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SENATE

{ REPORT
{ 107-214

PROVIDING EQUITABLE COMPENSATION TO THE YANKTON SIOUX TRIBE
OF SOUTH DAKOTA AND THE SANTEE SIOUX TRIBE OF NEBRASKA FOR
THE LOSS OF VALUE OF CERTAIN LANDS

JULY 22, 2002.—Ordered to be printed

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

R E P O R T

[To accompany S. 434]

The Committee on Indian Affairs, to which was referred the bill (S. 434) providing equitable compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for the loss of value of certain lands, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 434, the Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act, is to provide additional compensation to the Yankton and Santee Sioux Tribes for the acquisition by the United States of 2,851.40 acres of the Yankton Sioux Reservation for Fort Randall Dam and Reservoir and 593.10 acres of the Santee Sioux Reservation for Gavins Point Dam and Reservoir on the Missouri River.

BACKGROUND

Pursuant to the Treaty of April 19, 1858 (11 Stat. 743) a 430,405-acre reservation was established for the Yankton Sioux Indian Tribe along the east bank of the Missouri River in Charles Mix County, South Dakota. Approximately 40,000 acres of the reservation is currently in tribal or individual Indian trust status. In 1866, President Andrew Johnson signed an Executive Order setting aside four townships in northeastern Nebraska near the mouth of the Niobrara River as a permanent home for remnants of six Santee Sioux bands driven out of Minnesota following the so-called “Sioux

Uprising of 1862". Although subsequent Executive Orders adjusted the boundaries and expanded the size of the reservation to 165,195 acres, only about 7,000 acres of that area remain in tribal or individual trust status.

Under the Flood Control Act of 1944 (33 U.S.C. 701 et seq.), the Congress authorized construction of five massive dam projects on the Missouri River as part of the Pick-Sloan program, the primary purpose of which was to provide flood control downstream, as well as improved navigation, hydro-power generation, improved water supplies, and enhanced recreation. The U.S. Army Corps of Engineers, which constructed and operates the dams, estimates that the projects' overall annual contribution to the national economy averages \$1.9 billion. However, for the Yankton and Santee Sioux Tribes and other tribes along the Missouri, the human and economic costs of the projects have far outweighed any benefits received, since the lands affected by Pick-Sloan were, by and large, Indian lands, and entire tribal communities and their economies were destroyed.

Fort Randall Dam and Reservoir project, an integral part of the Pick-Sloan program, initially flooded 2,851 acres of Yankton Sioux tribal land and forced the relocation and resettlement of at least 20 families from the traditional and self-sustaining community of White Swan, one of four major settlement areas on the reservation. Unlike communities on other reservation that were relocated to higher ground to make way for Pick-Sloan projects, the White Swan community was completely dissolved and its residents were dispersed.¹

In 1952, the U.S. District Court awarded the Yankton Sioux \$121,210, or about \$42 an acre, for the appraised value of the flooded land in condemnation proceedings in which neither the Tribe nor its affected members were represented by private counsel. Significantly, the appraised value of the lands on the Yankton Reservation was less than half of the value that was established for comparable lands on four other Sioux reservations appraised in 1951. In 1954, the Congress appropriated \$106,500 for severance damages for Yankton Sioux tribal members, but by August, 1956, when these funds were distributed to some, but not all, affected tribal families, nine years had passed since their land had been condemned and six years had passed since their families had been forced to move.

The Gavins Point Dam and Reservoir Project, also an integral part of the Pick-Sloan program, inundated 593 acres of Santee Sioux tribal and individual trust land near the main settlement area of the Indian village of Santee in Knox County, Nebraska. This lost acreage, comprising about 8.5 percent of the reservation and considered among the best agricultural land on the Santee Sioux Reservation, included 380 acres of pastureland and 200 acres of cropland that was part of a tribal farm.

On or about January, 1958, the U.S. District Court awarded the Santee Sioux \$52,000, or \$87.67 an acre, for the appraised value of the inundated lands pursuant to a 1955 agreement between the Tribe and the Corps of Engineers. Records as to the actual distribu-

¹"Historical Analysis of the Impact of Missouri River Pick-Sloan Dam Projects on the Yankton and Santee Sioux Indian Tribes" by Michael Lawson, Ph.D., April, 1999.

tion of these funds are not available. As was the case with the payment to the Yankton Sioux Tribe, the payment to the Santee Sioux Tribe, made years after the taking of their land, did not account for the inflation in property values between the time of the taking and the time of settlement. Significantly, within months of the award, the U.S. District Court in South Dakota ruled that the Army lacked congressional authorization to condemn tribal land for its Pick-Sloan projects.

In 1984, a joint Federal-Tribal study found that the compensation that was provided by the United States to tribes impacted by the Pick-Sloan projects greatly undervalued their losses. To provide more just compensation, in 1992 the Congress enacted legislation that established a trust fund of \$149,200,000 for the Three Affiliated Tribes of the Fort Berthold Reservation related to the loss of 176,000 acres to the Garrison Dam project, and a trust fund of \$90,600,000 for the Standing Rock Sioux Tribe related to the loss of 56,000 acres to the Oahe Dam project.² In 1996, the Congress established a \$27,500,000 Recovery Fund for the Crow Creek Sioux Tribe and a \$39,900,000 Recovery Fund for the Lower Brule Sioux Tribe related to the loss of 15,693 and 22,296 acres of land, respectively, to the Fort Randall and Big Bend Dam projects.³ In 2000, the Congress established a Recovery Fund of \$290,723,000 for the Cheyenne River Sioux Tribe of South Dakota, which lost approximately 104,000 acres to the Oahe Dam project.⁴

The Fort Berthold, Cheyenne River, Standing Rock, Crow Creek, and Lower Brule Tribes all received initial settlements from Congress between 1947 and 1962 that included payment for direct property damages, severance damages (including the cost of relocation and reestablishment of affected tribal members), and rehabilitation for the entire reservation. In providing funds for rehabilitation, Congress recognize that the tribes as a whole and not just the tribal members within the taking areas were affected negatively by the loss of the fertile bottomland environment and reservation infrastructure. Accordingly, the five settlements provided compensation for severance damages and rehabilitation that averaged four and a half times more than was paid for direct damages.

In 1960, a Bureau of Indian Affairs comparative study of the experience of six reservations impacted by Pick-Sloan dams found that the average total payment per family within the taking area at Yankton was \$5,605, whereas the payment averaged \$16,680 on the other five reservations (Fort Berthold, Standing Rock, Cheyenne River, Crow Creek, and Lower Brule). Although the Yankton Sioux Tribe and the Santee Sioux Tribes received settlements for the appraised value of their property in condemnation proceedings and an amount for severance damages, neither tribe received any payments for direct property damages nor any funds for rehabilitation, even though a large number of tribal members residing outside the taking area on both tribes' reservations were also impacted by the dam projects.

The Committee recognizes that any attempt to measure the tangible and intangible values associated with the loss of tribal life and tradition along a free flowing river in monetary terms is nec-

²P.L. 102-575, title XXXV, 106 Stat. 4731 (Oct. 30, 1992).

³P.L. 104-223, 110 Stat. 3026 (Oct. 1, 1996), and P.L. 105-132, 111 Stat. 2563 (Dec. 2, 1997).

⁴P.L. 106-511, 114 Stat. 2365 (Nov. 13, 2000).

essarily subjective. Nevertheless, in view of the losses experienced by the Yankton Sioux Tribe and the Santee Sioux Tribe as a result of Pick-Sloan dams and reservoirs, and the precedents for providing additional compensation for other Missouri River tribes similarly affected, the Committee finds that it is appropriate to provide additional equitable compensation for the Yankton and Santee Sioux Tribes as would be provided by S. 434.

The amount to be deposited into the Yankton Sioux Tribe Development Trust Fund is based on the per-acre amount of compensation provided to the Lower Brule Sioux Tribe in 1997 for inundated land (\$1,763 per acre) multiplied by 2,851.4 (the number of acres of land flooded by the Fort Randall project), which equals \$5,027,018, multiplied by 458 percent (the average of the sum paid by Congress for severance damages and rehabilitation over and above the sums paid for property damages in five initial tribal settlements between 1948 and 1962), for a total of \$23,023,743.

The amount to be deposited into the Santee Sioux Tribe Development Trust Fund is calculated by taking the number of acres of land flooded by the Gavins Point project (593.1) and multiplying it by the per-acre amount of compensation provided to the Lower Brule Sioux Tribe in 1997 for inundated land (\$1,763), which equals \$1,045,635. This amount, multiplied by 458 percent (the average of sum paid by Congress for severance damages and rehabilitation over and above sums paid for property damages in five initial tribal settlements between 1948 and 1962), equals \$4,789,010.

S. 434 SUMMARY OF PROVISIONS

S. 434 would establish the Yankton Sioux Tribe Development Trust fund and the Santee Sioux Tribe Development Trust Fund in the U.S. Treasury. On the first day of the 11th fiscal year after the date of enactment, \$23,023,743, together with interest accrued from the date of enactment, would be deposited into the Yankton Sioux Tribe Development Trust Fund, and \$4,789,010, together with interest accrued from the date of enactment, would be deposited into the Santee Sioux Tribe Development Trust Fund. The Secretary of the Treasury would be authorized and directed to invest these funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

Once both funds have been capitalized, the Secretary of the Treasury would be authorized to transfer any accrued interest into separate accounts for transfer to the Secretary of the Interior, without fiscal year limitation on the availability of such funds. In turn, the Secretary of the Interior would be authorized to make payments to the Tribes for use in carrying out projects and programs that would implement tribal plans for socio-economic recovery and cultural preservation.

The tribal councils, in consultation with the Secretary of the Interior and the Secretary of Health and Human Services, are to prepare the plans, which must set forth a combination of economic development, infrastructure development, educational, health, recreation and social welfare objectives. Each council must permit tribal members to review and comment on the initial plan, as well as on any proposed revisions to it. Activities carried out under these plans would be subject to existing requirements of the Office of

Management and Budget for annual audits, and audit determinations would be required to be published together with tribal council proceedings. Per capita payments from the Funds are prohibited.

Payments from the trust funds to either Tribe could not be used as a basis for reducing or denying any service or program to which the Tribe or a tribal member is otherwise entitled, for subjecting the Tribe or a tribal member to any Federal or State income tax; or for affecting Pick-Sloan Missouri River power rates. Finally, once the tribal trust funds have been fully capitalized, S. 434 would extinguish all Yankton and Santee Sioux tribal claims against the United States for losses related to the construction of Fort Randall and Gavins Point dams and reservoirs.

LEGISLATIVE HISTORY

On May 27, 1999, during the 106th Congress, Senator Daschle of South Dakota and Senator Kerrey of Nebraska introduced S. 1148 as the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska Development Trust Fund Act, which was referred to the Committee on Indian Affairs. Senator Johnson of South Dakota and Senator Hagel of Nebraska were added as cosponsors. The Committee held a hearing on S. 1148 on May 17, 2000. The Department of the Interior witness expressed the Administration's support for the bill if it were amended to address concerns regarding the manner in which the proposed trust funds would be funded, per capita payments, and waiver of claims. Both Tribes testified in strong support of the legislation.

On June 21, 2000, the Committee on Indian Affairs considered and adopted an amendment-in-the-nature-of-a-substitute to S. 1148 on behalf of the bill's sponsors. The substitute included changes that (1) provide for capitalizing the trust funds from the General Fund of the Treasury, with interest, on the first day after the 11th year after the date of enactment; (2) prohibit per capita payments from the trust funds; (3) extinguish all tribal claims for losses related to construction of the two dams once the tribal trust funds have been fully capitalized; (4) require the tribes to consult with the Secretaries of Interior and Health and Human Services in preparing plans to use the trust funds; and, (5) include plan activities under existing requirements of the Office of Management and Budget for annual audits of such activities and require audit determinations to be published with tribal council proceedings. These changes addressed the concerns expressed by the Department of the Interior in its testimony and were acceptable to the Tribes. However, S. 1148 was not enacted into law.

S. 434 was introduced on March 1, 2001, by Senator Thomas A. Daschle, for himself, Senator Tim Johnson, and Senator Chuck Hagel, and was referred to the Committee on Indian Affairs. Senator E. Benjamin Nelson was subsequently added as a cosponsor. S. 434 is similar to S. 1148, but differs from it in that no compensation is provided for certain items included in the earlier bill (the use value of land on the reservation of the Yankton Sioux Tribe lost to erosion since 1953, and the loss value of Niobrara Island, located in the vicinity of the Santee Sioux Tribe Indian Reservation) and the amount of compensation to each Tribe is reduced accordingly. On March 21, 2002, the Committee on Indian Affairs, by voice vote, ordered the bill favorably reported to the Senate,

with the recommendation that the Senate do pass S. 434 as reported. The Committee has made certain technical amendments to the bill.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on March 21, 2002, approved S. 434 by voice vote and ordered the bill reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section cites the short title of S. 434 as the “Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act”.

Section 2—Findings

This section sets forth ten Congressional findings:

The first finding is that by enacting the Flood Control Act of 1944, Congress approved the Pick-Sloan Missouri River Basin program to promote the general economic development of the United States, to provide for irrigation above Sioux City, Iowa, to protect urban and rural areas from devastating floods of the Missouri River, and for other purposes.

The second findings is that the water impounded for the Fort Randall and Gavins Point projects of the Pick-Sloan program inundated the fertile, wooded bottom lands along the Missouri River that constituted the most productive agricultural and pastoral lands of, and the homeland of, the members of the Yankton Sioux Tribe and the Santee Sioux Tribe.

The third findings is that the Fort Randall project, including the Fort Randall Dam and Reservoir, overlies the western boundary of the Yankton Sioux Indian Reservation.

The fourth finding is that the Gavins Point project, including the Gavins Point Dam and Reservoir, overlies the eastern boundary of the Santee Sioux Tribe Indian Reservation.

The fifth finding is that although the Fort Randall and Gavins Point projects are major components of the Pick-Sloan program, and contribute to the economy of the United States by generating a substantial quantity of hydropower and impounding a substantial amount of water, the reservations of the Yankton Sioux Tribe and the Santee Sioux Tribe remain undeveloped.

The sixth finding is that the United States Army Corps of Engineers took the Indian lands used for the Fort Randall and Gavins Point projects by condemnation proceedings.

The seventh finding is that the Federal Government did not give the Yankton Sioux Tribe and the Santee Sioux Tribe an opportunity to receive compensation for direct damages from the Pick-Sloan program, even though the Federal Government gave five Indian tribes on reservations upstream from the Yankton Sioux Tribe and Santee Sioux Tribe such an opportunity.

The eighth finding is that the Yankton Sioux Tribe and the Santee Sioux Tribe did not receive just compensation for the taking through condemnation of their productive agricultural lands referred to in the sixth finding.

The ninth finding is that the settlement agreement that the United States entered into with the Yankton Sioux Tribe and the Santee Sioux Tribe to provide compensation for the taking by condemnation referred to in the sixth finding did not take into account the increase in property values over the years between the date of taking and the date of settlement.

The tenth finding states that in addition to the financial compensation provided under the settlement agreements referred to in the ninth finding, (A) the Yankton Sioux Tribe should receive \$23,023,743 for the loss value of 2,851.40 acres of land taken for the Fort Randall Dam and Reservoir, and (B) the Santee Sioux Tribe should receive \$4,789,010 for the loss value of 593.1 acres of land near the Santee village.

Section 3—Definitions

This section provides definitions for the terms “Indian Tribe”; “Santee Sioux Tribe”; and “Yankton Sioux Tribe”.

Section 4—Yankton Sioux Tribe Development Trust Fund

Subsection (a) provides for the establishment in the United States Treasury of a fund to be known as the “Yankton Sioux Tribe Development Trust Fund” (“Fund”) that shall consist of any amounts deposited into it pursuant to this Act.

Subsection (b) provides that on the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (a) \$23,023,743, together with an additional amount that equals the amount of interest that would have accrued on this amount if it had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

Subsection (c) requires the Secretary of the Treasury to invest that portion of the Fund that in his judgment is not required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The Secretary of the Treasury shall deposit interest resulting from such investments into the Fund.

Subsection (d)(1) provides that, beginning on the first day of the 11th fiscal year after the date of enactment of this Act, and on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into the Fund for that fiscal year and transfer that amount to the Secretary of the Interior for use, without fiscal year limitation, in accordance with paragraph (d)(2).

Subsection (d)(2) provides that the Secretary of the Interior shall use the amounts transferred under subsection (d)(1) only for the purpose of making payments to the Yankton Sioux Tribe as such payments are requested by the Tribe by tribal resolution, but only after the Tribe has adopted a tribal plan under section 6; funds so transferred may be expended only to carry out projects and programs under the tribal plan.

Subsection (e) bars the Secretary of the Treasury from transferring or withdrawing any amount deposited under subsection (b) of this section except as provided in subsections (c) and (d)(1) of this section.

Section 5—Santee Sioux Tribe Development Trust Fund

Subsection (a) provides for the establishment in the United States Treasury of a fund to be known as the “Santee Sioux Tribe Development Trust Fund” (“Fund”) that shall consist of any amounts deposited into it pursuant to this Act.

Subsection (b) provides that on the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (a) \$4,789,010, together with an amount of interest that equals the amount of interest that would have accrued on this amount if such amount had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

Subsection (c) requires the Secretary of the Treasury to invest that portion of the Fund that in his judgment is not required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The Secretary of the Treasury shall deposit interest resulting from such investments into the Fund.

Subsection (d)(1) provides that, beginning on the first day of the 11th fiscal year after the date of enactment of this Act, and on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into the Fund for the fiscal year and transfer that amount of the Secretary of the Interior for use, without fiscal year limitation, in accordance with subsection (d)(2).

Subsection (d)(2) provides that the Secretary of the Interior shall use the amounts deposited under subsection (d)(1) only for the purpose of making payments to the Santee Sioux Tribe as such payments are requested by the Tribe by tribal resolution, but only after the Tribe has adopted a tribal plan under section 6, and provides that funds so transferred may be expended only to carry out projects and programs under the tribal plan.

Subsection (e) bars the Secretary of the Treasury from transferring or withdrawing any amount deposited into the Fund under subsection (b) of this section except as provided in subsections (c) and (d)(1) of this section.

Section 6—Tribal plans

Subsection (a) provides that, not later than 24 months after the date of enactment of this Act, the tribal councils of the Yankton Sioux and Santee Sioux Tribes shall each prepare a plan (tribal plan) for the use of the payments made to each tribe under sections 4(d) or 5(d) of this Act.

Subsection (b) requires that each tribal plan shall provide for the manner in which the tribe shall expend payments made to the

tribe under section 4(d) or 5(d) to promote (1) economic development, (2) infrastructure development, (3) educational health, recreational, and social welfare objectives of the tribe and its members, or (4) any combination of such activities.

Subsection (c)(1) provides that the tribal councils of the Yankton Sioux and Santee Sioux Tribes shall make copies of their respective plans available to their members for review and comment before the tribal plan becomes final, in accordance with procedures established by the tribal council.

Subsection (c)(2) provides that each tribal council may, on an annual basis, revise and update its tribal plan. In revising the tribal plan, the tribal council shall provide the members of the tribe opportunity to review and comment on any proposed revision.

Subsection (c)(3) requires each tribal council to consult with the Secretary of the Interior and the Secretary of Health and Human Services in preparing its tribal plan and any revisions to update the plan.

Subsection (c)(4)(A) provides that the activities of the tribes in carrying out their respective tribal plans shall be audited as part of the annual single-agency audit that the tribes are required to prepare pursuant to the Office of Management and Budget Circular A-133.

Subsection (c)(4)(B) requires the auditors to determine whether funds received by each tribe for the period covered by the audits were expended to carry out the respective tribal plans in a manner consistent with this section, and to include such determinations in the written findings of the audits.

Subsection (c)(5)(C) requires that a copy of the written findings of the audits shall be inserted in the published minutes of each tribal council's proceedings for the session at which the audit is presented to each council.

Subsection (d) prohibits any portion of any payment made under this Act from being distributed to any member of the Yankton Sioux Tribe or the Santee Sioux Tribe on a per capita basis.

Section 7—Eligibility of tribe for certain programs and services

Subsection (a) declares that no payment made to the Yankton Sioux Tribe or the Santee Sioux Tribe pursuant to this Act shall result in the reduction or denial of any service or program to which, pursuant to Federal law, the Yankton Sioux Tribe or Santee Sioux Tribe is otherwise entitled because of the status of the tribe as a Federally-recognized Indian tribe, or any individual who is a member of either tribe because of that individual's status as a tribal member.

Subsection (b) provides that no payment made pursuant to this Act shall be subject to any Federal or State income tax.

Subsection (c) provides that no payment made pursuant to this Act shall affect Pick-Sloan Missouri River Basin power rates.

Section 8—Statutory construction

This section provides that nothing in this Act may be construed as diminishing or affecting any water rights of an Indian tribe, except as specifically provided in another provision of this Act, any treaty right that is in effect on the date of enactment of this Act, or any authority of the Secretary of the Interior or the head of any

other Federal agency under a law in effect on the date of enactment of this Act.

Section 9—Authorization of appropriations

This section authorizes to be appropriated such sums as are necessary to carry out this Act, including such sums as may be necessary for the administration of the Yankton Sioux Tribe Development Trust Fund under section 4 and the Santee Sioux Tribe Development Trust Fund under section 5.

Section 10—Extinguishment of claims

This section provides that all monetary claims that the Yankton Sioux Tribe or the Santee Sioux Tribe has or may have against the United States for loss of value or use of land related to lands described in section 2(a)(10) resulting from the Fort Randall and Gavins Point projects of the Pick-Sloan Missouri River Basin program shall be extinguished upon the deposit of funds under sections 4(b) and 5(b) of this Act.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 434, as provided by the Congressional Budget Office, is set forth below.

S. 434—Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act

Summary: S. 434 would compensate the Yankton Sioux Tribe and the Santee Sioux Tribe for the taking of certain tribal lands by the Federal Government. CBO estimates that enacting this bill would have no significant impact on the Federal budget over the 2002–2012 period. Enacting S. 434 would increase direct spending by an estimated \$49 million, but pay-as-you-go procedures would not apply because the spending would not occur until fiscal year 2013.

S. 434 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Tribal governments might incur some costs as a result of the bill's enactment, but those costs would be voluntary.

Estimated cost to the Federal Government: CBO estimates that enacting S. 434 would result in direct spending of \$49 million in 2013, but would have no significant impact on the Federal budget before then. For this estimate, CBO assumes that S. 434 will be enacted by the end of fiscal year 2002.

S. 434 would provide compensation to the two tribes for the taking of 3,445 acres of land by the Federal Government for various water projects. The bill would establish the Yankton Sioux Tribe Development Trust Fund and the Santee Sioux Tribe Development Trust Fund and would direct the Secretary of the Treasury to deposit a total of \$28 million into interest-bearing accounts to benefit the tribes on the first day of the 11th fiscal year that begins after the date of enactment. An additional deposit equal to the amount of interest that the fund would have earned if the fund had been capitalized and invested in 2003 would be made at the same time. CBO estimates that this additional payment would be \$21 million, for total deposit of \$49 million in 2013. Once the Secretary pays these amounts, any monetary claims the tribes may have against

the United States regarding the affected lands would be extinguished. Starting in 2013, the bill would allow the tribes to spend amounts equivalent to the annual interest earned on the fund pursuant to a tribal spending plan.

Payments to certain trust funds that are held and managed in a fiduciary capacity by the Federal Government on behalf of Indian tribes are treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited to the fund in 2013 would be recorded as budget authority and outlays in that year. Because the trust funds would be nonbudgetary, the subsequent use of such funds by the tribe would not affect Federal outlays.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. For the purposes of enforcing pay-as-you-go procedures, only the effects through 2006 are counted. CBO estimates that enacting S. 434 would not affect direct spending or receipts in any of those years.

Intergovernmental and private-sector impact: S. 434 contains no intergovernmental or private-sector mandates as defined in UMRA, but it would impose some conditions on the affected tribes for receipt of Federal funds. The bill would require the tribes to prepare and adopt plans for using payments from the trust fund and to obtain audits of their expenditures. The tribes would receive significant benefits from enactment of this legislation.

Estimate prepared by: Federal costs: Lanette J. Walker; impact on State, local, and tribal governments: Marjorie Miller; impact on the private sector: Cecil McPherson.

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

EXECUTIVE COMMUNICATIONS

No executive communications have been received in the 107th Congress. The views of the Administration on S. 1148 were set forth in the Committee's report on that bill, Report 106-367 (August 25, 2000).

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that the regulatory and paperwork impact of S. 434 will be minimal.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 434 will not result in any changes in existing law.