with the construction of the Big Bend dam and Fort Randall dam.

The Corps had prepared a report dated January 11, 1994, in which the Corps concluded that it had fulfilled its responsibilities. I reviewed the Corps' report, the pertinent laws, and visited the reservation to see what the Corps had done.

While I am proud of my association with the Corps for nearly 30 years, and I do believe the Corps is the finest organization in the Federal Government, I had to conclude in this case that the Corps missed the mark by a wide margin in concluding that they had fulfilled their responsibilities.

I would like to state the essence of the Corps' report and summarize my findings. The full Corps report is furnished for the record.

It is not at all clear that the Secretary of the Army and the Secretary of the Interior have fulfilled their respective responsibilities to implement the actions required by Public Law 85-916, Public Law 87-735, and Public Law 92-222. The Corps based its position on two assumptions about its authorities and responsibilities, which I believe are incorrect.

First, the Corps misstates the nature of the funding authorizations in the pertinent legislation. The Corps states that the authorizations limit the funds which can be expended. In reality, the funding authorization in Public Law 85-916 appears in section 9 and states: "There is hereby authorized to be appropriated such sums as are necessary for the purposes of this act." By its own terms, there is no limit on the funding of activities under Public Law 85-916.

Similarly, Public Law 87-735, section 15, states: "There is hereby authorized to be appropriated such amounts as are necessary for the purposes of this act." Again, by its own terms, the act does not limit the amount of funding which can be appropriated.

The Corps limited its request for funding based on specific dollar amount estimates for the work found in legislative reports accompanying the legislation; however, in each case the legislative report is clear that the dollar amounts are estimates.

In the case of the Big Ben dam authorization, the estimate is described as a preliminary estimate.

It is not clear to me how the Corps could then construe a preliminary estimate cited in a legislative report as a cap on the authorization, when the plain language of the statute authorizes such funds as are necessary.

Second, the Corps did not recognize its authority and responsibility under the 1921 Budget and Accounting Act. That act provides for the authority of the President to submit a budget, and requires the agencies to report any funding deficiencies to the President for consideration in the President's budget and subsequent submission

to Congress in order to complete activities which are authorized in legislation but which were not completed.

Thus, had sufficient funding been sought, the infrastructure which was intended by Congress but not constructed could have been built long ago.

I believe that the previous legislation was quite clear enough on what was needed and authorized, but the agencies somehow found ways to interpret the legislation to the disadvantage of the tribe.

This proposed legislation, S. 1264, will once again clarify the will of Congress, but this time will solve the funding problem and not rely on the executive branch agencies' interpretation of the law to include necessary funding requests in the President's budget.

The legislation will right the wrong, however belatedly, that has been visited on the Crow Creek Sioux Tribe.

Mr. Chairman and members of the committee, as I stated earlier, I am here on behalf of the Crow Creek Sioux Tribe, but the invitation to testify came directly to me from the Senate committee, so I'd like to take that personal invitation as an opportunity to say a word for myself.

As a private citizen and taxpayer, having studied this issue thoroughly, there is no question in my mind that this bill is the right thing to do. It is clear that the tribe has suffered greatly from the construction of Big Bend and Fort Randall dams, and Congress has always intended for their infrastructure to be rebuilt fully. Unfortunately, the executive branch agencies have seen things differently. This legislation will settle the issue once and for all. I urge you to adopt S. 1264 as quickly as possible, given the few remaining legislative days in the Congress. It is sorely needed and long overdue.

I'll try to respond to any questions that you may have.

Thank you.

Senator INOUE. Thank you very much.

[Prepared statement of Mr. Rees appears in appendix.]

**STATEMENT OF MICHAEL LAWSON, HISTORICAL RESEARCH ASSOCIATES, INC., ARLINGTON, VA**

Mr. LAWSON. Mr. Chairman and members of the committees, I am grateful to have the opportunity to appear before you today.

My name is Michael Lawson, and I am a historian who has specialized in the study of Native American issues.

For 13 years, I served as a staff historian with the BIA, both here in Washington and in the Aberdeen area office in South Dakota. I am presently the general manager of the Arlington, Virginia, Office of Historical Research Associates, Incorporated, a private consulting firm.

I wrote my doctoral dissertation on the impact of the Pick-Sloan dam projects on the Sioux Tribes along the Missouri River, and this manuscript was later published as a book entitled, "Dammed Indians."

Last year I prepared a report on the specific impacts of the Fort Randall and Big Bend dam projects on the Crow Creek Reservation, its resources, and tribal members. Because the tribe desires to have that report entered into the official record of this hearing,

I have provided copies of the report to the committees, in addition to my written statement.

My statement also includes a map of the Crow Creek area showing surrounding communities and geographic features.

My report summarizes the development of the Pick-Sloan Plan by the Corps of Engineers and the Bureau of Reclamation, its purposes and projects, and its authorization by Congress as part of the Flood Control Act of 1944.

Although existing treaty rights provided that tribal land could not be taken without consent, no tribal representatives were consulted prior to enactment of the Pick-Sloan plan. There was no language in the legislation that specifically authorized the taking of tribal land. The legislation was also silent regarding the tribe's reserved water rights.

The impact of the Pick-Sloan plan on the Crow Creek Sioux Reservation has been severe, affecting every aspect of tribal life. Two of the dam projects constructed by the Corps of Engineers, Fort Randall and Big Bend, inundated over 15,000 acres of reservation bottomlands. Approximately 45 percent of the reservation population was forced to evacuate their homes.

Ft. Thompson, the reservation's largest community, was completely inundated. The BIA agency headquarters there was moved 50 miles north of the reservation to Pierre, South Dakota, and the hospital facilities were moved 20 miles south of the reservation to Chamberlain.

In my report I detail how the flooding of the bottomlands destroyed the environment that had traditionally provided tribal members with their primary source of subsistence.

The Corps of Engineers began construction of the Fort Randall dam project in 1946, but it was not until 1949 that the BIA was able to fully inform the tribe of the damages it would suffer from the project. In 1955, the Army, without Congressional authorization, condemned the reservation land that it needed and forced tribal members to relocate. It was not until 3 years later, in 1958, that Congress finally authorized payment to the tribe for the reservation land that was flooded.

The tribe determined the fair market value of its damages and the redevelopment and reconstruction needs to be \$7.5 million, but the 1958 Settlement Act authorized only \$1.4 million for direct damages.

Congress deferred payment for reconstruction and redevelopment until after the Corps had completed acquisition of the reservation lands that would be needed for the Big Bend project.

In 1960, while the tribe was sustaining major damages from the Fort Randall project, the Army condemned the reservation land needed for the actual Big Bend dam site and began construction.

In 1962, Congress enacted Public Law 87-735, which authorized \$4.4 million to the tribe for damages sustained from the Big Bend project and for rehabilitation of the reservation.

This legislation clearly acknowledged the devastating impact of the Pick-Sloan projects on the Crow Creek people. It directed the Secretary of the Army, in consultation with the Secretary of the Interior and with the Crow Creek Tribal Council, to provide for replacement of specific facilities of the existing infrastructure of the

reservation community, taking into account its "reasonable future growth."

Nevertheless, as a result of funding decisions made by the Corps of Engineers and the lack of coordination between the Corps and the BIA, these directives were carried out either inadequately or not at all.

The replacement infrastructure of the new Fort Thompson proved so inadequate that many tribal families were compelled to find housing and employment elsewhere.

The high school, hospital, and irrigated tribal garden at Fort Thompson were never replaced. The new tribal hall lacked the auditorium and gymnasium specified in the 1962 legislation. Replacement homes were neither adequate in number nor sufficiently constructed to endure the rigors of the harsh Dakota winters. Water, sewage, and other town site facilities were not built to accommodate reasonable future growth, as intended by Congress.

Therefore, it is my conclusion that the history of the impact of the Pick-Sloan projects indicates that the Crow Creek Sioux Tribe has yet to receive its fair share of the benefits that were supposed to be provided by Pick-Sloan, although it has certainly suffered a great deal as a result of its implementation.

Consequently, it is my view that there is full justification for this Congress to provide a substantial appropriation to the tribe in order to honor the commitments memorialized in the Big Bend Settlement Act in 1962 but never fulfilled by the Federal Government.<sup>3</sup>

This concludes my statement. I would be happy to answer any questions the committee may have.

Senator INOUE. Thank you very much.

[Prepared statement of Mr. Lawson appears in appendix.]

Senator INOUE. Mr. Bad Moccasin.

**STATEMENT OF RICHARD BAD MOCCASIN, EXECUTIVE DIRECTOR, MNI-SOSE INTERTRIBAL WATER RIGHTS COALITION, RAPID CITY, SD**

Mr. BAD MOCCASIN. Mr. Chairman, I have submitted a written statement for the record. This morning I will summarize my more-detailed written statement.

Let me express my personal and sincere appreciation to you, Vice Chairman Inouye, for the opportunity to testify before the Senate Committee on Indian Affairs and the House Native American Affairs Subcommittee on S. 1264.

I have served as a legislative assistant to Senator Daschle, the bill's sponsor, and as a professional staff member to the Committee on Indian Affairs. As such, I have first-hand experience on how the work of the Senate committee and House subcommittee helps the sovereignty of our Indian nations and improves the lives of Indian people throughout the United States.

I extend my sincere appreciation to you, Chairman Inouye, for your leadership and commitment to Indian affairs.

At present, I serve as executive director of the Mni-Sose Intertribal Water Rights Coalition. Mni-Sose consists of 24 Indian nations located in the Missouri River basin. All of our tribes are im-

pacted in some manner by the Missouri River basin Pick-Sloan project.

Our tribes along the Missouri River main stem have suffered the loss of valuable land and the dislocation of communities. This includes Mni-Sose tribes such as the Three Affiliated Tribes, the Standing Rock, Cheyenne River, Crow Creek, Lower Brule, Yankton, and Santee Sioux Tribes, and also includes the Winnebago and Omaha Tribes in Nebraska.

Our tribes along the Missouri's many tributaries have seen these tributary watersheds altered by Bureau of Reclamation dams. The reclamation projects are contained in the authorization for Pick-Sloan, have dried up the stream flows on our reservations, further impeding economic development.

Our water has been supplied to the non-Indian homesteaders who farm upstream from our reservation. This applies to our member tribes, such as the Fort Belknap Tribe, the Crow, the northern Cheyenne in Montana, the Oglala, Rosebud Tribes in South Dakota, and the Omaha Tribe of Nebraska.

Professor Vine Deloria has described Pick-Sloan as the single most destructive act ever perpetuated against any tribe by the United States. When one looks at the pervasive and terrible impacts of Pick-Sloan throughout Missouri River basin Indian country, Professor Deloria's description of this project certainly rings true.

In addition to my experience working with Indian tribes on Pick-Sloan, let me state that I'm an enrolled member of the Crow Creek Sioux Tribe. Crow Creek is a pivotal tribe in Mni-Sose. As a tribal member, I can personally attest to the devastating impact which the Missouri River basin Pick-Sloan project has had on the Crow Creek Sioux Tribe.

I grew up as a young boy along the Missouri River bottomlands on the Crow Creek Reservation. When the dams were constructed, my family was forced to move from our fertile homeland along the river and forced to relocate to Pierre, South Dakota, a non-Indian community 60 miles away. In a sense, these dams shaped my childhood, and more recently my professional life, as well.

As executive director of Mni-Sose, I have met with tribal leaders throughout the Missouri River basin about the Pick-Sloan dams. There is universal support for S. 1264. This is because Crow Creek has suffered so much in order for two dams, Fort Randall and Big Bend, to be built.

First, our people were relocated for Fort Randall. Then the Army moved us again for Big Bend. Our community was forced to scatter.

Although the Big Bend Taking Act provided for the reconstruction of Fort Thompson, this was never done.

S. 1264 takes a practical way to finance the redevelopment of our community by utilizing a modest portion of the hydropower revenues for infrastructure and economic development on the reservation.

Let me urge the committee to act on this legislation immediately. The Crow Creek Sioux Tribe has waited over 30 years for the Government to fulfill the commitment to build its community. Surely that is long enough.

S. 1264 is an excellent bill. The Congress should pass this bill without any substantial amendment.

In addition, the Congress should utilize the concepts contained in S. 1264 to address the claims of all tribes in the Missouri River basin so we can finally overcome the most destructive act ever perpetuated against us.

Mr. Chairman, I shall take this opportunity to highlight a concern of Crow Creek and all the tribes in the Missouri River basin—the ongoing destruction of our Native cultural resources along the Missouri River. The various taking acts directed the Corps of Engineers to relocate the cemeteries in our communities. Many cemeteries were not relocated, however. When the water levels of the reservoir fluctuate, the bones of our descendants are unearthed. This is very troubling.

Yet, the Corps of Engineers refuses to acknowledge our deeply-felt concerns. The Corps is currently revising its Missouri River master manual. Mni-Sose has requested that, as part of the NEPA studies, the Corps evaluate ways that our remaining cultural resources might be protected, yet the Corps has refused to do so.

In closing, Mr. Chairman, let me mention that there is a bitter-sweet element to the timing in which the dams were built. My father and my uncles, all of whom served in the United States as veterans, recount to me how they returned home from the Korean Conflict only to find the Army relocating our community at home.

As with our fellow tribes throughout the region, the people of Crow Creek contributed the best land of the reservation for the Pick-Sloan dams, and we served honorably in two wars—the Korean Conflict, where my father and uncle served, and in Vietnam, where I served.

I respectfully urge the committee to enact S. 1264, and in the future to address the claims of the Indian nations throughout the Missouri River basin.

Thank you very much, Mr. Chairman.

Senator INOUE. Mr. Bad Moccasin, I thank you very much.

[Prepared statement of Mr. Bad Moccasin appears in appendix.]

Senator INOUE. I have noted that throughout this morning in the various statements submitted the Corps of Engineers has taken a hard hit. I think we should note that the Corps of Engineers takes orders and directions from the Congress and the Commander in Chief, the President of the United States and his agents.

For example, Dr. Rees, you have made clear that the Corps should have reported funding deficiencies. If the Congress had exercised its proper oversight responsibilities, we would have brought this forward and suggested that this matter be rectified, but obviously the Congress was not interested. And notwithstanding the fact that the language in the bill seemed clear, it would appear that if the Congress had intended that its intention be carried out, it would have done so.

The presidents at that time were considered very strong presidents—President Roosevelt, President Truman, and President Eisenhower. They are not known in history as weak presidents. They were tough and they had their directions carried out.

What I am trying to say is that we have an opportunity now to rectify the wrong; that it was a wrong that was not committed by

one agency, but the concerted activity of the Congress, the administration.

We have the same problem today. All that one has to do is to look at the laws that we have been considering, the budget that we have been considering, and one would see that, in many ways, very little change has come about since the turn of this century. We still ignore treaty rights. We still ignore our trust relationship. And many times we are trying to ignore the sovereignty of Indian nations.

We have an opportunity at this moment, because here is a measure that is supported by the administration, supported by the leadership of Congress, supported by the State of South Dakota, by the Governor and the Congressional delegations. All the stars are in the right place, and we had better pass it. We have the opportunity now, and I can pledge to you the support of the U.S. Senate Committee on Indian Affairs. The chairman's statement, as I indicated to you, is in full support of what you are seeking.

Chairman Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I, too, would like to add my comments.

In the testimonies that have been brought before the committee—I agree with you that I think the most important consideration now is not so much to emphasize the sins of the past, but where we are now and, more importantly, what we need to do the correct this inequity that has existed for all these years.

I think it's something that at least I am very hopeful on the House side that we will pursue this with all diligence, and certainly would like to offer my compliments to you and Chairman McCain for having taken this initiative. Hopefully, this joint hearing will be such that we will expedite this legislation as fast as we can and to get it passed before this Congress adjourns.

And so with that, Mr. Chairman, I certainly appreciate your asking us to hold this joint hearing and that for the witnesses that have borne their testimony this morning, all with the hope that we will fulfill our obligations and to correct this injustice to the good people of the Crow Creek Tribe.

With that, Mr. Chairman, I thank you again for the opportunity of sharing the podium with you and to hear the testimony this morning.

Thank you.

Senator INOUE. Thank you very much. Because of the importance of this measure and the impact it would have upon not only the tribe but to Indian country, the committee will keep the record open until May 10. If you wish to correct your statement, to add to your statement, or supplement it, or clarify it, you have until May 10 to do so.

If people in the audience, elders would like to submit their statements as part of the official record of this committee, feel free to do so. This is your opportunity, and I want to make certain that all the T's are crossed and the I's are dotted, because we cannot miss this opportunity.

Thank you very much. With that, the committee stands in adjournment.

[Whereupon, at 11:05 a.m., the committee was adjourned, to reconvene at the call of the Chair.]



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# APPENDIX

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## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA,  
CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

I would like to welcome the distinguished witnesses here today to present testimony on S. 1264 and H.R. 2512, bills to provide for certain benefits of the Missouri River Basin Pick-Sloan Project to the Crow Creek Sioux Tribe, and for other purposes. I also would like to thank the vice chairman of the committee, Senator Inouye, for chairing this hearing, and to compliment the sponsors of the legislation, Senator Daschle and Representative Johnson, for their efforts to bring these issues of utmost concern to the Crow Creek Sioux Tribe to the attention of the Congress and the administration.

The construction of huge, multipurpose dam projects by the Corps of Engineers and the Bureau of Reclamation earlier in this century brought major economic and other benefits to large numbers of people and interests in various parts of the United States. However, these benefits often came at a very high price to others. In the case of the dam projects authorized for construction in the Missouri River Basin by the Flood Control Act of 1944, commonly known as the Pick-Sloan Project, the greatest price was paid by Indian tribes whose reservations lie along the river in North and South Dakota. These tribes saw much of their best farm land flooded, long-established communities relocated, families disrupted, and a way of life changed forever. The human price they paid is beyond calculation.

Although Congress recognized that there would be adverse impacts on tribal lands and communities, and provided for compensation and mitigation for those impacts, the adequacy this compensation and mitigation has always been open to question. In 1992, after considering the findings and recommendations of a joint tribal-Federal task force, Congress enacted legislation that provided additional compensation for the Standing Rock Sioux Tribe and Three Affiliated Tribes of Fort Berthold. Trust accounts for these two tribes were established in the U.S. Treasury and funded with a share of annual repayment receipts from the Pick-Sloan Project. S. 1264 and H.R. 2512 would establish and fund a similar trust account for the Crow Creek Sioux Tribe that is proportional to those established for the Standing Rock and Fort Berthold Tribes.

Any information presented to the committee regarding the commitments made by the United States to the Crow Creek Sioux Tribe, and what the United States actually did to fulfill those commitments, will be especially useful to the committee in considering S. 1264 and H.R. 2512. I want to thank the witnesses for their testimony, and for assisting this committee in its efforts to ensure that the United States fulfills its commitments, not just to the Crow Creek Sioux Tribe, but to all Tribes.

PREPARED STATEMENT OF COLONEL MICHAEL S. MEULENERS, COMMANDER, OMAHA DISTRICT, U.S. ARMY CORPS OF ENGINEERS

Mr. Chairman and members of the committees, I am Colonel Michael S. Meuleners, Commander, Omaha District, U.S. Army Corps of Engineers. Accompanying me today is Rick Noel, of the Omaha District.

We are pleased to appear today to provide the views of the Department of the Army on S. 1264 and H.R. 2512, companion bills entitled the "Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1995". The Department of the Army defers to the Department of the Interior for the administration's position on the bills. However, I would like to offer one amendment for the committee's consideration.

The Fort Randall and Big Bend Dam projects were authorized by Public Law 78-534, the Flood Control Act of 1944, as part of a system of multipurpose reservoirs included in the Pick-Sloan Missouri Basin Program, commonly referred to as the Pick-Sloan Plan. Among other things, the Pick-Sloan Plan called for the construction of five dam and reservoir projects along the main stem of the Missouri River. As certain Indian reservation lands were needed for construction and operation of these projects, Congress authorized the acquisition of such lands and specified that compensation to be paid to the affected tribes and individual tribal members. The Corps manages the project lands acquired from the tribes, as well as other project lands acquired from tribal members and other previous owners, pursuant to Public Law 78-534 for the purposes of flood control, navigation, hydropower, water supply, irrigation, fish and wildlife recreation, and water quality control.

The two laws of direct relevance to the subject of this hearing are Public Law 85-916, an act to provide for additional payments to the Indians of the Crow Creek Sioux Reservation, South Dakota, whose lands have been acquired for the Fort Randall Dam and Reservoir Project and for other purposes and Public Law 87-735, an act providing for the acquisition of tribal and individually owned lands on the Crow Creek Sioux Reservation in South Dakota for the Big Bend Dam and for other purposes. Public Law 87-735 directed the Secretary of the Interior to oversee the—(a) replacement, relocation or reconstruction of governmental and agency facilities designated by the Secretary of the Interior, and b) the construction of a community center and a townsite, including infrastructure. The Corps was designated as the agent of the Secretary of the Interior in carrying out this provision. A 1964 Memorandum of Agreement between the Corps and the BIA addressed both the designated governmental and agency facilities and the townsite facilities and infrastructure. In a 1967 letter to the Corps, the Area Director of the BIA considered all Corps obligations in the Memorandum of Agreement to be complete as of that date.

In carrying out our responsibilities at the Big Bend and Fort Randall projects, the Corps has provided, and will continue to provide, technical assistance and project information at the request of the tribe. We have been supporting and assisting the tribe in its efforts to become more actively involved in the management and development of the Federal project lands and resources located within the boundaries of the reservation.

The remainder of my statement addresses the specific provisions in the bills which impact either directly or indirectly on the Army.

#### Section 2: Findings.

This section concludes that the Secretary of the Army and the Secretary of the Interior failed to meet the requirements of Public Law 87-735 with respect to the mitigation of the effects of the Fort Randall and Big Bend projects on the Crow Creek Reservation.

In the original acts which authorized acquisition for the Fort Randall and Big Bend projects, Congress addressed the question of adequate compensation to the tribes for losses suffered in connection with these projects. From the mid-1940's on the issue of adequate compensation was debated before Congress. Legislation authorizing compensation to the tribes recognized that both tangible and intangible impacts were associated with these projects. We believe that the Army Corps of Engineers fully executed the responsibilities entrusted to it under the 1964 Memorandum of Agreement between the Corps and the Bureau of Indian Affairs.

#### Section 5: Plan for socioeconomic recovery and cultural preservation.

Army notes that section 5(b)(5) appears to be restrictive by specifying recreation facilities only at Lake Sharpe. There is potential for recreation development on other lands within the boundaries of the Crow Creek Reservation. To allow for future development of high-density recreation at other locations, we suggest that "a Lake Sharpe at Big Bend Dam in South Dakota" be deleted from this section.

Section 4: Establishment of Crow Creek Sioux Tribe Infrastructure Development Trust Fund.

Section 6: Authorization of Appropriations.

Section 7: Effect of Payments to Tribes.

We defer to other agencies regarding these sections.

Mr. Chairman, and other members of the committees, this concludes my statement. Thank you for this opportunity to express the Department of the Army's views on S. 1264 and H.R. 2512.

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PREPARED STATEMENT OF AMBROSE MCBRIDE, TRIBAL ELDER, CROW CREEK SIOUX TRIBE

Thank you very much, Mr. Chairman and members of the Senate Committee on Indian Affairs and House Native American Affairs Subcommittee, for the opportunity to testify today in support of S. 1264. My name is Ambrose McBride, and I am an enrolled member of the Hunkpati Dakota Nation [Crow Creek Sioux Tribe]. I served as a member of the Crow Creek Tribal Council from 1974 until 1984. I appear today on behalf of the tribal elders, who for all practical purposes are unanimous in their support of this bill.

The tribal elders at Crow Creek remember growing up and living in the bottomlands along the Missouri River. We remember the higher quality of life that existed when our community was located in the wooded area along the old river. Everyone worked, either in the community gardens, at the honor farm at the school, or cutting timber or tending to cattle or horses.

Our families lived modestly, but well. There was no welfare or dependence on public assistance. With the assistance of the Bureau of Indian Affairs, we sold bushels of corn and alfalfa from the community gardens and honor farm, and we had an adequate harvest to provide a great deal of produce to our tribal members. Nearly every family had horses and some cattle, because all of the families had a tract of land in the woods down at old Fort Thompson.

I grew up as a boy in the woods along the river, in the part of the community known as the Hollywood area. We children picked and ate plums, choke cherries, crab apples, cherries, wild grapes, buffalo berries, goose berries and currants. Learning how to swim was a must and it was a relaxation that carried on the rest of the summer. The boys in the era went barefoot all summer long and everyone was ready to go swimming. Everything was by paths. There was a bus route at the edge of the woods but it didn't go into the woods.

It was of such beauty and serenity down there in grass and trees along the river. The natural beauty and greenery that surrounded us was truly stunning. Living there was a privilege. There was no such thing as vandalism or even littering. Everything was recyclable. We had burlap bags when we went to the store or took out own containers. We as a community truly lived in harmony with the Missouri River, living off of the resources it provided us.

The only situation that became a nuisance was in June. That was only something that came once a year but everyone expected it was the "June rise" when the Missouri River went over the banks the elderly where helped over the hill the beds where put up, the older men would watch the river as it comes up when the river came up then they would move up. When the water went down we would all go back down there. That was the only time I remember we would have flooding down there.

It wasn't like a real flood the water would just rise little at a time. It was something that was expected and we just dealt with it. It was something everyone anticipated we waited with excitement. When it was over everyone would go down and clean their place up. Hollywood usually got flooded out.

Our community members went fishing all of the time. We used throw lines. Most of the men had set lines. We would set them out all night and then they'd catch catfish. The environment was clean. There used to be place where the teams could pull in the water you could drink and not get sick it's not polluted like it is now.

I served in the Korean conflict from during the early 1950's. At Crow Creek we have a proud tradition of serving our country. In fact, my father served in World War I, although we Indians did not become citizens until the citizenship Act of 1924. He served even though he was not a U.S. citizen. Of course, the Congress enacted the Flood Control Act of December 22, 1944, which authorized the construction of the dams that flooded us out, while so many of our people were fighting for our country in World War II.

In any event, around 1955 after I came back from the service we had to start moving. I got out of the service when I was 21. First Congress passed the Fort Ran-

dall Act and my family had to move from our place. Then Congress passed the Big Bend Act so we had to move again. So we got hurt from two moves. At least 50 homes had to move in Hollywood area. In a few hours everything was covered up by the rising level of the river. The river—the lifeline of our community, had become a big lake.

Overnight, we went from a community that lived and worked in the wooded riparian area of the Missouri River, into public housing areas on the plains above the dam. The social impacts were dramatic. Unemployment, alcoholism, and crime, none of which were major problems prior to our relocation, became rampant.

Many families had to leave the Reservation altogether. My family moved to Huron, South Dakota, into tents. A lot of Indians moved to urban areas. Our community members scattered to Pierre, Huron and Rapid City, South Dakota. The replacement housing at Fort Thompson was inadequate. We still have a very serious housing shortage in Fort Thompson, today, and it dates back to our relocation for the dams in the late 1950's.

The elders didn't complain much, though. We've been oppressed some much we just have had to take it, in order to survive. Just like the trail of tears I remember my father tore down our house and divided up the lumber. Everyone at the time was very, very frustrated.

We lost our entire community. We lost the old hospital, the BIA and bachelors apartment and dormitory for boarding students. There was a big elementary school, for grades 1 through 12. The school had a big gymnasium. We lost the school farm, where we operated an agricultural program. We lost the Tribal offices, three stores, four churches, and of course our homes and a lot of good farming land. We had a water plant and electric generator.

The Big Bend Act of 1962 was supposed to ensure that the Corps of Engineers rebuilt our community. The only thing the Corps of Engineers did build was the Tribal building. We lost everything we had.

That is why S. 1264 is so important to our tribal elders at Crow Creek. The relocation of our community for the Fort Randall and Big Bend dams was a tragic turning point in the history of our tribe. We suffered a great deal. We have never recovered from the destruction of our community and relocation of our families. Our community was never rebuilt.

Other problems have resulted, as well. The strip of land on our reservation along the Missouri River is now owned by the Corps of Engineers. We have jurisdictional disputes with the State over hunting and fishing on this land. Before they built the dams, it was unheard of to see the State game wardens along the river on our Reservation.

In addition, by changing the river the Corps of Engineers impacted our treaty boundary. Under the Treaty of Fort Laramie of 1868, the east bank of the Missouri River constitutes the boundary of our treaty lands. Now, the east bank of the old Missouri River is underwater. As elders, the treaties are very important to us.

I truly hope that the problems that I have seen on our reservation in my lifetime can be solved. S. 1264 will provide the Crow Creek Sioux Tribe with the resources to rebuild our community. My people the Oyate have suffered much on the Crow Creek and I hope there is light at the end of the tunnel.

My uncle, Joe Wounded Knee, served as Tribal Chairman in the early 1960's after we were moved. Uncle Joe passed away recently, on January 8, 1996. Usually I wear my hair in a long ponytail, but I cut my hair after he passed away, which is a customary sign of respect for the deceased, among our people.

Many of our elders are passing on. They want to see this issue resolved, before there are none of us left, who remember our good life along the river.

We want to see things improve for our children and grandchildren. It is a difficult life on the Crow Creek Reservation, for them. We have inadequate schools and facilities for them. Our economy is under-developed, because there is no adequate infrastructure. Let us work together to get S. 1264 passed into law, so we can turn things around for the future generations.

Thank You, Wopida Tonka

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PREPARED STATEMENT OF J.M. SHAFER, ADMINISTRATOR, WESTERN AREA POWER ADMINISTRATION, DEPARTMENT OF ENERGY

This statement presents the views of the Western Area Power Administration [Western] on S. 1264, a bill that would establish an infrastructure development trust fund for the Crow Creek Sioux Tribe.

Western is the agency of the U.S. Department of Energy that is responsible for marketing the electric power produced at Federal dams in the Missouri, Colorado,

Sacramento-San Joaquin, and Rio Grande River Basins. Western sells the power produced at these dams to almost 600 customers, most of whom are electric utilities that, in turn, serve millions of retail customers in 15 central and western states. In fiscal year 1995, Western sold more than 34 billion kilowatthours of electricity and collected \$797 million in gross operating revenues for all of Western's projects.

Western defers to the Department of the Interior for the Administration's position on S. 1264. However, I would like to comment on those sections of the bill that refer to Western or power rates.

Section 4(b) requires the Secretary of the Treasury to deposit each year into the infrastructure development trust fund [Fund] established by the bill an amount equal to 25 percent of the receipts from deposits to the Treasury for the preceding fiscal year from the Eastern Division of the Missouri River basin Pick-Sloan program, administered by Western. Such deposits are to continue until the Fund deposits total \$27.5 million.

The section 4(b) language is similar to language found in sections 3504(a)(2) and 3504(b)(2) of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act [Public Law 102-575]. As Western commented before on the bills that became that law, it is Western's interpretation that the section 4(b) language would not impact Pick-Sloan [Eastern Division] power rates. Rather, S. 1264 takes annual Pick-Sloan [Eastern Division] power system revenues as a "given," and merely uses them as the "yardstick" to determine the amount of money to be deposited into the Fund each year. Western's deposits to the Treasury from the Pick-Sloan [Eastern Division] would continue to be credited against the Program's expense and repayment obligations; and annual revenue requirements and, therefore, rates would continue to be set based on Reclamation law and DOE Order RA6120.2. This interpretation of the bill's intent is referred to in Subsection 7(b)(1) of S. 1264, which states "POWER RATES.—No payment made pursuant to this act shall affect Missouri River basin Pick-Sloan power rates." I have several technical comments on the language of S. 1264 as introduced. First, in the bill summary, subsection 2(a)(9), and subsection 7(b)(1), the proper name for the project is "Pick-Sloan Missouri Basin Program". Second, subsection 2(a)(9) should drop the word "revenues", since the bill does not give hydropower revenues to the tribe.

Third, subsection 3(3) refers to "Programs", implying there is more than one program in the Eastern Division, and defines the term to be those programs "administered by the Western Area Power Administration, as determined by the Secretary [of the Interior]". There is no reference in the definition to the power function of the program, although that is implied by the references to Western and to power rates in subsection 7(b)(1). Since, there is only one Eastern Division power program, and since Western is not part of the Department of the Interior, I recommend that subsection 3(3) be revised to read:

(3) PROGRAM.—The term "Program" means the power program of the Pick-Sloan Missouri Basin Program (Eastern Division), as administered by the Western Area Power Administration."

Fourth, subsection 4(d)(2)(A) has a citation to "subsection (b)(2)" that should be referred to simply as "subsection (b)", since there is no "subsection (b)(2)". Fifth, Subsection 4(d)(2)(B) refers to "subparagraph (A)" and "the account established under such paragraph", when the account is actually established by subsection 4(d)(1). Also, given the language in subsection 4(d)(2)(B), subsection 4(e)(2) seems redundant.

Finally, the bill does not specify the source of the funds the Secretary of the Treasury shall deposit into the Fund. This should be clarified in the legislation. The Department of Energy [DOE] would oppose financing the Fund from DOE appropriations or from power revenues in a manner affecting power rates.

Based on these interpretations, should S. 1264 be enacted, the full \$27.5 million would be authorized for deposit into the Fund within the first year following enactment. This is because the Eastern Division of the Pick-Sloan Missouri Basin Program power system generated over \$110 million in gross operating revenue in each of the past 5 years—and is anticipated to continue doing so in future years—so 25 percent of the annual "yardstick" exceeds the limitation on deposits to the Fund in less than 1 year.

Thank you for the opportunity to comment on this legislation.

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PREPARED STATEMENT OF CATHERINE VANDEMOER, PH.D., SPECIAL ASSISTANT TO  
THE ASSISTANT SECRETARY-INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and members of the committees. I am pleased to be here today to present the Department of the Interior's views on S. 1264 and its

companion bill, H.R. 2512, the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1995. I will direct the remainder of my testimony to S. 1264, which is also applicable to H.R. 2512. If enacted, the bill would provide benefits of the Missouri River Basin Pick-Sloan Project to the Crow Creek Sioux Tribe. I wish to thank Senator Daschle for introducing the bill, and the Crow Creek Sioux tribe and its advisers for working so diligently to craft legislation which creatively addresses and solves a long-standing problem regarding water development in the Missouri River Basin and its impacts on Indian tribes. I would also like to thank Chairman McCain and Vice Chairman Inouye for holding this hearing.

The purpose of my testimony today is not only to comment on S. 1264, but also to present a historical perspective on the issue this bill seeks to address, and why some of the provisions of this bill represents an appropriate resolution. In addition, I would like to highlight certain key provisions of this bill that have implications and provide guidelines for other similar resolutions to tribal water and land rights issues in the Missouri River basin. In presenting this discussion, I will also describe the basis for and content of suggested changes to the legislation which the Department believes will strengthen and enhance its implementation.

The Crow Creek Sioux Tribe is a constituent band of the Great Sioux Nation and a signatory of the Fort Laramie Treaties of 1851 and 1868. The tribe resides on their 258,361 acre reservation in central South Dakota. The Missouri River cuts through the western boundary of the reservation. Prior to the construction of the five earthen dams on the Missouri river, otherwise known as the Missouri River Pick-Sloan project, the resources of the Missouri River bottom land provided food, water, wood for shelter and fuel, forage for cattle and wildlife, and plants for medicinal purposes. These resources were destroyed with the dam construction on the Missouri river for the purposes of flood control, navigation, recreation, irrigation, municipal and industrial and hydropower purposes.

The impacts of the dam construction on the Crow Creek Sioux Reservation have been devastating. The tribe lost acres of rich, prime bottom lands; whole towns were inundated; and key governmental and tribal services, such as schools? hospitals and the Bureau of Indian Affairs services, were moved miles away from the remaining reservation. Yet, despite this hardship, the Crow Creek Sioux Tribe continued their efforts to work constructively with the Congress, the Department of the Interior, and the U.S. Army Corps of Engineers to achieve the passage of specific legislation aimed at increasing the compensation to the Tribe for their loss of land. It was a Congressional action that provided for relocation expenses and the replacement of facilities and infrastructure lost as a result of dam construction.

Specifically, in 1962, when Public Law 87-735, the Big Bend Settlement Act, was enacted, Congress acknowledged the devastating impact of these projects on the people of the Crow Creek Reservation.

Section 5 of the Act stated that, and I quote:

The Secretary of the Army is authorized and directed out of funds appropriated for the Big Bend project other than funds provided by this Act to protect, replace, relocate or reconstruct any existing essential governmental and agency facilities on the reservation, including schools, hospitals, Public Health Service and Bureau of Indian Affairs offices, facilities, service buildings and employees quarters, roads, bridges and incidental matters of facilities in connection therewith which the Secretary of the Interior determines will be impaired or required by reason of the Big Bend Project.

Section 6 provided that:

The Secretary of the Army, under plans approved by the Secretary of the Interior after consultation with the Crow Creek Tribal Council, is authorized and directed out of funds appropriated for the Big Bend project other than funds provided by this act, to locate and construct on tribal land selected by the Crow Creek Tribal Council with the approval of the Secretary of the Interior, a town-site adequate for fifty homes, including streets, utilities, including water, sewage and electricity, taking into account the reasonable future growth of the townsite, a community center containing space and facilities for community gatherings, tribal offices, tribal council chambers, Bureau of Indian Affairs and Public Health Service offices and quarters and a combination gymnasium and auditorium.

The administration could support the bills if amended to remedy potential problems of direct appropriations that in turn cause pay-as-you-go problems. The Department is presently preparing and will soon transmit a report presenting the administration's proposed amendments that rectify this problem.

We view some provisions of S. 1264 as an implementation tool through which the tribe may finally realize the mandate expressed by Congress in the Big Bend Act

of 1962. Specifically, the bill authorizes the Secretary of the Interior to build for the tribe the key infrastructure components envisioned within the earlier Big Bend Act. The bill directs the Secretary of the Treasury to deposit an amount equal to 25 percent of the receipts from the deposits to the Treasury from the preceding fiscal year from Pick-Sloan [Eastern Division] Power revenues to capitalize a trust fund, whose interest will be used to finance infrastructure development on the Crow Creek reservation. The bill is structured after the provisions contained in the Three Affiliated Tribes and Standing Rock Sioux Equitable Compensation Program (106 Stat. 4731), and uses the same formula Congress employed in that bill to provide benefits of the Missouri River Pick-Sloan program to these tribes.

Using the formula, a trust fund in the amount of \$27.5 million has been determined to be an appropriate sum to provide additional compensation for the tribal lands that were lost, their relocation and to rebuild an infrastructure.

Under the proposed legislation, the Secretary of the Treasury will establish a special trust fund for the Crow Creek Tribe. This trust fund will consist of an amount equal to 25 percent of the receipts from the deposits to the Treasury for the preceding fiscal year from the integrated programs of the Eastern Division of the Missouri River Basin Pick-Sloan Project administered by the Western Area Power Administration [WAPA]. The deposits to the fund will continue until the aggregate amount equals \$27.5 million. Thereafter, the Secretary of the Treasury is required to invest the funds in interest-bearing obligations. Beginning the year after the aggregate amount in the fund is equal to \$27.5 million, all interest payments will be made available to the tribe without fiscal year limitation for infrastructure improvements and development.

The proposed legislation also contains provisions which prohibit the use of funds for per capita payments and prohibits the Secretary of the Interior from using the funds for any purpose other than the Crow Creek Sioux Tribe infrastructure development. Note also that a plan for infrastructure development is required so the funds can be directed toward achieving the goals of this and previous legislation.

In the construction of the dams, not only were essential food stuffs, wildlife, forage and timber resources lost, but the use of water for other purposes was also lost—the opportunity, if you will, to develop Indian water for Indian economic gain was largely missed. Now, much of the water that could reasonably be claimed by the tribes under existing Federal laws and doctrines is used to generate electricity, navigation flows, and recreational lake levels. It seems that the time is right to make sure that we provide the tribes with a real and tangible benefit from the projects which have affected their lands, resources, water rights, and communities.

The Department of the Interior is presently preparing and will soon transmit a report presenting the administration's proposed amendments to the bill. These amendments would: (1) correct the definition of "programs" and other drafting errors; (2) provide for the remedy of potential appropriations problems; (3) delete unnecessary language pertaining to the withdrawal and transfer of funds; (4) authorize the tribe to prepare the plan; and (5) provide for the costs for the operation and maintenance of the new school facility. There is, however, one revision we would like to highlight.

Section 5 of the proposed legislation calls for the Secretary of the Interior, in cooperation with the Bureau of Indian Affairs, Indian Health Service and the tribe, to develop a plan for infrastructure development. I suggest that it might be most effective for the tribe, not the Secretary of the Interior, to be responsible for initially developing an infrastructure plan. We understand that the Tribe has already made significant progress in developing such a plan, including cost estimates, engineering components, and other aspects. In addition, we believe that with the move toward self-governance and to provide all means of allowing tribes to attain self-determination, it is fitting that we put the responsibility in the hands of the Crow Creek Sioux Tribe. The administration, however, would still review the tribal plan.

The Missouri River Pick-Sloan program has provided significant benefit to the national and regional economy. The benefits of flood control, navigation, hydropower generation, recreation, irrigation, and municipal and industrial uses contribute approximately \$1.2 billion annually to the national economy, of which approximately one-half is revenue generated from hydropower operations. The proposed legislation would allow the Crow Creek Sioux Tribe to benefit from the Pick-Sloan plan, after having given up lands and resources, and waiting for more than 50 years to realize promises made by the Federal Government. Now is the time to rectify this situation.

Mr. Chairman, this concludes my testimony in support of S. 1264. I will be happy to respond to any questions you may have. Thank you.

PREPARED STATEMENT OF DR. MORGAN R. REES, PRESIDENT, REES ENGINEERING AND ENVIRONMENTAL SERVICES

It is indeed a pleasure to appear before these committees for the first time as a private citizen. I testified before these committees several times in previous Congresses in my former capacity as Deputy Assistant Secretary of the Army where part of my responsibilities was to oversee the Indian affairs programs of the Army Corps of Engineers.

I retired from the Federal Government just over a year ago. Last fall, Chairman Big Eagle of the Crow Creek Sioux Tribe asked me to review actions of the Army Corps of Engineers in connection with the Corps fulfilling its responsibilities to the Crow Creek Sioux Tribe under several laws associated with construction of Big Bend and Fort Randall Dams. The Corps had prepared a report dated January 11, 1994, in which the Corps concluded that it had fulfilled its responsibilities. I reviewed the Corps report, the pertinent laws, and visited the Reservation to see what the Corps had done. I am proud of my association with the Corps for nearly 30 years and believe the Corps is the finest organization in the Federal Government. But I must say that in this case, the Corps missed the mark by a wide margin in concluding that it had fulfilled its responsibilities. I would like to state the essence of the Corps report and summarize my findings. The full Corps report is furnished for the record.

It is not at all clear that the Secretary of the Army and the Secretary of the Interior have fulfilled their respective responsibilities to implement the actions required by the provisions of P.L. 85-916, P.L. 87-735, and P.L. 92-222. The Corps of Engineers based its position on two assumptions about its authorities and responsibilities which I believe are incorrect.

First, the Corps misstates the nature of the funding authorizations in the pertinent legislation. The Corps states that the authorizations limit the funds which can be expended. In reality, the funding authorization for P.L. 85-916 appears in Section 9, and states, "There is hereby authorized to be appropriated such sums as are necessary for the purposes of this Act." By its own terms, there is no limit on the funding of activities under P.L. 85-916. Similarly, P.L. 87-735, Section 15, states, "There are hereby authorized to be appropriated such amounts as are necessary for the purposes of this Act." Again, by its own terms, the act does not limit the amount of funding which can be appropriated. The Corps limited its requests for funding based on specific dollar amount estimates for the work found in the legislative reports accompanying the legislation. However, in each case, the legislative report is clear that the dollar amounts are estimates. In the case of the Big Bend Dam authorization, the estimate is described as a preliminary estimate. It is not clear to me how the Corps could construe a preliminary estimate cited in a legislative report as a cap on the authorization when the plain language of the statute authorizes "such funds as are necessary."

Second, the Corps did not recognize its authority and responsibility under the 1921 Budget and Accounting Act. That Act provides the authority for the President's budget and requires agencies to report any funding deficiencies to the President for consideration in the President's budget and submission to Congress to complete activities authorized in legislation, but not completed.

Thus, had sufficient funding been sought, the infrastructure which was intended by Congress, but not constructed, could have been built long ago. I believe that previous legislation was quite clear enough on what was needed and authorized, but the agencies somehow found ways to interpret the legislation to the disadvantage of the tribe. This proposed legislation, S. 1264, will once again clarify the will of Congress, but this time will solve the funding problem and not rely on the executive branch agencies' interpretation of the law to include necessary funding requests in the President's budget. The legislation will right the wrong, however belatedly, that has been visited on the Crow Creek Sioux Tribe.

Mr. Chairman and members of the committee, as I stated earlier, I am here on behalf of the Crow Creek Sioux Tribe, but the invitation to testify came directly to me from the committee. So I would like to take that personal invitation as an opportunity to say a word for myself. As a private citizen and taxpayer having studied this issue thoroughly, there is no question in my mind that this bill is the right thing to do. It is clear that the Tribe has suffered greatly from construction of Big Bend and Fort Randall Dams and Congress has always intended for their infrastructure to be rebuilt fully. Unfortunately, the executive branch agencies have seen things differently. This legislation will settle the issue once and for all. I urge you to adopt S. 1264 as quickly as possible, given the few remaining legislative days in this Congress. It is sorely needed and long overdue.

*CORPS OF ENGINEERS' REPORT*

**REPORT ON THE  
CONSTRUCTION EFFORTS TO MITIGATE IMPACTS ON THE  
CROW CREEK SIOUX TRIBE  
AT  
FORT RANDALL/LAKE FRANCIS CASE  
AND  
BIG BEND DAM/LAKE SHARPE  
SOUTH DAKOTA**

11 January 1994

**AUTHORITY**

Memorandum from CECW-ON/CERE-MC dated 8 December 1993, provides the authorization for this report.

**PURPOSE**

The purpose of this report is to describe Corps of Engineers' construction activities undertaken in fulfillment of laws authorizing the construction of Fort Randall Dam/Lake Francis Case and Big Bend Dam/Lake Sharpe Projects. This report focuses upon the various expenditures for construction activities intended to mitigate or replace Crow Creek Sioux Tribe (CCST) facilities impacted by construction of the projects.

**SCOPE**

The extent of construction at these projects was immense. The Government has expended several hundred million dollars for the construction of these projects since the groundbreaking ceremonies at Fort Randall by Brigadier General Lewis A. Pick on July 30, 1946. Review of all available documents indicates a long history of dissatisfaction by the CCST with the terms of the Big Bend and Fort Randall Acts. The Tribe has historically questioned the Government's replacement of governmental facilities at the former Ft. Thompson Townsite. A fully reconciled listing of construction activities and associated expenditures for all construction at the projects is a formidable task which is beyond the intention of this report.

**PROJECT AUTHORITIES**

Public Law 85-916 (72 Stat. 1766, approved September 2, 1958), provided for the payment to the CCST and individual owners for land taken under condemnation actions at the Fort Randall Project (Exhibit A).

Public Law 87-735 (76 Stat. 704, approved October 3, 1962), provided the authority to acquire and further compensate the CCST Reservation for lands at the Big Bend Project. Among other things, it also provided for the social and economic development of the members of the Tribe (Exhibit B).

Both Acts contain provisions to compensate the Tribe for the acquisition of the land. Each Act contains specific provisions for further compensation of fees and expenditures due to the taking.

Public Law 92-222 (85 Stat. 798, approved December 23, 1971), authorized the expenditure of an additional \$800,000 for facilities in connection with a community meeting facility at Fort Thompson (Exhibit C). The Act also authorized and directed the Secretary of Interior to reimburse the Tribe up to \$22,500 for fees incurred in resolving implementation problems of P.L. 87-735.

#### HISTORY OF LAND ACQUISITION AT THE PROJECTS

By virtue of the Flood Control Act of December 22, 1944 (P.L. 78-534, 52 Stat. 887), as provided for in Senate Document No. 247 dated October 25, 1944, the Corps acquired large amounts of land for the Big Bend/Lake Sharpe Project and the Fort Randall/Lake Francis Case Project.

Negotiations with the CCST began on October 4, 1946. These negotiations involved the acquisition of Indian land at both the Big Bend and Fort Randall Projects. All initial Indian lands were acquired through Eminent Domain proceedings. The Corps filed two condemnation actions to acquire title to the property. The first action dated February 5, 1953, was filed in the U.S. District Court, Southern Division, Civil Case 844. Judgement on the Declaration of Taking was filed on February 9, 1953. The second action filed was Civil Case 184, filed in the Central Division of the U.S. District Court on July 23, 1953. Judgement on the

Declaration of Taking was filed on January 21, 1955. . . . Ninety percent of the total appraised value of the land was deposited in trust and made available to the Tribal members. P.L. 85-916 authorized the compensation for the taking of the land and to settle all claims, rights, and demands of the Tribe.

P.L. 87-735 was subsequently enacted to acquire additional land for the Big Bend Project and fully compensate the CCST for the land and other economic and social impacts.

#### **ACQUISITION CRITERIA**

Fee simple acquisition for the Fort Randall Project was directed upon approval of the Definite Project Report approved in May 1947. The acquisition guideline was established at the Fort Randall Project by delineating all land lying below elevation 1375 m.s.l., plus land lying 300 feet horizontally from the edge of the 1375 m.s.l. elevation. In some of the upper reaches of Fort Randall, the take line extended beyond the 1375 m.s.l. elevation up to a 500-foot setback from that elevation.

Fee simple acquisition of land for the Big Bend Project was directed upon approval of Real Estate Design Memorandum MB-21 by 6th Endorsement dated 18 October 1960. The acquisition guideline was established at the Big Bend Project by delineating all land lying below elevation 1420 feet m.s.l., plus that land lying 300 feet horizontally from the edge of that elevation. Land lying beyond the setbacks at both projects was also included within the guideline as necessary for erosion control.

Generally, the guide acquisition line was "blocked out" using the maximum of 10-acre Government subdivisions and close tangents based on the United States public land survey system.

## CURRENT LANDHOLDINGS

## FORT RANDALL PROJECT

a. Fee Purchase. As of December 13, 1993, 96,829.68 acres of land had been acquired in fee from private parties or from state or local governments.

b. Indian Lands. The United States acquired land from Tribes on both sides of the river. The Government acquired approximately 18,032.63 acres of land from the Tribes and individual members of the Tribes at this project.

c. Transfer of Land. Certain land previously acquired for the construction of the Fort Randall Project was transferred to the Big Bend Project. This land included 10,609 acres of land acquired from the Lower Brule Sioux Tribe and its members, under the provisions of Public Law 85-923, approved 2 September 1958, and 9,148.69 acres of land from the CCST and its members, under the provisions of Public Law 85-916 approved 2 September 1958. Currently, there are 13,108.16 acres of CCST reservation land lying within the Fort Randall Project boundaries.

d. State and Local Government Land. Approximately 5529.29 acres of land were purchased in fee from state and local governments.

e. Lesser Interests. There were approximately 6402.76 acres of flowage easements purchased and 1.13 acres acquired under lease for the project.

f. Public Domain. 189.66 acres of land were transferred to the Secretary of Army's supervision for use at the Fort Randall Dam Project.

g. Current Total Acreage. The 1.13 acres acquired by lease, 127.71 acres of easement and approximately 723.09 acres acquired in fee were subsequently disposed. Currently, the Fort Randall/Lake Francis Case Project consists of 120,603.93 acres of land owned in fee and easement.

#### **BIG BEND PROJECT**

a. Fee Purchase. As of August 1989, 21,442.22 acres of land were acquired in fee from private parties or from state or local governments.

b. Indian Lands. Congress passed two laws to accomplish the acquisition of land from the Tribe at Big Bend. Public Law 87-734, approved 3 October 1962, authorized acquisition of 14,299 acres from the Lower Brule Sioux Tribe and individual members of the Tribe. Public Law 87-735, approved 3 October 1962, authorized the acquisition of 6,283.57 acres of land from the CCST and individual members of the Tribe. These Public Laws, however, reserved certain rights, title, interest, and privileges in the acquired land for the Tribes and their members. 23,969.42 acres of land within the CCST and Lower Brule Reservations were eventually acquired for the project from private owners and through public law. There is currently 13,993.74 acres of project land within the CCST reservation boundaries.

c. Public Domain. The approximately 12.93 acres in this category are lands that have been in the possession of the United States Government since the Louisiana Purchase. By Public Land Order 3270, dated 20 November 1963, the Secretary of the Interior withdrew, permanently set aside, and reserved for the Army these lands for use in connection with the Big Bend Project.

d. Current Total Acreage. The Government disposed of 295.36 acres of fee land and 1.57 acres of easement. The total Big

Bend Project currently consists of approximately 45,116.28 acres of fee simple ownership and 166.97 acres of easement interest for a total managed area of 45,296.18 acres.

#### ACCOMPLISHMENT OF MITIGATIVE CONSTRUCTION RESPONSIBILITIES

P.L. 85-916 authorized and directed the Secretary of the Army to pay the CCST and individual owners for 9,148.69 acres of land. The Act specifically states that the law was enacted to settle all claims, rights and demands of the CCST arising out of construction of the Fort Randall Dam. There is no reference to mitigative construction responsibilities in this Act.

Sections 5 and 6 of P.L. 87-735 directed protective and mitigative measures to protect governmental facilities at the project. The Act authorized the expenditure of \$660,660 for this purpose. The work authorized by the Act was implemented under a Memorandum of Agreement (MOA) dated 26 May 1964, between the Corps and the Bureau of Indian Affairs (BIA) (Exhibit D).

The Corps proceeded with the relocation of the townsite in accordance with the previously cited MOA. The scope of the MOA did not include schools or hospitals. It was agreed that the Corps would be limited to the estimated expenditure amount of \$600,600 shown on page 11 of Senate Report No. 1637 (pg. 2, Exhibit E). Under this mandate, \$679,840.76 was expended for the relocation of the townsite. Of this amount, \$25,000 was deducted for improvements to the water system which were provided directly by the BIA. The net expenditure by the Corps was \$654,840.76 (pg. 3, Exhibit E). Congress also directed that \$350,000 was to be withdrawn from the funds paid to the Tribe under Section 3 of the Act and transferred to the Big Bend Dam and Reservoir Project. Records indicate that this payment has not been made by the Tribe.

Nine homes and one duplex, and four residential garages were physically moved onto new foundations at the new Fort Thompson

Townsite for an estimated cost of \$48,220. A new roads maintenance garage, bus garage and other garage buildings were relocated at an estimated cost of \$64,360.

A new elementary school was constructed to replace an education facility previously located in the town. The cost of constructing the school was estimated to be \$221,928, in Design Memorandum No. MR-58. The school was constructed for only elementary grades and would accommodate approximately 200 students. There were also several roads relocated by the Corps. Two of the roads were constructed under Design Memorandum No. MR-54 for an estimated cost of \$123,000.

Considerable correspondence between the Corps, the Bureau of Indian Affairs (BIA), Senator Karl Mundt, and the CCST took place during the 1960's concerning alleged deficiencies by the Corps in complying with Sections 5 and 6 of the Act. The controversy has continued throughout the past three decades. The Tribe has passed resolutions (Exhibits F and G) and solicited assistance from Congressional representatives (Exhibit H).

Notwithstanding the differing opinions as to the extent of Government compliance with the Acts, the BIA advised the Corps, by letter dated February 21, 1967, that all requirements contained in the Memorandum of Understanding had been satisfactorily completed (Exhibit I).

On December 23, 1971, Congress passed P.L. 92-222. The Act authorized the construction of a new conference facility, auditorium, and kitchen facilities. The Act also provided for adequate water, sewer and drainage facilities, street lighting, widening of streets, provisions for off-street parking, and sufficient parking near the new community building. The Act authorized additional expenditures of \$800,000 for the improvements. A total of \$795,000 was expended for these

improvements. Construction was completed December 9, 1976.

The Tribe continues to be dissatisfied with the benefits provided by the three Acts affecting the project. The major points of contention appear to center around decisions made by the Department of Interior and the previously cited MOA. Prior to construction of the projects, the Bureau of Indian Affairs operated an agency office, school and a limited medical facility in Fort Thompson. Sometime during the planning or construction phase of Fort Randall Dam, the Secretary of Interior made a decision to consolidate the Crow Creek and Lower Brule Agency offices at Pierre, South Dakota. The services provided by the medical facility were also discontinued by the BIA. A variety of documents generated by the CCST, including a Tribal Resolution dated October 30, 1971 (Exhibit F), reference the loss of a high school due to construction of the project.

The Corps has taken the position that it was not authorized to replace facilities which did not exist prior to construction of the project. The Corps has maintained that there is no evidence to support the existence of a high school operating in old Fort Thompson prior to construction of the project.

The CCST and many of its members did not agree with the Secretary of Interior's decision to consolidate certain facilities to Pierre, South Dakota. This issue continues to be a point of contention with them.

#### CONCLUSION

The Corps has consistently maintained that all requirements of the applicable laws were fully and comprehensively complied with in accordance with the specific provisions of the relevant Acts and the intent of Congress. Section 5 of P.L. 87-735 specifically authorizes the expenditure of funds to protect, replace, relocate or reconstruct any existing essential governmental and agency

facilities on the reservation. Section 6 of the Act authorizes funds to be expended for construction of a town consisting of streets, utilities and 50 homes on reservation land. Section 6 essentially refers to the relocation of the town of Fort Thompson.

The history of relations with the CCST at the Fort Randall and Big Bend Project is extensive. Senator Larry Pressler and Congressman Tom Daschle of South Dakota, posed similar questions as those addressed in this report in their joint inquiry dated February 13, 1981, to Major General E.R. Heiberg. The Corps has been very consistent in its assertion that all construction was completed in accordance with the law (Exhibit H).

The Corps has comprehensively complied with all of the relevant Congressional Acts at the Big Bend and Fort Randall Projects. All of the money appropriated for the protection and reconstruction of CCST facilities was expended and no further construction is mandated under current authorizing legislation.

**STATEMENT OF DUANE BIG EAGLE, CHAIRMAN**  
**CROW CREEK SIOUX TRIBE**  
**IN SUPPORT OF S. 1264**  
**APRIL 25, 1996**

Mr. Chairman, my name is Duane Big Eagle, and I serve as Chairman of the Crow Creek Sioux Tribe. On behalf of the Crow Creek Tribal Council and our Tribal membership, let me take this opportunity to express our sincere appreciation for your consideration of S. 1264. The Tribe has worked for 30 years to address our claims to mitigate the terrible losses we suffered for the Missouri River dams. I am honored to represent the Tribe on this occasion, to present testimony in support of S.1264.

**Background**

The Crow Creek Sioux Tribe is a constituent band of the Great Sioux Nation, and a signator of the Fort Laramie Treaties of 1851 and 1868. The Tribe resides on our 258,361 acre reservation in central South Dakota. The Missouri River borders the reservation, and the resources of the Missouri's bottomlands have traditionally provided food, water, wood for shelter and fuel, forage for cattle and wildlife, and plants utilized for medicinal uses.

Yet, in 1944 the U.S. Congress enacted the Flood Control Act (58 Stat. 887), which authorized the construction of five massive earthen dams along the Missouri. The primary purpose of the dams and reservoirs was flood control downstream. Navigation, the generation of hydropower, the provision of water supplies and recreation were also project purposes. Today the Army Corps of Engineers, which constructed and operates the dams, estimates that the project's overall contribution to the national economy averages \$1.27 billion.

However, the impact of Pick-Sloan on the Crow Creek Indian Reservation has been devastating. Two Pick-Sloan dams, Fort Randall and Big Bend, inundated the Reservation's bottomlands. The Corps of Engineers began construction of the Fort Randall dam and reservoir in 1946. Twelve years later, the Congress enacted Public Law 85-916 (72 Stat. 1766, September 2, 1958), authorizing payment for the Tribal land taken for the project. The Tribe lost 9,154 acres of rich bottomland, over one-third of which had been forested. Eighty-four families, constituting 34 percent of our Tribal membership, were relocated against their wishes.

The project flooded Fort Thompson, the Reservation's largest community. The Bureau of Indian Affairs relocated its agency headquarters to Pierre, South Dakota, thirty miles from the Reservation. Likewise, the Indian Health Service hospital was moved twenty miles south to Chamberlain. The resources of the bottomlands, and the subsistence economy based on those resources, were gone forever. The relocated families received nominal payments authorized under P.L. 85-916 four years after the relocation.

In September, 1959, the Corps began work on the Big Bend project. In 1962, the Congress enacted Public Law 87-735 (76 Stat. 704), providing for the purchase of 6,179 acres of remaining bottomland. Twenty-seven more families were relocated.

Thus, the Crow Creek Sioux Tribe lost its most valuable land, and Tribal members were forced to relocate to the higher elevations above the river. The groundwater quantity and quality is inferior in the area where "new" Fort Thompson is located. Subsistence hunting and fishing has long been common on the Reservation, and the patterns of harvesting wildlife have been inalterably disrupted.

Our entire way of life was disrupted. The community in the bottomlands was based upon our common land and water resources. All of our families possessed homesteads. We worked together in the community gardens, ensuring that all of the families had fresh vegetables. There were wild berries and nuts which supplemented our diet, and which we used in ceremonies.

The big game was unbelievable - deer and antelope were very abundant. I remember hunting in the bottomlands with my father as a boy. We ensured that we had enough meat for our household, and then for our extended family, and then for our neighboring families throughout the community. The timber was also very abundant, and we cut firewood for our family and for others in the community in the same manner.

The relocation of our community destroyed this economic and social fabric. Our homes were destroyed by flooding as the Missouri River water levels rose and became the reservoir. We had to acquire replacement homes, which were of inferior quality. For the first time, our families had to purchase fuel for heating, and food. The timber which heated our homes was underwater. The wildlife habitat was destroyed, and the big game began to disappear. The nuts and wild fruit were inundated. Our fertile community garden was gone.

Our families had worked together for many years to cut fire wood and to gather food. This community cooperation on food and heating - long the spirit of our community - was no longer a part of our community life. Instead, many families that were independent for generations needed public assistance for the different lifestyle at "new" Fort Thompson. Our economic and social way of life was destroyed.

### Big Bend Act of October 3, 1962

In passing P.L. 87-735, Congress acknowledged the devastating impact of these projects on the people of Crow Creek. Congress directed the Corps to replace lost infrastructure, Tribal and federal government facilities, schools, hospitals, a community center and roads and utilities. As a consequence of funding decisions by the Corps and the lack of coordination between the Corps and BIA, these directives were carried out inadequately, or not at all.

The Big Bend Act is very clear in its mandate. It requires the Corps of Engineers to -

protect, replace, relocate or reconstruct any existing essential governmental and agency facilities on the reservation, including schools, hospitals, Public Health Service and Bureau of Indian Affairs offices, facilities, service buildings, and employees' quarters, roads, bridges, and incidental matters or facilities in connection therewith... (and) a townsite adequate for fifty homes, including streets, utilities, including water and sewage, and electricity, taking into account the reasonable future growth of the townsite, a community center containing space and facilities for community gatherings, tribal offices, tribal council chamber, Bureau of Indian Affairs and Public Health Service offices and quarters and a combination gymnasium and auditorium....

P.L. 87-735, Sec. 5 and Sec. 6, 76 Stat. 764, 765.

Thus, the Congress directed the Corps of Engineers to help mitigate the devastating impact of the Fort Randall and Big Bend projects on Crow Creek, and to replace the lost infrastructure and community facilities, by constructing -

1. New schools with dormitories
2. A new hospital
3. A new Tribal office with Tribal Council chambers
4. A new community center with a gymnasium and auditorium
5. New PHS and BIA offices and living quarters
6. New roads, bridges and incidental infrastructure
7. A new townsite, with adequate utilities for future growth

From 1957 to 1962, my predecessors in Tribal leadership at Crow Creek negotiated with federal officials for the complete reconstruction of Fort Thompson. The legislative history of the Big Bend Act confirms the Tribe's position. On July 31, 1961, the Committee on Interior and Insular Affairs (Subcommittee on Indian Affairs) held hearings in Washington, D.C. on the question of the payment to the Crow Creek Sioux Tribe required by the development by the United States of the Big Bend Dam and Reservoir project. Rep. Ben Reifel of South Dakota, chief sponsor of the Big Bend Act, testified before the Committee that -

I am pleased, indeed, to have the opportunity to appear before this distinguished Committee in behalf of my bill, H.R. 5165. With the permission of the committee I have sat in on the hearings concerning Lower Brule, something similar to this bill. The excellent, patient and serious consideration given to the provisions on Lower Brule I am sure will be carried over to a consideration given to this proposed legislation...

I want to say here in connection with the facilities for the Crow Creek people the Committee already knows as well if not better than I that so far as the Fort Randall Dam Reservoir are concerned it made it necessary that the Indian Agency as such be replaced, so that the Agency establishments had to be placed some 50 miles away.

The Crow Creek people did have a hospital building. I think the hospital was being used more or less as a clinic at the time the Dam was constructed, and the people had to move out.

Also they had a very fine new school, plus some fine dormitories which were razed and not replaced.

In reconsideration of those needs I should like to suggest that you consider this displacement and give serious consideration to providing better high school opportunity for the young people of Crow Creek than at the present time.

They are now going to school at a place which is not as adequate as the one they had to give up when they left the Agency site at Fort Thompson on the Crow Creek Reservation.

I do feel, in view of what I have heard here, that you will give due, serious and appropriate consideration to all aspects of the needs of the Crow Creek people as provided in this proposed legislation.

Hearings before the U.S. House of Representatives, Committee on Interior and Insular Affairs; July 31, 1961, pp. 453-454 (emphasis added).

Crow Creek's high school students still utilize the facility which Rep. Reifel termed inadequate, 33 years ago.

Clearly, Rep. Reifel intended the act to replace the infrastructure and facilities of old Fort Thompson. This simply has not occurred.

### **The Need for S. 1264**

S. 1264 uses existing resources - revenues from the sale of hydroelectricity at the Missouri River dams, to finance the infrastructure and mitigation projects contemplated in the Big Bend Act. Currently, Pick-Sloan hydropower revenues are generally utilized to repay the federal investment for the construction of the Pick-Sloan program. A modest share of the annual revenues returned to the U.S. treasury may be allocated to the Crow Creek Sioux Tribe, to implement the federal commitments in P.L. 87-735 and to provide funding for Tribal programs to overcome the impacts of the land takings. This results in a modest reduction in the amount of money returned to the treasury for the repayment of Pick-Sloan. The Congress took this approach in financing compensation for the Standing Rock Sioux Tribe and Three Affiliated Tribes of Fort Berthold, in Title XXXV of the Water Resources Development Act of 1992, P.L. 102-575.

S. 1264 provides that the Crow Creek Sioux Tribe and the U.S. Departments of the Interior and Health and Human Services shall develop a plan for the expenditure of these funds, to include those projects contemplated in the taking act. These projects include -

1. Education Facility - The BIA Agency at Crow Creek has recommended the development of a comprehensive education project, under the directives of P.L. 87-735. The project would include a Head Start facility, primary education school building, community college, housing for teachers and Tribal Education Department.

2. Inpatient Health Care Facilities - The IHS Aberdeen Area Office has developed preliminary plans for inpatient health facilities, kidney dialysis capabilities, a long term care facility, alcohol rehabilitation center, adult and youth halfway homes, a hospital and maintenance supplies building.

3. Economic Development - Section 11 of the Big Bend Act authorizes the Secretary of the Interior to consolidate land holdings on the Reservation. Congress recognized the detrimental impact of that the loss of Tribal land would have on our economy, and provided the Secretary the authority to assist the Tribe in overcoming these impacts. However, the Secretary has never provided the assistance with land consolidation and economic development as contemplated in the taking act.

4. Public and Rural Water System - The public water and sewer system serving Fort Thompson is in disrepair. The system utilizes groundwater that has high levels of nitrates, bacteria and certain metals, although better quality Missouri River surface water is readily available in adequate supply. Consequently, consistent with the Congressional directive in P.L. 87-735, the Tribe is seeking a Reservation-wide rural water system.

The communities on the Crow Creek Indian Reservation contain fewer community facilities and infrastructure than back in the mid -1950's. This remains the case notwithstanding the commitments made to the Tribe and memorialized in the Big Bend Act. Our community has waited for over 30 years for the United States to fulfill these commitments. Clearly, there is no prospect that the executive branch shall take any action absent a funding mechanism provided by the Congress. S. 1264 provides a funding mechanism to fulfill these commitments.

### **Proposed Amendments**

With regards to the development of the plan for the expenditure of funds, however, as currently drafted the executive branch agencies shall play an active role in planning for the expenditure of the funds generated from the Recovery Account. In consultation with the Department of the Interior, the tribe has prepared amendments to Section 5(b), reducing the role of the Departments of the Interior and Health and Human Services in the development of the plan for expenditures of these funds. We seek that the Bureau of Indian Affairs and Indian Health Service take a consultative role rather than becoming the final arbiters of the expenditure of funds. This is consistent with the principles of self determination codified in the Indian Self Determination and Education Assistance Act, 25 U.S. C. 450 et seq. In addition, the history of the land takings suggests that the best way to redevelop the community facilities and infrastructure at Crow Creek shall be to have the Tribe assume the lead in planning and development of these facilities.

### Conclusion

The Crow Creek Tribal Council has worked for many years with our congressional delegation on these issues. Under the leadership of Senator Daschle and Representative Johnson, S. 1264 has been developed. S. 1264 is a practical manner of obtaining financial resources for the mitigation projects and Congressional directives contained in the Big Bend Act of 1962, and promised to the Tribe by the federal government, but which have never been built. Significantly, there is no opposition to the principles contained in S. 1264 from the executive branch or private industry.

I respectfully request that the Committees refer this legislation to the full Senate and House with a recommendation that it be passed and sent to President Clinton. Mr. Chairman, the Crow Creek Sioux Tribe has waited for over 30 years for the resources to rebuild our community. We have contributed our very best Reservation lands, for the prosperity of the United States.

The exhibits to my statement are photographs of the beautiful wooded bottomlands where old Fort Thompson was located, and the high plateau above the reservoir where the community is now situated. Our losses are stunningly evident by looking at these photos.

In closing, I am reminded of the very many elders of our community who have served in Tribal government and have worked for a better future for our children. In the past year, we have suffered the loss of many of our elders, including our former Chairman Joe Wounded Knee, Patrick Fogg, Percy Crow, Mary Crow, Sydney Bad Moccasin, Warren Dion, Henrietta Red Hail and our traditional Chief William Byrd.

These cherished members of our Tribe grew up along the river, speaking our native language and living in harmony with nature and with one another in old Fort Thompson. They witnessed first hand the terrible changes that have been wrought by the Missouri River dams. In their later years, they wanted very badly for the United States to honor its commitments to our Tribe. They spoke often of the need to overcome these changes, for the future of our children.

These were my friends, and my grandparents and uncles and aunts. I respectfully urge you, Mr. Chairman, to take positive action on this legislation, not because my descendants have lived to see our Tribe turn our terrible dilemma around, but because there can be no better honor to their memory.

**Crow Creek Sioux Tribe**  
**Proposed Amendments - S. 1264**

1. On p. 9, line 1, delete Sec. 5 (a)(1) and insert:  

(1) IN GENERAL -- The Tribe shall prepare a plan for the use of payments made to the Tribe under Section 4 (d)(2). The Tribe shall submit the plan to the Congress not later than two years from the date of enactment of this act. In developing the plan, the Tribe shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.
2. On p. 9, lines 14 - 19, delete Sec. 5 (a)(3) and Sec. 5 (a)(4).
3. On p. 11 lines 3 through 5 delete "as the Secretary, in consultation with the individuals and entities referred to in subsection (a)(1), considers to be appropriate," and insert "." after "Tribe" on line 3.



OMAHA DISTRICT  
CORPS OF ENGINEERS  
U. S. ARMY

BID BEND DAM

Fort Thompson, S. D.

SURVEY OF POSSIBLE SITES FOR DAM

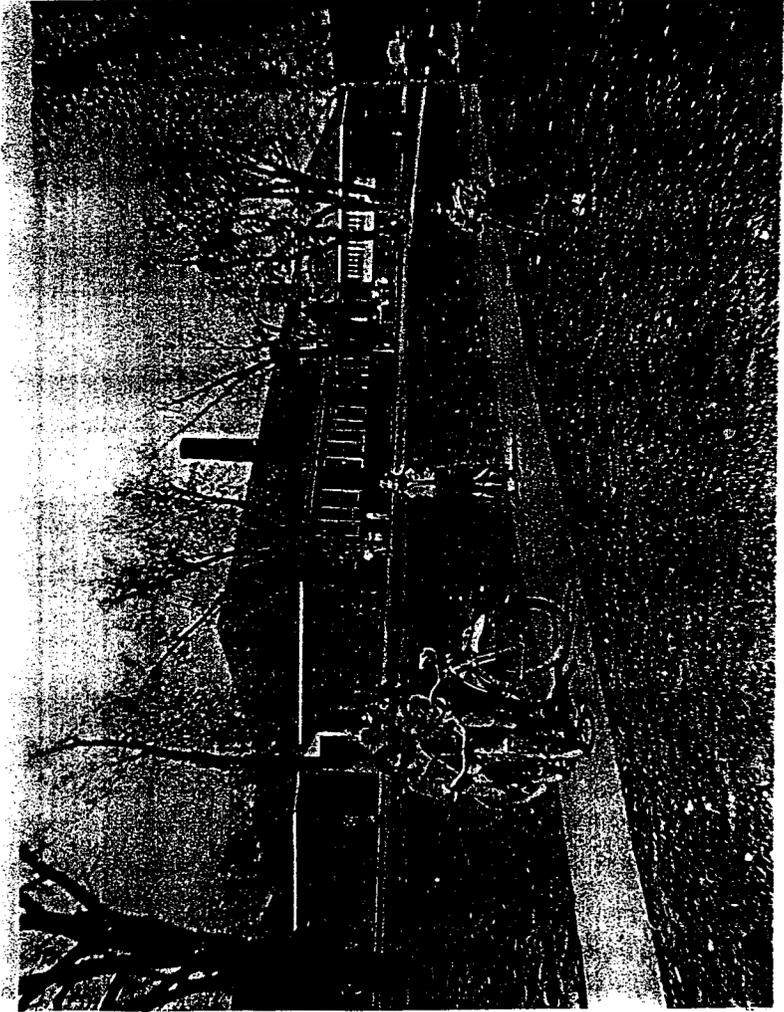
Preliminary aerial survey of site location shows lower tip of Brule Island. Village of Lower Brule on right bank will have to be moved if Site "C" or "D" is chosen.

Photo No: RBD-2

Dated: 16 October 1956



|   |  |  |
|---|--|--|
| <p>OMAHA DISTRICT<br/>CORPS OF ENGINEERS<br/>U. S. ARMY<br/>DA-25-066-C1VFNG-60-836<br/>Dated: 13 April 1960<br/>Funds: 95x3122</p> | <p>BIG BEND RESERVOIR<br/>Fort Thompson, S. D.<br/>EARTHWORK STAGE I<br/>General aerial view looking south from left bank shows approaches to construction bridge, causeway and embankment fill in background.</p> | <p>Photo No: BBD-296<br/>Dated: 21 October 1960<br/>Contractor: Western Contracting Corp.<br/>Sioux City, Iowa</p> |
|---|--|--|





OMAHA DISTRICT  
CORPS OF ENGINEERS  
U. S. ARMY

BIG BEND DAM  
Fort Thompson, S. D.  
SURVEY OF POSSIBLE SITES FOR DAM

Preliminary aerial survey of site location shows typical  
right bank topography, Site "C".

Photo No: BBD-10  
Dated: 16 October 1956

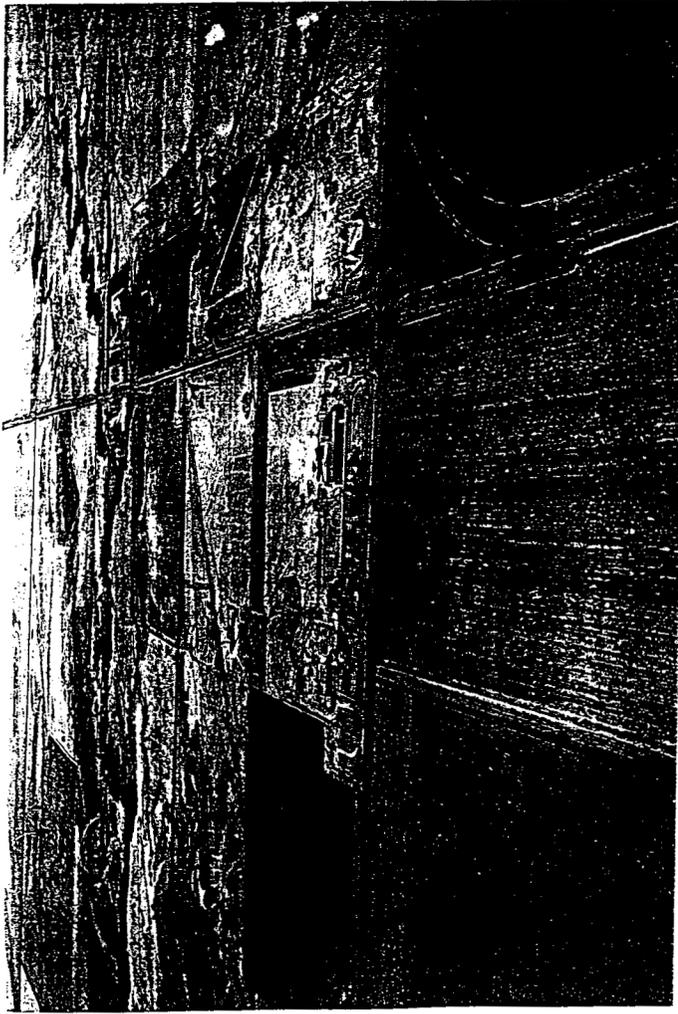


OMAHA DISTRICT  
CORPS OF ENGINEERS  
U. S. ARMY

BIG BEND AREA  
Fort Thompson, S. D.  
AERIAL

Photo No: BDD-1185  
Dated: 18 June 1962

Aerial view looking upstream.



OMAHA DISTRICT  
CORPS OF ENGINEERS  
U. S. ARMY

BIG BEND DAM  
Fort Thompson, S. D.  
PRE-CONSTRUCTION

Photo No: BBD-27  
Dated: 29 October 1950

Aerial view looking west shows relocated Ft. Thompson in foreground and north limits of construction area to right.



STATE OF SOUTH DAKOTA  
WILLIAM J. JANKLOW, GOVERNOR

June 22, 1995

The Honorable Duane Big Eagle  
Chairman of the Crow Creek Sioux Tribe  
Post Office Box 50  
Fort Thompson, South Dakota 57501

Dear Chairman Big Eagle:

Thank you for giving me a copy of the proposed federal legislation that requires the federal government to fulfill the commitments made to the Crow Creek Sioux Tribe in the Big Bend Act of 1962.

I wholeheartedly support this legislation and your efforts to develop Fort Thompson with the infrastructure and community facilities that the Crow Creek community should have received long ago. The method for funding in the bill is fair and I hope a majority of both houses of Congress and the President will realize the importance of passing this bill and signing it into law.

In several different ways, all of the various groups of people who live in South Dakota have not received the benefits promised when the great dams were built in the 1950s. The persistence of the members of the Crow Creek Sioux Tribe to right this wrong is worthy of high praise. Congratulations on creating an excellent proposal.

If there is anything I can do to help you, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Janklow".

William J. Janklow

EXECUTIVE OFFICE  
STATE CAPITOL  
500 EAST CAPITOL  
PIERRE, SOUTH DAKOTA  
57501-5070  
605-773-3212

**STATEMENT OF DR. MICHAEL L. LAWSON BEFORE A JOINT HEARING OF THE SENATE COMMITTEE ON INDIAN AFFAIRS AND THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS ON S. 1264, A BILL TO PROVIDE FOR CERTAIN BENEFITS OF THE MISSOURI RIVER PICK-SLOAN PROJECT TO THE CROW CREEK SIOUX TRIBE, AND FOR OTHER PURPOSES, THURSDAY APRIL 25, 1996.**

My name is Michael Lawson and I am a historian who has specialized in the study of Native American issues. For thirteen years, I served as a staff historian with the Bureau of Indian Affairs, both here in Washington and in the Aberdeen Area Office in South Dakota. I am presently the General Manager of the Arlington, Virginia office of Historical Research Associates, Inc., a private consulting firm. I also serve currently as a member of the Board of Editors of the South Dakota State Historical Society.

I wrote my doctoral dissertation at the University of New Mexico on the impact of the multi-purpose dam projects authorized by the Flood Control Act of 1944 on the Sioux tribes along the Missouri River. This manuscript was later published by the University of Oklahoma Press as a book entitled *Damned Indians: The Pick-Sloan Plan and the Missouri River Sioux*. Last year, the Crow Creek Sioux Tribe asked me to utilize the documentation I have gathered over the years to prepare a report on the specific impacts of the Fort Randall and Big Bend dam projects on their reservation and its resources and tribal members. This report, completed in August 1995, is entitled *An Analysis of the Impact of the Pick-Sloan Plan on the Crow Creek Sioux Tribe and of the Need for Federal Legislation to Address These Impacts*. Because the Tribe desires to have the report entered into the official record of this hearing, I have provided copies of the report to all of the committee members. I appear today at the invitation of the Tribe and the Senate Committee on Indian Affairs to summarize briefly the results of my report findings.

The Crow Creek Sioux Tribe is a constituent band of the Great Sioux Nation, and a signatory of the Fort Laramie Treaties of 1851 and 1868. The Tribe resides on its 258,361 acre reservation in central South Dakota. The Missouri River overlies the western boundary of the reservation, and the

resources of the Missouri's bottom-lands traditionally provided food, water, wood for shelter and fuel, forage for cattle and wildlife, and plants utilized for a variety of purposes.

In 1944, Congress authorized implementation of the Pick-Sloan Plan as part of the Flood Control Act of that year. The Pick-Sloan Plan was a joint program designed by the U.S. Army Corps of Engineers and the Bureau of Reclamation to develop the water resources of the Missouri River Basin. Officially labelled the Missouri River Basin Development Program, the Pick-Sloan Plan was gradually expanded to include the construction of 150 multiple-purpose reservoir projects. In addition to flood control, these dams were designed to provide the benefits of hydroelectric power, navigation, recreation, and improved water supplies.

The backbone of the Pick-Sloan Plan was provided by the six massive dams constructed by the Corps of Engineers on the main stem of the Missouri River; two of which (Fort Peck and Oahe) rank among the largest earth dams in the world. The impact of the Pick-Sloan Plan on the Crow Creek Sioux Reservation has been devastating. Two of its main-stem dams, Fort Randall and Big Bend, inundated over 15,000 acres of the Reservation's bottom-lands.

Taken together, the six dam constructed on the Missouri River by the Corps of Engineers caused more damage to Indian reservation lands than any public works project in the history of this nation; inundating over 550 square miles of land and displacing more than 900 Indian families. The Corps of Engineers estimates that the overall annual contribution of these projects to the national economy averages \$1.27 billion. However, for affected tribes such as the Crow Creek Sioux the human and economic costs have far outweighed any benefits received.

Although existing treaty rights provided that tribal land could not be taken without consent, no tribal representatives were consulted prior to enactment of the Pick-Sloan Plan and there was no language in the legislation that specifically authorized the taking of tribal land. The legislation also

ignored the tribes' reserved water rights under the legal precedent established by the U.S. Supreme Court in 1907, which became known as the Winters Doctrine.

The Crow Creek Sioux Tribe lost 9,154 acres of precious bottom-land to the Fort Randall project, over one-third of which was forested. Eighty-four families, representing approximately 34 percent of the reservation population, were forced to evacuate their riverside homes and to accept land ill suited for houses, ranches, or farms. Fort Thompson, the reservation's largest community, was completely inundated. The BIA agency headquarters there was moved fifty miles from the reservation to Pierre, the tiny capital city of South Dakota. The Indian Health Service hospital was moved twenty miles south to Chamberlain. These facilities were now located over ninety miles from remote parts of the reservations. For a people whose transportation facilities were severely limited, this situation created an immense hardship.

The Corps of Engineers began construction of the Fort Randall dam and reservoir in 1946. Yet, it was not until 1949 that the Bureau of Indian Affairs was able to fully inform the Crow Creek Sioux Tribe of the damages it would suffer from the project. In 1958, twelve years after construction began and three years after the Corps of Engineers condemned the Crow Creek land it needed and forced tribal members to relocate, Congress finally authorized payment to the Tribe for the reservation land that was flooded.

The Crow Creek Sioux Tribe determined the fair market value of damages from the Fort Randall project and costs of rehabilitating the reservation to be approximately \$7.5 million. Yet, in the 1958 settlement act, Congress only authorized a payment of approximately \$1.4 million for damages. Accepting the recommendation of Army officials, Congress determined that any payment for rehabilitation should be deferred until after the Corps of Engineers had completed the acquisition of reservation lands needed for the Big Bend project.

In 1960, while the Crow Creek Sioux were sustaining major damages from the Fort Randall project, the Corps of Engineers began work on the Big Bend Dam. This project was located near the new townsite of Fort Thompson on land belonging to the Crow Creek and Lower Brule Sioux tribes. The Corps of Engineers again succeeded in obtaining the reservation land needed for the actual project site through condemnation proceedings, despite a 1958 decision of the U.S. District Court for South Dakota that the Flood Control Act of 1944 had not specifically delegated to the Army the powers of eminent domain over tribal land.

The Big Bend project took an additional 6,417 acres of Crow Creek Sioux land and forced the relocation of 27 reservation families. These damages affected 5 percent of the reservation's land base and 11 percent of its population. Approximately one-fourth of the tribe's remaining farms and ranches were also inundated. The government's handling of the Fort Randall relocations was so slipshod that some reservation families were relocated on lands within the projected area of the Big Bend Dam. These unfortunate tribal members were thus required to undergo the trauma of yet another move.

For those unfamiliar with Sioux culture and the geography of the Dakotas, it is perhaps difficult to appreciate how important the bottom-lands were to the way of life of the Crow Creek people. Trees along the river had provided them with their primary source of fuel and lumber. The wooded areas also protected tribal members and their livestock from the ravages of winter blizzards and scorching summer heat. The gathering and selling of wood helped supplement their small cash income. The flooding of the forestlands destroyed the vast majority of timber on their reservation.

The gathering and preserving of wild fruits and vegetables was a traditional part of the culture of the Crow Creek Sioux. Wild plants added variety and bulk to their diet and were also used for ceremonial and medicinal purposes. The wooded bottom-lands served likewise as a shelter and

feeding ground for many kinds of wildlife. Destruction of this environment by the Pick-Sloan dams reduced the wild game and plant supply on the reservation by 75 percent.

Reservation families fully exploited the resources of the bottom-lands and utilized the Missouri and other nearby streams as a primary water source. Tribal members also fished for subsistence, using set lines and nets. After the bottom-lands were flooded, shoreline access for hunting, fishing, and grazing was controlled by the Corps of Engineers and the State of South Dakota. The loss of the bottom-land grazing areas seriously crippled the livestock industry on Crow Creek, which had been the primary economic activity on the reservation in the years prior to Pick-Sloan.

Damage caused by the Pick-Sloan projects touched every aspect of the life of the Crow Creek Sioux. Abruptly, tribal members were transformed from an economy based on agricultural subsistence to a non-agricultural cash economy and forced to develop new ways of making a living. The uprooting of the long-standing reservation community disrupted and disorganized the social, economic, political, and religious life of well-integrated family groups and had a serious effect on the entire tribal population, both resident and non-resident. It was an onerous imposition for tribal members to be forced to move their community halls, churches, and religious shrines. It was even harder for them to disturb the graves of their ancestors. Yet, the largest cemeteries and most of the private burial grounds had to be excavated and moved elsewhere.

Physical losses inflicted by Pick-Sloan are easily quantified. Psychological and aesthetic damages are more difficult to measure. Like any people forced to relinquish their homes, the Crow Creek Sioux hated not only giving up their property but also seeking unfamiliar places to live. Their particular circumstances made the situation even more difficult. Because of their close relationship with nature, these people had a sacred attachment to their land. The areas along the river had afforded them a comfortable and relatively scenic environment with resources enough to sustain their

way of life. The loss of this land and livelihood had a strong emotional impact on them. The disruption of both traditional communities and federal services created a great deal of anxiety, insecurity, and resentment. Feelings that they were being unjustly exploited made them sullen and bitter. Unlike others affected by public works projects, they were not able to duplicate their old way of life by moving to a similar environment. No Indian lands like the ones vacated existed after inundation. When measured in terms of the loss of federal services and close kinship ties, the disadvantages of leaving the reservation were much too great to make it a viable alternative.

In 1962, Congress enacted Public Law 87-735, which authorized a payment of approximately \$4.4 million to the Crow Creek Sioux Tribe for damages sustained from the Bog Bend project and for rehabilitation of the reservation. By enactment of this legislation, Congress clearly acknowledged the devastating impact of the Pick-Sloan projects on the Crow Creek people. Specifically, Section 5 of the Big Bend Settlement Act provided in relevant part that

The Secretary of the Army is authorized and directed out of funds appropriated for the Big Bend project other than funds provided by this Act to protect, replace, relocate, or reconstruct any existing essential governmental and agency facilities on the reservation, including schools, hospitals, Public Health Service and Bureau of Indian Affairs offices, facilities, service buildings, and employees quarters, roads, bridges, and incidental matters of facilities in connection therewith ...

Section 6 of the Act provided that

The Secretary of the Army, under plans approved by the Secretary of the Interior after consultation with the Crow Creek Tribal Council, is authorized and directed out of funds appropriated for the Big Bend project other than funds provided by this Act, to locate and construct on tribal land selected by the Crow Creek Tribal Council with the approval of the Secretary of the Interior, a townsite adequate for fifty homes, including streets, utilities, including water, sewage, and electricity, taking into account the reasonable future growth of the townsite, a community center containing space and facilities for community gatherings, tribal offices, tribal council chamber, Bureau of Indian Affairs and Public Health Service offices and quarters and a combination gymnasium and auditorium.

A review of the legislative history of the Big Bend Settlement Act also confirms the view of the Crow Creek Sioux Tribe that Congress clearly intended to replace the existing infrastructure and facilities of the old Fort Thompson in a manner that would allow for reasonable future growth. Nevertheless, as a result of funding decisions made by the Corps of Engineers and the lack of coordination between the Corps and the BIA, these directives were carried out either inadequately or not at all.

The new community infrastructure proved so inadequate that many families decided to resettle instead in the Crow Creek district of the reservation, approximately 20 miles southeast of Fort Thompson. Because some roads, homes, and appurtenant facilities were not replaced, many residents of the old Fort Thompson were prevented from moving to the replacement townsite. They were compelled to find substitute housing and livelihoods elsewhere; many of these people also settled ultimately in the Crow Creek district.

The present tribal community in the Crow Creek district of the reservation arose out of the relocation experience. Yet, the federal government has never provided for the development of an adequate water supply to support the population. As a consequence, the lack of treated water now poses a serious public health problem in the community.

In some cases the Tribe did not get its facilities replaced or restored adequately or at all. Prior to the dam projects, educational facilities at Fort Thompson included an elementary school and a high school complex consisting of the school, a work farm, and dormitories. The high school's reputation for quality was such that Indian students from throughout the region came to attend classes and board there. The Corps of Engineers built a new elementary school, which soon proved to be inadequate and of poor construction, but the high school was never replaced. Once the Fort Thompson high school was shut down, its students were bussed 60 miles round-trip to the public school in the off-reservation community of Gann Valley. Eventually, in 1976, the Tribe took control

of the Immaculate Conception school facility, formerly operated by the Roman Catholic Church in the community of Stephan, South Dakota.

The hospital at Fort Thompson was never replaced and the Indian Health Service did not bring a facility back to the reservation until 1980. The Corps of Engineers built a new Tribal Hall. However, it lacked the auditorium and gymnasium specifically provided for in the Big Bend Settlement Act. The Corps also upgraded the Fort Thompson water treatment facility, but not adequately enough to accommodate the "reasonable future growth of the townsite" as mandated by the 1962 statute. An irrigated community garden was never replaced.

Tribal elders who experienced the relocation recall that the cookie-cutter replacement homes were not insulated sufficiently to endure the rigors of harsh Dakota winters. However, they were not reinsulated until twenty years later. Water lines for the new homes were placed on the roofs. This soon led to disaster when the pipes froze and burst. While the replacement homes allowed many tribal members to have their first experience with electricity and running water, their cash income was such that they were not prepared for the monthly payments that accompanied these new luxuries. Many assumed that electrical and water supply lines would be free benefits of the dam projects to which they gave up their former homes. They also recall their hope that the dam construction and relocation would afford them at least temporary employment opportunities. But this was seldom the case.

A report issued by the Corps of Engineers in January of 1994 maintains that the Corps complied with the requirements of the Big Bend Settlement Act, because it expended the amount of money authorized under the Act for infrastructure rehabilitation. Perhaps Congress underestimated the cost of the infrastructure to be replaced and did not appropriate sufficient funds to reconstruct the facilities that it specifically authorized. Nevertheless, the general legal principle that ambiguous phrases or statutes are to be interpreted in the light most favorable to the Indians applies to this

matter. Consequently, it is my view that there should be a substantial amount for funding provided to the Crow Creek Sioux Tribe for the school, hospital, townsite and infrastructure replacement guaranteed to the Tribe in the Big Bend Act.

The redress of problems caused to Native Americans by the Pick-Sloan projects is not unprecedented. In 1992, Congress enacted the Three Affiliated Tribes of Fort Berthold and Standing Rock Sioux Tribe Equitable Compensation Act. This legislation established a trust account of \$149.2 million for the Three Affiliated Tribes and a \$90.6 million trust account for the Standing Rock Sioux Tribe. These "Recovery Funds" were capitalized by allocating to the Tribes 25 percent of the gross receipts realized by the federal government each year from the hydropower generated by the Missouri River dams. This power is marketed by the Eastern Division of the Western Area Power Administration. The receipts from WAPA's transactions are deposited in the U.S. Treasury, for operation and maintenance of the Pick-Sloan projects and repayment of the their debt.

The U.S. General Accounting Office (GAO) reported to Congress in 1991 that the issue of whether legislative action addressing an Indian Tribe's outstanding claims under Pick-Sloan is warranted should assess "the compensation the tribe believed was warranted at the time of the taking." In the case of Crow Creek, the Tribe sought replacement and reconstruction of the facilities and infrastructure located at old Fort Thompson. The Tribe succeeded in obtaining Congressional authorization for such reconstruction in 1962. Yet, the authorization has not been fulfilled by the Executive Branch.

The Three Affiliated Tribes of Fort Berthold, North Dakota lost nearly 176,000 acres of land to the Garrison Dam project. The Standing Rock Sioux Tribe of North and South Dakota lost approximately 56,000 acres to the Oahe Dam project. Congress established a "Recovery Fund" for these tribes pursuant to the GAO's finding that the wishes of the Tribes at the time of the land takings

were significant, and its own finding that "the United States Government did not justly compensate [the] Tribes when it acquired those lands."

The Crow Creek Sioux Tribe lost over 15,000 acres of land to the Fort Randall and Big Bend Dam projects. Under the same concepts developed by the GAO and implemented by Congress in the Equitable Compensation Act, the Tribe is entitled to a "Recovery Fund" in the amount of \$27.5 million. The annual interest and investment income from this fund would be adequate to finance the reconstruction and rehabilitation of Fort Thompson and the development of sanitary water resources for the Crow Creek community. This is what tribal negotiators originally sought over forty years ago. A trust fund of this amount is also justified under the formula for "just compensation" utilized by Congress in the Equitable Compensation Act of 1962.

The members of the Crow Creek Sioux Tribe have yet to receive their fair share of the benefits that were supposed to be provided by Pick-Sloan, although they suffered a great deal as a result of its implementation. The story of the Pick-Sloan projects and their impact on the Crow Creek Sioux and other tribes of the Missouri River is one that will continue well into the future. While it will always be impossible to ignore or excuse the abuse of Native American rights that has characterized much of the history of this program, it is my hope that Congress will continue to provide corrective initiatives that will allow future historians to write a more optimistic conclusion to the episode, especially as it pertains to the Crow Creek Sioux Tribe.

This concludes my statement. I will be happy to answer any questions you may have.

**AN ANALYSIS OF THE IMPACT OF THE PICK-SLOAN PLAN  
ON THE CROW CREEK SIOUX TRIBE AND OF THE NEED FOR  
FEDERAL LEGISLATION TO ADDRESS THESE IMPACTS**

Prepared for  
The Crow Creek Sioux Tribe  
Fort Thompson, South Dakota

by  
Michael L. Lawson, Ph.D.  
Associate Historian



Arlington, Virginia

August 18, 1995

## I. INTRODUCTION

The Crow Creek Sioux Tribe is a constituent band of the Great Sioux Nation, and a signatory of the Fort Laramie Treaties of 1851 and 1868. The Tribe resides on its 258,361 acre reservation in central South Dakota (Figure 1). The Missouri River overlies the western boundary of the reservation, and the resources of the Missouri's bottomlands have traditionally provided food, water, wood for shelter and fuel, forage for cattle and wildlife, and plants utilized for medicinal purposes. The Missouri River Basin Pick-Sloan Plan involved the construction of numerous earthen dams on the Missouri River. The lands affected by Pick-Sloan were, by and large, Indian lands, and entire tribal communities and economies were destroyed by the dam projects.

In 1944, the U.S. Congress enacted the Flood Control Act (58 Stat. 887), which authorized implementation of the Pick-Sloan Plan for water development in the Missouri River Basin. This plan included the construction of five massive earthen dams along the Missouri. The primary purpose of the main-stem dams and reservoirs was flood control downstream. Navigation, the generation of hydropower, the provision of improved water supplies, and enhanced recreation were also project purposes. The Army Corps of Engineers, which constructed and operates the dams, estimates that the projects' overall contribution to the national economy averages \$1.27 billion. For the Crow Creek Sioux, the human and economic costs far outweighed any benefit received by the Tribe.

The impact of the Pick-Sloan Plan on the Crow Creek Sioux Reservation has been devastating. Two of its main-stem dams, Fort Randall and Big Bend, inundated the Reservation's bottomlands. The Corps of Engineers began construction of the Fort Randall dam and reservoir in 1946. Twelve years later, in 1958, Congress enacted Public Law 85-916 (72 Stat. 1766, September 2, 1958), authorizing payment for the Tribal land taken for the project. The Tribe lost 9,154 acres of rich bottomland, over one-third of which was forested. Eighty-four families, constituting 34 percent of the Tribal membership, were relocated against their wishes. The project flooded Fort Thompson, the Reservation's largest community, and the Bureau of Indian Affairs (BIA) relocated its agency headquarters from that site to Pierre, South Dakota, fifty miles from the Reservation. Likewise, the Indian Health Service hospital at Fort Thompson was moved twenty miles south to Chamberlain, South Dakota. The resources of the bottomlands, and the subsistence economy based on those resources were gone forever. The relocated families received the nominal payments authorized under Public Law 85-916 four years after the relocation.

Nevertheless in 1962, Congress enacted Public Law 87-735 (76 Stat. 704) providing for the purchase of 6,179 acres of remaining bottomland. Twenty-seven more families were relocated. The history of the land takings and impacts suffered by the families of Crow Creek is discussed in detail in this report.

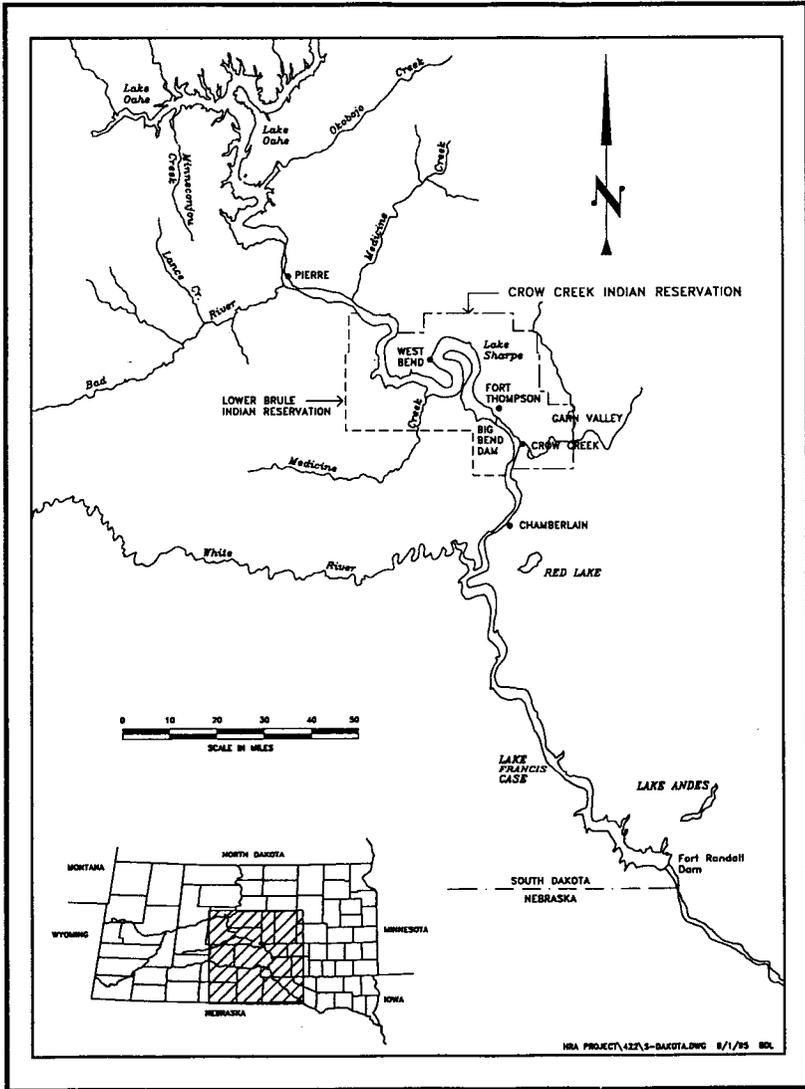


Figure 1. Location of the Crow Creek Indian Reservation.

In enacting Public Law 87-735, Congress acknowledged the devastating impact of these projects on the people of Crow Creek. Congress directed the Corps of Engineers to replace lost infrastructure, Tribal and federal government facilities, schools, hospitals, a community center, and roads and utilities. Specifically, Section 5 of the Big Bend Settlement Act provided in relevant part that

The Secretary of the Army is authorized and directed out of funds appropriated for the Big Bend project other than funds provided by this Act to protect, replace, relocate, or reconstruct any existing essential governmental and agency facilities on the reservation, including schools, hospitals, Public Health Service and Bureau of Indian Affairs offices, facilities, service buildings, and employees quarters, roads, bridges, and incidental matters of facilities in connection therewith ...<sup>1</sup>

Section 6 of the Act provided that

The Secretary of the Army, under plans approved by the Secretary of the Interior after consultation with the Crow Creek Tribal Council, is authorized and directed out of funds appropriated for the Big Bend project other than funds provided by this Act, to locate and construct on tribal land selected by the Crow Creek Tribal Council with the approval of the Secretary of the Interior, a townsite adequate for fifty homes, including streets, utilities, including water, sewage, and electricity, taking into account the reasonable future growth of the townsite, a community center containing space and facilities for community gatherings, tribal offices, tribal council chamber, Bureau of Indian Affairs and Public Health Service offices and quarters and a combination gymnasium and auditorium.<sup>2</sup>

Nevertheless, as a result of funding decisions by the Corps of Engineers and the lack of coordination between the Corps and the BIA, these directives were carried out inadequately, or not at all. Consequently, there is a need for legislation to implement these commitments made to the Crow Creek Sioux Tribe, and memorialized in the taking act, but never fulfilled.

This report provides an analysis of the impact of the Fort Randall and Big Bend Dams on the Crow Creek Sioux Tribe. It describes the background to the land takings and dislocation of the Tribal communities. It discusses the extent that the commitments made to the Tribe by Congress in the Big Bend Act of 1962 have not been fulfilled. Finally, the report explains how Congress has utilized revenues from the sale of hydroelectricity generated at the Missouri River dams to redress Tribal claims for land takings along the Missouri, and how this concept may be used to redress the unresolved rights of the Crow Creek Sioux Tribe.

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<sup>1</sup> *Act of October 3, 1962, 76 Stat. 705-706.*

<sup>2</sup> *Ibid.*, p. 706.

## II. BACKGROUND

The history of the application of the European doctrines of discovery and conquest to Native American tribes in the eighteenth and nineteenth centuries, and the evolution of policies that recognized them as "domestic dependent nations" under federal trusteeship, is well known. The subsequent saga of massacres, depredations, and broken treaties resulting from the exercise of territorial imperatives by both federal and tribal leaders has likewise been the focus of many historians. What is less familiar to our national consciousness is that the struggle of tribal people for control of their own resources and economic and political destiny did not end in the bloody snow at Wounded Knee in 1890, but has continued, for far greater stakes, into the present century.

During the first six decades of the 1900s, the United States invoked its powers of eminent domain increasingly to obtain large parcels of Native American land for the construction of flood control and reclamation projects. Although federal water agencies claimed that the technology of their dams and reservoirs would provide multiple benefits for the general public, the overall cost-benefit ratio of these projects has seldom been to the advantage of the tribes affected.

In the Missouri River Basin, the Pick-Sloan Plan, the joint water development program designed by the U.S. Army Corps of Engineers and the Department of the Interior's Bureau of Reclamation in the early 1940s, caused more damage to Indian reservation lands than any other public works project in this nation. Whether or not the architects of the plan chose deliberately to impact Indian rather than non-Indian land and resources, as some tribal leaders charged, their projects ultimately affected twenty-three different reservations.

Three of the dams constructed under the Pick-Sloan Plan (Fort Randall, Oahe, and Big Bend) flooded over 202,000 acres of Sioux land on the Standing Rock, Cheyenne River, Lower Brule, Crow Creek, Yankton, and Rosebud reservations in North and South Dakota.<sup>3</sup> A review of the impact of the Fort Randall and Big Bend projects on the Crow Creek Sioux Reservation and its resident tribal members in South Dakota provides an illuminating twentieth century example of both the diminishment of Indian land, resources, and rights through federal acquisition and the involuntary resettlement of Native American families.

The development of the Pick-Sloan Plan represented a compromise between the separate water resource programs developed by Colonel Lewis A. Pick of the Corps of Engineers and William G. Sloan of the Bureau of Reclamation. The Pick-Plan was primarily concerned with the development of flood control measures to protect the lower Missouri Basin, while the Sloan

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<sup>3</sup> For an analysis of the impact of all three of these dams on the six Sioux reservations see Michael L. Lawson, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux* (Norman: University of Oklahoma Press, 1994).

Plan was preoccupied with the construction of irrigation facilities in the upper Missouri Basin. Although these seemingly conflicting programs were proposed by two powerful agencies traditionally at odds, a remarkable conciliation of the two plans was rather very quickly achieved and rather hastily approved and enacted by Congress as part of the Flood Control Act of 1944.<sup>4</sup> This modern "Missouri Compromise" was accomplished partly as a result of the urgent demand for federal action that followed the disastrous Missouri River floods of 1942 and 1943. It also represented an attempt to head off support that was growing for an alternative plan to develop a Missouri Valley Authority (MVA) — an independent public corporation patterned after the Tennessee Valley Authority (TVA).<sup>5</sup>

Officially labelled the Missouri River Basin Development Program, the Pick-Sloan Plan was gradually expanded to include the construction of 150 multiple-purpose reservoir projects. In addition to flood control, these dams were designed to provide the benefits of hydroelectric power, navigation, recreation, and improved water supplies.<sup>6</sup>

The backbone of the Pick-Sloan Plan was provided by the six massive dams constructed by the Corps of Engineers on the main stem of the Missouri River; two of which (Fort Peck and Oahe) rank among the largest earth dams in the world. Together, these six projects inundated over 550 square miles of Indian land and displaced more than 900 Indian families.<sup>7</sup>

Many of the problems encountered by the tribal members affected came as a result of the federal government's failure to provide an adequate administrative structure for the Pick-Sloan

<sup>4</sup> *Flood Control Act of 1944*, 58 Stat. 827.

<sup>5</sup> U.S., Congress, Senate, *Missouri River Basin, Report of a Committee of Two Representatives Each From the Corps of Engineers, US. Army, and the Bureau of Reclamation, Appointed to Review the Features of Plans Presented by the Corps of Engineers (H.R. Doc. 475) and the Bureau of Reclamation (S. Doc. 191) for the Comprehensive Development of the Missouri River Basin*, Document No. 247, 78th Cong., 2d sess., 1944, pp. 1-6; Richard G. Baumhoff, *The Dammed Missouri Valley: One-Sixth of Our Nation* (New York: Alfred A. Knopf, 1951), pp. 184-95; Bruce Nelson, *Land of the Dakotahs* (Minneapolis: University of Minnesota Press, 1946), pp. 318-28.

<sup>6</sup> John W. Ball, "Midwest Flood Also Burst Political Dike," *Washington Post*, July 29, 1951; Otto G. Hoiberg, *Its Your Business and Mine: Missouri River Basin Development Program, A Study Guide*, University of Nebraska, Extension Division, Booklet No. 175 (May 1950), pp. 39, 60; Marvin Meade, *The Missouri River Proposals for Development*, Citizens Pamphlet 11 (Lawrence: University of Kansas, Bureau of Government Research, 1952), p. 22.

<sup>7</sup> U.S., Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigations Project, *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138 (Billings, 1954), pp. 1, 18-19, 47; "Summary and Evaluation of Experiences of Six Indian Reservations Affected by Large Dam and Reservoir Projects on Missouri River," pp. 5-10, 44-45; File 1766-074.1, MRBI, pt. I-A (General Programs, Missouri Basin, 1960); Record Group 75, Records of the Bureau of Indian Affairs; Washington National Records Center, Suitland, Maryland.

Plan. In response to the apparently overwhelming opposition to the creation of a Missouri Valley Authority, the Truman Administration placed the program under the rather loose-knit coordination of the Missouri Basin Inter-Agency Committee (MBIAC), a nonstatutory body that quickly fell under the domination of the Corps of Engineers.\*

The Inter-Agency Committee's piecemeal approach to Missouri Basin problems and its preoccupation with engineering methods did not allow for adequate consideration of such important human factors as the condemnation of farms and ranches and the relocation of families. The Army Engineers had little in their training or backgrounds that prepared them to deal knowledgeably with Native Americans, and the federal agency usually charged with that responsibility, the Bureau of Indian Affairs (BIA), was hampered during this period by a severely reduced budget and under threat of being abolished altogether by those in Congress who supported the "termination" of the government's trust responsibility for Indian tribes.

While a more centralized administrative structure, such as that proposed for the Missouri Valley Authority, might have received an annual block appropriation for all of its activities and functions, the numerous agencies involved with Pick-Sloan had to deal with several separate committees in Congress for funding of their particular part of the overall program. This meant that the Army often received generous amounts for dam construction during years when the Sioux tribes were not able to receive appropriations for their necessary relocation nor compensation for their losses. Because of this lack of coordination, tribal members were systematically denied most of the important benefits offered by Pick-Sloan and their efforts at reconstruction fell far short of their needs.

### III. UPROOTED

The Sioux tribes knew little of the Pick-Sloan Plan until long after it had been approved. Although existing treaty rights provided that land could not be taken without their consent, none of the tribes were consulted prior to the program's enactment. The Bureau of Indian Affairs was fully informed, yet made no objections to the plan while it was being debated in Congress in 1944. The Indian Bureau did not inform the tribes of the damages they would suffer until 1947. The Corps of Engineers was so confident that it could acquire the Indian land it needed through federal powers of eminent domain that it began construction on its dams, including

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\* U.S., Missouri Basin Inter-Agency Committee and the Missouri River States Committee, *The Missouri River Basin Development Program* (Washington, D.C.: Government Printing Office, 1952), p. 11; Marian E. Ridgeway, *The Missouri Basin's Pick-Sloan Plan: A Case Study in Congressional Policy Determination*, Illinois Studies in Social Science, vol. 35 (Urbana: University of Illinois Press, 1955), pp. 15-21; Rufus Terral, *The Missouri Valley — Land of Drouth, Flood, and Promise* (New Haven: Yale University Press, 1947), pp. 208-210; Baumhoff, *Dammed Missouri Valley*, pp. 169-79; Nelson, *Land of the Dakotahs*, pp. 325-28.

those actually on reservation property, even before opening formal negotiations with the tribal leaders. The legislation establishing the Pick-Sloan Plan also ignored the Indians' reserved water rights under the legal doctrine known as the Winters Doctrine.<sup>9</sup>

The Pick-Sloan Plan was thus presented to the Crow Creek Sioux Tribe as a *fait accompli*. The federal government was determined to move them out, and there was little they could do about it. Although the tribes were angry and bitter that the United States again would break the faith of its treaty obligations and sacrifice their interests to satisfy non-Indian demands for progress, they realized that resistance was futile. Intertribal cooperation was virtually nonexistent, and the individual tribes were too politically fragmented to offer an organized opposition. Access to influential legislators and competent legal counselors was extremely limited, and tribal members were not inclined to take radical action. Federal officials ignored the protests that were made, and the Sioux were eventually forced to accept the inevitable consequences of Pick-Sloan. Gradually they resigned themselves to making the most of whatever alms might be offered in compensation, but their bitterness remained.

In 1947 the Bureau of Indian Affairs made its first effort to represent tribal interests within the Missouri Basin Inter-Agency Committee. To assess fully the damages to Indian land resulting from Pick-Sloan, the BIA organized the Missouri River Basin Investigations Project (MRBI) within the structure of its regional office at Billings, Montana. Initially this agency was given the task of conducting both extensive reservation surveys and appraisals to estimate replacement costs as well as social and economic damages resulting from inundation. Later the MRBI was also assigned to help tribes gain equitable settlements and to assist relocation and reconstruction activities.<sup>10</sup>

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<sup>9</sup> The Winters Doctrine was propounded by the United States Supreme Court in 1907 in the case of *Winters v. United States*. The Fort Belknap Indians of Montana had brought suit against an upstream farmer, Henry Winter (his name was erroneously entered as Winters on court documents), to enjoin him from interfering with the flow of the Milk River, a tributary of the Missouri, through their reservation. The Court ruled that when the Indians gave up their rights to their former lands in exchange for the arid, unirrigated land of the reservation, sufficient water was reserved from the Milk River to enable the tribe "to become a pastoral and civilized people." The Court also held that the Indians' right to use the water could not be diminished by any rights created under State law. Later decisions, such as *Conrad Investment Company v. United States*, further extended the Winters doctrine establishing that Indians have prior and superior rights to both present and future beneficial uses of water. These early decisions were reaffirmed by the U.S. Supreme Court in the 1963 case of *Arizona v. California*, which granted five lower Colorado River tribes sufficient water to "irrigate the irrigable portions" of their reservations. See *Winters v. U.S.*, 207 U.S. 564, 575-77 (1907); *Conrad Investment Company v. U.S.*, 161 Fed. 829 (CA9, 1908); and *Arizona v. California*, 373 U.S. 546, 598-600 (1963).

<sup>10</sup> U.S., Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigations Project, *Annual Report, Fiscal Year 1948* (Billings, 1948), pp. 6-8; "Programs and Accomplishments of Interior Agencies Using Missouri Basin Project Transfer Funds," Department of the Interior Report, January 7, 1958; File 50745-44-074 (Missouri Basin Project, 1955-58); Record Group 75, Records of the Bureau of Indian

(continued...)

By the time the first MRBI staff members reached the field, the Corps of Engineers had spent approximately \$28 million on the preliminary construction of three of its main-stem projects, including the Fort Randall Dam. A significant portion of the reservoir to be developed behind Fort Randall Dam, Lake Francis Case, would flood Crow Creek Reservation land and communities. Initial MRBI findings were not published until 1949, by which time the Corps had spent an additional \$37.5 million on construction. Yet, it was not until these early MRBI appraisals were made available that the Crow Creek Sioux learned the full effect of Pick-Sloan on their reservation.<sup>11</sup>

Construction of the Fort Randall Dam began in May 1946. This project was located downstream of the Crow Creek Indian Reservation, 100 miles southeast of Crow Creek and just above the Nebraska line in south-central South Dakota. When it was completed in 1969, Fort Randall provided a water storage capacity of 5.7 million acre-feet and a maximum hydroelectric power output of 320,000 kilowatts. The reservoir behind the dam stretched over 107 miles and was named Lake Case in honor of the late Senator Francis Case of South Dakota. Fort Randall was built with compacted earth fill, as were other army projects on the Missouri. Like Garrison and Oahe dams, it featured a relatively high-head dam (160 feet) and a chute-type spillway designed to release excessive flows. Although the Corps of Engineers estimated this project would cost \$75 million in 1944, it ultimately cost more than \$200 million.<sup>12</sup>

The Fort Randall Dam flooded 22,091 acres of Sioux land and dislocated 136 Indian families. Of the tribes affected, the Crow Creek Sioux were the hardest hit. Its tribal members lost 9,514 acres of precious bottomland, over one-third of which was forested. Eighty-four families, representing approximately 34 percent of the reservation population, were forced to evacuate their riverside homes and to accept land ill suited for houses, ranches, or farms. Fort

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<sup>9</sup>(...continued)

Affairs, National Archives, Washington, D.C.; "Statement of Responsibilities and Relationships for the Administration of the Oahe-Cheyenne River Act, P.L. 776, 83d Cong." File 16822-074.1 (Missouri River Basin, Oahe Dam, Cheyenne River-Standing Rock, 1951-55), Record Group 75, Records of the Bureau of Indian Affairs, Washington National Records Center, Suitland, Maryland.

<sup>11</sup> U.S., Department of the Army, Corps of Engineers, *Annual Report of the Chief of Engineers, U.S. Army, 1948*, pt. 1, vol. 2 (Washington, D.C.: Government Printing Office, 1949), pp. 1718, 1720, 1723, 1754; *Annual Report of Chief of Engineers, U.S. Army, 1949*, pt. 1, vol. 2, (Washington, D.C.: Government Printing Office, 1950), pp. 1557, 1559, 1561, 1593; U.S., Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigations Project, *Listings of Missouri River Basin Investigation Reports*, MRBI Rept. 108 (Billings, 1970), pp. 15-22.

<sup>12</sup> U.S., Department of the Army, Corps of Engineers, Missouri River Division, *Fort Randall Reservoir; Lake Francis Case* (Omaha, 1972), pp. 1-4; *Annual Report of the Chief of Engineers, U.S. Army, 1973*, pt. 2, vol. 1 (Washington, D.C.: Government Printing Office, 1974) sec. 2 1, pp. 12-14; U.S., Department of the Army, Corps of Engineers, Missouri River Division, *The Development and Control of the Missouri River* (Omaha, 1947), p. 7.

Thompson, the reservation's largest community, was completely inundated. The BIA agency headquarters there, which also served the Lower Brule Sioux, was moved fifty miles from the reservation to Pierre, the tiny capital city of South Dakota. The Indian Health Service hospital was moved twenty miles south to Chamberlain. These facilities were now located over ninety miles from remote parts of the reservations. Because tribal offices remained on Indian land, it was no longer possible for the Crow Creek Sioux to take care of their BIA, public-health, and tribal business needs on the same day at the same location. For a people whose transportation facilities were severely limited, this situation created an immense hardship.<sup>13</sup>

While the Crow Creek Sioux were sustaining major damages from the Fort Randall project, the Corps of Engineers began work on the Big Bend Dam in September 1959. This project was located near the new townsite of Fort Thompson on land belonging to the Crow Creek and Lower Brule tribes. The smallest of the Army's main-stem structures, Big Bend was developed primarily for hydroelectric power production. Taking advantage of the long bend in the river for which it was named, engineers built a dam that produced 468,000 kilowatts and was just ninety-five feet high. The reservoir behind it, only twenty miles long, was named for former South Dakota Governor M. Q. Sharpe. He was a leading advocate of the Pick Plan in 1944 who later served as tribal attorney for both the Crow Creek and Lower Brule Sioux during their Fort Randall negotiations.<sup>14</sup>

The Big Bend project took an additional 21,026 acres of Sioux land. Crow Creek tribal members lost 6,417 acres to the dam project and were forced to move twenty-seven families. These damages affected 5 percent of the reservation's land base and 11 percent of its population. Approximately one-fourth of the tribe's remaining farms and ranches were also deluged. The government's handling of the Fort Randall relocations had been so slipshod that families on both the Crow Creek and the Lower Brule reservations were relocated on lands

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<sup>13</sup> *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 1, 18-19, 47; "Summary and Evaluation of Experiences of Six Indian Reservations Affected by Large Dam and Reservoir Projects on Missouri River," pp. 5-10, 44-45; U.S., Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigations Project, *Appraisal of Indian Property on the Fort Randall Reservoir Site Within the Lower Brule and Crow Creek Indian Reservations, South Dakota*, MRBI Rept. 135 (Billings, 1953), pp. 1-7; *Problems of Indian Removal and Rehabilitation Growing Out of the Fort Randall Taking on Crow Creek and Lower Brule Reservations, South Dakota*, MRBI Rept. 136 (Billings, 1953), pp. 1-6, 17-20; *Report of Ownership Status of Restricted, Allotted, and Tribal Indian Lands on the Crow Creek, Lower Brule, and Rosebud Reservations, South Dakota, Affected by Fort Randall Dam and Reservoir Project*, MRBI Rept. 83 (Billings, 1949), pp. 1-4.

<sup>14</sup> U.S., Department of the Army, Corps of Engineers, Missouri River Division, *Big Bend Dam: Lake Sharpe* (Omaha, 1972), pp. 1-4; *Annual Report of the Chief of Engineers, 1973*, pt. 2, vol. 2, sec. 21, p. 12.

within the projected area of the Big Bend Dam. These unfortunate tribal members were thus required to undergo the trauma of yet another move.<sup>15</sup>

Because their families and most important resources were concentrated near the Missouri River, resettlement devastated affected members of the Crow Creek Sioux Tribe. The natural advantages of their former homes could not be replaced on the marginal reservation lands that remained after inundation. The shaded bottomlands had provided a pleasant environment with plenty of wood, game, water, and natural food sources. Livestock could graze on abundant grasses and take shelter under the trees. The barren upland regions to which these people were forced to move were less hospitable, more rigorous, and presented far greater challenges to their survival.<sup>16</sup>

For those unfamiliar with Sioux culture and the geography of the Dakotas, it is perhaps difficult to appreciate how important the bottomlands were to the way of life of the Crow Creek people. Trees along the river had provided them with their primary source of fuel and lumber. The wooded areas also protected both man and beast from the ravages of winter blizzards and the scorching summer heat. The gathering and selling of wood helped supplement their small cash income. The flooding of the forestlands destroyed the vast majority of timber on their reservation.<sup>17</sup>

The gathering and preserving of wild fruits and vegetables was a traditional part of the culture of the Crow Creek Sioux. The many herbs, roots, berries, currants, plums, cherries, and beans that grew in the bottomlands added variety and bulk to their diet. These plants were eaten raw, dried and stored for winter, made into soups and sauces, or mixed with other foods to add flavoring. Traditionally they were also used for ceremonial and medicinal purposes. Buffalo berries, for example, were once used in female puberty rites, and chokeberries continued to serve as a cure for diarrhea and other ailments. A form of wild pea called a

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<sup>15</sup> *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 1, 18-19, 47; MRBI, "Experiences of Six Reservations Affected by Large Dams," pp. 5-10, 44-45; U.S., Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigations Project, *Damages to Indians on Crow Creek and Lower Brule Reservations from Big Bend Dam and Reservoir Project, South Dakota*, MRBI Rept. 165 (Billings, 1960), pp. 1-10.

<sup>16</sup> *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 12-14, 18-19; "Experiences of Six Reservations Affected by Large Dams," pp. 5-10, 44-45.

<sup>17</sup> *Ibid.*

"mouse bean"<sup>14</sup> was regarded as one of the most palatable wild vegetables on the Great Plains. The loss of these and other plants greatly reduced the Indians' natural food supply.<sup>19</sup>

The wooded bottomlands also served as a shelter and feeding ground for many kinds of wildlife. Déer, beaver, rabbits, and raccoons were abundant year-round, and numerous pheasants and other game birds wintered there each year. The hunting and trapping of this game provided the Crow Creek Sioux with an important source of food, income, and recreation. Wild fruit, including chokecherries, buffalo berries, gooseberries, and currants were readily available for picking. Destruction of this environment by the Pick-Sloan dams reduced the wild game and plant supply on the reservation by 75 percent.<sup>20</sup>

Reservation families fully exploited the resources of the bottom-lands and utilized the Missouri and other nearby streams as a primary water source. Tribal members also fished for subsistence, using set lines and nets. However, recreational fishing, swimming, and boating were uncommon activities for the Sioux.<sup>21</sup>

The loss of the bottomland grazing areas seriously crippled the livestock industry on Crow Creek. Ranching had become the primary economic activity on the reservation in the years prior to Pick-Sloan. A substantial portion of the Indian ranchers were forced either to liquidate their assets altogether or to establish smaller operations on the inferior reservation land that remained.<sup>22</sup>

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<sup>14</sup> This food source acquired its name because it was collected and stored by field mice and taken from their nests by tribal members. According to tradition, the Sioux always replaced the beans they took with an equal amount of corn or other grain. Soup made from these beans was still considered a delicacy at the time of the inundation.

<sup>19</sup> *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, p. 79; Ethel Nurge, "Dakota Diet: Traditional and Contemporary," in *The Modern Sioux: Social Systems and Reservation Culture*, ed. Ethel Nurge (Lincoln: University of Nebraska Press, 1970), pp. 39, 75-89. For a full discussion of traditional plant uses, see Melvin Randolph Gilmore, "Use of Plants by the Indians of the Missouri River Region," in *Thirty-third Annual Report of the American Bureau of Ethnology* (Washington, D.C.: Government Printing Office, 1919), pp. 43-154.

<sup>20</sup> *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 12-14; Discussions with Tribal elders at Crow Creek elder facility, Fort Thompson, South Dakota, July 19, 1995.

<sup>21</sup> *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, p. 39; Discussions with Tribal elders at Crow Creek elder facility, Fort Thompson, South Dakota, July 19, 1995; Nurge, "Dakota Diet," p. 39.

<sup>22</sup> "Experiences of Six Reservations Affected by Large Dams," pp. 8-9, 49-53.

In the bottomlands cattle were able freely to graze, water, and take shelter. On the upland prairies artificial shelters had to be built to replace the natural shelter of the trees, and the loss of the winter hay meadows meant open grazing was no longer possible. Fences had to be erected to confine the herds in smaller areas and to protect them from the waters of the wildly fluctuating reservoirs. Artesian wells, cisterns, and stock water ponds had to be dug, and feed supplements had to be purchased, to replace the natural water and food sources of the old habitat. Stock raising in the new environment thus proved more difficult, expensive, and risky.<sup>23</sup>

The upland regions also presented a stiff challenge for Indian homeowners. Houses built or relocated on this treeless land required better insulation and could no longer be heated by wood stoves. New sources of fuel, lumber, food, and water had to be developed or purchased. The necessity of finding new homesites and rangelands on the reduced reservations created a highly competitive and inflated real-estate market. The nature of the soil and terrain made irrigation impractical if not impossible. Paradoxically, Pick-Sloan flooded the most potentially irrigable lands. The Fort Randall and Big Bend projects, for example, destroyed the possibility of implementing plans proposed jointly by the BIA and the Bureau of Reclamation for sizable irrigation projects on the Crow Creek Reservation.<sup>24</sup>

Damage caused by the Pick-Sloan projects touched every aspect of the life of the Crow Creek Sioux. Abruptly, tribal members were transformed from a subsistence to a cash economy and forced to develop new ways of making a living. The uprooting of long-standing reservation communities disrupted and disorganized the social, economic, political, and religious life of well-integrated tribal groups and had a serious effect on the entire tribal population, both resident and non-resident. It was an onerous imposition for tribal members to be forced to move their community halls, churches, and religious shrines. It was even harder for them to disturb the graves of their ancestors. Yet, the largest cemeteries and most of the private burial grounds had to be excavated and moved elsewhere.<sup>25</sup>

Physical losses inflicted by Pick-Sloan were easily quantified. Psychological and aesthetic damages were more difficult to measure. Like any people forced to relinquish their

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<sup>23</sup> *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI Rept. 138, pp. 9-11, 61-67.

<sup>24</sup> *Ibid.*, pp. 8-9, 11-12, 51, 56-60; *Damages to Indians on Crow Creek and Lower Brule Reservations from Big Bend Dam and Reservoir Project, South Dakota*, MRBI Rept. 165, pp. 2, 10; *Problems of Indian Removal and Rehabilitation Growing Out of the Fort Randall Reservoir Taking on Crow Creek and Lower Brule Reservations, South Dakota*, MRBI Rept. 136, p. 2.

<sup>25</sup> *Damages to Indians of Five Reservations from Three Missouri River Reservoirs in North and South Dakota*, MRBI, Rept. 138, pp. 15-16.

homes, the Crow Creek Sioux hated not only giving up their property but also seeking unfamiliar places to live. Their particular circumstances made the situation even more difficult. Because of their close relationship with nature, these people had a sacred attachment to their land. The areas along the river had afforded them a comfortable and relatively scenic environment with resources enough to sustain their way of life. The loss of this land and livelihood had a strong emotional impact on them. The disruption of both traditional communities and federal services created a great deal of anxiety, insecurity, and resentment. Feelings that they were being unjustly exploited made them sullen and bitter. Unlike others affected by public works projects, they were not able to duplicate their old way of life by moving to a similar environment. No Indian lands like the ones vacated existed after inundation. When measured in terms of the loss of federal services and close kinship ties, the disadvantages of leaving the reservation were much too great to make it a viable alternative.<sup>26</sup>

#### IV. EARLY DISPUTES AND DEMANDS

Realizing they were powerless to stop the dams, Sioux tribal leaders were determined, nevertheless, to negotiate for payments and benefits which would allow them to fully utilize their remaining resources. In light of the congressional debate over the termination of federal trust responsibilities, they also sought compensation that might permit them to make a giant step toward self-sufficiency, a goal established previously by the so-called "Indian New Deal" administration of Commissioner John Collier between 1933 and 1945. Thus, tribal negotiators reasoned that a generous settlement might include development of new programs and facilities for health, education, housing, community growth, and employment. They also hoped for such direct benefits from the dam projects as low-cost electrical power, irrigation, and improved water supplies.<sup>27</sup>

The Crow Creek Sioux Tribe was hampered in its initial efforts to obtain legal counsel. Tribal leaders sought to employ James E. Curry, a noted Washington, D.C. attorney and an outspoken critic of the Bureau of Indian Affairs. However, Indian Commissioner Dillon S. Myer refused to grant his necessary approval of a tribal contract with Curry and stated publicly

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<sup>26</sup> Ibid.

<sup>27</sup> Aljoe Agard, former Standing Rock Sioux Tribal Chairman, interview conducted by author and Marcia Lawson at Fort Yates, North Dakota, August 8, 1972; Frank Ducheneaux, former Cheyenne River Sioux Tribal Chairman, interviews conducted by author and Marcia Lawson on the Cheyenne River Sioux Reservation, South Dakota, July 30-31, 1972; Richard LaRoche, Jr., former Lower Brule Sioux Tribal Chairman, interview conducted at Lower Brule, South Dakota, August 21, 1971, by the American Indian Research Project, South Dakota Oral History Center, University of South Dakota, Tapes 784, 789. For a good description of the "Indian New Deal" see Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-1945* (Lincoln: University of Nebraska Press, 1980).

that the attorney was an opportunist and a sham who deliberately misled the tribes by improperly soliciting their claims while bartering solely for his own gain. Myer was a curious appointee of the Truman Administration. He had previously administered the Japanese internment-camp program during World War II. Lest anyone doubt that the New Deal spirit was dying within the BIA, Myer also refused to approve Curry's contracts with thirteen other tribes. Others in Washington, including members of the Senate Indian Affairs Subcommittee, applauded his stand. His vendetta against the Indian claims lawyers was also extended to seven other attorneys, including Felix S. Cohen, a leading authority on federal Indian law and a primary architect of the Indian Reorganization Act.<sup>28</sup>

Commissioner Myer also blocked the Tribe's attempts to hire Ramon Robideaux, a local South Dakota attorney. A protest led by the Indian Rights Association and the Association of American Indian Affairs produced no results. The American Civil Liberties Union provided funds for lawyers to serve as unofficial tribal representatives in preliminary negotiations that began in 1952. Eventually, however, the Tribe felt compelled to find an attorney who met Commissioner Myer's approval. It settled on M. Q. Sharpe, a local lawyer previously engaged by the Lower Brule Sioux. Sharpe, the former governor of South Dakota, had no trouble gaining approval for his contract. As chairman of the Missouri River States Committee, he had been a leading advocate of the Army's main-stem Missouri River projects during the 1944 congressional debate on the Pick-Sloan Plan.<sup>29</sup>

Recognizing its obligation to ensure that the Sioux tribes affected by Pick-Sloan received just compensation, Congress in 1950 authorized the Corps of Engineers and the BIA to negotiate separate settlement contracts with representatives of the Standing Rock and Cheyenne River Sioux tribes. In addition to providing payment for all damages, these agencies were directed to cover the costs of relocating tribal members "so that their economic, social, and religious life can be reestablished and protected." Each of the agencies was required to prepare

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<sup>28</sup> Appendix to Letter, James E. Curry to the Standing Rock Sioux Tribal Negotiating Committee, November 1, 1952; Central Classified Files, 1937-53, File 5-1 ( Missouri River Basin); Record Group 48, Records of the Office of the Secretary of the Interior, National Archives, Washington, D.C.; *New York Times*, January 4, 1952, January 4, 1953.

<sup>29</sup> Mastin G. White, Acting Secretary of the Interior, to Alexander Lesser, Executive Director, Association on American Indian Affairs, July 22, 1952; Roger Baldwin, National Chairman, American Civil Liberties Union, to Oscar Chapman, Secretary of the Interior, July 26, 1952; Secretary Chapman to Jonathan M. Steere, President, Indian Rights Association, July 30, 1952; Douglas McKay, Secretary of the Interior, to James E. Curry, April 29, 1953; Central Classified Files, 1937-53, File 5-1 (Missouri River Basin); Record Group 48, Records of the Office of the Secretary of the Interior, National Archives, Washington, D.C.; Minutes, Lower Brule Sioux Tribal Council, March 19, 1953; Box 58, Crow Creek Agency, Decimal File 064, Lower Brule Sioux Tribal Council Minutes, 1948-55; Record Group 75, Records of the Bureau of Indian Affairs, National Archives — Central Plains Branch, Kansas City, Missouri.

a detailed analysis of damages, and in the event that they could not reach a satisfactory agreement in the field, Congress was to legislate a final settlement.<sup>30</sup>

The Crow Creek Tribe petitioned in 1951 for prompt enactment of similar settlement procedures for their negotiations, but Congress failed to heed the request until 1954. In the meantime the tribes were not idle. Meetings were held on the reservations to discuss contract terms, negotiating committees were appointed, and contracts for legal counsel were finally approved. Damage appraisals were prepared by both the army and the BIA; MRBI staff members conducted socioeconomic surveys; and tribal lands were inspected by Commissioner Myer.<sup>31</sup>

In 1951, the BIA announced that because of the Fort Randall project it planned to move its facilities at Fort Thompson, which served both the Crow Creek and Lower Brule tribes, to the non-Indian community of Chamberlain, South Dakota. It also proclaimed that all schools on the reservations would be closed and students would be transferred to nearby public institutions. Hospital facilities at Fort Thompson had already been moved to Chamberlain the previous year.<sup>32</sup>

The Tribe vehemently opposed those decisions, which it viewed as an initial step toward termination of federal trust services. Tribal leaders protested that the relocation plan would create undue hardship, especially since they felt strongly that the citizens of Chamberlain were prejudiced toward tribal members. In a petition to D'Arcy McNickle of the BIA's Tribal Affairs office, they asked that the decision be reconsidered. The tribes trusted McNickle, a noted Flathead Indian novelist and historian, who later became head of the Newberry Library

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<sup>30</sup> *Act of September 30, 1950, 64 Stat., 1093.*

<sup>31</sup> Minutes, General Meetings, Crow Creek Sioux Tribe, May 4, July 6, November 15, 23, 1951; Box 56, Crow Creek Agency, Decimal File 064 (Crow Creek Tribal Council Minutes, 1950-52; Record Group 75, Records of the Bureau of Indian Affairs; National Archives — Central Plains Branch, Kansas City, Missouri; *Congressional Record*, 82d Cong., 1st sess., 31 August 1951, 97:10874; U.S., Department of the Interior, Bureau of Indian Affairs, Missouri Basin Investigations Project, *Report on Negotiations Between the United States and The Sioux Indians of the Crow Creek and Lower Brule Reservations Regarding the Acquisition of Indian Lands and Rights Needed for the Fort Randall Reservoir, South Dakota*, MRBI Rept. 143 (Billings, 1955), pp. 1-2.

<sup>32</sup> Minutes, Special Meeting, Crow Creek Sioux Tribal Council, August 31, 1951; File 48776-054, Crow Creek Agency, Crow Creek Sioux Tribal Relations, 1951-52; Record Group 75, Records of the Bureau of Indian Affairs; Washington National Records Center, Suitland, Maryland.

Center for the History of the American Indian. In October 1951, Myer was moved by McNickle to help put tribal fears to rest.<sup>33</sup>

In a letter to Herbert Wounded Knee, Crow Creek Tribal Chairman, Myer denied that an official decision had been made concerning the Fort Thompson facilities. He assured the tribal leader that the Bureau of Indian Affairs had no intention either to ignore tribal desires or to deprive tribal members of their rights, but in executive conference with other BIA administrators on February 1, 1952, the Commissioner reaffirmed the earlier decisions. Fortunately no further action was taken on this matter during Myer's term of office. Under the direction of Glenn L. Emmons, President Eisenhower's appointee for Indian Commissioner, plans were altered slightly. The Fort Thompson facilities were moved to Pierre instead of Chamberlain, and grade-school children were allowed to stay in reservation schools.<sup>34</sup>

On July 21, 1952, the gates of Fort Randall Dam were closed, and by the end of the year portions of the Crow Creek Reservation were under water. Still the Tribe awaited the initiation of settlement talks. Finally, negotiations were opened at Fort Thompson on March 9, 1953.<sup>35</sup>

The Corps of Engineers offered the Crow Creek negotiators \$375,613 for their land and improvements. This settlement was based on an appraisal made by the Corps' Real Estate Division. BIA officials offered \$399,313, an amount reached by MRBI appraisers. When Attorney M. Q. Sharpe asked Corps officials if they would accept the higher NMBI figures,

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<sup>33</sup> Herbert Wounded Knee to McNickle, August 31, 1951, File 48776-054, *Ibid.*; William E. Warne, Assistant Secretary of the Interior, to Don Stansky, State Senator, South Dakota, April 13, 1950; Central Classified Files, 1937-53, File 5-1 (Missouri River Basin); Record Group 48, Records of the Office of the Secretary of the Interior, National Archives, Washington, D.C.

<sup>34</sup> Secretary Myer to Herbert Wounded Knee, October 5, 1951; File 48776-054, *Ibid.*; Cooper to Myer, February 4, 1952; File 381 1-01, Box 1 (Aberdeen Area Office, Relocation Plans, 1952); Record Group 75, Records of the Bureau of Indian Affairs, Washington National Records Center, Suitland, Maryland; Minutes, Special Meeting, Crow Creek Sioux Tribal Council, October 11, 1954; Box 57, Crow Creek Agency, Decimal File 064, Crow Creek Sioux Tribal Council Minutes, 1953-54; Record Group 75, Records of the Bureau of Indian Affairs; National Archives — Central Plains Branch, Kansas City, Missouri.

<sup>35</sup> Minutes, Special Joint Meetings, Lower Brule and Crow Creek Sioux Tribal Councils; July 6 and July 30, 1951, File 48776-054, *Ibid.*; U.S., Department of the Army, Corps of Engineers, *Annual Report of the Chief of Engineers, U.S. Army, 1953*, vol. 2, pt. 1 (Washington, D.C.: Government Printing Office, 1954), pp. 59-62; *Report on Negotiations Between the United States and The Sioux Indians of the Crow Creek and Lower Brule Reservations Regarding the Acquisition of Indian Lands and Rights Needed for the Fort Randall Reservoir, South Dakota*, MRBI Rept. 143, p. 4.

they flatly refused. The Corps then threatened to take the land by condemnation if an agreement could not be reached quickly.<sup>36</sup>

Several other meetings were held during the next few months, but all failed to bring the parties closer to settlement. Members of the Crow Creek Indian Rights Association complained to President Eisenhower's Interior Secretary Douglas McKay. They felt that tribal members were being systematically denied both information about the Fort Randall project and participation in the ongoing talks. BIA spokesmen also expressed disgust with the Army's reluctance to compromise, but Corps officials remained unmoved.<sup>37</sup>

Army attorneys began preparing condemnation suits for the taking of the Crow Creek land without waiting for further developments. They claimed that the rising pool level of the Fort Randall reservoir and the long delay of Congress in establishing settlement guidelines left them no alternative. The Tribe was assured that 90 percent of the appraised value of their property would be made immediately available to them through the federal court, and that this legal action would in no way affect the eventual settlement from Congress. In effect, the Crow Creek Sioux were being asked to give up their land before agreeing to a price.<sup>38</sup>

On June 1, 1953, Army spokesmen agreed to accept BIA appraisal figures as the basis of their condemnation suits. Tribal attorney M. Q. Sharpe failed to challenge the Army's right to take tribal lands despite the precedent of a 1920 decision of the U.S. Supreme Court that held that a federal agency must have the specific authorization of Congress to do so without tribal consent.<sup>39</sup> However, he did remind corps representatives that the tribes had not yet agreed to accept MRBI valuations. After a long discussion with Sharpe, Crow Creek negotiators were persuaded to accept the Army offer, provided that certain rights could be guaranteed. These included the right to use the land free of charge until a final settlement could be reached and the retention of all mineral rights within the reservoir area. Corps representatives expressed

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<sup>36</sup> MRBI Rept. 143, *Ibid.*

<sup>37</sup> *Ibid.*; Eva J. Nichols to Secretary McKay, April 25, 1953, Jerry McBride, CC Indian Rights Association, to Congressman Lovre, March 31, 1953, and Orme Lewis, Assistant Secretary of the Interior, to Congressman Lovre, May 6, 1953; Central Classified Files, 1937-53, File 5-1 ( Missouri River Basin); Record Group 48, Records of the Office of the Secretary of the Interior, National Archives, Washington, D.C.; Telephone Memo, Atchley to Spaulding, August 7, 1952; File 17899-074.1, pt. I-A; Record Group 75, Records of the Bureau of Indian Affairs; Washington National Records Center, Suitland, Maryland.

<sup>38</sup> MRBI Rept. 143, pp. 5-6.

<sup>39</sup> *U.S. v. North American Trading and Transportation Company*, 253 U.S. 330 (1920). The Flood Control Act of 1944, which authorized the Pick-Sloan Plan, did not contain any language regarding the taking of tribal lands.

pleasure that a land agreement had finally been reached, but they gave no assurances that tribal conditions would be met.<sup>40</sup>

On August 4, 1953, the Army filed suit in the United States District Court of South Dakota in an attempt to obtain title to lands on the Crow Creek and Lower Brule reservations. The action went unchallenged, the Court passed favorably on the condemnation request, and the Corps of Engineers again succeeded in circumventing its legal obligations to the Indians. Despite previous agreements an amount equal to the Army's land appraisal rather than that of the BIA was deposited with the Court, but this money was never distributed to the tribes. The United States District Attorney's office failed to file a declaration of taking, which would have given the Army full title to the land, before Congress finally passed a law establishing legal guidelines for the Fort Randall negotiations in July 1954. This act required federal representatives to open new talks with the tribes. When these negotiations failed to bring about an agreement by 1955, the Justice Department permitted the army to carry through its original condemnation suits.<sup>41</sup>

## V. THE FORT RANDALL SETTLEMENT

By 1954, construction of the Fort Randall Dam was 84 percent complete, all non-Indian land needed for the project had been acquired, and the pool level of the reservoir was rising rapidly, while Indian property owners still awaited Congressional action. Finally legislation providing a settlement for the Yankton Sioux and establishing contract guidelines for the Crow Creek and Lower Brule tribes was approved on June 6, 1954.<sup>42</sup>

Negotiation guidelines established for the Crow Creek Sioux were similar to those provided for the Cheyenne River and Standing Rock Tribes in 1950, with some important exceptions. The growing urgency of the situation caused Congress to shorten time limits for further talks; BIA and Army representatives were given only a year to obtain a contract agreement. Despite treaty provisions and precedents established in earlier settlements with the Fort Berthold and Cheyenne River tribes, tribal ratification requirements were lowered from three-fourths of the adult tribal members to a simple majority. The Interior Department had

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<sup>40</sup> MRBI Rept. 143, pp. 7-10.

<sup>41</sup> U.S., District Court, South Dakota District, Central Division, *U. S. v. 9,148 Acres of Land, et al., and the Crow Creek Tribe of Sioux Indians*, Civil No. 184, August 4, 1953, p. 47; *New York Times*, March 20, 1953; *Congressional Record*, 83d Cong., 1st sess., February 25, 1953, 99:A887.

<sup>42</sup> U.S., Department of the Army, Corps of Engineers, *Annual Report of the Chief of Engineers, U.S. Army, 1954*, vol. 2 (Washington, D.C.: Government Printing Office, 1955), pp. 834-37; *Act of July 6, 1954*, 68 Stat. 452-54.

recommended this action in order to expedite approval. Finally, the retention of tribal mineral rights was limited to gas and oil.<sup>43</sup>

New talks with the Crow Creek Sioux Tribe were rekindled in the autumn of 1954 but ended again in deadlock. The BIA raised its offer for a property settlement to allow for the increase in land values since 1951, the year of the last MRBI appraisal. The Corps of Engineers refused to offer any more than the amount it had previously deposited with the federal court in its condemnation suits of 1953. Although the tribes were increasingly pressured by the impending flood, they were determined to hold out for better terms. In the meantime tribal leaders were compelled by circumstances to make plans for the evacuation of their lands.<sup>44</sup>

Crow Creek families within the Fort Randall taking area faced the prospect of having their homes inundated during the spring runoff of 1955, yet they still had no money with which to move. Condemnation funds deposited with the Court were not available because the Justice Department had not yet filed a "declaration of taking" on the land, and the chances for a timely congressional settlement appeared increasingly dim. Because it was anticipated that favorable agreements could not be reached with BIA and Army representatives, Senator Francis Case and Congressman E. Y. Berry of South Dakota were asked to introduce settlement legislation for the tribes in the Eighty-third Congress. These bills, which asked \$5,686,036 for the Crow Creek Sioux Tribe, were never given consideration. As a result, the Tribe expected that they would have to use its own meager funds to help families relocate. During the fall of 1954 tribal leaders began planning for this eventuality.<sup>45</sup>

In the meantime, BIA officials were still debating where to move the agency facilities at Fort Thompson. Most of them preferred Chamberlain. Although tribal members wanted all government services to remain on the reservation, they overwhelmingly preferred Pierre to Chamberlain if an outside location had to be selected, and they petitioned Congressman Berry to make their wishes known in Washington. Because the mayor of Chamberlain had on several

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<sup>43</sup> 68 Stat. 452.

<sup>44</sup> *Report on Negotiations Between the United States and The Sioux Indians of the Crow Creek and Lower Brule Reservations Regarding the Acquisition of Indian Lands and Rights Needed for the Fort Randall Reservoir, South Dakota*, MRBI Rept. 143, p. II; U.S., Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigations Project, *Progress Report on Removal of Families from Fort Randall Reservoir Area, Crow Creek and Lower Brule Reservations, South Dakota*, MRBI Rept. 145 (Billings, 1955), P. 1; U.S., Congress, House and Senate, *A Bill to Provide for Acquisition by the United States of Lands Required for the Reservoir to be Created by the Fort Randall Dam on the Missouri River, and to Provide for the Rehabilitation of Sioux Indians of the Crow Creek Reservation in South Dakota*, H.R. 9833, S. 3747 (H.R. 9832, S. 3748, same title as above except for Lower Brule Sioux), 83d Cong., 2d sess., 1954.

<sup>45</sup> MRBI Rept. 143, *Ibid.*, p. 18.

occasions demonstrated his prejudice against Indians, the BIA finally decided to yield to tribal requests and to establish the Pierre Agency as the new administrative headquarters for the Crow Creek.<sup>46</sup>

Following the breakdown of negotiations in November 1954, both the Army and BIA requested the Justice Department to carry out the condemnation suits filed in 1953. The Corps of Engineers wanted clear title to the land, and the Indian Bureau wanted some money dispersed to tribal members before they were forced to move. Consequently, an official declaration of taking was filed on January 20, 1955. The Court allowed the army to take the Indian land it needed, and no one questioned the legality of the suit itself. The Corps of Engineers later claimed that its action was legal because the settlement guidelines, established by Congress the previous year, had stipulated that negotiations would not be allowed to interfere with the scheduled construction of the Fort Randall project. The army, however, had filed suit before legislation was passed, and nothing in the act itself specifically authorized the Corps of Engineers to exercise the right of eminent domain as required by law.<sup>47</sup>

On March 22, 1955, Indian landowners on Crow Creek Reservation received \$399,313 from the Court as partial payment for their property. The army had been required to deposit an additional \$23,700 in order to bring payments up to the MRBI appraisal figures. BIA assistance was requested in the distribution and expenditure of these funds, and a tribal committee was formed to plan relocation activities.<sup>48</sup>

Efforts on the part of tribal leaders to tap other money sources proved unsuccessful. Several families who lived within the reservoir area were not legally entitled to receive condemnation money because they did not actually own property there. The Corps of Engineers was compelled to pay these Indians a certain amount for relocation, but they refused to release the funds until actual costs of moving had been incurred. The tribes were forced to create hardship funds out of whatever surplus monies could be found in order to assist these tribal

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<sup>46</sup> Minutes, Special Meetings, Crow Creek Sioux Tribal Council, May 7, July 23, August 9, October 11, 1954; Box 57, Crow Creek Agency, Decimal File 064, Crow Creek Tribal Council Minutes, 1953-54; Record Group 75, Records of the Bureau of Indian Affairs, National Archives — Central Plains Branch, Kansas City, Missouri.

<sup>47</sup> *Report on Negotiations Between the United States and The Sioux Indians of the Crow Creek and Lower Brule Reservations Regarding the Acquisition of Indian Lands and Rights Needed for the Fort Randall Reservoir, South Dakota*, MRBI Rept. 143, p. 10; *Progress Report on Removal of Families from Fort Randall Reservoir Area, Crow Creek and Lower Brule Reservations, South Dakota*, MRBI Rept. 145, pp. 1-2; U.S., Congress, House, Committee on Interior and Insular Affairs, *Providing Additional Payments to Indians of the Lower Brule Reservation, South Dakota, Whose Lands Have Been Acquired for the Fort Randall Dam and Reservoir Project*, H. Rept. 2054, 85th Cong., 2d sess., 1958, pp. 1-3.

<sup>48</sup> MRBI Rept. 145, *Ibid.*, pp. 2, 16.

members. Because of the limited funds available to the tribes and because of their constant need to hurry, the relocation and salvage operations on the two reservations, which were carried on throughout the remainder of 1955, proved to be very inadequate.<sup>49</sup>

The Crow Creek Sioux Tribe, like the Standing Rock Sioux, was compelled for three more years to fight for a settlement from Congress. New legislation incorporating tribal demands was introduced in the Eighty-fourth and Eighty-fifth congresses by Senator Case and Congressmen Berry, Harold Lovre, and George S. McGovern of South Dakota.<sup>50</sup> Hearings were conducted on these bills by the Indian subcommittees in 1957. Despite the obvious urgency of the settlements Congress felt no compunction to move quickly. In the meantime, the Fort Randall project, 99 percent complete according to Army reports, was officially dedicated on August 11, 1956.<sup>51</sup>

In bills introduced in 1957 the Crow Creek Sioux asked \$685,138 for direct damages, \$1,132,452 for indirect damages, and \$5,686,036 for rehabilitation. The House Indian Subcommittee held hearings on these proposals in 1957, but failed to file a report of its recommendations before Congress adjourned.<sup>52</sup> During these hearings tribal members were called upon to justify all of their cash demands in minute detail. For example, they had to explain the value to their subsistence of mouse beans, cottonwood trees, berries, and skunk

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<sup>49</sup> Ibid.; Minutes, Crow Creek Tribal Council Meeting, March 9, 1955; Box 57, Crow Creek Agency, Decimal File 064, Crow Creek Tribal Council Minutes, 1953-54; Record Group 75, Records of the Bureau of Indian Affairs, National Archives — Central Plains Branch, Kansas City, Missouri.

<sup>50</sup> U.S., Congress, House and Senate, H.R. 3602, S. 952 (same title as H.R. 9833 [1954]), H.R. 3544, S. 953 (same title as H.R. 9832 [1954]), 84th Cong., 1st sess., 1955; H.R. 6125, H.R. 7758, S. 2152 (same title as H.R. 9833 [1954]), H.R. 6074, H.R. 6569 (same title as H.R. 9832 [1954]), 85th Cong., 1st sess., 1957; H.R. 12670, H.R. 10786, S. 3225 (same title as H.R. 9833 [1954]), H.R. 12663 (same title as H.R. 9832 [1954]), 85th Cong., 2d sess., 1958.

<sup>51</sup> C. H. Beitzel, Pierre Agency, Bureau of Indian Affairs, to Commissioner of Indian Affairs, May 6, 1957; File 71151952-056, Pierre Agency; Record Group 75, Washington National Records Center, Suitland, Maryland; U.S., Department of the Army, Corps of Engineers, *Annual Report of the Chief of Engineers, U.S. Army, 1956*, vol. 2 (Washington, D.C.: Government Printing Office, 1957), pp. 937-39; *New York Times*, August 12, 1956.

<sup>52</sup> U.S., Congress, House, Committee on Interior and Insular Affairs, *Providing Additional Payments to Indians of the Crow Creek Reservation, South Dakota, Whose Lands Have Been Acquired for the Fort Randall Dam and Reservoir Project*, House Rept. 2086, 85th Cong., 2d sess., 1958, p. 6; U.S., Congress, House, Committee on Interior and Insular Affairs, H. Rept. 2054, except for Lower Brule, 85th Cong., 2d sess., 1958, p. 6.

oil.<sup>33</sup> Army representatives at the hearings made their usual objection to tribal proposals, BIA spokesmen offered more moderate terms and Congressmen probing the issue became totally confused.

Following the 1957 hearings, tribal negotiators succeeded in reaching a compromise with Army and BIA representatives on the issue of damages. The Crow Creek Sioux agreed to accept \$555,787 for their direct damages and \$1,463,433 for indirect damages, including \$500,000 for the relocation of Fort Thompson.<sup>34</sup> Because of this agreement, the Tribe redrafted its settlement proposal. New legislation, which included previous BIA, Army, and Congressional recommendations, was subsequently introduced by Congressmen Berry and McGovern on May 23, 1958.<sup>35</sup>

The most dramatic change in the new bills was the complete elimination of all requests for rehabilitation. Because Crow Creek land would soon be flooded again by the Big Bend project, federal officials urged that consideration of the rehabilitation programs be postponed until after the Army had completed all of its acquisitions on the reservations. South Dakota politicians were also afraid of the negative connotations that had become associated with the term "rehabilitation." Overly sensitive that this word had become synonymous with the idea of reparations in the minds of many congressmen, they decided that the Crow Creek Sioux Tribe could wait a few more years to receive general improvement funds. After all, the damage had already been done and more was coming.<sup>36</sup>

In January 1958, attorney Marvin J. Sonosky of Washington, D.C., acting on behalf of the Standing Rock Sioux Tribe, filed an injunction in the United States District Court of South Dakota to halt further construction of the Oahe Dam project until an adequate settlement was

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<sup>33</sup> Richard LaRoche, Jr., interview held at Lower Brule, South Dakota, August 25, 1971, South Dakota Oral History Project, University of South Dakota, Tape 784, p. 25., interview, September 1, 1971, Tape 789, pp. 28-29; George C. Estes and Richard R. Loder, *KulWicasa-Oyate: Lower Brule Sioux Tribe* (Lower Brule, SD: Lower Brule Sioux Tribe, 1971), p. 70.

<sup>34</sup> H. Rept. 2086 (1958), pp. 3-6; H. Rept. 2054 (1958), pp. 3-5.

<sup>35</sup> H. Rept. 2054, pp. 11-14; H. Rept. 2086, pp. 15-21; H.R. 12663, H.R.12670 (1958).

<sup>36</sup> Ernest Schusky, *Politics and Planning in a Dakota Indian Community* (Vermillion: Institute of Indian Studies, University of South Dakota, 1959), p. 58; U.S., Congress, House, Committee on Interior and Insular Affairs, *Providing for the Payment for Individual and Tribal Lands of the Crow Creek Sioux Reservation in South Dakota, Required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Development of the Members of the Tribe*, H. Rept. 853, 87th Cong., 1st sess., 1961, p. 11.

negotiated with the Tribe.<sup>57</sup> Sonosky argued that the Corps of Engineers did not have the legal authority to condemn Standing Rock property. To support his case, the Standing Rock attorney cited the Sioux treaty of 1868, which was reaffirmed by acts of Congress in 1877 and 1889. The acts proclaimed that land could be taken from the tribe only upon payment of just compensation and the consent of three-fourths of its adult membership. He then established that even though the Supreme Court had determined that Congress had the right of eminent domain over Indian land as long as a just compensation was provided in accordance with the Fifth Amendment, the Court also had ruled in at least two cases that this power rested only with Congress and could not be extended to other federal agencies without the expressed authorization of that body.<sup>58</sup>

The presiding Judge, George T. Mickelson, a former governor of South Dakota, decided on March 10, 1958 to uphold the tribe's motion to dismiss the Army's condemnation suit. In doing so he ruled that Congress had not authorized the Corps to take Indian lands by any legislative act, including the Flood Control Act of 1944. "It is clear to this Court," he remarked, "that Congress has never provided the requisite authority to the Secretary of the Army to condemn this tribal land. Such action is wholly repugnant to the entire history of Congressional and judicial treatment of the Indians."<sup>59</sup>

In effect Judge Mickelson ruled that the Army could not take possession of Standing Rock property until after it had been purchased by Congress. If this same reasoning could have been applied in the case of the Fort Randall takings a decade earlier, it certainly would have saved the Crow Creek Sioux considerable grief. A speedier settlement would have been provided the Tribe and more money for relocation would have been made available before tribal members forced to give up their land. The entire relocation process, unpleasant at best, could have been made less painful and more beneficial.

A few months after the Standing Rock decision, the House Interior Committee considered the latest settlement legislation for the Crow Creek Sioux. After being reported without amendment, the bill was passed by the House on July 24, 1958. As it had with all previous Pick-Sloan tribal settlement requests, the Senate Interior Committee made drastic cuts

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<sup>57</sup> U.S. District Court, South Dakota District, Northern Division, *U.S. v. 2005.32 Acres of Land, et al., and Standing Rock Tribe of Sioux Indians*, Civil No. 722, N.D. Tract R. 18251, March 10, 1958; U.S., Congress, House, Committee on Interior and Insular Affairs, *Acquisition of Lands for Reservoir Created by Construction of Oahe Dam on the Missouri River and the Rehabilitation of the Standing Rock Indians, South Dakota and North Dakota*, H. Rept. 1888 (1958), pp. 35-43.

<sup>58</sup> 15 Stat. 635; 21 Stat. 254; 35 Stat. 888; *U.S. v. North American Transportation and Trading Company*, 253 U.S. 330 (1920); *Youngstown Sheet and Tube Company v. Sawyer*, 343 U.S. 579 (1952).

<sup>59</sup> H. Rept. 1888 (1958), p. 43.

in the Tribe's cash proposals, slashing about \$623,000 from the settlement. The legislation was then passed by the Senate on August 18 and signed into law by President Eisenhower on September 2, along with the settlement legislation for the Lower Brule and Standing Rock Sioux tribes.<sup>65</sup>

The Crow Creek Sioux finally received \$1,395,812 for their property, including their interest in the riverbed and all damages caused by the Fort Randall project. Unlike the Standing Rock Sioux, the Tribe was denied rehabilitation money and the right to regain ownership of any former property found unnecessary for the project. Reimbursement for negotiating expenses was limited to \$100,000, with a restriction that not more than \$50,000 could be used for attorneys' fees. Individual tribal members were given just twenty-eight days, or until the end of September, to salvage whatever property was left within the reservoir area. After that time the Tribe was given until January 1959 to take whatever property private owners left behind. In effect these were false benefits because a great portion of the area was already underwater.<sup>66</sup>

Although no limit was placed on moving costs, the Tribe was required to pay all relocation expenses out of settlement funds. The Standing Rock and Cheyenne River legislation had provided that such costs would be charged to the Corps of Engineers' project budget. Whereas the Standing Rock law provided that the BIA could, with the permission of 25 percent of the interest holders, sell heirship lands, the Crow Creek settlement required written approval from 51 percent of the owners.<sup>67</sup>

The Crow Creek Sioux did not receive protection for livestock hazards as the Cheyenne River tribe had or the right to ratify the final agreement, nor were they permitted the same degree of autonomy over control and distribution of settlement funds, relocation of tribal members, or consolidation of their land.<sup>68</sup>

The Crow Creek Tribe had fought against the same odds as the Cheyenne River and Standing Rock Sioux and were more disappointed with the results. Of all the Sioux tribes only the Crow Creek and Lower Brule had suffered the hardship and humiliation of having to move two years before receiving a settlement, and they alone had been denied funds for rehabilitating their reservations, although their poverty was relatively greater. They were also the only tribes that would face the same ordeal again.

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<sup>65</sup> U.S., Congress, Daily Digest, 85th Cong., 2d sess., 1958, *Congressional Record* 104:D646; 72 Stat. 1766; 72 Stat. 1773.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

## VI. THE BIG BEND SETTLEMENT

Even as tribal negotiators were in Washington seeking compensation for Fort Randall damages, Army crews were out surveying Crow Creek land for the Big Bend project. Construction of this dam was scheduled to begin in September 1960. This meant that the Tribe had to negotiate a settlement by that time if it hoped to avoid losing more land without adequate compensation. The Corps of Engineers, however, worked ahead of schedule and groundbreaking ceremonies for the project, presided over by presidential hopeful Lyndon B. Johnson of Texas, took place on May 30.<sup>44</sup>

Legislation for the Crow Creek and Lower Brule tribes was not introduced in Congress until March 2, 1960. A week later the Corps of Engineers again filed suit in federal district court to condemn the 867 acres of Indian land needed for the actual project site, despite the earlier decision handed down by the same court in regard to the Standing Rock suit in 1958. Congress had still not specifically delegated its powers of eminent domain to the army, yet the Corps of Engineers was allowed to take title to the reservation land.<sup>45</sup>

Once again, the Army proved less than generous when it came time to negotiate a settlement. Corps representatives would still not move from their previous positions on such items as salvage and shoreline rights, relocation costs, indirect damages, and rehabilitation.<sup>46</sup> In contrast to the earlier settlements, however, Congress considered the tribal proposals in record time. They appeared to feel some guilt for what Senator Karl Mundt of South Dakota described as their "shockingly dilatory" behavior in regard to the Fort Randall settlement. After

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<sup>44</sup> U.S., Department of the Army, Corps of Engineers, *Annual Report of the Chief of Engineers, U.S. Army, 1960*, vol. 2 (Washington, D.C.: Government Printing Office, 1961), pp. 939-41; *New York Times*, May 30, 1960.

<sup>45</sup> U.S. District Court, South Dakota District, Northern Division, *U.S. v. 867.5 Acres of Land, et al., and Crow Creek and Lower Brule Tribes of Sioux Indians*, Civil No. 335, March 9, 1960.

<sup>46</sup> U.S., Congress, House, Committee on Interior and Insular Affairs, *Providing for the Payment for Individual and Tribal Lands of the Crow Creek Sioux Reservation in South Dakota, Required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Development of the Members of the Tribe*, H. Rept. 853, 87th Cong., 1st sess., 1961, pp. 25-33; Summary of Joint Negotiations by Representatives of the Corps of Engineers, Bureau of Indian Affairs, Crow Creek Sioux Tribe, and Lower Brule Sioux Tribe on Big Bend Project, January 3-4, 1961; Files 74A390, 223836; Record Group 75, National Archives — Rocky Mountain Region, Denver, Colorado, pp. 1-16; Memorandum of Understandings Between Corps of Engineers, Lower Brule Sioux Tribe, and Crow Creek Sioux Tribe, May 23, 1961, Washington, D.C.; Central Classified Files, 1937-53, File 5-1 ( Missouri River Basin); Record Group 48, Records of the Office of the Secretary of the Interior, National Archives, Washington, D.C.

expediently eliminating the requirement for a separate law to establish negotiation guidelines, the legislators took just two years and seven months to approve the Big Bend bills.<sup>67</sup>

The Crow Creek Sioux asked for a new townsite that would include a tribal office building, community center, and 100 new homes, but did not ask for any new schools. It also requested the right to purchase any land within fifty miles of the reservations for the purpose of industrial development or tribal housing projects. The Tribe stipulated that this land come under federal trust status.<sup>68</sup>

After this proposal was reviewed by the Indian subcommittees, made the subject of new legislation, and further reduced by the House and Senate, the Tribe received a final settlement on October 3, 1962.<sup>69</sup> The Crow Creek Sioux were granted \$355,000 for its direct damages (including the loss of the riverbed and gravel), \$209,302 for indirect damages, and \$3,802,500 for rehabilitation: a total of \$4,366,802. Their moving expenses were limited to \$77,550, and their negotiating expenses to \$75,000.<sup>70</sup>

Requests for shoreline boundary markers, fire protection, and unrestricted grazing, hunting, and fishing rights were systematically denied the Tribe. It received the same salvage and shoreline rights provided in all previous Pick-Sloan tribal settlements, subject to federal regulation, but with the additional right to lease shoreline grazing areas to non-Indians if they chose. No provision was given for special tribal funds to be developed from these revenues as the Indians had hoped, and the Corps of Engineers was given the authority to regulate the location, size, and nature of all lands so used.<sup>71</sup>

The Senate Interior Committee ruled that the Army should be held responsible for construction of the new townsite on the reservation, but that replacement facilities needed only to be comparable to previously existing ones. If more elaborate structures were needed or

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<sup>67</sup> U.S., Congress, Senate, Remarks of Senator Mundt on Payment of Certain Individual and Tribal Lands in South Dakota, 86th Cong., 2d sess., 1960, *Congressional Record* 106:5697.

<sup>68</sup> *Ibid.*

<sup>69</sup> 76 *Stat.* 704-10.

<sup>70</sup> *Ibid.*, p. 704.

<sup>71</sup> *Ibid.*

desired, the senators maintained that they should be financed and constructed by the BIA out of its annual appropriations and not out of the Corps of Engineers' Big Bend project funds.<sup>72</sup>

The tribal negotiators had reminded Congress that during the negotiations for the Fort Randall settlement five years earlier, they refused to provide for the reconstruction of Crow Creek until the Big Bend settlement. Tribal officials thus asked for the full construction of the community under Big Bend provisions, and Congress generally agreed. However, provisions for paved streets, sidewalks, gutters, and streetlights were dropped by the legislators. The provision for building facilities not already found on the reservations was also eliminated. The proposed new Crow Creek housing project was reduced by fifty units. The Tribe was also prohibited from spending more than \$350,000 of its rehabilitation money for development of a new townsite for Fort Thompson.<sup>73</sup>

The Crow Creek Sioux were granted permission to purchase property within fifty miles of the reservation for industrial development, but Congress ruled that federal trust status could not be extended outside the reservation. The Tribe was prohibited from spending more than \$400,000 of its rehabilitation money for that purpose. It was were permitted to pool its resources, if it chose, for the development of cooperative enterprises. Congress held that any industry attracted by the project would be required to give preferential employment rights to tribal members.<sup>74</sup>

Afraid that tribal members would squander their money, Congress restricted excessive land purchases and prohibited per capita payments, as it had done in the Standing Rock settlement. To appease the Tribe, however, it granted its request to retain ownership of any former lands found unnecessary for the Big Bend project, although it was felt that there was little chance that the Army would give up the property. Congress's other concessions included a tax exemption on all settlement funds.<sup>75</sup>

Several features of the Big Bend legislation made it unique. The Crow Creek and Lower Brule Sioux were the only tribes to have their rehabilitation program extended to all enrolled tribal members rather than just those who resided on the reservation. This was done at the

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<sup>72</sup> U.S., Congress, Senate, Committee on Interior and Insular Affairs, *Providing for the Payment for Individual and Tribal Lands of the Crow Creek Sioux Reservation in South Dakota, Required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Development of the Members of the Tribe*, Senate Report 1636, 87th Cong., 1st sess.(1961), pp. 10-13.

<sup>73</sup> 76 Stat. 704.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

request of the tribes because of their large nonresident membership (over 50 percent). This factor also explains why these settlements were the only ones to permit tribal members to move family graves from old cemeteries within the reservoir area to new sites off the reservations.<sup>66</sup>

The Big Bend legislation established different procedures for settlement of contested property appraisals. Tribal members were given the same rights to have the value of their holdings determined in court at government expense, provided they filed suit within a year. Congress held that, while these cases were pending, an amount equal to 10 percent of the tribal member's Individual Indian Money (IIM) Account, or the money held and managed for them by the BIA, would be withheld from disbursement. This meant that the Indians were required as an act of good faith to forego some of their personal finances until their suits were decided. The provision had been included at the insistence of the Army. Hoping to avoid the additional costs that resulted from higher court settlements, the Corps of Engineers obviously wanted to discourage further litigation.<sup>67</sup>

The Big Bend settlements were the only ones requiring the tribes to give up their gravel rights. These mineral resources, it seems, were needed for use in the construction of the dam. This legislation also stood alone in its consideration of non-Indian property interests. It was common for white ranchers to build improvements on land leased from the tribes. In previous settlements no provision had been made for these people or their property, and they had been forced to move what they owned at their own expense. The Big Bend acts, however, required the Army to pay them the fair market value of their property.<sup>68</sup>

Crow Creek tribal members were given until July 1, 1963, to remain on their land and to make use of it free of charge. Although the BIA was directed to assist the Tribe in its efforts to purchase and consolidate land, new and more elaborate procedures were established for the sale of heirship interests. As in the previous Standing Rock settlement, all settlement funds were exempted from the payment of previous liens, debts, or claims except those owed the federal or tribal government. Congress ruled that even these last two obligations could be exempted if it was found that such payment would create hardship for individual tribal members.<sup>69</sup>

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<sup>66</sup> Ibid.

<sup>67</sup> Ibid.; *Providing for the Payment for Individual and Tribal Lands of the Crow Creek Sioux Reservation in South Dakota, Required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Development of the Members of the Tribe*, H. Rept. 853, 87th Cong., 1st sess., 1961, pp. 30-34.

<sup>68</sup> 76 Stat. 704.

<sup>69</sup> Ibid.

## VII. RECONSTRUCTION

With the passage of the Big Bend settlements in 1962 the federal government acquired the last tribal lands needed for the Pick-Sloan main-stem projects. Over the span of fourteen years and at a cost of over \$34 million the United States had obtained title to approximately 204,124 acres of Sioux property, more Indian land than was taken for any other public works project in the United States. None of the tribes considered their compensation adequate. As long and arduous as the process of negotiating final settlement was, it represented only the first stage of the Pick-Sloan ordeal for the tribes affected. Once compensation was received, and benefits and provisions were outlined by law (or even earlier in the case of the Fort Randall takings), plans had to be implemented for the relocation of tribal members and their property, the reconstruction and restoration of reservation facilities and services, and the rehabilitation of entire Indian communities. The disruption, chaos, and uncertainty generated by this experience made it a most painful one for all tribal members involved.

For the Sioux tribes, the period of reconstruction was the most distressing phase of the Pick-Sloan experience. Whereas problems encountered in settlement negotiations involved relatively few tribal members, the onerous task of relocation touched them all. Most drastically affected were those families who actually resided within the reservoir areas. Yet all suffered from the loss of their reservation's land and resources, the interruption of government services, and the disruption of the social, economic, and religious life of their tribe.

The difficult period of adjustment posed a challenge to both federal and tribal governments. Coordination and supervision of relocation and rebuilding activities demanded the most sensitive and sophisticated administrative talents. Unfortunately, neither party proved equal to the task. The federal government was ineffective in its role as protective steward. The tribes were ineffective because as semiautonomous victims, they were usually systematically removed from the actual decision-making process. From the moment when the first tribal member signed a settlement contract until the day when the final nail was driven into the last replacement house, the process of reconstruction was marked by confusion, delay, ruinous errors, and ill-fated incidents. The result was chaos, despair, and in many cases genuine hardship for the Sioux people involved.

The distribution and expenditure of settlement money was closely monitored in all cases by the Bureau of Indian Affairs. Based on the long-standing assumption that tribal members were not entirely competent to handle their own financial affairs, elaborate protective measures were established. These precautions seemed to be designed not so much to protect tribal members from monetary problems as to protect the settlement funds from tribal members.

Based on the experience of non-Indian litigants affected by the Pick-Sloan projects, tribal members learned that they could expect a higher property settlement if they appealed in court. Non-Indian farmers who lost land to the Fort Randall Dam had received an average of 40 percent more money from the Court than the Army had been willing to pay them.<sup>80</sup> Still, several factors worked to discourage Indians from taking this course of action.

In contrast to earlier settlements, the Big Bend land takings produced a flurry of rejection cases. Tribal members on the Crow Creek and Lower Brule reservations held consistently that their property had been valued too low. They were also convinced by previous experience that those Indians who pressed for litigation received better terms. Consequently, twenty-nine of them, a record number for any of the settlements, decided to seek a court decision. Because of a serious misunderstanding, however, most of these Indians failed to initiate court action within the one-year time limit stipulated by law.<sup>81</sup>

In an effort to avoid heavy legal expenses, some tribal members tried to consolidate their cases so that one lawyer could handle them all. This gave others the mistaken impression that the tribal attorney was assuming the responsibility of filing all rejection cases with the court. As a result only a few of those who had decided to reject their offers managed to meet the October 2, 1963, deadline. After learning of their error, these people made a desperate appeal to local congressmen for an extension of the time limit. Legislation introduced in 1964 to provide for the extension was not approved until June, 1969. After five additional years of waiting the Indian property owners finally succeeded in getting the time limit extended to September 1, 1969.<sup>82</sup>

Over the course of the next two years those Indians whose patience and determination had seen them through generally received more favorable settlements from the Court. In the meantime they had placed themselves at an economic disadvantage during the relocation period

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<sup>80</sup> Kris Kristjanson, *TVA Land Acquisition Experience Applied to Dams in the Missouri Basin* (Brookings, SD: South Dakota State College, Agricultural Experiment Station, 1953), p. 40.

<sup>81</sup> Martin N. B. Holm, Aberdeen Area Director, Bureau of Indian Affairs, to the Commissioner of Indian Affairs, May 5, 1969; Box 81632, Aberdeen Area Office, Decimal File 001, Correspondence, 1950-65, Record Group 75, Records of the Bureau of Indian Affairs, National Archives — Rocky Mountain Region, Denver, Colorado; U.S., Congress, Senate, Committee on Interior and Insular Affairs, *Amending Sections of the Acts of October 3, 1962, and for Other Purposes*, S. Rept. 1146, 90th Cong., 2d sess., 1968, p. 1.

<sup>82</sup> *Ibid.*; U.S., Congress, Senate, *A Bill to Amend Sections 13(b) of the Acts of October 3, 1962 (72 Stat. 698, 704), and for Other Purposes*, S. 2044, 88th Cong., 2d sess., 1964, and S. 203, 90th Cong., 1st sess., 1967; *Act of July 11, 1968, 82 Stat. 337*.

because they were unable to receive the full cash value of their property at the crucial moment when they were forced to move and when the best replacement land was available.<sup>53</sup>

The Sioux tribes affected by Pick-Sloan often experienced as much difficulty in obtaining their funds as the government did in distributing them. The Crow Creek Sioux had a particularly difficult time in relocating families from the Fort Randall reservoir area. Because the Tribe only received money from the Army's condemnation settlement at the time they were forced to move, its relocation program had to be tailored to fit the funds available rather than the goal of full reestablishment as contemplated by Congress. Aimed at immediate results rather than comprehensive rehabilitation, its programs failed to provide for such crucial items as development of satisfactory water supplies, construction of sufficient housing, or reestablishment of lost sources of income.<sup>54</sup>

Although the Fort Randall project had been announced a full decade earlier, neither the Army nor the Bureau of Indian Affairs was prepared to implement an efficient relocation program when the time came for the Indians to move. Though it was clearly their responsibility to do so, neither agency had bothered to survey the reservations for new homesites or to investigate the actual cost of building materials. They failed to keep tribal members fully informed about the relocation plans affecting them. Kept in uncertainty until the last possible moment, the Tribe was compelled to proceed in haste when the time came to evacuate their land. Consequently, this event was accompanied by a great deal of misery and confusion.<sup>55</sup>

Tribal families were crowded into temporary quarters until houses could be relocated and restored. In the chaos that followed, many were assigned to the wrong tracts of land and eventually had to move a second time. Shacks that should have qualified only for destruction had to be moved and repaired simply because there was not enough money for new housing. Nineteen of the Crow Creek families within the reservoir area were found to be ineligible for payment because they did not actually own property there. Tribal pleas for assistance for these Indians fell on deaf ears. The Army ruled that these tribal members were not entitled to the usual payment for relocation (25 percent of the property value) until after their expenses had been incurred. As a result the Crow Creek Tribal Council found it necessary to create a special hardship fund for these people out of its own meager resources. The council also donated land within the tribal reserve for those who could not afford any other homesite.<sup>56</sup>

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<sup>53</sup> Robert J. Philbrick, Chairman, Crow Creek Sioux Tribal Council, to author, August 24, 1972.

<sup>54</sup> MRBI Report 145, *Progress Report on Removal of Families from Fort Randall Reservoir Area, Crow Creek and Lower Brule Reservations, South Dakota*, p. 16.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, pp. 2, 10, 16.

The relocation of government facilities generated controversy over the selection of a new agency site. In most cases involving the other tribes affected by Pick-Sloan, the nearest suitable upland area was designated as the new relocation site. But crucial BIA facilities serving the Crow Creek Sioux were moved completely off the reservation. Tribal facilities and individual residences were relocated from the Fort Thompson townsite to the nearest convenient upland locations.<sup>77</sup> Although Congress carefully prescribed both the quantity and quality of replacement structures for the new Fort Thompson townsite in the Big Bend Settlement Act, the BIA and the Corps of Engineers failed to fulfill the intent of the statute. The new community infrastructure proved so inadequate that many families decided to resettle instead in the Crow Creek district of the reservation, approximately 20 miles southwest of Fort Thompson. Because some roads, homes, and appurtenant facilities were not replaced, many residents of the old Fort Thompson were prevented from moving to the replacement townsite. They were compelled to find substitute housing and livelihoods elsewhere, many of these people also settled ultimately in the Crow Creek district.<sup>78</sup>

Some tribes were treated more favorably than others, but the relocation experience was generally unpleasant for all. The receipt of "river money" created a seller's market on all of the reservations, and those who sought to buy land as well as goods and services found themselves facing an obstacle that settlement legislation had not anticipated: rampant inflation. In many cases tribal members were placed at the mercy of unscrupulous white ranchers, merchants, and real estate agents, but in some instances they were taken advantage of by fellow tribal members.<sup>79</sup> Only those people fortunate enough to buy land directly from the Tribe or to find housing within the tribally developed subdivision were able to minimize the problems of inflation. Most found it difficult, if not impossible, to purchase the same quantity and quality of new land with the money they received for their old.

During many phases of reconstruction when the Crow Creek Sioux had to depend on the Corps of Engineers, they usually found that agency uncooperative or hostile. The tribes often had difficulty persuading the army to recognize their salvage rights. Ranchers on the reservation also claimed that the Corps interfered with their shoreline grazing rights. Protesting

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<sup>77</sup> Big Bend Redevelopment Commission, *Big Bend Overall Economic Development Plans*, 2d Annual Report (Pierre, 1964), p. 7; U.S., Department of the Interior, Bureau of Indian Affairs, Aberdeen Area Office, *Preliminary Comprehensive Development Plan for Lower Brule Indian Reservation, Lower Brule, South Dakota* (Aberdeen, 1963), p. 4.

<sup>78</sup> Crow Creek Sioux Tribe, Office of Unresolved Rights, "Crow Creek Sioux Tribe Position Paper on U.S. Army Corps of Engineers Report on the Construction Efforts Fort Randall/Lake Francis Case and Big Bend/Lake Sharpe, South Dakota," undated, p. 7.

<sup>79</sup> U.S., Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigations Project, *Cultural and Economic Status of Sioux People, 1955, Standing Rock Reservation, North and South Dakota*, MRBI Rept. 151 (Billings, 1957), p. 7.

to Congress in 1962, they pointed out that the Army had taken complete control over these areas. Under Corps regulations, only specifically designated areas could be used for grazing and all ranchers, including tribal members themselves, were required to obtain grazing permits. Some previous rangeland was opened to public access, and the proceeds from fees charged to non-Indian ranchers, which the Tribe felt it was entitled to, were kept by the Corps of Engineers.<sup>90</sup>

Tribal leaders asserted that all of this was illegal under the provisions of the 1958 Fort Randall settlement act that gave them free shoreline access rights both for their grazing and for the leasing of lands to others. The Congressmen quickly reminded tribal delegates that the laws had also clearly stated that these rights were subject "to all reasonable regulations which might be imposed by the Chief of Engineers," and that the Army was therefore entitled to issue permits, collect fees, restrict land use, and designate public access areas as it deemed necessary and proper.<sup>91</sup>

In some cases the Tribe did not get its facilities replaced or restored adequately or at all. Prior to the dam projects, educational facilities at Fort Thompson included an elementary school and a high school complex consisting of the school, a work farm, and dormitories. The high school's reputation for quality was such that Indian students from throughout the region came to attend classes and board there. The Corps of Engineers built a new elementary school, which soon proved to be inadequate and of poor construction, but the high school was never replaced. Once the Fort Thompson high school was shut down, its students were bussed 60 miles round-trip to the public school in the off-reservation community of Gann Valley. Eventually, in 1976, the Tribe took control of the Immaculate Conception school facility, formerly operated by the Roman Catholic Church in the community of Stephan, South Dakota. This shortened the daily bus trip of the Fort Thompson high school students by 30 miles.<sup>92</sup>

The hospital at Fort Thompson was never replaced and the Indian Health Service did not bring a facility back to the reservation until 1980. The Corps of Engineers built a new Tribal Hall. However, it lacked the auditorium and gymnasium specifically provided for in the Big

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<sup>90</sup> Lloyd LeBeau, interview held at Eagle Butte, South Dakota, July 31, 1972; Frank Ducheneaux, interviews held on Cheyenne River Sioux Reservation, South Dakota, July 30-31, 1972.

<sup>91</sup> U.S., Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigations Project, *Social and Economic Conditions of Resident Families on Yankton Sioux Reservation, South Dakota*, MRBI Rept. 141 (Billings, 1954), p. 5.

<sup>92</sup> "Crow Creek Sioux Tribe Position Paper on U.S. Army Corps of Engineers Report on Construction Efforts," pp. 6-7, 9; Ambrose McBride, Crow Creek Tribal elder, interview at Fort Thompson, South Dakota, July 19, 1995; Delores McGhee, Coordinator, Crow Creek Sioux Tribe, Office of Unresolved Rights, interview at Fort Thompson, South Dakota, July 19, 1995.

Bend Settlement Act. The Corps also upgraded the Fort Thompson water treatment facility, but not adequately enough to accommodate the "reasonable future growth of the townsite" as mandated by the 1962 statute. An irrigated community garden was never replaced.<sup>93</sup>

Tribal elders who experienced the relocation recall that the cookie-cutter replacement homes were not insulated sufficiently to endure the rigors of harsh Dakota winters. However, they were not reinsulated until twenty years later. Water lines for the new homes were placed on the roofs. This soon led to disaster when the pipes froze and burst. While the replacement homes allowed many tribal members to have their first experience with electricity and running water, their cash income was such that they were not prepared for the monthly payments that accompanied these new luxuries. Many assumed that electrical and water supply lines would be free benefits of the dam projects to which they gave up their former homes. They also recall their hope that the dam construction and relocation would afford them at least temporary employment opportunities. But this was seldom the case.<sup>94</sup>

While in most cases reconstruction efforts on the reservation were substandard, in other instances the federal government was very generous to the Crow Creek Sioux. In 1958, for example, Congress donated thirty-seven surplus buildings at the old Fort Thompson agency site for the use of tribal members in their Fort Randall relocation program. The BIA also gave the Tribe free title to 1,276 acres of surplus federal school lands in 1961. These were to be used as homesites for families forced to move by the Big Bend project.<sup>95</sup>

Another serious effect of relocation was the disruption of federal and tribal services on the reservation. Administrative offices, law enforcement offices, schools, hospitals, and health clinics could not effectively serve tribal members Indians while they were being moved from one location to another. Social and religious activities were curtailed while churches, community centers, playgrounds, and recreation areas were relocated to higher ground.

Closure of the Fort Thompson hospital, for example, produced numerous complaints about the quality of health services on the Crow Creek reservation. The BIA arranged to have biweekly clinics held by visiting Public Health Service physicians, and emergency ambulance service was also provided, but these stopgap measures proved inadequate. The clinics were under-equipped, understaffed, and overcrowded; the ambulance driver was suspended for driving while drunk; and tribal members who sought treatment at other nearby hospitals were repeatedly

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<sup>93</sup> *Ibid.*; Discussions with Tribal elders at Crow Creek elder facility, Fort Thompson, South Dakota, July 19, 1995.

<sup>94</sup> Discussions with Tribal elders at Crow Creek elder facility, Fort Thompson, South Dakota, July 19, 1995.

<sup>95</sup> *Act of September 2, 1958, 72 Stat. 1436; Act of October 24, 1961, 75 Stat. 802.*

turned away. When the new hospital was finally opened, tribal members still faced transportation problems. They also had to cope with the deep feelings of bigotry and hostility that they felt existed in the town of Chamberlain, where the new facility was located<sup>66</sup>

The most serious effects of relocation were felt by the reservation economy. Ranchers, the most important economic group on the reservation, lost considerable income during the period needed to fence new lands, dig wells, and construct shelters to replace the natural feature of bottomland pastures. Farmers also had difficulty finding fertile new plots and adequate water sources on the marginal reservation land that remained. Families that depended on their former land for game, wild fruit, and firewood had to search for alternative and usually more expensive sources of sustenance. All experienced higher living costs after moving because of inflated prices and the necessity of purchasing water, food, fuel, lumber, and other materials that previously had been easily accessible and free. Houses needed better weatherproofing on the open plains and warmer clothing was required. Those who now found themselves far from federal facilities also had to allow for increased transportation expenses. These problems led tribal members to bitterly regret they had not been more conscious of the consequences of relocation.

#### VIII. LEGISLATION FOR REDEVELOPMENT OF THE CROW CREEK INDIAN RESERVATION

The Big Bend Settlement Act of 1962 clearly required the Corps of Engineers to "replace" government facilities, "schools, hospitals", the Fort Thompson "townsite," including the community infrastructure such as "roads, bridges, and incidental facilities," and "utilities, including water, sewage, and electricity (emphasis added)."<sup>67</sup>

The legislative history of the Big Bend Act confirms the Crow Creek Sioux Tribe's position and understanding regarding replacement facilities and structures. On July 31, 1961, the House Committee on Interior and Insular Affairs held hearings in Washington, D.C. on the question of the payment to the Crow Creek Sioux Tribe required by the development by the United States of the Big Bend Dam and Reservoir project. Representative Ben Reifel of South Dakota, chief sponsor of the Big Bend settlement bill, testified before the Committee that

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<sup>66</sup> Minutes of Special Meeting, Crow Creek Sioux Tribal Council, August 9, 1954; Box 57, File 064, Record Group 75, Records of the Bureau of Indian Affairs, National Archives — Central Plains Branch, Kansas City, Missouri; Robert J. Philbrick, Chairman, Crow Creek Sioux Tribal Council, to author, August 24, 1972.

<sup>67</sup> P.L. 87-735, Sections 5 and 6, 76 Stat. 735.

I am pleased, indeed to have the opportunity to appear before this distinguished Committee on behalf of my bill, H.R. 5165. With the permission of the committee I have sat in on the hearings concerning Lower Brule, something similar to this bill. The excellent, patient and serious consideration given to the provisions on Lower Brule I am sure will be carried over to a consideration given to this proposed legislation ...

I want to say here in connection with the facilities for the Crow Creek people the Committee already knows as well if not better than I that so far as the Fort Randall Dam and Reservoir are concerned, it made it necessary that the Indian Agency as such be replaced, so that the Agency establishments had to be placed some 50 miles away.

The Crow Creek people did have a hospital building. I think that the hospital was being used more or less as a clinic at the time the Dam was constructed, and the people had to move out.

Also they had a fine new school, plus some fine dormitories which were razed and not replaced.

In reconsideration of those needs I should like to suggest that you consider this displacement and give serious consideration to providing a better high school opportunity for the young people at Crow Creek than at present.

They are now going to school at a place which is not as adequate as the one they had to give up when they left the Agency site at Fort Thompson, on the Crow Creek Reservation.\*

I do feel, in view of what I have heard here, that you will give due, serious and appropriate consideration to all aspects of the needs of the Crow Creek people as provided in this proposed legislation.\*\*

Congressman Reifel clearly intended the Big Bend settlement legislation to replace the infrastructure and facilities of old Fort Thompson. That this has not occurred was made very clear at public meetings held on the Crow Creek Reservation in June and July of 1994, at which affected tribal members described the inadequacies of the reconstruction.<sup>100</sup>

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\* Crow Creek's high school students still utilize the facility that Congressman Reifel termed inadequate 34 years ago.

\*\* U.S., Congress, House of Representatives, Committee on Interior and Insular Affairs, *Hearings on H.R. 5165, Providing for the Payment for Individual and Tribal Lands of the Crow Creek Sioux Reservation in South Dakota, Required by the United States for the Big Bend Dam and Reservoir Project on the Missouri River, and for the Development of the Members of the Tribe*, 87th Cong., 1st sess. (1961), pp. 453-54.

<sup>100</sup> "Crow Creek Sioux Tribe Position Paper on U.S. Army Corps of Engineers Report on Construction Efforts," pp. 6-7.

A report issued by the Corps of Engineers in January of 1994 maintains that the Corps complied with the requirements of the Big Bend Settlement Act, because it expended the amount of money authorized under the Act for infrastructure rehabilitation.<sup>101</sup> Perhaps Congress underestimated the cost of the infrastructure to be replaced and did not appropriate sufficient funds to reconstruct the facilities that it specifically authorized. Nevertheless, the general legal principle that ambiguous phrases or statutes are to be interpreted in the light most favorable to the Indians applies to this matter. Consequently, there should be a substantial amount for funding provided to the Crow Creek Sioux Tribe for the school, hospital, townsite and infrastructure replacement guaranteed to the Tribe in the Big Bend Act.

The U.S. General Accounting Office (GAO) has reported to Congress that the issue of whether legislative action addressing an Indian Tribe's outstanding claims under Pick-Sloan is warranted should assess "the compensation the tribe believed was warranted at the time of the taking."<sup>102</sup> In the case of Crow Creek, the Tribe sought replacement and reconstruction of the facilities and infrastructure located at old Fort Thompson. The Tribe succeeded in obtaining Congressional authorization for such reconstruction. Yet, the authorization has not been fulfilled by the executive branch.

The Crow Creek Sioux Tribe has proposed that Fort Thompson be rehabilitated as directed by Congress in the Big Bend Act of 1962 by allocating \$27.5 million in revenues of the Western Area Power Administration (WAPA) to the Tribe. Congress endorsed this approach in providing equitable compensation in 1992 to the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux Tribe for tribal losses resulting from the construction of the Garrison Dam and Oahe Dam projects on the Missouri River.<sup>103</sup>

The Eastern Division of the WAPA markets the firm power supply generated by the Missouri River dams. The receipts from these transactions are deposited in the U.S. Treasury annually, for operation and maintenance of the projects and repayment of the Pick-Sloan debt. In the Three Affiliated Tribes of Fort Berthold and Standing Rock Sioux Tribe Equitable Compensation Act, Congress allocated 25 percent of the annual gross receipts deposited by the WAPA to the U.S. Treasury to trust accounts established for each Tribe. These revenues

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<sup>101</sup> U.S. Army, Corps of Engineers, "Report on the Construction Efforts to Mitigate Impacts on the Crow Creek Sioux Tribe at Fort Randall/Lake Francis Case and Big Bend Dam/Lake Sharpe South Dakota," January 11, 1994, p. 6.

<sup>102</sup> U.S., General Accounting Office, Report to the Chairman, Select Committee on Indian Affairs, U.S. Senate, Rept. No. GAO/RCED-91-77, May, 1991, p. 7.

<sup>103</sup> *The Reclamation Projects Authorization and Adjustment Act of 1992, Title XXXV — Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Program, North Dakota*, October 30, 1992, 106 Stat. 4731.

capitalized a trust account of \$149,200,000 for the Three Affiliated Tribes and a \$90,600,000 trust account for the Standing Rock Sioux Tribe.<sup>104</sup>

The Three Affiliated Tribes of Fort Berthold lost 175,716 acres of land to the Garrison Dam project. The Standing Rock Sioux Tribe lost approximately 56,000 acres to the Oahe Dam project. As described above, Congress established a "Recovery Fund" for these tribes in the amount of \$149.2 million and \$90.6 million respectively. These funds were provided financed from the gross receipts supplied to the Treasury from the WAPA. They were provided to the Tribe's pursuant to the GAO's finding that the wished of the Tribes at the time of the land takings was significant, and the Congressional finding that "the United States Government did not justly compensate [the] Tribes when it acquired those lands."<sup>105</sup>

The Crow Creek Sioux Tribe lost 15,432.26 acres of land to the Fort Randall and Big Bend Dam projects. Under the same concepts developed by the GAO and implemented by Congress in the Equitable Compensation Act, the Tribe is entitled to a "Recovery Fund" in the amount of \$27.5 million. The annual interest and investment income from this fund would be adequate to finance the reconstruction and rehabilitation of Fort Thompson. This is what the Tribal negotiators sought at the time of the land takings. The construction projects themselves are itemized in Sections 6 and 7 of the Big Bend Act of 1962. A \$27.5 million trust fund of this amount is also justified under the formula for "just compensation" utilized by Congress in the Equitable Compensation Act of 1962.

## IX. CONCLUSION

The Pick-Sloan main-stem projects have now been completed for several years. If the benefits that the Sioux tribes received from these massive projects are to be gauged, they should first be measured in terms of the purposes for which the dams were originally constructed. Assuming that the \$30 billion Pick-Sloan Plan was truly designed to be beneficial to the people of the Missouri Basin, then it should be of equal benefit to those people, both Indian and non-Indian, who suffered the most as a result of its implementation. But such is not the case.

The U.S. Army Corps of Engineers and the Interior Department's Bureau of Reclamation designed their integrated water development program to provide flood control, irrigation, hydroelectric power, navigation, recreation, and numerous other benefits. An evaluation of their efforts at this juncture time reveals that any measurable improvement in the lives of the Sioux people resulting from these projects has been slow in coming.

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<sup>104</sup> Ibid., section 3503(a), p. 4732.

<sup>105</sup> Ibid., section 3503.

To its credit, the Army and the Interior Department succeeded in making long stretches of the Missouri system safe from the catastrophe of high floods. This is particularly true in the populous region between Kansas City and Sioux City. However, floods on the Sioux reservations were never as serious or as frequent as those in the lower basin, and the federal efforts have still not prevented the continuation of tributary inundations. What tribal members are more concerned with is that, in many places, the Corps of Engineers took far more land than was necessary to maintain the reservoirs at their maximum pool level. Yet, in other places the reservoir waters have infringed on land never purchased by the federal government. The fluctuation of the undulating waters has created a far greater hazard than any of the infrequent floods of the past.<sup>106</sup>

The stream-bank erosion caused by the reservoir waters has become a serious problem. Shoreline conditions continually have been made unstable, and sediment deposits in the water have been much greater than expected. While Lake Sharpe, the Big Bend reservoir, is relatively stable, the waters impounded behind the Fort Randall (Lake Francis Case) fluctuate between ten and twenty feet each year. This has made it extremely difficult for the tribes to develop fully their shoreline land and resources. The cutting action of the water not only endangers tribal members and their livestock but also has, in at least one case, caused the exposure of skeletal remains from unmarked graves along the shore. Since the Corps of Engineers did not accurately project reservoir boundary lines prior to inundation, water now often infringes on Indian property when at maximum pool level. Because the army also refused tribal requests to build fences along the boundaries, Indian ranchers regularly suffer livestock losses, as their cattle either fall off the eroding banks or drift into the reservoirs in search of water.<sup>107</sup>

While the Pick-Sloan Plan has generally improved flood protection in the Missouri Basin, the advantage of this fact to the Sioux has been obscured by the present disadvantages of the reservoir projects. The benefits of flood control are outweighed by the damages that these people sustained in order to make these projects possible. The Indians did not have to forfeit their lives, but they certainly suffered greater losses from the human-caused inundations than they would have from any natural flood in their region.

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<sup>106</sup> Frank Ducheneaux, Lloyd LeBeau, Aljoe Agard, interviews; Kermeth S. Engle, BIA Realty Officer, Standing Rock Agency, interview held at Fort Yates, North Dakota, August 9, 1972.

<sup>107</sup> Ibid.; U.S., Missouri Basin Inter-Agency Committee, *The Missouri River Basin Comprehensive Framework Study*, vol. 5, *Present and Future Needs* (Washington, D.C.: Government Printing Office, 1971), pp. 6-8; Harland, Batholomew, and Associates, *Economic Potential of Recreation at Big Bend Reservoir* (St. Louis, 1963), p. 8; Leo A. Daly and Associates, *Comprehensive Plan for Crow Creek Reservation, South Dakota* (Omaha, 1967), p. 34; Donald Kritzsinger, Oahe Area Manager, U.S. Army, Corps of Engineers, interview held at Pierre, SD July 27, 1972.; Rusty Farmer, BIA Administrative Officer, Cheyenne River Agency, interview held at Eagle Butte, SD, August 12, 1972.

During the summer of 1993, prolonged torrential rains put the Pick-Sloan facilities to their stiffest test yet, and perhaps ever. Record flooding was experienced along the lower Missouri from Nebraska City, Nebraska, to the river's mouth near St. Louis. There was also major flooding along the tributary Big Sioux River in northwestern Iowa and southeastern South Dakota. The Pick-Sloan mainstream reservoirs saved downstream communities from even worse flooding by capturing much of the runoff in Montana and the Dakotas. Yet all of Iowa and most of the counties in North Dakota, eastern South Dakota, southeastern Nebraska, and the upper two-thirds of Missouri suffered enough flood damage to be included within the designated federal disaster area. Several Indian reservations within the region were also ruled eligible for government disaster aid, including Fort Berthold and Standing Rock in North Dakota, and Yankton in South Dakota. Although hydrologists declared that the Great Deluge of '93 was "in excess of a 100-year flood," meaning that there is less than a one-in-a-hundred chance that a similar disaster could happen in any given year, it caused everyone involved to question whether any amount of engineering and construction can provide absolute flood protection.

Although the Pick-Sloan power plants have definitely increased the availability of electrical power in the Missouri Basin, they have not been a factor in actually increasing the use of electrical power by the Sioux tribes. The reservations lacked electrical power before construction of the Pick-Sloan projects primarily because their residents could not afford it rather than because it was unavailable. To this extent the steady increase in the use of electrical power by tribal members over the past four decades is more a result of the rise in the general economic level of the reservations than of the increased availability of electrical power. Affordability remained the most important factor as far as the Sioux were concerned. As late as the early 1980s, there were still many areas of the reservations that lacked electrical service because it was beyond economic capability. There is no evidence to show that Pick-Sloan provided the lower electrical rates its proponents promised, and the federal government has done little to make lower power rates available to the Sioux tribes.<sup>108</sup>

It was not until the 1980s that Congress and the Executive Branch made concessions to the Missouri River Sioux tribes regarding Pick-Sloan hydropower. For the first time the Department of Energy acknowledged that, under Section 5 of the Flood Control Act of 1944, the tribes qualified as preferential low-cost power customers. Unfortunately, nearly all of this power had been allocated to non-Indian municipalities and rural cooperatives. In 1982, however, Congress authorized the Departments of Energy and the Interior to make Pick-Sloan pumping power available for irrigation projects on Crow Creek and four other Missouri River reservations; Standing Rock, Cheyenne River, Lower Brule, and Omaha. Irrigation projects on

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<sup>108</sup> Herbert S. Schell, *History of South Dakota*, 3d ed. (Lincoln: University of Nebraska Press, 1975), p. 308; MBIAC, *Comprehensive Framework Study*, vol. 1, *Report*, p. 165, and vol. 5; *Present and Future Needs*, p. 4.

these reservations now qualify for the preferential rate of 2.5 mills for their pivots. The catch is that Congress did not provide for the construction of new transmission lines to these Indian projects, and the existing lines are now owned and controlled by Rural Electrification Administration cooperatives that cannot afford to give the tribes a reduced delivery rate. The result is that the tribes can pump water to their farmlands at the Pick-Sloan rate but first must pay a premium rate to get the water to their pumps. Despite these problems, a few Missouri River Sioux, including the Crow Creek Tribe have experienced moderate success with irrigation projects since 1980.

The long and heated debate over the suitability and practicality of reclamation in the upper Missouri Basin has caused frustrating delays, serious cutbacks, and drastic revisions in the original Pick-Sloan irrigation plans. Consequently, the Bureau of Reclamation two major projects in the Dakotas, the Garrison and Oahe diversion units were halted by environmentalists and others who shifted their support to alternative water development programs. Most of the irrigation projects proposed for the Sioux reservation lands were deauthorized by Congress in 1964.<sup>109</sup>

The Reclamation Bureau determined that approximately 125,000 acres of the Sioux reservations are potentially irrigable, yet it remains to be seen if the tribes will ever be able to develop this potential. First, there is the critical question of whether or extensive irrigated farming can ever be financially feasible for the tribes. Second, there is the question of how much of the reservation land is actually irrigable. In some places it has been discovered that neither the water nor the soil was of sufficient quality to make irrigation projects worthwhile.<sup>110</sup>

Under the body of law that developed from the Winters decision of 1907, the Sioux have prior and paramount rights, for the purpose of irrigation, to all waters that flow either through or along the reservations. It has also been claimed that their rights include priority use of water for any other beneficial use, either at present or in the future. The actual extent of the Indians'

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<sup>109</sup> Schell, *Ibid.*, p. 361; William E. Warne, *The Bureau of Reclamation* (New York: Praeger Publishers, 1973); Elwyn B. Robinson, *History of North Dakota* (Lincoln: University of Nebraska Press, 1966), pp. 463, 465-66; U.S., Department of the Interior, Bureau of Indian Affairs, *Potential Irrigation Development, Missouri River Basin Reservations*, MRBI Rept. 185 (Billings, 1967), pp. 1-3, Appendix 10, pp. 2, 20.

<sup>110</sup> MRBI Rept. 185, *Ibid.*; Schell, *Ibid.*; Cheyenne River Redevelopment Committee, *Overall Economic Plan for Cheyenne River Redevelopment Area* (Eagle Butte, 1969), pp. 41-42, 73-74; Frank Ducheneaux, interviews.

reserved water rights beyond the purposes of irrigation, however, has never been judicially clarified.<sup>111</sup>

Despite the specific requirements of the law, the federal government has not made an effort to comply with the Winters Doctrine in regard to the Pick-Sloan Plan, and the Sioux tribes have not attempted to have their rights protected through the process of judicial appeal. Because no effort has ever been made to accurately determine and to quantify the precise water needs of the tribes, it is likely that their rights will continue to be ignored.

The Flood Control Act of 1944, which authorized the Pick-Sloan Plan, provided that the irrigation of tribal lands and repayment for such projects would be "in accordance with the laws relating to Indian lands."<sup>112</sup> The Leavitt Act of 1932 had established generous policies whereby payment of irrigation construction costs could be deferred by the tribes over a long period according to their repayment ability.<sup>113</sup> To comply with these laws and the provisions of the Winters Doctrine, the Bureau of Reclamation should have fully recognized the Indians' rights and made an effort to accurately quantify their water needs before committing any of the water under its control to other projects. Having guaranteed the priority of native rights, it should then have made plans to develop irrigation wherever feasible on the reservations, without regard to cost. Because this was not done, it is doubtful that the Sioux will ever realize the full benefits of irrigation.

Residents of South Dakota, including the Crow Creek Sioux, did not expect any navigation benefit from Pick-Sloan, since its primary project was the development of a navigation channel by the Corps of Engineers from Kansas City to Sioux City. Neither did they anticipate any difficulty in navigating the Army's main-stem reservoirs. Yet, the nature of the clearing operations carried out by the Corps obstructed navigation on many of the Missouri River reservoirs by leaving trees, and sometimes buildings, standing above or just below water

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<sup>111</sup> *Winters v. U.S.*, 207 U.S. 564, pp. 575-77 (1908). Other decisions which have extended the Winters Doctrine include *Conrad Investment Company v. U.S.*, 161 Fed. 829 (CA9, 1908), *U.S. v. Walker River Irrigation District*, 104 Fed. 2d. 334 (CA9, 1939); *U.S. v. Ahtanum Irrigation District*, 236 Fed. 2d. 321 (CA9, 1956), *Arizona v. California*, 373 U.S. 546, pp. 598-600 (1963); Monroe E. Price, *Law and the American Indian, Readings, Notes, Cases* (Indianapolis: Bobbs-Merrill Co., 1973), p. 310; William H. Veeder, "Indian Prior and Paramount Rights to the Use of Water," *Rocky Mountain Mineral Law Institute Review* 16 (1971):656-57, "Confiscation of Indian Winters Rights in the Upper Missouri Basin," *South Dakota Law Review* 21 (Spring, 1976):283.

<sup>112</sup> 58 Stat. 887, 905, sec. 9.

<sup>113</sup> *Act of July 1, 1932*, 47 Stat. 564.

surfaces. These obstacles also interfered with recreational activities on the man-made lakes, another of the purposes for which the dams were created.<sup>14</sup>

Of all the benefits promised by Pick-Sloan, the most immediate and successful results have been realized in the areas of outdoor recreation and tourism. Each year millions of vacationers are drawn to the hundreds of public access areas developed along the reservoirs for swimming, boating, camping, and picnicking, but the primary attraction is fishing. State and federal wildlife agents have gradually succeeded in increasing both the number and variety of species through constant restocking, and fishing has become exceptionally good. Businesses catering to tourists and outdoor enthusiasts have thrived, and the Interior Department has considered making all six main stem reservoirs into a National Recreation Area.<sup>15</sup>

Although the Crow Creek Sioux Tribe attempted to realize the economic potential of the sudden recreation boom, it has not been able to share significantly in the new prosperity. In 1971, the Tribe, with the help of an Economic Development Administration grant, developed a tourist complex at Fort Thompson. Though this tribally owned business appeared to offer great promise for the future, it gradually fell victim to the strong anti-Indian economic bias that exists in South Dakota and had eventually to be closed.

Since traditional Sioux seldom engaged in recreational fishing, boating, or swimming, the dam projects, by causing the depletion of the wildlife habitat, and the subsequent decline in good hunting, actually reduced the favored recreational activity of Crow Creek tribal members. The intent of the settlement acts was to allow subsistence hunting and fishing by tribal members within the taking areas controlled by the Corps of Engineers. Now that the Crow Creek people no longer do much subsistence hunting and fishing, they would like to gain revenue by guiding non-Indian sportsmen in those areas. However, the State of South Dakota will not permit them to do so.<sup>16</sup>

The trespassing of non-Indian sportsmen on the reservation and the regulation of their activities has become a serious problem. In 1993, in the case of *South Dakota v. Bourland*, the U.S. Supreme Court held that Congress, through the vehicle of Pick-Sloan settlement legislation, had abrogated the right of the Cheyenne River Sioux Tribe to regulate hunting and

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<sup>14</sup> *Overall Economic Plan for Cheyenne River Redevelopment Area* (1969), p. 69; Arthur E. Morgan, *Dams and Other Disasters: A Century of the Army Corps of Engineers in Civil Works* (Boston: Porter Sargent Publishers, 1971), p. 57; Frank Ducheneaux, Lloyd LeBeau, Aljoe Agard, interviews.

<sup>15</sup> U.S., Department of the Interior, Bureau of Outdoor Recreation, *The Middle Missouri, A Rediscovery — A Study in Potential Outdoor Recreation* (Washington, D.C.: Government Printing Office, 1970), pp. 1, 28-30; Jack Merwin, "Those Dam Walleyes," *Outdoor Life* 153 (April 1973):61-64.

<sup>16</sup> Ambrose McBride, interview.

fishing by non-Indians within the taking area of the Oahe Dam project.<sup>17</sup> Although it is too soon to know the full implications of this decision for the other Sioux tribes of the Missouri River, it does not appear to bode well.

While another of the promised Pick-Sloan benefits was the development of an adequate water supply for domestic, municipal, and industrial use, many areas of the Sioux reservations are still dependent on ground water sources that exceed federal standards for maximum impurities and are generally unfit for human use.

The members of the Crow Creek Sioux Tribe have yet to receive, therefore, their fair share of the benefits that were supposed to be provided by Pick-Sloan, although they suffered a great deal as a result of its implementation. Although some observers feel that the money appropriated in the Big Bend settlement legislation for "rehabilitation" of tribal members should be considered a direct benefit of the water development program, it is clear that the Crow Creek Tribe could have received this money independent of the dam project settlement, as did the Navajo, Hopi, Pine Ridge Sioux, and numerous other tribes during this period. These federal funds could certainly have been put to more effective use, in fact, had not the economic life of the Crow Creek Reservation been so thoroughly disrupted by the Army's dam projects.

The saga of the Pick-Sloan Plan and its impact on the Crow Creek Sioux and other tribes of the Missouri River will continue well into the future. While it will always be impossible to ignore or excuse the abuse of Native American rights that has characterized much of the history of this program, it is sincerely hoped that the federal government will provide corrective initiatives that might allow this historian to someday write a more optimistic conclusion to the episode as it pertains to the Crow Creek Sioux Tribe.

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<sup>17</sup> *South Dakota v. Bourland, et al.*, No. 91-2051 (U.S. Sup. Ct., June 14, 1993), 20 ILR 1026.

**Executive Director:**  
Richard Bad Moccasian

**Member Tribes:**  
Assiniboine & Sioux Tribes of Fort Peck, Poplar, Montana

Chayenne River Sioux Tribe, Eagle Butte, South Dakota

Chippewa Cree Tribe, Box Elder, Montana

Crow Tribe, Crow Agency, Montana

Crow Creek Sioux Tribe, Fort Thompson, South Dakota

Devils Lake Sioux Tribe, Fort Totten, North Dakota

Flandreau Santee Sioux Tribe, Flandreau, South Dakota

Fort Belknap Tribe, Harlem, Montana

Kickapoo Tribe of Kansas, Horton, Kansas

Lower Brule Sioux Tribe, Lower Brule, South Dakota

Northern Cheyenne Tribe, Lane Deer, Montana

Oglala Sioux Tribe, Pine Ridge, South Dakota

Omaha Tribe, Walthill, Nebraska

Ponca Tribe of Nebraska, Niobrara, Nebraska

Prairie Band of Potawatomi, Mayetta, Kansas

Rosebud Sioux Tribe, Rosebud, South Dakota

Sac & Fox of Missouri, Reservoir, Kansas

Santee Sioux Tribe, Niobrara, Nebraska

Sisseton-Wahpeton Dakota Nation, South Dakota

Standing Rock Sioux Tribe, Fort Yates, North Dakota

Three Affiliated Tribes, New Town, North Dakota

Turtle Mountain Band of Chippewas, North Dakota

Winnabago Tribe of Nebraska, Winnabago, Nebraska

Yankton Sioux Tribe, Marty, South Dakota

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**Statement of Richard Bad Moccasian, Executive Director**

**Mni Sose Intertribal Water Rights Coalition, Inc.**

**In Support of S. 1264**

**April 25, 1996**

**I. Introduction**

Thank you very much Vice Chairman Inouye for the opportunity to testify before the Senate Committee on Indian Affairs and House Native American Affairs Subcommittee, on S. 1264. I have served as a Legislative Assistant to Senator Daschle, the bill's sponsor, and as a Professional Staff member to the Committee on Indian Affairs. As such, I have first-hand experience on how the work of the Senate Committee and House Subcommittee helps the sovereignty of our Indian Nations and improves the lives of the Indian people throughout the United States. I extend my sincere appreciation to you, Chairman Inouye, for your leadership and commitment to Indian affairs.

At present, I serve as Executive Director of the Mni Sose Intertribal Water Rights Coalition. Mni Sose consist of 24 Indian Nations located in the Missouri River Basin. All of our Tribes are impacted in some manner by the Missouri River Basin Pick-Sloan Project.

The Pick-Sloan project consist of five massive earthen dams on the main stem of the Missouri River, developed for flood control, hydroelectricity, navigation, and recreation. These projects were built and are operated by the Army Corps of Engineers. There are numerous smaller projects on the Missouri's tributaries, operated by the Bureau of Reclamation for irrigation and flood control. Two Pick-Sloan projects, Fort Randall and Big Bend, required overlay of the Crow Creek Indian Reservation.

As stated above, Pick-Sloan detrimentally affected all of the Tribes of Mni Sose. The Assiniboine and Gros Ventre Tribes of the Fort Belknap Indian Reservation are located high on the central Rocky Mountain plateau of north central Montana, where the water resources on the Milk River have been developed by the Bureau of Reclamation, impeding water flows on the Reservation. The Corps of Engineers developed Fort Peck dam just above the Fort

Peck Indian Reservation, taking control of Missouri River from the Assiniboine and Sioux Tribes of Fort Peck.

Further downstream along the Missouri River, the Three Affiliated Tribes of the Fort Berthold Reservation, and the various Tribes of the Great Sioux Nation, lost land and riparian resources upon the construction of the six earthen dams on the main stem of the Missouri River. Downstream from these projects, the important water resources of the Winnebago, Omaha, Sac and Fox, Kickapoo and Potawatomi Nations have been developed and utilized for barge traffic and the navigation industry.

The eminent author, Vine Deloria, Jr., a member of the Standing Rock Sioux Tribe, which is very active in Mni Sose, described Pick-Sloan as the "single most destructive act ever perpetrated by the United States against an Indian Tribe." The experience of our Tribes certainly bares this out.

In addition to my experience working with Indian Tribes on Pick-Sloan, let me state that I am an enrolled member of the Crow Creek Sioux Tribe. Crow Creek is a pivotal Tribe in Mni Sose. Moreover, as a tribal member, I can personally attest to the devastating impact which the Missouri River Basin Pick-Sloan project has had on the Crow Creek Sioux Tribe.

As a young boy, I grew up along the Missouri River bottomlands on the Crow Creek Reservation. When the dams were constructed my family was forced to move from our fertile and beautiful homeland along the river, and forced to relocate to Pierre, South Dakota, a non-Indian community 60 miles away. In a sense, these dams shaped my childhood, and more recently my professional life as well.

## **II. Background - Missouri River Basin Pick-Sloan Project**

The resource which the Indian Nations of the Missouri River Basin rely on for economic development and for cultural and spiritual purposes is the Missouri River itself. The free-flowing river has been completely destroyed above Sioux City, Iowa, by the U.S. Army Corps of Engineers. The Corps constructed six massive earthen dams, turning the main stem of the Missouri into a series of reservoirs. These dams are collectively referred to as the Missouri River Basin Pick-Sloan project.

As is shown below, approximately 350,000 acres of Indian land were taken by the Corps of Engineers for Pick-Sloan. This represents 23 percent of the 1,499,759 acres impacted by the main stem dams, reservoirs and transmission lines. In addition, miles of artificial navigation channels were constructed across the Omaha and Winnebago Indian Reservations. Although the impact due to the construction of the main stem dams cannot be reversed, the continuing effects these projects have had on the Tribes can and should be addressed. This is precisely what S. 1264 is designed to accomplish.

**Indian Lands Taken for  
Missouri River Reservoir Construction**

| <u>Reservation</u>         | <u>Reservoir</u> | <u>Acres Taken</u> |
|----------------------------|------------------|--------------------|
| Fort Berthold              | Garrison         | 154,912            |
| Standing Rock              | Oahe             | 55,994             |
| Cheyenne River             | Oahe             | 99,548             |
| Lower Brule                | Big Bend         | 14,958             |
| Lower Brule                | Fort Randall     | 7,997              |
| Crow Creek                 | Big Bend         | 6,416              |
| Crow Creek                 | Fort Randall     | 9,149              |
| Santee                     | Gavins Point     | <u>593</u>         |
| <b>Total Acreage Taken</b> |                  | <b>349,567</b>     |

The Pick-Sloan project severely and disproportionately impacted the Indian Tribes of the Missouri River Basin. It is astonishing that nearly 25 percent of the land acquired by the Corps of Engineers for the main stem dams was Indian land. Proportionately much more Indian land was utilized for the project than non-Indian land.

The locations of the dams appear to have been planned so as to maximize the impact on Indian land and minimize the impact on non-Indian communities. The Gavins Point Dam is located upstream from Sioux City, Iowa, and below the Santee and Yankton Indian Reservations, which were substantially flooded by Lewis and Clark Lake, behind the Gavins Point Dam. The Yankton Indian Reservation was also inundated by Fort Randall Dam, constructed right on the Reservation at Lake Andes, South Dakota. The tailwaters behind Fort Randall subside near the non-Indian community of Chamberlain, which suffered no loss of land or community.

Just north of Chamberlain, though, Big Bend Dam was developed right on the Crow Creek and Lower Brule Reservations, inundating tens of thousands of acres of Indian land and destroying the communities of Fort Thompson and Lower Brule. The tailwaters behind Big Bend Dam subside just below the non-Indian community of Pierre, South Dakota. Immediately above Pierre, the Corps of Engineers built Oahe Dam, flooding over 150,000 acres of Indian land on the Standing Rock and Cheyenne River Sioux Indian Reservations. This resulted in the forced displacement of numerous tribal communities. Yet the tailwaters of Lake Oahe subside at Bismarck, North Dakota, saving Bismarck from any adverse impacts. Similarly, just upstream from Bismarck, the Corps built Garrison Dam, which destroyed numerous communities on the Fort Berthold Indian Reservation, but whose tailwaters remained below Williston, North Dakota, which suffered no impact.

The development of the Missouri River main stem dams remains a classic case study of environmentally-destructive development which disproportionately impacts indigenous people. In the Great Plains Regions, the tribal communities arose in the wooded bottomlands of the Missouri

and its primary tributaries. The riparian environment provided the resources upon which the tribal communities became economically self sufficient, well into the twentieth century. Author Michael Lawson has described Pick-Sloan's impacts as follows:

The shaded bottom lands provided a pleasant living environment with plenty of wood, game, water and natural food resources. The trees along the Missouri and its tributaries were a primary source of fuel and lumber for the tribes and (provided protection)... from the ravages of winter and the scorching summer heat. The gathering and preserving of wild fruits and vegetables was traditional facet of Plains Indian culture. The numerous types of herbs, roots, berries and beans that grew in the bottom lands added bulk and variety to the diet, and were used for medicinal and ceremonial purposes.

The wooded bottom lands also served as shelter and feeding grounds for many species of wildlife, and hunting and trapping were important sources of food, income, and recreation for the tribes. The loss of bottom land grazing areas crippled tribal livestock operations, once the primary industry on many reservations. Artificial shelters had to be built to replace the natural resources of the hold habitat. Stock raising thus became far more difficult, expensive, and risky.

The Pick-Sloan projects damaged every aspect of reservation life. Abruptly the tribes lost the basis for their subsistence and had to develop new ways to making a living in a cash economy. The relocation of the agency headquarters and largest communities on Fort Berthold, Cheyenne River, Crow Creek and Lower Brule disrupted federal and tribal services, and tipped the social, economic, and religious fabric of the well-integrated tribal life. It was especially onerous for the Indians to excavate their cemeteries and private burial grounds and to relocate their ancestors' remains.

Psychological and aesthetic damages are impossible to measure, but the Indians' lifestyle made the effects of Pick-Sloan especially difficult. Unlike most non-Indians affected by public works projects, these tribal members could not duplicate their old ways of life by moving to a similar environment. Their old ways of life were shaped by a land which no longer existed, after the bottom lands were flooded...

The marginal lands which remained after inundation could not replace the natural advantages of the Indians' former homes. The barren uplands regions where the Indians were forced to move, were less hospitable and more difficult to survive.

Michael Lawson, Dammed Indians - Pick-Sloan Plan and the Missouri River Sioux, University of Oklahoma Press (1982).

As noted by Dr. Lawson, one particularly bitter pill for the dislocated Indian people to swallow was the destruction of native cultural resources along the Missouri River. All of the Congressional statutes which provided for the taking of Indian land for Pick-Sloan, required the Army Corps of Engineers to relocate cemeteries. However, the Corps of Engineers failed to do so.

Let me point out that the Corps of Engineers is currently revising its Missouri River Master Water Control Manual. In its Draft Environmental Impact Statement on Missouri River Operations, the Corps has indicated that it shall not consider the protection of native cultural resources to be an operational issue. The Corps shall not study how to protect native cultural resources as part of the National Environmental Policy Act (NEPA) process. Thus, even as the Corps operates the dams today, it actively ignores our native cultural resources concerns. With each day that passes, cultural resources along the river are subject to erosion and inundation.

Ultimately, Pick-Sloan constitutes the destruction of indigenous economies for the benefit of the larger societal economy. Pick-Sloan was developed by the Corps of Engineers in response to catastrophic flooding which occurred on the lower stretches of the Missouri River during the early 1940's. The cities of Kansas City, Missouri, and Omaha, Nebraska were impacted by these floods. There was an outcry for federal action to prevent further damage from flooding.

Meanwhile, the navigation industry was developing along the lower stretches of the Missouri and on the Mississippi River. A series of River and Harbor Acts authorized dredging and the construction of artificial channels on the Mississippi, but as of the 1940's, the Missouri remained undeveloped.

Consequently, Congress enacted the Flood Control Act of December 22, 1944, authorizing the Missouri River Basin Pick-Sloan project. This resulted in the destruction of tribal communities and economies, for the benefit of the regional and national economy.

Obviously, no economy may develop when the resources of the economy are destroyed and utilized for the economic benefit of others.. This is what has happened to the Indian Nations of the Missouri River Basin. The construction of the dams, and the manner in which they are operated, results in the taking of resources from poor indigenous communities for the benefit of the wealthier society at large.

Nowhere is this more apparent than at Crow Creek.

### **III. Impacts on the Fort Randall and Big Bend Dams on Crow Creek Sioux Tribe**

Two of the six Pick-Sloan projects on the Missouri River overlay the Crow Creek Indian Reservation. When the Fort Randall Dam was constructed in 1958, nearly 100 families were relocated from their homes along the river. These families received the nominal payments authorized under the Fort Randall Act of September 2, 1958, four years after having to relocate.

Meanwhile, the Corps of Engineers developed the Big Bend Dam at Fort Thompson, where the families had been moved. Consequently, in 1962, many families were dislocated a second time. In all, 50 percent of the tribal membership at Crow Creek were relocated from our homeland along the river, to the higher ground on the Great Plains.

The community of old Fort Thompson, along with the wildlife, water, timber and forage resources of the bottomlands, was completely destroyed. These resources constituted the basis for the tribal economy, which was likewise destroyed.

Meanwhile, Pick-Sloan provides substantial benefits to the national economy. The Army Corps of Engineers, which constructed and operates the dams on the Missouri River main stem, estimates that these projects contribute approximately \$1.3 billion annually to the national economy. (U.S. Army Corps of Engineers, Missouri River Division, Draft Environmental Impact Statement, Missouri River Master Water Control Manual Review and Update, July 1994). Of that figure, approximately one-half, or \$655 million, is derived from the sale of hydroelectricity by the U.S. Department of Energy. The remaining contribution comes in the form of navigational benefits, flood control benefits and recreational development. Nevertheless, the hydroelectrical benefits clearly constitute a resource that may be tapped to address the unresolved claims of the Tribes under Pick-Sloan.

#### **IV. S. 1264 and Financing of Mitigation Projects Contained in Big Bend Act**

S. 1264 would accomplish this in a very practical manner. S. 1264 utilizes a very modest allocation of Pick-Sloan hydroelectricity revenues to finance a trust account within the treasury to be utilized by the Crow Creek Sioux Tribe to rebuild the community infrastructure that was lost to Pick-Sloan. The revenues allocated to the tribal trust account would impact neither the electrical rates in the region, nor the debt repayment for the Pick-Sloan project.

The trust account would produce revenues to rebuild the community of Fort Thompson. The United States had promised the Tribe that the community would be rebuilt. These promises were contained in Section 5 and Section 6 of the Big Bend Act, which read in relevant part:

The Secretary of the Army is authorized and directed to... protect, replace, relocate, or reconstruct any existing essential governmental and agency facilities on the reservation, including schools, hospitals, Public Health Service and Bureau of Indian Affairs' offices, facilities, service buildings and employees' quarters, roads, bridges, and incidental matters or facilities in connection therewith... (and) a townsite adequate for fifty homes, including streets, utilities, including water, sewage and electricity, taking into account the reasonable future growth of the townsite, a community center containing space for and facilities for community gatherings, tribal offices, tribal council chamber... and a combination gymnasium and auditorium...

76 Stat. 828.

As a consequence of the lack of coordination between the Corps of Engineers and Bureau of Indian Affairs, and the lack of commitment by these agencies to obtain funding from Congress to rebuild Fort Thompson, the Congressional directive to do so has not been fulfilled.

S. 1264 provides the Crow Creek Sioux Tribe with an off-budget source of funding to finally rebuild its community, over 30 years later.

**V. Conclusion - Mni Sose Supports S. 1264 and Redress for All Tribes  
Impacted by the Pick-Sloan Project**

The history of the development of the Pick-Sloan dams at Crow Creek contains many of the themes that are applicable to all of the Tribes impacted by Pick-Sloan. The Corps of Engineers first arrived on the Reservation during the mid-1950's, making promises about how the dams would benefit our people. The Tribes cooperated with the United States, albeit reluctantly. The Army then built the dams prior to settling the land acquisitions with the Tribes. Consequently, the river levels rose before tribal members were paid for our land. The Indian people - whether it be at Crow Creek, Yankton, Cheyenne River or Fort Berthold - were forced to move in a hurry, leaving behind possessions, such as home and fixtures, and without time to harvest timber or food. Although many of the promises were later memorialized in legislation, the legislative directives were generally ignored by the federal agencies. Thus, our communities remain underdeveloped, with inadequate infrastructure with which to re-establish prosperous tribal economies.

Yet the society at large benefits substantially from these dam projects. As stated above, the national economy benefits upwards of \$1.3 billion annually. Over half of this benefit is derived in the form of hydroelectricity.

Ultimately, a common theme emerges, applicable to all of the Indian Tribes in the Missouri River Basin. We suffered the costs of Pick-Sloan, yet the non-Indian society enjoys all of its benefits. These dams are on our land and the hydroelectricity is generated with water to which we have senior claims under the U.S. Supreme Court's decision *Winters v. United States*, 207 U.S. 564 (1907). The promises that were made and that we relied upon have not been fulfilled. Professor Deloria's description of Pick-Sloan as "the single most destructive act ever perpetuated" on us was truly prophetic.

For these reasons, the Board of Directors of the Mni Sose Intertribal Water Rights Coalition has enacted Resolution No. 96-04. This resolution, attached to my statement, expresses our unqualified support for this legislation.

Moreover, let me urge the Committees to act on this legislation immediately. The Crow Creek Sioux Tribe has waited over 30 years for the government to fulfill the commitment to rebuild its community. Surely, that is long enough.

In closing, let me reiterate that all of the Tribes of the Mni Sose Coalition suffer from the impacts of Pick-Sloan. Our Tribes along the Missouri River main stem have suffered the loss of valuable land and the dislocation of communities. Our Tribes along the Missouri's many beautiful tributaries have seen these tributary watersheds altered by Bureau of Reclamation dams. The Reclamation projects, also contained in the authorization for Pick-Sloan, have dried up the streamflows on our Reservations, further impeding economic development. Our water has been supplied to the non-Indian homesteaders, who farm upstream from our Reservations.

S. 1264 is an excellent bill. The Congress should pass this bill without any substantive amendment. In addition, the Congress should utilize the concepts contained in S. 1264 to address the claims of all Tribes in the Missouri River Basin, so we can finally overcome the "most destructive act" ever perpetuated upon us.



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MSC 96-04

**A RESOLUTION OF THE  
MNI SOSE INTERTRIBAL WATER RIGHTS COALITION, INC.**

**A RESOLUTION REQUESTING THAT THE UNITED STATES SENATE COMMITTEE  
ON INDIAN AFFAIRS AND U. S. SENATE SUPPORT THE CROW CREEK SIOUX TRIBE  
INFRASTRUCTURE DEVELOPMENT TRUST ACT OF 1995.**

- WHEREAS,** the Mni Sose Intertribal Water Rights Coalition, Inc., (hereinafter Mni Sose) is a non-profit corporation that is dedicated to the preservation, enhancement and protection of the water rights of Indian Tribes in the Missouri River Basin; and
- WHEREAS,** the Indian Tribes, by virtue of inherent Tribal sovereignty and the acknowledgment by Congress of Tribal authority in the area of environmental protection, are the appropriate sovereigns to protect the environment on and near the Reservations; and
- WHEREAS,** Mni Sose is composed of twenty-four Indian Tribes located in the Missouri River Basin with vested interests in water rights; and
- WHEREAS,** the Mni Sose Coalition promotes the health, education, and welfare of the member tribes, bands, nations and/or Indian communities; and
- WHEREAS,** the Crow Creek Sioux Tribe has not received the benefits of the 1944 Flood Control Act as stated in P.L. 87-735; and
- WHEREAS,** the Secretary of the Army and the Secretary of the Interior have failed to meet the requirements under P.L. 87-735; and
- WHEREAS,** the Treasury of the United States has developed the Crow Creek Sioux Tribe Infrastructure Development Trust Fund; now

**THEREFORE BE IT RESOLVED**, the U.S. Senate Committee on Indian Affairs and the U.S. Senate support the development of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund to assist the Crow Creek Sioux Tribes in receiving the full benefits of the 1944 Flood Control Act.

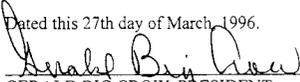
**BE IT FURTHER RESOLVED**, the Crow Creek Sioux Tribe Infrastructure Development Trust Fund be funded at levels that assure that the programs and activities developed by the Crow Creek Sioux Tribe are full implemented.

*CERTIFICATION*

We, the undersigned President and the Secretary of the Mni Sose Intertribal Water Rights Coalition, Inc. hereby certify that the Mni Sose Coalition is comprised of 24 federally-recognized Tribes, of whom 14 constituting a quorum, were present at a meeting thereof and duly and regularly called, noticed, convened and held the 27th day of March, 1996, that the foregoing resolution was duly adopted by the affirmative vote of 14 members, with 0 opposing and 1 abstaining.

*ATTESTED:*

Dated this 27th day of March, 1996.

  
GERALD BIG CROW, PRESIDENT  
Mni Sose Intertribal Water Rights Coalition, Inc.

  
SHEILA CRAWFORD, SECRETARY  
Mni Sose Intertribal Water Rights Coalition, Inc.



### Crow Creek Tribal Schools

|                                       |                      |                    |
|---------------------------------------|----------------------|--------------------|
| <b>Elementary School</b>              | <b>Middle School</b> | <b>High School</b> |
| P.O. Box 469                          | P.O. Box 1           | P.O. Box 12        |
| Ft. Thompson, SD 57339                | Stephan, SD 57346    | Stephan, SD 57346  |
| (605) 245-2372                        | (605) 852-2455       | (605) 852-2455     |
| (605) 245-2373                        | (605) 852-2258       | (605) 852-2258     |
| FAX (605) 852-2791 Administration     |                      |                    |
| FAX (605) 852-2401 High School Office |                      |                    |

Dear Sir:

We the students and staff of the Crow Creek Tribal Schools, Fort Thompson, South Dakota, are sending this signed petition, requesting the full monetary compensation of the land and resources which were taken during the United States Army Corp of Engineers, Pick-Sloan project. The Missouri River basin Pick-Sloan project or the "Flood Control Act of 1944", authorized the acquisition of 9,418 acres of Tribal land located on the Crow Creek Indian Reservation, and an additional 6,179 acres of Indian land on the Big Bend project. These projects ultimately affected the communities of Fort Thompson and Big Bend disrupting the families and government of the Crow Creek Sioux Tribe. The homes, school, hospital, and tribal offices, originally located near the Missouri River were lost, as a result of the Fort Randall and Big Bend Dam projects. Although the national economy has greatly benefited from the hydro-electrical, irrigational, and recreational facilities generated from the Pick-Sloan projects, the tribes located along the river have continued to suffer from their losses. Public Law 87-735, requires the U.S. Army Corp of Engineers, Secretary of the Interior, and Congress to honor their agreement and provide Crow Creek with fair and just compensation. We are a small but proud nation, our children are our future. This compensation will help our tribe by providing funding for a new school, in-patient health care facilities, water system, irrigation, and economical development.

Respectfully

The Students of Crow Creek Tribal Schools

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**Crow Creek Tribal Schools**

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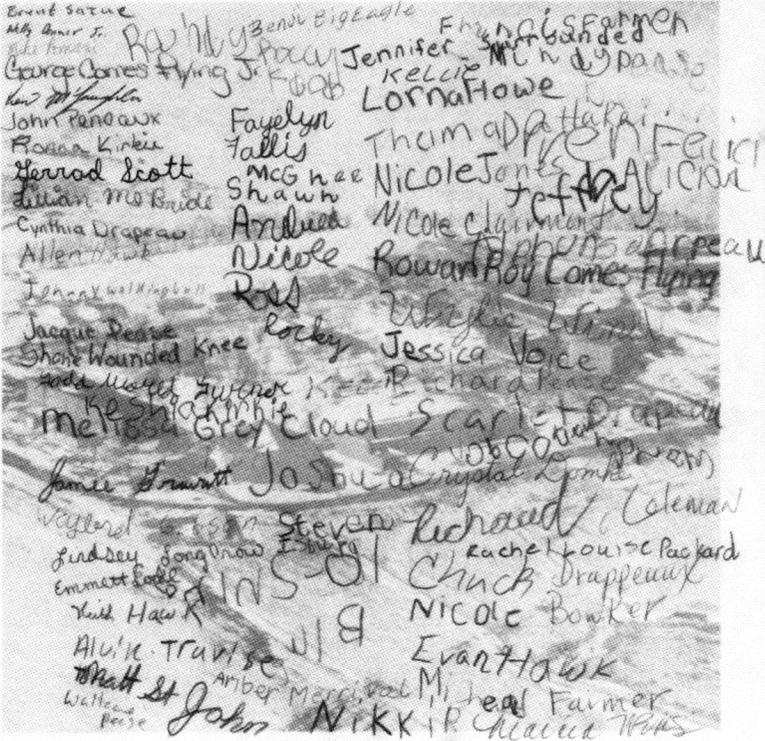
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*Bernard Lee Owl 4-16-96 Ft. Thompson SD*  
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*Lang Chavez*  
*Jesse Obay*  
*all the*  
*Justin B*  
*for French for*  
*Charles H.L.*  
*R.J. shields*

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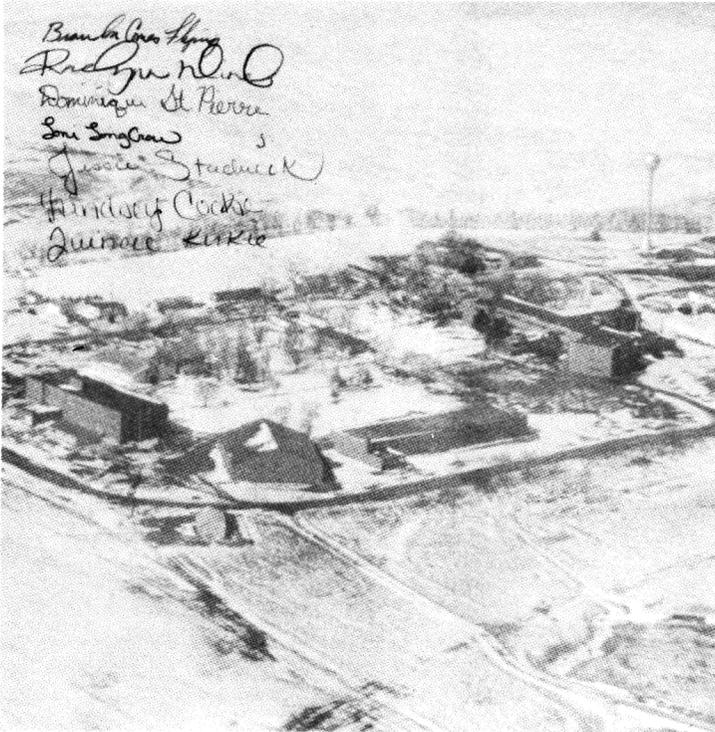
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*Thomas Middleton*  
*Kyle Howard*  
*Russell*  
*Lottie Dease*  
*Kaylene Gravatt*  
*Rita Miller*  
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