

**THE OGLALA SIOUX TRIBE ANGOSTURA
IRRIGATION PROJECT REHABILITATION
AND DEVELOPMENT ACT**

HEARING

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

S. 1996

TO ENHANCE AND PROVIDE TO THE OGLALA SIOUX TRIBE AND
ANGOSTURA IRRIGATION PROJECT CERTAIN BENEFITS OF THE PICK-
SLOAN MISSOURI RIVER BASIN PROGRAM

JUNE 16, 2004
WASHINGTON, DC



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THE OGLALA SIOUX TRIBE ANGOSTURA IRRIGATION PROJECT REHABILITATION AND DEVELOPMENT ACT

WEDNESDAY, JUNE 15, 2004

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senators Inouye and Johnson.

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

Senator INOUE. The Senate Committee on Indian Affairs to order. We are meeting today to discuss S. 1996, the Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act, a bill sponsored by Senator Tom Daschle of South Dakota.

The Angostura Unit is a part of the Missouri River Basin Pick-Sloan Program. It is an irrigation project operated by the Bureau of Reclamation in southwestern South Dakota. This project diverts up to 48,000 acre-feet of water annually from the Cheyenne River to irrigate more than 12,000 acres of farmland in the Angostura Irrigation District.

The Pine Ridge Indian Reservation, home of the Oglala Sioux Tribe, is located on the Cheyenne River downstream of the Angostura Unit. The tribe receives no economic benefit from the operation of the Unit, but does suffer significant economic, environmental and ecological harm because of the greatly reduced flows in the Cheyenne River.

According to the testimony that has been submitted to the committee for this hearing, the territory of the Oglala Sioux Tribe was first recognized by the United States in the treaty of Fort Laramie of 1851. Under the Winters Doctrine established by the U.S. Supreme Court, the reservation of lands of this tribe and for other tribes includes the right to a sufficient amount of water to fulfill the purposes for which the reservation was established.

Typically, these reserve water rights have a priority date that coincides with the date of establishment of a tribe's reservation. Thus, the water rights of the Oglala Sioux Tribe predate the formation of the Angostura Irrigation Project by nearly 100 years. Nonetheless, the operation of the Angostura Irrigation Project by the In-

terior Department's Bureau of Reclamation provides for no release of water for instream flows of the Cheyenne River upon which the survival of fish and wildlife and tribal agriculture depends.

In August 2002, the final environmental impact statement for the Angostura Unit was completed. That final EIS documented substantially diminished water flows in the Cheyenne River, as well as serious impacts on water quality. These circumstances have led to disputes between the tribe and non-Indian water users over the continued operation of the Angostura Unit.

S. 1996 is intended to resolve those disputes. The bill has two parts. Title I provides funds to upgrade the efficiency of the irrigation works associated with the Irrigation District so that the water thus conserved can be returned to the river for the benefit of the tribe and other downstream interests. Title II establishes an economic development fund for the benefit of the tribe.

Because we are advised that certain sections of this bill have yet to be fully developed, the committee would hope that the Interior Department would be willing to work with the committee and the Oglala Sioux Tribe in further refining this measure.

[Text of S. 1996 follows:]

108TH CONGRESS
1ST SESSION

S. 1996

To enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2003

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

A BILL

To enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program.

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 “Oglala Sioux Tribe
5 Angostura Irrigation Project Rehabilitation and Develop-
6 ment Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

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

1 ber 22, 1944 (commonly known as the “Flood Con-
2 trol Act of 1944”) (33 U.S.C. 701–1 et seq.)—

3 (A) to promote the economic development
4 of the United States;

5 (B) to provide for irrigation in regions
6 north of Sioux City, Iowa;

7 (C) to protect urban and rural areas from
8 devastating floods of the Missouri River; and

9 (D) for other purposes;

10 (2) the Angostura Unit—

11 (A) is a component of the Pick-Sloan pro-
12 gram; and

13 (B) provides for—

14 (i) irrigation of 12,218 acres of pro-
15 ductive farm land in the State; and

16 (ii) substantial recreation and fish
17 and wildlife benefits;

18 (3) the Commissioner of Reclamation has deter-
19 mined that—

20 (A) the national economic development
21 benefits from irrigation at the Angostura Unit
22 total approximately \$3,410,000 annually; and

23 (B) the national economic development
24 benefits of recreation at Angostura Reservoir
25 total approximately \$7,100,000 annually;

1 (4) the Angostura Unit impounds the Cheyenne
2 River 20 miles upstream of the Pine Ridge Indian
3 Reservation in the State;

4 (5)(A) the Reservation experiences extremely
5 high rates of unemployment and poverty; and

6 (B) there is a need for economic development
7 on the Reservation;

8 (6) the national economic development benefits
9 of the Angostura Unit do not extend to the Reserva-
10 tion;

11 (7) the Angostura Unit may be associated with
12 negative affects on water quality and riparian vege-
13 tation in the Cheyenne River on the Reservation;

14 (8) rehabilitation of the irrigation facilities at
15 the Angostura Unit would—

16 (A) enhance the national economic develop-
17 ment benefits of the Angostura Unit; and

18 (B) result in improved water efficiency and
19 environmental restoration benefits on the Res-
20 ervation; and

21 (9) the establishment of a trust fund for the
22 Oglala Sioux Tribe would—

23 (A) produce economic development benefits
24 for the Reservation comparable to the benefits
25 produced at the Angostura Unit; and

1 (B) provide resources that are necessary
2 for restoration of the Cheyenne River corridor
3 on the Reservation.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) **ANGOSTURA UNIT.**—The term “Angostura
7 Unit” means the irrigation unit of the Angostura ir-
8 rigation project developed under the Act of August
9 11, 1939 (16 U.S.C. 590y et seq.).

10 (2) **FUND.**—The term “Fund” means the Og-
11 lala Sioux Tribal Development Trust Fund estab-
12 lished by section 201(a).

13 (3) **PICK-SLOAN PROGRAM.**—The term “Pick-
14 Sloan program” means the Pick-Sloan Missouri
15 River basin program approved under the Act of De-
16 cember 22, 1944 (commonly known as the “Flood
17 Control Act of 1944”) (33 U.S.C. 701–1 et seq.).

18 (4) **PLAN.**—The term “plan” means the devel-
19 opment plan developed by the Tribe under section
20 201(f).

21 (5) **RESERVATION.**—The term “Reservation”
22 means the Pine Ridge Indian Reservation in the
23 State.

24 (6) **SECRETARY.**—The term “Secretary” means
25 the Secretary of the Interior.

1 (7) STATE.—The term “State” means the State
2 of South Dakota.

3 (8) TRIBAL COUNCIL.—The term “Tribal Coun-
4 cil” means the governing body of the Tribe.

5 (9) TRIBE.—The term “Tribe” means the Og-
6 lala Sioux Tribe of South Dakota.

7 **TITLE I—REHABILITATION**

8 **SEC. 101. REHABILITATION OF FACILITIES AT ANGOSTURA** 9 **UNIT.**

10 The Secretary may carry out the rehabilitation and
11 improvement of the facilities at the Angostura Project de-
12 scribed in the report entitled “Angostura Unit Contract
13 Negotiation and Water Management Final Environmental
14 Impact Statement”, dated August 2002.

15 **SEC. 102. DELIVERY OF WATER TO PINE RIDGE INDIAN** 16 **RESERVATION.**

17 The Secretary shall provide for—

18 (1) to the maximum extent practicable, the de-
19 livery of water saved through the rehabilitation and
20 improvement of the facilities of the Angostura Unit
21 to the Pine Ridge Indian Reservation; and

22 (2) the use of that water for purposes of envi-
23 ronmental restoration on the Pine Ridge Indian Res-
24 ervation.

1 **SEC. 103. EFFECT ON OTHER LAW.**

2 Nothing in this title affects—

3 (1) any reserved water rights or other rights of
4 the Tribe;

5 (2) any service or program to which, in accord-
6 ance with Federal law, the Tribe, or an individual
7 member of the Tribe, is entitled; or

8 (3) any water rights in existence on the date of
9 enactment of this Act held by any person or entity.

10 **SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

11 There is authorized to be appropriated such sums as
12 are necessary to carry out this title, to remain available
13 until expended.

14 **TITLE II—DEVELOPMENT**

15 **SEC. 201. OGLALA SIOUX TRIBAL DEVELOPMENT TRUST**
16 **FUND.**

17 (a) OGLALA SIOUX TRIBAL DEVELOPMENT TRUST
18 FUND.—There is established in the Treasury of the
19 United States a fund to be known as the “Oglala Sioux
20 Tribal Development Trust Fund”, consisting of any
21 amounts deposited in the Fund under this title.

22 (b) FUNDING.—On the first day of the 11th fiscal
23 year that begins after the date of enactment of this Act,
24 the Secretary of the Treasury shall, from the General
25 Fund of the Treasury, deposit in the Fund—

1 (1) such sums as the Secretary of the Treasury,
2 in consultation with the Secretary, the Secretary of
3 Health and Human Services, and the Tribal Council,
4 are necessary to carry out development under this
5 title; and

6 (2) the amount that equals the amount of inter-
7 est that would have accrued on the amount de-
8 scribed in paragraph (1) if that amount had been in-
9 vested in interest-bearing obligations of the United
10 States, or in obligations guaranteed as to both prin-
11 cipal and interest by the United States, on the first
12 day of the first fiscal year that begins after the date
13 of enactment of this Act and compounded annually
14 thereafter.

15 (c) INVESTMENT OF TRUST FUND.—

16 (1) IN GENERAL.—The Secretary of the Treas-
17 ury shall invest such portion of the Fund as is not,
18 in the judgment of the Secretary of the Treasury,
19 required to meet current withdrawals.

20 (2) ACQUISITION OF OBLIGATIONS.—Such in-
21 vestments may be made only in interest-bearing obli-
22 gations of the United States or in obligations guar-
23 anteed as to both principal and interest by the
24 United States.

1 (3) INTEREST.—The Secretary of the Treasury
2 shall deposit interest resulting from such invest-
3 ments into the Fund.

4 (d) PAYMENT OF INTEREST TO TRIBE.—

5 (1) WITHDRAWAL OF INTEREST.—Beginning on
6 the first day of the 11th fiscal year after the date
7 of enactment of this Act and, on the first day of
8 each fiscal year thereafter, the Secretary of the
9 Treasury shall transfer the aggregate amount of in-
10 terest deposited into the Fund for the fiscal year to
11 the Secretary for use in accordance with paragraph
12 (3).

13 (2) AVAILABILITY.—Each amount transferred
14 under paragraph (1) shall be available without fiscal
15 year limitation.

16 (3) PAYMENTS TO TRIBE.—

17 (A) IN GENERAL.—The Secretary shall use
18 the amounts transferred under paragraph (1)
19 only for the purpose of making payments to the
20 Tribe, as such payments are requested by the
21 Tribe pursuant to tribal resolution.

22 (B) LIMITATION.—Payments may be made
23 by the Secretary of the Interior under subpara-
24 graph (A) only after the Tribe has adopted a
25 plan under subsection (f).

1 (C) USE OF PAYMENTS BY TRIBE.—The
2 Tribe shall use the payments made under sub-
3 paragraph (B) only for carrying out projects
4 and programs under the plan prepared under
5 subsection (f).

6 (e) LIMITATION ON TRANSFERS AND WITHDRAW-
7 ALS.—Except as provided in subsections (c) and (d)(1),
8 the Secretary of the Treasury shall not transfer or with-
9 draw any amount deposited under subsection (b).

10 (f) DEVELOPMENT PLAN.—

11 (1) IN GENERAL.—Not later than 18 months
12 after the date of enactment of this Act, the govern-
13 ing body of the Tribe shall prepare a plan for the
14 use of the payments to the Tribe under subsection
15 (d).

16 (2) CONTENTS.—The plan shall provide for the
17 manner in which the Tribe shall expend payments to
18 the Tribe under subsection (d) to promote—

19 (A) economic development;

20 (B) infrastructure development;

21 (C) the educational, health, recreational,
22 and social welfare objectives of the Tribe and
23 members of the Tribe; or

24 (D) any combination of the activities de-
25 scribed in subparagraphs (A) through (C).

1 (3) PLAN REVIEW AND REVISION.—

2 (A) IN GENERAL.—The Tribal Council
3 shall make available for review and comment by
4 the members of the Tribe a copy of the plan be-
5 fore the plan becomes final, in accordance with
6 procedures established by the Tribal Council.

7 (B) UPDATING OF PLAN.—

8 (i) IN GENERAL.—The Tribal Council
9 may, on an annual basis, revise the plan to
10 update the plan.

11 (ii) REVIEW AND COMMENT.—In re-
12 vising the plan, the Tribal Council shall
13 provide the members of the Tribe oppor-
14 tunity to review and comment on any pro-
15 posed revision to the plan.

16 (C) CONSULTATION.—In preparing the
17 plan and any revisions to update the plan, the
18 Tribal Council shall consult with the Secretary
19 and the Secretary of Health and Human Serv-
20 ices.

21 (4) AUDIT.—

22 (A) IN GENERAL.—The activities of the
23 Tribe in carrying out the plan shall be audited
24 as part of the annual single-agency audit that
25 the Tribe is required to prepare pursuant to the

1 Office of Management and Budget circular
2 numbered A-133.

3 (B) DETERMINATION BY AUDITORS.—The
4 auditors that conduct the audit under subpara-
5 graph (A) shall—

6 (i) determine whether funds received
7 by the Tribe under this section for the pe-
8 riod covered by the audit were expended to
9 carry out the plan in a manner consistent
10 with this section; and

11 (ii) include in the written findings of
12 the audit the determination made under
13 clause (i).

14 (C) INCLUSION OF FINDINGS WITH PUBLI-
15 CATION OF PROCEEDINGS OF TRIBAL COUN-
16 CIL.—A copy of the written findings of the
17 audit described in subparagraph (A) shall be in-
18 serted in the published minutes of the Tribal
19 Council proceedings for the session at which the
20 audit is presented to the Tribal Council.

21 (g) PROHIBITION OF PER CAPITA PAYMENTS.—No
22 portion of any payment made under this title may be dis-
23 tributed to any member of the Tribe on a per capita basis.

1 **SEC. 202. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS**
2 **AND SERVICES.**

3 No payment made to the Tribe under this title shall
4 result in the reduction or denial of any service or program
5 with respect to which, under Federal law—

6 (1) the Tribe is otherwise entitled because of
7 the status of the Tribe as a federally recognized In-
8 dian tribe; or

9 (2) any individual who is a member of the Tribe
10 is entitled because of the status of the individual as
11 a member of the Tribe.

12 **SEC. 203. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated such sums
14 as are necessary to pay the administrative expenses of the
15 Fund.

○

Senator INOUE. May I call upon Senator Tim Johnson.

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

Senator JOHNSON. Thank you, Senator Inouye. I thank you and Chairman Campbell for your willingness to hold this important hearing today pertaining to S. 1996, the Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act, a bill introduced by my senior Senator, Senator Tom Daschle, and co-sponsored by myself.

I would also like to recognize and thank the Oglala Sioux tribal president, John Yellow Bird Steele, for coming to testify today, and for his leadership on this issue. Accompanying President Steele here today are Oglala Sioux tribal council members Valerie Killsmall Janis, Gary Janis, Cora Hildebrand Whiting, and Carol O'Rourke. I welcome the Oglala Sioux tribal council members and other South Dakotans that are joining us here this afternoon. I appreciate all the hard work that you are doing on behalf of the Oglala people.

The Angostura legislation addresses the legal and equitable claims of the Oglala Sioux Tribe relating to the Angostura Unit's environmental impacts in the Cheyenne River watershed on the Pine River Reservation. In August 2002, Reclamation released its final environmental impact statement, Angostura Unit Contract Negotiation and Water Management. The final EIS verifies that the water flows, water quality and riparian habitat below Angostura have diminished substantially. The Angostura Unit is located 15 miles from the Pine Ridge Reservation, and the project has impacted the environmental and economic resources of the Oglala Sioux Tribe.

Proposed amendments call for a \$92.5-million trust fund to be set up to make the tribe whole. I am supportive of this legislation and I look forward to working with the tribe as this bill moves forward.

I want to conclude by thanking Senator Daschle for introducing this legislation. I have been known to say that our tribes have no better friend in Washington than my friend and colleague, Tom Daschle. I look forward to working with Senator Daschle on this legislation. I know that it was his intent to lead off the testimony here today. Hopefully, he will be able to join us, but as you know, he is balancing demands on his time on the floor with the Defense authorization bill and other matters all going on simultaneously. I will leave it to the chairman in which order to call witnesses, but I know that Senator Daschle regards this legislation as among his very highest priorities.

Thank you, Mr. Vice Chairman.

Senator INOUE. I can assure you that Senator Daschle will be here. He is at this moment presiding over a matter of great importance and some sensitivity. I have been instructed to move ahead and not to keep you waiting.

With that in mind, I would like to call upon the acting director of Trust Services of BIA, Ross Mooney. Mr. Mooney, welcome, sir.

**STATEMENT OF ROSS MOONEY, ACTING DEPUTY DIRECTOR,
OFFICE OF TRUST SERVICES, BIA, DEPARTMENT OF THE
INTERIOR**

Mr. MOONEY. Good afternoon, Mr. Vice Chairman.

I am pleased to provide the Administration's views on S. 1996, the Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act. This bill would enhance and provide certain project benefits for the Oglala Sioux Tribe in connection with water conservation improvements on the Angostura Irrigation Project.

Title I of this bill would authorize the secretary to rehabilitate and improve the facilities of the project, a component of the larger Pick-Sloan project in the Missouri River Basin. Furthermore, title I would provide that the Secretary shall to the maximum extent practicable deliver water saved through the rehabilitation and improvement of the facilities of the Angostura Project to the Pine Ridge Indian Reservation and provide that the use of that water be used for environmental restoration.

Title II of the bill would create a tribal development trust fund to promote economic development, infrastructure development, and the educational, health, recreational and social welfare objectives of the tribal members. The Administration shares the concern of the tribe about the need to improve economic, educational and health systems on the reservation and will continue to work with the tribe to seek solutions to promote these reforms.

While the Administration has some concerns that are contained in the written testimony, Mr. Chairman, we share the sponsor's goal of finding innovative solutions for economic, education, health, recreational and social welfare improvements on the reservation. The Department stands ready to work with the tribe, this committee and the South Dakota delegation on possible solutions.

This concludes my testimony and I will be happy to respond to questions you may have. Thank you.

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

Senator INOUE. I thank you very much, sir.

My first question is, how many Indian tribes have been affected by the Missouri River Basin Pick-Sloan program? And how many of those tribes have alleged injuries that have not yet been fully addressed by Congress?

Mr. MOONEY. I cannot respond to that, sir, because the Commissioner of Reclamation was unable to make the meeting. But I have been involved with five other tribes, the Cheyenne River, Lower Brule, Standing Rock, some of those other tribes that were more directly impacted by some of the facilities that were constructed as part of the Pick-Sloan project.

Senator INOUE. There are several tribes with alleged injuries.

Mr. MOONEY. Most of the tribes within the Missouri River basin, as I understand it, did have some impacts as a result of the facilities associated with Pick-Sloan.

Senator INOUE. In your written testimony, you state that the Department is not aware of any specific impacts caused by the development of the Angostura Unit. How do you reconcile this statement with the findings of the final environmental impact statement of August 2002 prepared by your own Department, that specifically

documents substantially diminished water flows in the Cheyenne, as well as serious impacts on water quality?

Mr. MOONEY. The EIS was developed by the Bureau of Reclamation, and again, since the Commissioner of Reclamation could not appear at this time, I really cannot respond to that question. I will be glad to take it in writing and we can respond later.

Senator INOUE. Yes; can you provide us with that, sir, your written response? I would appreciate that.

Mr. MOONEY. Yes, Mr. Vice Chairman; I sure can.

Senator INOUE. Your testimony states that the Administration does not support the enactment of legislation mandating that water saved through improved efficiency of the Angostura Unit be applied to environmental restoration on the Pine Ridge Indian Reservation. Does the Department propose any alternative measures to address the economic and ecological injuries the tribe claims to have suffered? Is it the Department's position that no such injuries have been demonstrated?

Mr. MOONEY. I do not believe we put forth that there have been no injuries, but dedicating the water that is saved through efficiencies of the rehabilitation of the project, in putting this in the bill, in a sense circumvents the public interface with the other stakeholders in the area. The way the bill is written, it appears to dedicate this water strictly to the Pine Ridge Reservation without further consultation with these other stakeholders.

Senator INOUE. What do you propose to do with other stakeholders? They have been kept out in the cold up until now. What do you propose to do with them?

Mr. MOONEY. Are you referring to the Oglala Sioux Tribe stakeholders?

Senator INOUE. Of the tribe, yes.

Mr. MOONEY. As I stated in the testimony, we will be glad to work with this committee and the tribe to come to resolution and solutions on these kinds of issues.

Senator INOUE. These tribes have been asking for relief for some time. Have you attempted anything up until now?

Mr. MOONEY. I personally am not aware of any actions that the Commissioner has taken. I am sure he has worked diligently to try to work with the tribes, especially through the EIS process. Any further detail on that, I would have to refer to him.

Senator INOUE. I thank you very much, sir.

May I call upon Senator Johnson.

Senator JOHNSON. Thank you, Senator Inouye.

Mr. Mooney, this the final environmental impact statement for Angostura Unit. Have you read the EIS?

Mr. MOONEY. I have read a brief summary of it, sir, but I have not read the whole EIS.

Senator JOHNSON. Okay. In your statement, you testified that the Secretary currently possesses the authority to rehabilitate the irrigation unit, but on page 24 of the EIS, it states that legislation is required for this. Wouldn't you agree that this presents a discrepancy between your statement and the EIS evaluation?

Mr. MOONEY. Yes, sir; I agree. As you stated, it seems to be a discrepancy.

Senator JOHNSON. You testified that S. 1996 excludes all other stakeholders. As a cosponsor of S. 1996, my staff is engaged in discussions with the Bureau of Reclamation and other stakeholders. Additionally, I know that President John Steele has been in discussion with the Angostura Irrigation District and members of Hot Springs and Oral communities. With these discussions taking place, how exactly is it that S. 1996 undermines collaboration with other stakeholders?

Mr. MOONEY. The bill appears to circumvent that. If there have been official consultations with the stakeholders, then that does not seem to be a problem. Again, I would defer the final answer to that question to the Commissioner of Reclamation.

Senator JOHNSON. When you refer to stakeholders, who exactly are you talking about and which stakeholders have you spoken with?

Mr. MOONEY. The EIS was performed in cooperation with the Angostura Irrigation District; the Oglala Sioux Tribe, the Cheyenne River Sioux Tribe; the Lower Brule Sioux Tribe; the South Dakota Department of Game, Fish and Parks; the U.S. Geological Survey; U.S. Natural Resources Conservation Service; the BIA; and the South Dakota Department of Environmental and Natural Resources.

Senator JOHNSON. Are you aware that President Steele has proposed an amendment that provides that the irrigation improvements are to be on a non-reimbursable basis? And this amendment, one might think, would alleviate your concerns that the bill undermines the collaboration with other stakeholders.

Mr. MOONEY. I am aware that there has been a proposed amendment for non-reimbursability of the funds.

Senator JOHNSON. Do you still see this, however, as an undermining of collaboration?

Mr. MOONEY. Since the commissioner and his delegates have been the ones consulting with the stakeholders, I would defer that detailed answer to him.

Senator JOHNSON. Your testimony indicates that title I of the bill is inconsistent with the record of decision, whereas title I implements the preferred alternative in the EIS and the record of decision. When you state that title I is inconsistent with the ROD, which section of the record of decision are you talking about?

Mr. MOONEY. Let me defer that answer to the commissioner.

Senator JOHNSON. Very good. And you will provide that in writing?

Mr. MOONEY. Yes, sir.

Senator JOHNSON. Good. I have several other questions, but I will submit them to you and would appreciate your timely attention to that.

Mr. Chairman, we received Mr. Mooney's testimony this morning. Obviously, it is not as favorable as I would like, but frankly in my view the BIA is not really the agency that should be testifying in many respects. It is the Bureau of Reclamation that I think we may need to know more from.

We have drafted several questions for Mr. Mooney and we will make that part of the record and submit them for his prompt attention.

Senator INOUE. Without objection, so ordered.

Senator JOHNSON. Very good. I yield back.

Senator INOUE. I thank you very much.

Mr. MOONEY. Thank you, Mr. Vice Chairman.

Senator INOUE. Thank you very much, Mr. Mooney.

May I now call upon John Yellow Bird Steele, the president of the Oglala Sioux Tribe of Pine Ridge, SD.

**STATEMENT OF JOHN YELLOW BIRD STEELE, PRESIDENT,
OGLALA SIOUX TRIBE, ACCOMPANIED BY VALERIE JANIS,
COUNCIL MEMBER, OGLALA SIOUX TRIBAL COUNCIL**

Mr. STEELE. Thank you very much, Mr. Vice Chairman Inouye. Thank you for chairing this meeting.

My name is John Yellow Bird Steele. I serve as the president of the Oglala Sioux Tribe. I thank Senator Johnson for being here and for cosponsoring this legislation of Senator Daschle's.

I do have with me Valerie Janis. She is on the tribal council. She represents the affected community that the river does pass through, the Cheyenne River on the Pine Ridge Reservation. And Peter Capasella, our attorney, who is going to help me answer any questions that may have to be answered.

I filed a written statement, Senator, and I ask that I be able to summarize that lengthy written statement here.

Senator INOUE. Without objection, your full statement is made part of the record.

Mr. STEELE. I thank you, sir. We have also proposed some amendments to S. 1996 which I ask to also be included in the record.

Senator INOUE. Without objection.

Mr. STEELE. I would like to thank the Chairman, Senator Ben Nighthorse Campbell, for allowing this meeting, the conducting of this hearing on S. 1996. I would like to thank you, Senator Inouye, for chairing this afternoon's hearing. I would like to thank you, Senator, for your advocacy for Indian issues over all of these years.

I would like to thank Senator Johnson for participating in this afternoon's hearing. I have been working with Senator Johnson on this specific issue since the early 1990's when the contracts with the irrigators gave out. It has been 10 years now, and we do have legislation introduced by the Senator here. Today, we have an opportunity to discuss the damage to our reservation caused by the Angostura Dam and the basic unfairness to our tribe to have our water flows cut off by the Bureau of Reclamation just above our reservation's boundary.

We the Oglala Sioux Tribe are adapting to the modern world now. We are making progress. We still have some lack and needs in housing, education, economic development, but we are making progress in those areas. We still hold many of our older practices. This includes hunting and fishing, gathering of fruits and berries and roots and plants for medicinal purposes. As children, we grew up doing this.

The Cheyenne River, which is on the northwestern part of our reservation, was the most fertile and beautiful area. Historically, the rich Cheyenne River valley attracted tribal members from throughout the reservation. They gathered there to hunt, to fish,

for recreation, for swimming. The Red Shirt Table community on the Cheyenne River is one of the most traditional communities. Many of the residents are descendants of the survivors of Wounded Knee massacre. This is a rich historical area. The stronghold is right near there. This is where our people lived in harmony with the natural environment for hundreds of years.

The Angostura Dam changed all of that. The dam was built in the late 1940's. By 1950, the dam was completed and the river flows in the Cheyenne River were completely cut off of the reservation. In 1956, the Bureau of Reclamation entered into a 40-year contract with irrigators for water delivery from the Angostura Irrigation Dam. At that time, our tribe was not consulted. We were in no position to object to the Bureau of Reclamation.

The results were devastating. The natural flow of the river was completely disrupted. Spring floods dried up. Riparian vegetation dried up. Wild fruits disappeared. Wildlife went away. Water quality declined. Now the fish have sores or lesions on them. I believe it was a bottle of water that we brought from Cheyenne River when we proposed the Mni Wiconi project that was discolored, had an odor to it, had a bad taste to it, that they were using there in Red Shirt Table.

The Indian Health Service posted a sign at Red Shirt Table warning residents not to swim in the Cheyenne River. The water quality got so bad. The water supply for the community gardens dried up. Red Shirt Cannery closed down in the 1950's.

They used to have an agricultural cooperative back in the 1950's in Red Shirt Village, along with the irrigation and the cannery. That had to close down and disband. Our tribe has suffered severe harm, irreparable harm since the 1950's because of Angostura Dam.

In 1996, as I said, the water contract expired with the irrigators. I requested that the Bureau of Reclamation conduct an EIS, an environmental impact statement. They said it would take too long, be too costly at first. But then they came around and they agreed to do it. The EIS took 4 years to complete. We worked with the irrigators, the recreation people that use the dam for recreations. We worked with all the participants in the benefits of the dam right now. We completed the EIS and that is what we are using today, Senator, on this legislation.

Our tribal environmental program has accumulated a great deal of water data on the Cheyenne River. We worked hard to ensure that this was considered by the Bureau of Reclamation in the EIS. I do wish the Bureau of Reclamation were here. We have a relationship with them because we worked with them on that EIS for many years.

I did discuss with Dennis Breitzman, the manager of the Dakotas area office, in developing this win-win approach we see that we are producing today in this legislation, where the irrigators are going to be satisfied; the recreational people are going to be satisfied; and the Oglala Sioux Tribe is going to be satisfied with the stream flow that is going to take care of those fish with lesions on them, the children swimming in those ponds, that are supposedly supposed to be a river.

I called it a win-win approach in S. 1996, because everybody benefits here. Because of the, as I stated, irreparable harm done by the Angostura Dam over the 50 years, a trust fund in the amount of \$92.5 million will be established for some of those damages to help mediate some of those damages. But it is based upon prior legislation by Congress, and so the EIS has got the amount of \$92.5 million in it, based upon prior legislation.

This is accomplished without quantifying or compromising our water rights, this legislation. Time-consuming and costly litigation are being avoided with this legislation. The environment is being protected and our tribe is trying to be made whole again with this legislation.

This legislation is based upon many years of negotiations between our tribe and the Bureau of Reclamation and all of the water users. It includes provisions favored by the irrigators, as well as the provisions for fish and wildlife habitat and the environment. The tribal council supports the bill. The Bureau of Reclamation participated in the development of the concepts included in the bill. It is based on BOR's final EIS. All affected parties have participated and are in support of S. 1996.

I am a little contrary to what the BIA is saying up here. They have not been a participant over all of these years. They have made testimony today, but I do not know where they are coming from because they have not participated one minute. I do not know how they got their opinion to make a statement today.

But for the reasons that I give you, I urge the committee to take favorable action on S. 1996. I thank you very much. Let me defer some of my time for a brief statement from Tribal Councilperson here, Valerie Janis from the White Clay District, the Red Shirt Table Area District. Valerie?

Ms. JANIS. Thank you, President Steele, and thank you Mr. Vice Chairman. My name is Valerie Killsmall Janis. I represent the White Clay District on the Oglala Sioux Tribal Council. The Red Shirt Table community is located in my district. I know from growing up in this area and visiting with my relatives in Red Shirt just how much Angostura Dam affects our area.

Because of the Angostura Dam, we went from hunting and fishing to food stamps and welfare. We went from gathering chokecherries, buffalo berries, wild plums and canning them and storing food supplies for the winter, to being idle and having no jobs or industry. As our tribal President stated, Red Shirt Table community had its own cannery and provided jobs and income for community residents. That is all gone now.

We need the development trust fund that is provided in S. 1996. Our unemployment rate is 80 percent. There is a serious lack of housing in Red Shirt community. The elementary school is on the brink of being condemned. It is in such bad condition that the Shannon County school board is planning on replacing the school, but the community electrical distribution system is not adequate for a new building.

The water supply was just hooked up last week. For many years, Red Shirt community members hauled water great distances, traveling throughout the city to fill water bottles, that is 40 miles away. The road from Red Shirt across the reservation is unpaved.

This 40-mile stretch of road is extremely dangerous. There are many accidents and fatalities on this road. Just two weeks ago, President Steele's chief aide and close relative, Richard Yellow Bird, who was from the Red Shirt community, and his 16-year-old granddaughter Amber were killed in a head-on collision on the Red Shirt Road.

Our community and our tribe suffer from the lack of basic infrastructure, things that other Americans take for granted like paved roads, electricity, telephone service that are unavailable for many of our community members.

In the meantime, the Bureau of Reclamation built this large irrigation project for the nearby off-reservation farming community. They use our water and disrupt our way of life. We deserve this trust fund. We deserve the opportunity for a better life than we have now. S. 1996 provides that hope for us.

I appreciate the opportunity to speak today on behalf of the White Clay District and the Red Shirt Table community. Thank you very much, Senator Inouye.

Senator INOUE. Thank you very much.

Mr. President, would you care to add to this?

Mr. STEELE. Senator, it is a situation that, as I said in my statement, that the tribe had no consultation, no right to give an opinion in the 1950's as to the construction and the use of the water. It was completely cut off. We got the dry river bed. And that river bed used to be the life of the people. It used to be the life of that community. The area had been able to provide some fish for food, the berries and stuff. They no longer grow. The river, the sides of it, the berry trees do not grow because the silt is not there anymore. It is just devastating. The life of the community was just choked off, as Ms. Janis just stated here. They have just been surviving up there.

After 50 years, we have an opportunity to speak to yourselves, the United States Congress here, to try to mediate some of these problems.

Senator INOUE. As a result of this reduced flow, did you testify that the Red Shirt Agricultural Coop had to be closed?

Mr. STEELE. Yes, sir; they had a cannery. They canned different items of berries, vegetables through their irrigation of the use of the river. And there was an agricultural coop established in the 1950's. These all had to close down and disband because there was no more water for all of those purposes.

Senator INOUE. And the water quality is unfit for human consumption?

Mr. STEELE. Oh, no, you could not drink that. It is in the EIS, the environmental impact statement that the Bureau of Reclamation has done. But the fish that we are taking out of the river have lesions on them, sores. The children that use the river, the ponds in there because it is dried up and there are just ponds left, get rashes. So Indian Health Service put signs up for children not to swim in there because it is contaminated with pesticides, fertilizers that a natural-flowing river would clean itself up. But here with standing water, it does not have a chance to clean itself up.

Senator INOUE. You have the senior rights to the use of water on the Angostura Irrigation project, but if you exercise those rights fully, no one else would have water.

Mr. STEELE. This is what we are terming the win-win situation in this legislation, Senator. The irrigators would still get water to irrigate with; the recreation people would still have water to ski and to motorboat and to use these for recreation purposes. We would get a stream flow from the savings of the water for the increased efficiencies in the irrigation system. I think there are about identified 20,000 acre-feet of water that would be saved per annum. This would go into the stream flow to help mitigate some of the distressed river conditions for the wildlife.

But yes, we do have senior prior rights as established through the Winters doctrine, through the 1868 and the 1851 Fort Laramie Treaties. It would be very costly litigation for us to establish those prior water rights through litigation, but we would rather approach Congress for this win-win situation for everybody involved, all the stakeholders. The stakeholders would not be fairly treated through court. The Oglala Sioux Tribe, in all fairness, is entitled to all of the water.

Senator INOUE. In other words, you are trying to share your water with others.

Mr. STEELE. Through this legislation, it is a solution. It is not a settlement that we are offering. But yes, this legislation would continue for all of the stakeholders a good equitable share, what they are used to today.

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

Senator JOHNSON. I have some questions for President Steele and for Ms. Janis. However, I notice that Leader Daschle is here, and I wonder, Mr. Chairman, given the demands on his schedule, if he might present his statement and then we can return to questions to the tribal leadership.

Senator INOUE. Would you like to introduce our leader?

Senator JOHNSON. It is an honor for me, of course, to introduce our Leader and my senior Senator, Senator Tom Daschle. Senator Daschle is the lead sponsor of this legislation and has been an extraordinary friend of all of our tribes in South Dakota.

These are difficult issues, and we are thankful that we have someone of Tom Daschle's stature taking the leadership role on behalf of the immense needs of Indian people in South Dakota. So I am very pleased that Senator Daschle could take time out of an incredibly busy schedule to join us here for this.

Senator INOUE. Mr. Leader, may I request that I be listed as one of your cosponsors?

Senator DASCHLE. I would appreciate very much the honor of adding you as a cosponsor. I will certainly do that. I thank you.

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

Senator DASCHLE. I thank you for this hearing. I thank Senator Johnson for his incredible advocacy. The Indian people of this country have no two stronger or finer or more loyal friends than the two of you. I am very grateful. This is the second day in a row that

Senator Johnson has participated in or chaired a hearing, thanks to you and your magnificent staff. So I am grateful to you.

I have a lengthy statement and I would ask that it be made a part of the record, Mr. Chairman. Let me just say very briefly, you have heard from President Steele. You know from his eloquent presentation the injustices that have once again been recorded, and our need to begin correcting those injustices with this legislation.

We can go all the way back to the treaties themselves and the many, many wrongs that came as a result of our abrogation of those treaties and our unwillingness to respect them. But this even goes beyond the treaty. These were projects that were built and constructed for good reason. We think that flood control in South Dakota and irrigation in South Dakota are worthy goals. But they cannot be done at the expense of others. They cannot be done at the expense of those who have already been victimized in so many other ways as a result of the abrogation of treaties.

So this legislation simply provides a mechanism by which we can make right some of the tremendous pain, economically and socially, that has been caused by the construction of our flood control and irrigation efforts.

I think it is long past due. I think it is very, very critical that at the earliest possible time, we address this inequity, this injustice, and try to make it right. That is all that we attempt to do with the legislation, to provide a meaningful way with which to put some balance back into the sacrifices required of those who live in southwestern South Dakota, especially on the Pine Ridge Reservation.

Chairman Steele and those tribal leaders within the tribe themselves have very powerfully and eloquently made the case to us, to Senator Johnson and me on a number of occasions, and I think you can tell from his presentation today that they have given great thought to this issue.

So it is with pride and with great determination that I come before you today with the expectation that this committee and ultimately the Senate will address this injustice in a way that will allow them to begin feeling more confident that they can be made whole, given the sacrifices that they have made with such great regularity for the last 100 years, but especially in the time since these projects were created.

So with that, Mr. Chairman, again I thank you and I cannot begin to express my gratitude to you for all that you do for Indian country, but especially for what you do for the Native American population in our State of South Dakota.

Senator INOUE. Mr. Leader, I thank you for your very moving statement. I wish Indian country was here to listen to you because if it were not for you, I think Indian country would be in worse shape than it is now.

Mr. Leader, yesterday we received testimony here that the Crow Creek Sioux Tribe, like President Steele's tribe, has about 80 percent unemployment. The thing that shook me was the report that teenagers commit suicide or attempt to commit suicide on an average of about 22 a month. This is the highest in the United States, with a tribal population of just 2,200. It is unheard of. That is why

I requested that I be made one of the sponsors of this measure, because this matter must be resolved. I am with you, sir.

Senator DASCHLE. Mr. Chairman, I am very grateful. And to your ally and my dear, dear friend, Senator Johnson, I know I speak on behalf of everyone in Pine Ridge in expressing our gratitude to both of you. Thank you.

Senator JOHNSON. Only briefly to once again express appreciation to Leader Daschle. As he has so ably stated here, that the Oglala Sioux are one of America's largest tribes in terms of population, but also one of America's poorest in terms of economic circumstances.

While this legislation does not single-handedly correct all the problems that we face in that part of South Dakota, it is an important part of any kind of strategy to help to alleviate the poverty and the hopelessness that has existed for far too long, and which was brought upon these people due to no choice of their own.

While we have talked about the trust funds for reservations that abut the Missouri River, the loss suffered by this tribe is no less than it is for others, and the need for equity is as great here as it is with any other tribe.

So I thank Senator Daschle for his leadership and Mr. Vice Chairman, you for your cosponsorship of this legislation.

Senator INOUE. I would just like to add something, Mr. Leader. I think we should also note that more members of these tribes have volunteered to serve in the uniform of the United States than any other ethnic group in the United States. This is the worst-treated group, and yet they come out number one. The least we can do is to rectify that. I am with you.

Senator DASCHLE. Mr. Chairman, I thank you. I applaud for calling attention to the patriotism of our Native American community. You are absolutely right. In numbers beyond virtually any other ethnic group, they have demonstrated once again their commitment to their country. We owe them a response that is commensurate with that level of patriotism today.

Thank you.

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

Do you have any questions?

Senator JOHNSON. I do have some questions for President Steele and for Councilwoman Janis. I know that we are short on time and I have another obligation, as I know that you do as well, but just a couple of quick points.

John, you and I have been talking about this for a long time. I am afraid our hair is getting grayer faster than the equity is being delivered on this problem. How long have you been working on this project? And have you been working with the Bureau of Reclamation all along that way?

Mr. STEELE. We have been in touch with the Bureau of Reclamation prior to 1996 in the early 1990's on the fish out there that had the sores on them, and the kids getting rashes from swimming in those ponds in that river bed. But it was 1996 when the irrigators' contracts, their 40-year contracts ran out that I met with Eluid Martinez who was then Commissioner of the Bureau of Reclamation, and said I wanted an EIS done and they refused at first. So

I told them I would take you to court over the water rights. They came around and they did the EIS at that time on the river.

So we have been working and yourself, sir, since then, on the EIS. It takes several scoping meetings. You have to meet quite often, quite regularly to compare data, discuss and agree upon things. It took four years for the environmental impact statement to be completed. So it has been quite a number of years that we have been physically there working on it. That is why I question, why isn't the Bureau of Reclamation here? They approved of this legislation. They had input into it. The BIA had no participation. They do not even know who the stakeholders are, and yet they are testifying here. I cannot understand that.

Senator JOHNSON. Thanks to your insistence upon the environmental impact statement, we now know, we have a scientific basis for knowing that when you talk about the lesions and the illnesses of the children and so on, that not only has the volume of water been degraded significantly that comes to the Oglala Sioux, but that you now suffer from the inclusion of mercury, pesticides and other foreign influences into that ecosystem. It is not diluted in the fashion that it once was, and that has, if I understand the EIS, has been a further significant detriment to the public health of the children and the people of particularly the Red Shirt District.

Mr. STEELE. Yes; that is all in the environmental impact statement. The fish and the mercury are all identified. We have taken the fish to the labs for the lesions, for the mercury content, all of that stuff. It is all in the EIS. Yes, sir.

Senator JOHNSON. This morning I received some proposed amendments to the bill. I want to thank you for those. As is virtually always the case, most legislation evolves and changes over a matter of course, and I want to again say to you, John, that I look forward to working with you in our attempt to really bring this legislation to a point where I think we can move it out of this committee and finally bring a resolution to what has been a half-century-long injustice to the people of your reservation.

Mr. STEELE. Yes, Senator; and on behalf of the over 42,000 enrolled tribal members back home, I would like to thank yourself and I would like to thank Senator Inouye for offering to cosponsor this at this time. Thank you so much.

Senator JOHNSON. I would only in closing say to Councilwoman Janis, Valerie, first of all I appreciate your leadership with the Red Shirt District. Your constituents were most particularly impacted by the Angostura Dam. Can you share with us just briefly how this legislation would impact the people of your district of the Oglala Sioux?

Ms. JANIS. Yes; thank you.

Senator JOHNSON. What would we be able to do for your people?

Ms. JANIS. To provide the basic infrastructure needs that I talked about in my testimony, and also for our future generations to come, and speaking to the elders there, they said they used to do all of these things which they can no longer teach their children and grandchildren. So I would appreciate the legislation for the future generations.

Senator JOHNSON. We are not talking about taking the water away from irrigators. We are simply talking about a financial com-

compensation for what has been a profound loss to the way of life of your people. I think we need to understand that as well.

Mr. STEELE. Yes, sir; and the irrigators are going to still get the same amount of water, but there are going to be about 20,000 acre-feet saved through more efficient irrigation systems.

Senator JOHNSON. That is an excellent point, that again it is as you denominated it, a win-win recommendation.

Mr. Vice Chairman, I have no further statements here, but again I applaud the leadership and the testimony of Chairman Steele and Councilwoman Janis.

Senator INOUE. I thank you very much, sir. If I may just bring Hawaii into the picture, whenever we have conditions where we consider the water being a bit polluted or unsafe, we invite Government workers to swim there. [Laughter.]

If they are not willing to swim there, then something must be wrong. I think we should invite the Department of the Interior to swim there.

Mr. STEELE. We should ask Mr. Mooney to come to Pine Ridge next week. [Laughter.]

With that, I thank you very much, sir. We will do our very best.

Mr. STEELE. Thank you very much.

Senator INOUE. The meeting is adjourned.

[Whereupon, at 2:57 p.m. the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ROSS MOONEY, ACTING DEPUTY DIRECTOR, OFFICE OF TRUST SERVICES, BIA, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. Chairman, I am Ross Mooney, the acting deputy director for the Office of Trust Services for the BIA. I am pleased to provide the Administration's views on S. 1996, the Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act. S. 1996 would enhance and provide certain project benefits for the Oglala Sioux Tribe in connection with water conservation improvements on the Angostura Irrigation Project. The Administration cannot support the bill as it is currently written, and has several serious concerns, which I will discuss here today.

Title I of S. 1996 would authorize the Secretary to rehabilitate and improve the facilities of the Angostura Project, a component of the multi-State Pick-Sloan Missouri Basin Program. Furthermore, title I would provide that the Secretary shall to the maximum extent practicable, deliver water saved through the rehabilitation and improvement of the facilities of the Angostura Project to the Pine Ridge Indian reservation, and provide that the use of that water be used for environmental restoration.

Title II of the bill would create a tribal development trust fund to promote economic development, infrastructure development, and the education, health, recreational, and social welfare objectives of the tribe and members of the tribe.

While the Administration recognizes that economic challenges that many tribes in Indian country face, the establishment of a Trust Fund to address these issues does not seem warranted at this time. The bill infers there "may" be impacts caused by the development of Angostura Unit of the Pick-Sloan Project, yet we are not aware of what those specific impacts are. Unlike other legislative propositions regarding compensation for land impacted by the Pick-Sloan Project, no specific impacts have been cited here nor any evaluation of appropriate compensation completed. The Administration shares the concern of the Tribes about the need to improve economic, educational, and health systems on the reservation and will continue to work with the Tribe to seek solutions to promote these reforms.

In addition, title II establishes a trust fund without a specific dollar amount and requires a retroactive annual interest payment on an unspecified amount to be deposited in the fund in the 11th year following enactment of S. 1996. We are concerned with the precedent that this may set.

The Administration is also concerned that the proposal would exclude all the stakeholders, other than the Oglala Sioux Tribe, from the ongoing public process collaboratively developed during the Environmental Impact Statement [EIS] process to recommend the most beneficial use of saved water. In addition, we do not support the blanket authorization for such sums that may be necessary included in this bill.

In August 2002, the Bureau of Reclamation [Reclamation], in collaboration with a host of stakeholders, completed and published the Final Environmental Impact Statement [FEIS] for Contract Negotiation and Water Management of the Angostura Unit. The EIS was prepared in cooperation with:

- the Angostura Irrigation District;
- Oglala Sioux Tribe;
- Cheyenne River Sioux Tribe;
- Lower Brule Sioux Tribe;
- South Dakota Department of Game, Fish, and Parks;
- U.S. Geological Survey;
- U.S. Natural Resources Conservation Service;
- U.S. Bureau of Indian Affairs; and
- The South Dakota Department of Environment and Natural Resources.

In January 2003 the Record of Decision [ROD] was signed for renewal of a long-term water service contract for the Angostura Unit, Cheyenne River Basin, SD. Reclamation is concerned that provisions of title I are inconsistent with understandings spelled out in the ROD that involved input from many key stakeholders. These provisions include the requirement that the Secretary deliver saved water for the purposes of environmental restoration on the Pine Ridge Indian Reservation, and the finding that the Angostura Unit may be associated with negative effects on water quality and riparian vegetation in the Cheyenne River on the reservation.

With regard to the authority in section 101 to carryout rehabilitation and improvement at the Angostura Project, Reclamation already has authority to undertake such work.

Mr. Chairman, while the Department cannot support S. 1996 as written, we share the sponsors goal of finding innovative solutions for economic, education, health, recreational, and social welfare improvements on the reservation. Indeed, the Department has already committed significant resources to the ongoing construction of the Mni Wiconi rural water project, which addresses many of the needs identified in this legislation. The Department stands ready to work with the Tribe, the Committee, and the South Dakota delegation on these activities including examining if there are quantifiable impacts caused by the Pick-Sloan project.

STATEMENT OF JOHN YELLOW BIRD STEELE

PRESIDENT, OGLALA SIOUX TRIBE

BEFORE THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

**Hearing on S.1996, The Oglala Sioux Tribe Angostura Irrigation Project
Rehabilitation and Development Act**

June 16, 2004

Chairman Nighthorse Campbell, Senator Inouye, and members of the Committee on Indian Affairs, my name is John Yellow Bird Steele. I serve as President of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation. Let me thank you for conducting this hearing on S. 1996, the Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act.

This legislation addresses the legal and equitable claims of the Oglala Sioux Tribe relating to the Angostura Dam's environmental impacts on the Cheyenne River watershed on the Pine Ridge Reservation. In August 2002, the Bureau of Reclamation released its *Final Environmental Impact Statement, Angostura Unit Contract Negotiation and Water Management*. The Final EIS confirms that water flows, water quality and riparian habitat downstream of the Angostura Dam Unit have diminished substantially since it was constructed. The Pine Ridge Reservation is located 15 miles downstream from the Angostura Unit, and the project has impacted the environmental and economic resources of our Tribe.

Accordingly, it is very important to our Tribe that Congress enact S. 1996.

I. Impacts of the Angostura Dam on the Pine Ridge Reservation

The Angostura Dam has been a concern to the Oglala Sioux Tribe for a very long time. Angostura was built in the late 1940's, the gates of the dam were closed in 1949, and delivery of water for irrigation began in 1953. During this time, the water flows of the Cheyenne River dried up on the Pine Ridge Reservation.

The impoundment of water and irrigation at the Angostura Unit completely disrupted water flows of the Cheyenne River on the Pine Ridge Reservation, and the Red Shirt Table community in particular. The Reservation's Red Shirt Table community is located right on the Cheyenne River. The Bureau of Reclamation releases no water at Angostura Dam for instream flows or fish and wildlife downstream. The resulting effect has been disastrous for the Cheyenne River watershed and the Red Shirt Table community.

Historically, the Red Shirt Table community relied upon the water and riparian resources of the Cheyenne River as its economic base. Prior to construction of Angostura, the river in its natural state was subject to natural fluctuations. Water flows varied substantially from throughout the year, and from year to year. High spring flows provided water that was diverted in Red Shirt for extensive community gardens and irrigation for alfalfa.

The abundant water supply that was diverted and available throughout the summer months enabled Red Shirt community members to form the Red Shirt Agricultural Cooperative during the 1930's. Gravity irrigation was used to grow alfalfa, and for the Red Shirt community gardens. The Cooperative established a cannery, and fresh vegetables and canned produce was provided to community members and sold to local merchants.

Tribal elders in the Red Shirt Table community recount how nearly all of the community's 200 original families worked together in the Cooperative. The alfalfa crop supported a growing herd of livestock, which grazed in the rich, wooded riparian area surrounding Red Shirt community.

The river was unpredictable. Spring floods sometimes threatened community dwellings. Our elders still talk about staying up for days and filling sandbags and building levees, to hold off flood waters.

The periodic flooding was essential to the community's fertile ecosystem, however. Flood waters deposited fertile silt throughout river basin. The Cheyenne River valley was an extremely lush area, dense with chokecherries, buffalo berries, wild plums, and other natural fruits and berries.

The naturally-lush river bottom attracted considerable wildlife as well. Deer, antelope and fur-bearing animals were plentiful. They provided a supplemental food source for community members during the first half of the twentieth century. Indeed, Tribal members from throughout the Pine Ridge Reservation were known to travel to the Red Shirt Table and Cheyenne River, to hunt, fish, and gather fruits and medicinal plants. It was our best remaining land.

It all ended with the closure of the gates of Angostura Dam. In 1956, the Bureau of Reclamation completely shut off flows to the Cheyenne River below the Dam. Since that time, Cheyenne River water flows have diminished by approximately 200,000 acre-feet per year. The only water flows to the Cheyenne below the Angostura Unit are tributary flows, which are minimal, and irrigation return flows, which drain salt, pesticides and other contaminants into the Cheyenne River.

The spring flood waters are gone. The rich soils that grew riparian vegetation are no longer deposited in the riparian area. Consequently, the naturally-occurring fruits and berries such as chokecherries, wild plums, and blackberries have disappeared. The medicinal plants, including sage, pursh, sweet grass, and bitterroot are no longer

available. Longstanding practices of gathering these resources have gradually ended. The cottonwood tree cover has also diminished. The regeneration of cottonwood trees has been stifled since closure of the dam gates in the 1950's.

The community gardens, long a central aspect of life in Red Shirt, dried up. Water supplies were no longer available for diversion to the community gardens and alfalfa fields. The Red Shirt Cannery closed in the late 1950's. The Red Shirt Agricultural Cooperative closed. In short, the agricultural economy of Red Shirt Table community on the Pine Ridge Indian Reservation was completely destroyed by the Angostura Unit.

The wildlife and recreational resources traditionally relied on by the Tribe were harmed as well. The forage relied upon by deer and other subsistence species is largely gone. Wildlife populations have declined significantly. The Cheyenne River fishery has also been impacted. Historically, this was an important food source for Red Shirt Table residents and Tribal members generally. The health of the fish has been severely impacted by the Angostura Unit. Warmwater fish species in the Cheyenne River are commonly found with lesions caused by environmental stress. Important fish species, such as the endangered sturgeon chub and pallid sturgeon were once found in the Cheyenne, but have not been identified in years.

As a result of the Dam, the Red Shirt community no longer attracts hunters and fisherman from throughout the Reservation. The area, which had been the Reservation's most productive agricultural land and wooded habitat, has lost the resource base that attracted subsistence and sports hunters and fisherman from throughout the Reservation and throughout the region.

As it damaged the resource base of the Tribe, the Dam created two significant new resource bases for upstream users of the Cheyenne River flows. As discussed below, recreation at the Angostura Reservoir is valued at \$7.1 million annually, and the agricultural benefits of the Unit total approximately \$3.4 million annually. S. 1996 proposes to maintain or enhance these economic benefits for upstream users, while restoring some of the same kind of economic benefits back to the Tribe.

II. Water Rights and Treaty Rights

Tribal members, particularly members of the Red Shirt Community, have long expressed concern with the impacts of Angostura on the Cheyenne River. Our people understand that in our Treaties we reserved both land and water, and we have the senior right to use water.

These principles stem from the Supreme Court decision in *Winters v. United States*, 207 U.S. 564 (1907). In the *Winters* case, non-Indian irrigators on Montana's Milk River diverted water upstream from the Fort Belknap Reservation. The water was needed for Tribal irrigation on the Fort Belknap Reservation. The non-Indian irrigation

project had a state water permit which pre-dated the Tribal irrigation project, making it a senior water appropriator under state law.

The Supreme Court held that the fact that the non-Indian irrigation project had a state permit which predated the Tribal irrigation project did not control, and established the so-called Winters Doctrine, which recognizes that Indian Tribes reserved water rights as well as land, in Treaties with the United States. State water law was determined not to apply to Tribes. Our water rights are reserved under federal law. The priority date of our reserved water right relates back to the date of establishment of our Treaty Reservation and recognition of our territory.

Article 2 of the Treaty of Fort Laramie of April 29, 1868, (15 Stat. 635), established the Great Sioux Reservation, which includes 80 million acres, from the Missouri River east bank, to the 105th parallel. The territory of the Oglalas was first recognized by the United States in the Treaty of Fort Laramie of September 17, 1851, (11 Stat. 749), which recognized as Sioux Territory the vast stretch of plains from the Big Horn Mountains to the Missouri River, and south to the Republican River.

Our Treaties give rise to our reserved water rights under the Winters Doctrine. The priority date of our water rights dates back to the establishment of the Great Sioux Reservation, in 1868, or to the recognition of Sioux Territory in 1851. Thus, our water rights are prior and superior to the rights of all other water users in the upper plains. This includes the water rights of the Angostura Irrigation District. The Bureau's FEIS acknowledges the Tribe's Winters Doctrine rights and recognizes our water rights as Indian Trust Assets:

“The basis for Indian water rights stem from the Supreme Court’s decision of *Winters v. United States*, 207 U.S. 564 (1908), commonly known as the *Winters Doctrine*. According to the doctrine, the establishment of an Indian reservation implied that sufficient water was reserved (or set aside) to fulfill purposes for which the reservation was created, with the priority date being the date the reservation was established. As such, Indian water rights constitute an ITA (Indian Trust Asset).

“Under the Winters Doctrine, the OST, ... [has] a claim to Cheyenne River water, as do other Tribes of the Lakota Nation ... [t]heir claims would probably predate most other appropriators in the basin.”

(FEIS, p. 10). *See also*, (FEIS, p. 97) (The Pine Ridge Reservation and the Cheyenne River Reservation were established before the claims of most other appropriators in the basin which means they have priority).

The amount of water we reserved remains unquantified. Its scope is very broad, however. It includes the right to use all of the water that is needed to fulfill the purpose of the reservation, namely, the creation of a permanent homeland for our people. *See Arizona v. California*, 373 U.S. 546 (1963). The FEIS acknowledges that the Tribe's

water rights remain despite the fact that they have not been quantified. (FEIS, p. 10). (“The fact that they have not been quantified, however, does not negate the reserved water rights of the Tribes”) and (FEIS, p. 97) (stating that the fact that the Tribe has not exercised its water rights does not negate its reserved water rights under the Winters Doctrine to water in the Cheyenne River). Consequently, there is no question that the Oglala Sioux Tribe reserved substantial water rights to the Cheyenne River and its tributaries, and that these rights are paramount, and prior and superior to those of the existing water users, and the Angostura Irrigation District. S. 1996, however, would not affect these water rights of the Tribe; it seeks to find a solution and a compromise to the Federal Government’s and the Tribe’s interests in the future of the Angostura Unit without affecting the Tribe’s water rights or other rights.

III. Water Service Contracts and Final Environmental Impact Statement

As I stated, irrigation service at Angostura Unit commenced in 1953, with full service beginning in 1956. That year, the Bureau of Reclamation entered a 40-year water service contract with the Angostura Irrigation District, for delivery of 48,000 acre-feet of water to irrigate 12, 218 acres of land. The Angostura Dam impounds 115,000 acre-feet of water to provide water service to the District.

A thriving recreation industry has developed at Angostura Reservoir. The Bureau of Reclamation estimates that recreation at Angostura Reservoir is valued at \$7.1 million annually. Agricultural benefits total approximately \$3.4 million annually, with total annual benefits estimated at \$11.5 million. The Oglala Sioux Tribe receives virtually none of the economic benefits of the Angostura Unit. To the contrary, the Tribe has lost its valuable water and environmental resources and suffers harm from irrigation run-off and pesticides below Angostura Unit.

The 40-year water service contract expired in 1996. The dispute between the Oglala Sioux Tribe, Bureau of Reclamation and Angostura Irrigation District that S. 1996 will resolve came to a head at this time. In 1996, I asked the Bureau of Reclamation to prepare an Environmental Impact Statement prior to renewing the long-term irrigation service contract. Initially, the BOR expressed reluctance to do this. The threat of litigation surfaced for the first time. However, after a year of negotiations, BOR agreed that the irrigation contract with Angostura District does have environmental impacts, and BOR agreed to prepare the EIS.

The EIS took five years to complete. The Bureau of Reclamation released its *Final Environmental Impact Statement, Angostura Unit, Contract Negotiation and Water Management* in August, 2002. The EIS reflects the concerns expressed by the Oglala Sioux Tribe about diminished water flows, water quality, and riparian vegetation.

The Bureau of Reclamation operates Angostura Dam exclusively to supply water to the Angostura Irrigation District. No water is released for instream or conservation flows for the Cheyenne River. The natural flow of the Cheyenne River is completely disrupted below Angostura Unit.

The Final EIS documented substantially diminished water flows in the Cheyenne River. It states –

- “Regulation (of rivers) by dams generally alters this pattern of seasonal flows by flattening of high flows and increasing flows during past periods (like winter) of low or no flows. The loss of high flow removes the dynamic process that would otherwise restructure the channel periodically and sustain different-aged plant communities. (FEIS, p. 57).
- “Data reflect a general reduction in annual flows at Wasta following construction of Angostura Dam.” (FEIS, p. 58).
- “In addition to lower annual flows, a change in seasonal patterns has also occurred.” (FEIS, p. 58).
- “The dam undoubtedly affects distribution and magnitude of peak flows.” (FEIS, p. 58).

Our water quality concerns were likewise verified. With respect to water quality, the Final EIS explains –

- “The river below Angostura Dam to the confluence of the Belle Fouché River is typical of many western streams after regulation (by dams). Water is colder here than downstream and less turbid since the reservoir acts as a settling basin.”
- The Cheyenne River below Angostura contains high selenium and mercury levels. (FEIS, p. 46). High mercury levels for the Cheyenne River are also indicated in *U.S. Geological Survey Water Resources Department 90-4152, Table 12*.
- Repeated episodes of low Dissolved Oxygen are identified. (FEIS, p. 44-45).
- The pesticides atrazine, cyanazine, prometon and simazine were detected below Angostura Unit. (FEIS, p. 51).
- Reservoir zooplankton has migrated to the river channel, affecting biodiversity in the river below Angostura Unit. (Berdanier and Kenner, S.D. School of Mines, 1999).
- The degraded water quality results in environmental stress. This affects the health of fish in the Cheyenne River. Various species have been found with bacteriological lesions. According to a report by Plateau Ecosystems (1997), the sores are caused by a combination of factors causing environmental stress. Moreover, the diminished water flows in particular

impact riparian vegetation, such as the wild fruits and berries harvested by Tribal members, prior to construction of the dam. Since 1950, riparian vegetation has diminished precipitously.

The Final Environmental Impact Statement outlines the same conditions cited by the Oglala Sioux Tribe in the decline of water resources and fish and wildlife habitat in the Cheyenne River watershed. The Angostura Unit is the cause of the problem.

The Final EIS selects as the Preferred Alternative the Rehabilitation and Betterment Alternative. This involves the construction of efficiency improvements at the Angostura Irrigation District. The BOR estimates that improvements in the irrigation system costing \$4.8 million will result in considerably less water use for irrigation of 12, 218 acres. The water savings is estimated at 10,000 acre-feet. This is approximately 20-25 percent of the annual water use by the District.

The Oglala Sioux Tribe initially asked BOR to evaluate the restoration of natural flows of the Cheyenne River below Angostura Dam. This was included as an alternative in the Final Environmental Impact Statement. The Bureau of Reclamation determined that by opening the gates of Angostura Dam, the natural flow of the Cheyenne River could be restored on the Pine Ridge Reservation.

This was the optimal alternative for the Oglala Sioux Tribe. The restoration of natural streamflows would have enormous positive impacts for the environment on the Pine Ridge Indian Reservation. Sufficient water would be available for gardens and agriculture in Red Shirt Table Community. The resumption of peak flows would create rich alluvial soils, and over time the riparian vegetation would regenerate. Enhanced streamflows would also improve water quality. The harm from pesticides would abate. The Cheyenne River could be restored as an important ecological and economic resource for the Oglala Sioux Tribe.

However, according to BOR, breaching the dam would close the Angostura Irrigation District. Water supplies currently impounded and delivered for irrigation would be permitted to flow down the river, to re-create its natural state. There would be no water available for irrigation. In addition, the Angostura Reservoir would drain, and the existing recreation development, estimated at \$7.1 million annually, would close down.

Thus, the alternative most beneficial to the Oglala Sioux Tribe, the re-establishment of natural flows for the Cheyenne River, would substantially diminish the agricultural and recreation benefits of the Angostura Unit. This led to discussions between the Bureau of Reclamation, Angostura Irrigation District, and the Oglala Sioux Tribe, about how to achieve a "win/win" solution, whereby the harm to fish and wildlife and the environmental concerns of our Tribe could be addressed, while maintaining the existing benefits of Angostura Unit. This "win/win" solution is embodied in S. 1996.

IV. S. 1996 Addresses the Concerns of the Oglala Sioux Tribe While Maintaining Existing Benefits of the Angostura Unit

S. 1996 implements the Rehabilitation and Betterment Alternative of the Final Environmental Impact Statement. Section 101 of the bill authorizes the efficiency improvements at Angostura Unit for the irrigation facilities at the Angostura Irrigation District. These improvements, which include replacing sprinklers and lining the irrigation canals, cost \$4.8 million.

The improvements to the irrigation system authorized in section 101 will enhance the efficiency of water use at the Angostura Irrigation District. Section 102 of the bill directs the Secretary to release the saved water, estimated at 10,000 acre-feet annually, to the Cheyenne River as an instream flow. This will enhance fish and wildlife habitat and water quality on the Reservation.

Section 201 of S. 1996 establishes the Oglala Sioux Tribe Development Trust Fund. This fund is designed to provide economic development resources for the Tribe. The Angostura Unit uses water resources of the Cheyenne River in a manner that forecloses Indian water uses, and harms fish and wildlife habitat and the environment on the Reservation. However, it has been a boon to upstream users, generating more than \$10 million a year in recreation and agricultural revenues. The establishment of a development trust fund for the Tribe is intended to restore to the Tribe some of the same economic benefits upstream users have enjoyed since the floodgates closed.

The establishment of the development trust fund in section 201 produces economic resources for the Oglala Sioux Tribe without reducing the economic benefits produced by Angostura Unit for the regional economy. The storage of water in Angostura Reservoir will remain near existing levels, and recreation benefits of \$7.1 million annually at Angostura Reservoir shall be maintained or enhanced.

Similarly, water deliveries for irrigation shall be continued. In fact, irrigation efficiency shall be enhanced. This will help protect the agricultural benefits of the Dam. More important to our Tribe, the more efficient use of water will free up 10,000 acre-feet of water to be released from Angostura Dam under section 102 of the bill, for an instream flow for fish and wildlife and environmental enhancement at Pine Ridge.

Ultimately, S. 1996 is good for both the environment and the economy. The efficiency improvements authorized in section 101 and the establishment of instream flows in section 102 are beneficial to fish, wildlife and the environment. It also maintains existing recreation and agricultural benefits. The establishment of the trust fund in section 201 produces economic benefits for the Reservation for the first time since the construction of the Dam.

S. 1996 does not adjudicate or contain a water settlement involving the water rights of the Oglala Sioux Tribe. That would involve extremely time-consuming

litigation, and as the Bureau of Reclamation recognized in its FEIS, would result in the termination of water supply deliveries to Angostura as Tribal water uses come on line.

Instead, S. 1996 takes a pragmatic approach to water rights. Section 103 of the bill keeps the water rights and claims of the Oglala Sioux Tribe intact, while upgrading the irrigation system at Angostura Unit for farmers and providing water resources for the Tribe. The water flows of the Cheyenne River will be enhanced, while existing uses are maintained and the Tribe's claims remain unaffected. Immediate economic resources will be provided to the Tribe by the Development Trust Fund established in section 201 of the bill.

There is ample precedent for this legislation. See Lawrence J. MacDonnell, *Managing Reclamation Facilities for Ecosystem Benefits*, 67 Univ. of Colo. L. Rev. 197 (1996). Such precedents include –

- The Truckee-Carson-Pyramid Lake Water Settlement (104 Stat. 3294);
- The Grand Canyon Protection Act of 1992 (106 Stat. 4669);
- The Central Valley Project Improvement Act (106 Stat. 4706).

In 1992, Congress enacted the “Truckee-Carson-Pyramid Lake Water Settlement.” (Title II, P.L. 101-618, 104 Stat. 3294). Bureau of Reclamation diversions along the Truckee River had harmed the long-time fishery for the cui-wui and Lahontan cut-throat trout in Pyramid Lake on the Pyramid Lake Paiute Reservation. The Pyramid Lake Water Settlement resolved litigation between the Tribe, the United States, the Newlands Project, and the affected states. By way of settlement, Congress established the “Pyramid Lake Paiute Economic Development Fund” in the amount of \$40 million, plus the “Pyramid Lake Paiute Fisheries Fund” in the amount of \$25 million. In addition to the \$65 million settlement received by the Tribe, Congress directed operational changes to be made in at Derby Dam and the Newlands Reclamation Project.

Congress addressed similar issues in the Central Valley Project Improvement Act (Title XXXIV, P.L. 102-575, 106 Stat. 4706). The Central Valley Project Act dedicated nearly 800,000 acre-feet of California's Central Valley Project water for fish and wildlife purposes, and established a “Central Valley Project Restoration Fund.” The stated purposes of the act are to “protect, restore, and enhance fish, wildlife and associated habitats ... to improve the operational flexibility of the Central Valley Project ... (and) to achieve a reasonable balance among competing demand for use of Central Valley Project water, including fish and wildlife...” (106 Stat. 4706). Section 3406 of the Act directed the Bureau of Reclamation to “implement a program which makes all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in Central Valley rivers and streams will sustainable... (and) to protect and restore natural channel and riparian habitat values through habitat restoration actions (and) modifications to Central

Valley Project operations...” (106 Stat. 4714-4715). Section 3407 of the act established the Central Valley Project Restoration fund, in the amount of \$50 million.

In the Grand Canyon Protection Act of 1992, the Congress directed the Secretary of the Interior to revise the operating criteria at Glen Canyon Dam, where Bureau of Reclamation operations detrimentally affected the environment. The Act directed Reclamation to “mitigate adverse impacts to, and improve the values for which the Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use.” 106 Stat. 4669. At Glen Canyon, like at Angostura, the BOR adopted narrow operating criteria, and Congressional action was needed for “reasonable mitigation measures taken to protect, mitigate adverse impacts to, and improve the condition of the natural, recreational and cultural resources of the Colorado River downstream of Glen Canyon Dam.” 106 Stat. 4671. Congress did not establish a trust fund of a specific amount, but authorized the use of “funds received from the sale of electric power and energy from the Colorado River Storage Project.” 106 Stat. 4672. These funds are to be used for “long-term monitoring programs and activities” on the Colorado River, to address the harm caused by the manner BOR had been operating Glen Canyon Dam.

S. 1996 addresses the environmental concerns and equitable claims of the Oglala Sioux Tribe, avoiding costly litigation over the environmental impacts of the Angostura Irrigation District and the quantification of water rights to the Cheyenne River. Under S. 1996, federal funding would be available on a non-reimbursable basis for rehabilitation and betterment of the Angostura Irrigation District, improving the efficiency of water use and providing water for in-stream flows. The establishment of a trust fund for the Oglala Sioux Tribe, similar to that established for the Pyramid Lake Paiute Tribe, would enable the Tribe to proceed with environmental restoration and mitigation and economic development along the Cheyenne River.

In 1990, the Pyramid Lake Paiute Tribe received an Economic Development Trust Fund in the amount of \$40 million and a Fisheries Fund in the amount of \$25 million, to address the Tribe’s legal and equitable claims, and for restoration of fish and wildlife habitat. In today’s dollars, this fund would be worth \$92.5 million.

S. 1996 avoids the time and costs of reaching a settlement years down the road for the efficiency and practicality of a win-win solution that can be put in place today. While the Tribe initially believed the most equitable solution would involve the establishment of a trust fund that could generate an annual interest in an amount equivalent to the \$11.5 million in annual economic benefits enjoyed by upstream users, the funds allocated to the Pyramid Lake settlement may be a more practicable model. Like S. 1996, the Pyramid Lake Act provides a solution (albeit only after the considerable cost and expense of litigation) to a Tribe’s economic and water rights claims. As a result, the establishment of a similar Development Trust Fund of \$92.5 million in S. 1996 is justified to provide the Oglalas an equivalent benefit to that received by the Pyramid Lake Paiutes in 1990.

V. Socioeconomic Factors on Pine Ridge Reservation Support Establishment of Development Trust Fund

The socioeconomic situation on the Pine Ridge Reservation is severe. The establishment of a Development Trust Fund is justified, to address critical economic and infrastructure development needs.

The Reservation population is 40,873, making the Oglala Sioux one of the largest Tribes in the United States. (Bureau of Indian Affairs, *Indian Labor Force Report*, 1999, p. 8). The 1999 unemployment rate was estimated by the Bureau of Indian Affairs at 85 percent. *Id.* The 2000 Census indicates that per capita income in Shannon County, the Reservation's largest county, was \$6,286. This compares with the per capita income nationwide of \$21,587. Median household income on the Reservation is \$20,916, less than one-half the national average of \$41,994. (2002 U.S. Census).

The community of Red Shirt Table needs jobs and infrastructure. Until recently, community residents had to haul their drinking water. Most residents hauled water in jugs or containers filed up in Rapid City, 40 miles away.

The Red Shirt Elementary School is the sole employer in the community. The school is dilapidated. A new school building is needed. There is inadequate three-phase power in the community for a new building, however. The community water, sewer and electrical infrastructure is inadequate and requires a substantial investment.

The roads are unpaved, and Red Shirt Table community members have no paved road access to the rest of the Reservation. The estimated cost of paving the road for community residents is \$56 million.

The infrastructure and economic development needs throughout the Pine Ridge Reservation, and especially in the area affected by Angostura, are pervasive and urgent. They justify establishment of a Development Trust Fund for the Oglala Sioux Tribe.

VI. Conclusion – S. 1996 Should be Enacted into Law

S. 1996 is a sensible and cost-effective solution to the impacts caused by the Angostura Unit in the Cheyenne River watershed and to the Oglala Sioux Tribe. It avoids litigation between the Oglala Sioux Tribe, Angostura Irrigation District and Bureau of Reclamation. Water flows in the Cheyenne River will be enhanced, and irrigation service at Angostura Unit can continue. Full recreation benefits for all users will be maintained.

Most important to the Oglala Sioux Tribe, the establishment of a Development Trust Fund will provide the Tribe the resources it needs to develop critical Reservation infrastructure and lay the ground work for a more prosperous future on the Pine Ridge Reservation.