

**TESTIMONY**

**ON S. 1530**

**TRIBAL PARITY ACT:**

**TO PROVIDE COMPENSATION TO THE LOWER BRULE  
AND CROW CREEK SIOUX TRIBES OF SOUTH DAKOTA  
FOR DAMAGE TO TRIBAL LAND CAUSED BY PICK-  
SLOAN PROJECTS ALONG THE MISSOURI RIVER**

**BEFORE THE**

**COMMITTEE ON INDIAN AFFAIRS**

**U. S. SENATE**

**JUNE 15, 2004**

**SUBMITTED BY**

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Mr. Chairman and members of the Committee, I am grateful to have the opportunity to provide testimony today in regard to Senate Bill S. 1530, the Tribal Parity Act. With your permission, Mr. Chairman, I would like to provide my written statement for the hearing record, along with my report entitled *Parity Compensation for Losses from Missouri River Pick-Sloan Dam Projects*, and then summarize my findings.

I am Mike Lawson and I am a historian and a senior associate with Morgan Angel & Associates, a public policy consulting firm here in Washington. I have considerable specific knowledge about the impact on Indian tribes of the six dams constructed by the U.S. Army Corps of Engineers on the main-stem of the Missouri River as part of the Missouri River Basin Development Program (better known as the Pick-Sloan Plan). I first began studying these impacts more than thirty years ago when I was a graduate student in Nebraska. In my book, *Dammed Indians*, first published in 1982, I explored in detail the development of the Pick-Sloan Plan and the negotiations that took place between the tribes and the Federal government. I measured the physical, aesthetic, cultural, and psychological damages the tribes suffered against the benefits they received and concluded that the critical losses far exceeded the minimal gains

My research has been used in part to document and support all of the legislation that Congress has enacted since 1992 to provide additional compensation to the Missouri River Sioux tribes for the loss of reservation resources and infrastructure caused by the Pick-Sloan dam projects.

I have been asked to review the proposed Tribal Parity Act in light of the previous compensation Congress has provided to the Lower Brule and Crow Creek Sioux Tribes of South Dakota. I have also been requested to determine, based on methodology approved by the General Accounting Office, whether additional compensation for these two tribes is justified and appropriate. I have reviewed all of the compensation legislation that Congress has enacted for the Missouri River tribes. My review has

included, but has not been limited to, the additional compensation provided by Congress to the Three Affiliated Tribes and the Standing Rock Sioux Tribe in 1992 and the Cheyenne River Sioux Tribe in 2000 and the GAO reports underpinning that legislation. I have concluded, based on my review, that additional compensation for the Lower Brule and Crow Creek Sioux Tribes is warranted and required if the United States is to treat all the Missouri River tribes equally. I therefore support S. 1530 as being a consistent, accurate, and a fair method by which the Federal Government can provide parity to all the Missouri River tribes.

The Lower Brule and Crow Creek Sioux Tribes were deprived of a total of approximately 38,000 acres of their best reservation lands as a result of the development of the Fort Randall and Big Bend dam projects. These two tribes have never fully recovered from losing their most productive land and resources and having to relocate a majority of their tribal members.

The damages suffered by the Lower Brule and Crow Creek Sioux Tribes as a result of these projects are comparable to the impacts of the Garrison Dam on the Three Affiliated Tribes of Fort Berthold and the Oahe Dam on the Standing Rock and Cheyenne River Sioux Tribes. This is especially true in regard to the loss of natural resources and reservation infrastructure.

The Lower Brule and Crow Creek Sioux Tribes seek final compensation for damages caused to their reservations by the two dam projects and parity with the final settlements provided by Congress to the Three Affiliated Tribes in 1992 and the Cheyenne River Sioux Tribe in 2000. These settlements were based on the methodology for determining fair compensation first proposed by the General Accounting Office in 1991. A GAO report of that year noted that “the Tribes may not have been willing sellers of the land at the amount of compensation authorized by Congress.” The GAO proposed that Congress, as a method of determining a range of fair compensation, “start with the difference between the compensation the Tribes believed was warranted at the time of the

taking and the compensation that was appropriated by Congress.”

The compensation suggested by the GAO was to take the difference between the amounts requested by the Tribes and the amounts appropriated by Congress and add to that difference a further valuation within two possible ranges. The lower range of these valuations was based on the average annual rate of inflation. The higher range of valuation was based the rate of average annual rate of interest that would have accrued over time had the amount of the difference been invested in AAA corporate bonds as of the date of settlement. AAA is the highest grade of corporate bonds in the estimate of bond rating services such as Moody’s Investment Services.

The 102<sup>nd</sup> Congress followed the GAO’s compensation formula in 1992 when it enacted Public Law 575. This statute authorized the establishment of a developmental trust fund or Recovery Fund capitalized at \$149.2 million for the Three Affiliated Tribes of North Dakota. This was approximately the same amount suggested by the GAO as the highest range of valuation based on the average annual interest rate on AAA corporate bonds.

Public Law 102-575 also appropriated a \$90.6 million recovery fund for the Standing Rock Sioux. This amount represented more than the lowest range of valuation suggested by the GAO, based on the rate of inflation, but was considerably less than the highest range based on corporate bond interest rates.

Public Law 102-575 acknowledged for the first time that the United States Government had not adequately compensated Tribes for the taking of their land and resources for the Pick-Sloan projects. It also established as precedent that the impacted Tribes were thus entitled to additional compensation.

Accordingly, in 1996, Congress passed PL 104-223, which established a \$27.5 million recovery fund for the Crow Creek Sioux Tribe. In 1997, Congress likewise enacted PL 105-132, which created a \$39.3 million trust fund for the Lower Brule Sioux Tribe. However, the amount of the recovery funds for the Crow Creek and Lower Brule

Tribes were not based on what can be termed the “range of difference” formula suggested by the GAO in 1991. Rather, they were based on the “per-acre value” of the 1992 compensation for the Three Affiliated Tribes and the Standing Rock Sioux. This was calculated as a value of approximately \$1,763 per acre lost.

The \$1,763 per acre valuation was also used as the basis of compensation in 2002 when Congress enacted PL 107-331. This statute established a \$23 million development trust fund for the Yankton Sioux Tribe of South Dakota and a \$4.7 million trust fund for the Santee Sioux Tribe of Nebraska. These amounts were calculated based on the valuation of \$1,763 per acre multiplied by 438 percent. This multiplier represented the average amount above property damages that five other Missouri River Tribes received from Congress between 1947 and 1962 for severance damages and the rehabilitation of their reservations. The Yankton and Santee Sioux Tribes had not received funds for these purposes as part of their initial settlements. These Tribes were not eligible for the “range of difference” compensation suggested by the GAO in 1991 because they did not propose an overall asking price to the Government.

The 106<sup>th</sup> Congress returned to the GAO’s “range of difference” formula in 2000 when it approved Public Law 511. This statute appropriated \$290.7 million for the establishment of a recovery fund for the Cheyenne River Sioux Tribe of South Dakota. In common with the settlement provided to the Three Affiliated Tribes in 1992, this additional compensation was based on the average annual interest rate earned on investments in AAA corporate bonds. The GAO had reiterated its “range of difference” formula in a 1998 report it prepared regarding additional compensation for the Cheyenne River Sioux.

The Lower Brule and Crow Creek Sioux Tribes are requesting that Congress extend to them the same method of determining fair compensation based on the GAO’s “range of difference” formula calculated at the AAA corporate bond interest rate.

Congress provided initial compensation to the Lower Brule and Crow Creek

Sioux Tribes for their Fort Randall damages in 1958 and for their Big Bend losses in 1962. The Tribes did not consider this compensation to be adequate, because the settlements provided by Congress were significantly less than the Tribes' own estimates of damages. The Lower Brule Sioux Tribe requested a total of \$11.4 million in compensation, but received only \$4.3 million from Congress. The Crow Creek Sioux Tribe likewise asked for \$10 million in compensation, but was given just \$5.9 million

The value in 2004 dollars of the total differences between the amounts the Lower Brule Sioux Tribe believed were warranted for its damages in regard to the Fort Randall and Big Bend projects and the initial compensation provided by Congress in 1958 and 1962, when calculated as an investment in prime corporate bonds, is approximately \$186,382,140 (see Table below). If one subtracts from the present valuation of the total differences (\$176,398,012.25) the \$39,300,000 provided by Congress to the Tribe as additional compensation for Fort Randall and Big Bend damages in 1997, it brings the present valuation to \$147,082,140 (see Table below). This is the amount requested by the Lower Brule Sioux Tribe as further compensation from Congress in order to provide it with a final settlement equitable to that provided previously by Congress to the Three Affiliated Tribes and the Cheyenne River Sioux Tribe.

The application of the AAA corporate bond interest rate to the total differences between the amounts requested by the Crow Creek Sioux Tribe and those authorized by Congress yields a valuation in 2004 dollars of approximately \$105,917,853 (see Table below). If the \$27,500,000 the Tribe received from Congress as additional compensation from Congress in 1996 is subtracted from the present valuation of total differences (\$100,244,040.77), the value in 2003 dollars becomes \$78,417,853 (see Table below). This is the amount requested by the Crow Creek Sioux Tribe as further compensation from Congress in order to provide it with a final settlement equitable to that provided by Congress to the Three Affiliated Tribes and the Cheyenne River Sioux Tribe.

The members of the Lower Brule and Crow Creek Sioux Tribes have yet to

receive their fair share of the benefits that were supposed to be provided by the Pick-Sloan Plan, although they suffered a great deal as a result of its implementation. The saga of the Missouri River dams and their impact on the Sioux and other tribes of the Northern Plains region will continue well into the future. It is my conclusion that additional compensation for the Lower Brule and Crow Creek Sioux Tribes is appropriate and necessary if ever the United States is to provide equity to the Missouri River tribes. The members of these tribes sacrificed much so that many other citizens of the Northern Plains might enjoy the benefits of increased electrical power, flood control, and recreational opportunities provided by the Pick-Sloan dams. It will always be impossible to ignore or excuse the abuse of Native American rights that has characterized much of the history of Pick-Sloan. However, it is sincerely hoped that the federal government will continue to provide corrective initiatives that will allow this historian to someday write a more optimistic conclusion to the episode as it pertains to the Lower Brule and Crow Creek Sioux Tribes. This can be accomplished by extending to these tribes the benefit of recovery funds that offer parity with those that Congress has previously established for other tribes impacted by the Pick-Sloan dams. I therefore urge the Committee to support S. 1530 and encourage passage of the Tribal Parity Act as a means of providing equity, consistency, and fairness to all Missouri River tribes.

This concludes my remarks. I would be happy to answer any questions you may have.

**Table 1: Basis for Parity Compensation in 2004 Dollars**

<b>TRIBE</b>	<b>Crow Creek</b>	<b>Lower Brule</b>
<b>Fort Randall Damages Difference</b>	\$709,208.61	\$1,553,948.75
<b>Fort Randall Damages Difference in 2004 Dollars*</b>	\$21,211,040.08	\$46,475,562.69
<b>Big Bend Damages Difference</b>	\$447,592.00	\$1,170,667.00
<b>Big Bend Damages Difference in 2004 Dollars*</b>	\$11,282,601.04	\$29,509,394.08
<b>Rehabilitation Difference</b>	\$2,912,811.50	\$4,379,566.00
<b>Rehabilitation Difference in 2004 Dollars*</b>	\$73,424,212.38	\$110,397,182.97
<b>Total Requested by Tribes 1954-1960</b>	\$10,007,226.05	\$11,450,169.75
<b>Total Provided by Congress 1958 and 1962</b>	\$5,937,613.94	\$4,345,988.00
<b>Total Difference</b>	\$4,069,612.11	\$7,104,181.75
<b>Total Provided by Congress 1958, 1962, 1996/1997</b>	\$33,437,613.94	\$43,645,988.00
<b>Total Difference in 2004 Dollars*</b>	\$105,917,853.50	\$186,382,139.60
<b>Minus Amount Provided by Congress, 1996/1997</b>	- \$27,500,000.00	- \$39,300,000.00
<b>Total Parity Compensation Requested**</b>	<b>\$78,417,853.00</b>	<b>\$147,082,140.00</b>

\*Difference in 2004 Dollars is calculated by adding to the principal difference the annual average rate of interest earned on investments in AAA corporate bonds during the time period. This is the same calculating method approved by Congress in providing additional compensation to the Three Affiliated Tribes of Fort Berthold in Public Law 102-575, Title XXXV, October 30, 1992, and the Cheyenne River Sioux Tribe in Public Law 106-511, November 13, 2000. \*\*Rounded to nearest dollar.