

Statement of Harold Frazier
Chairman, Cheyenne River Sioux Tribe

Before the House Committee on Resources, Subcommittee On Water and Power,
Hearing on H.R. 3558, the Cheyenne River Sioux Tribe

Equitable Compensation Amendments

Act of 2005

July 12, 2006

As Chairman of the Cheyenne River Sioux Tribe, I am pleased to present this testimony on the Cheyenne River Sioux Tribe Equitable Compensation Amendments Act of 2005. I thank Representative Herseth for sponsoring this important piece of legislation, and Chairman Radanovich, Ranking Member Napolitano, and other members of the Subcommittee, for the opportunity to provide testimony at this hearing.

The Pick-Sloan Missouri River Basin Program

In 1944, Congress authorized the Pick-Sloan Missouri River Basin Program (the "Pick-Sloan Program") as part of the Flood Control Act of 1944. This plan, which would destroy more Indian lands than any other public works project ever in the United States, was approved without tribal consultation and regardless of the devastating impacts it would have on tribes along the Missouri River.

The Pick-Sloan Program caused massive relocation of members of the Cheyenne River Sioux Tribe ("Tribe"), and devastated the Tribe's economy and way of life. In 1948, the United States Army Corps of Engineers ("Corps") took possession of lands within the Cheyenne River Sioux Reservation and began construction of the Oahe Dam and Reservoir Project ("Project"), a part of the Pick-Sloan Program. In total, the Corps acquired 104,492 acres of tribal and allotted lands within the Reservation for the Project. One-hundred and eighty-one families of the Cheyenne River Sioux Tribe—or about 30% of the tribal population—were forced to move as a result of the Project. The Tribe and its members lost their most valuable and fertile lands, and lost access to traditional hunting, gathering, and ceremonial grounds. At the same time, the Tribe did not enjoy any benefits of the Project. It did not receive preferential power rates. It did not receive flood control benefits, as it had not experienced flooding previous to the Project. It did not benefit from any irrigation project. The severe detrimental impacts of the Project upon the Tribe have been the subject of congressional reports.

Congress first compensated the Tribe and its members for their losses in 1954, when Congress authorized payments totaling \$10.6 million for damages, rehabilitation, and administrative expenses. These payments were less than half of the \$23.5 million requested by the Tribe. The Tribe agreed to the bill authorizing the payments only because South Dakota Senator Karl Mundt promised to pursue an amendment in the next session of Congress to increase the payments. No such amendments were introduced or considered.

In later years, reports of the Joint Tribal-Federal Advisory Committee ("JTAC"), the General Accounting Office, and private consultants showed that the Cheyenne River Sioux Tribe and other tribes along the Missouri River that had lost lands to the Pick-Sloan Program had not been fairly compensated for their losses.

The Cheyenne River Sioux Tribe Equitable Compensation Act

The 106th Congress enacted the Cheyenne River Sioux Equitable Compensation Act ("Compensation Act") as Title I of Public Law 106-511. The Compensation Act acknowledged that the Pick-Sloan Program damaged the economy of the Tribe and its members [Section 102(a)(1)(C)], and that the Tribe had not been fairly compensated for the Program [Section 102(a)(3)(A)]. The Compensation Act created the Cheyenne River Sioux Tribal Recovery Trust Fund ("Trust Fund") to provide further compensation to the Tribe. It provided that the Secretary of the Treasury would deposit into the Trust Fund, *on October 1, 2011*, (a) \$290,722,958, plus (b) an amount equaling the interest that would have accrued on that amount if that amount had been deposited into an account on October 1, 2001, and been invested in securities issued by the Treasury Department and other federal agencies and corporations (also known as "treasuries" and "agencies"), compounded annually [Section 104(b)].

The Treasury Department is to invest such funds in treasuries and agencies [Section 104(c)]. Beginning on October 1, 2011, Treasury shall withdraw the aggregate interest deposited into the fund for the fiscal year, and shall transfer that amount to the Secretary of the Interior, who is authorized to make payments to the Tribe in accordance with a plan adopted by the

Tribe for the use of such funds [Section 104(d)]. The Tribal plan must provide that the funds shall be used for one or more of the following purposes: (A) economic development; (B) Infrastructure development; and (C) the educational, health, recreational and social welfare objectives of the Tribe and tribal members [Section 104(f)(2)].

H.R. 3558

H.R. 3558 would make three amendments to Public Law 106-511. These amendments would:

- (1) allow the Tribe to use interest from the Trust Fund to pay additional compensation to tribal members who lost their lands due to the Oahe Dam (or their heirs).
- (2) begin to capitalize the Trust Fund sooner, thereby making the interest on the Fund available to the Tribe sooner.
- (3) make a technical amendment to provide a methodology for calculating the total amount at which the Trust Fund is to be capitalized.

These three areas of amendment are discussed in more detail below.

The Tribal Council approved of the proposed amendments on June 29, 2004, and sought their introduction. The bill also enjoys the support of tribal members. Attached to this statement is the transcript of a tribal hearing held on the bill on June 14, 2005, at which tribal members testified in support of the bill.

Compensating the Tribal Member Landowners

The first purpose of the bill is to allow the Tribe to use interest from the Trust Fund to pay additional compensation to tribal members who lost their lands due to the Oahe Dam (or their heirs).

It was not just the Tribe that lost Reservation lands to the Oahe Project. Many tribal member landowners lost lands as well. Of the 104,492 acres of tribal and allotted Reservation lands acquired by the Corps for the Project, 46,274.95 acres, or about 44.3 percent, were allotted lands. Tribal members also lost fee lands within the Reservation. The tribal member landowners, like the Tribe, were not adequately compensated for their losses. At a June 14, 2005 Tribal hearing, tribal members testified as to the inadequate compensation they received for their lands. One tribal member testified, for example, that he was paid \$21.40 per acre, compared to compensation of \$49.22 paid to landowners off the reservation for comparable land. Despite the inadequacy of their compensation, however, the tribal member landowners have never been provided additional compensation for their losses, and no bill has ever been enacted to provide them any additional compensation.

Public Law 106-511 provided additional compensation to the Tribe based on the entire 104,492 acres lost by the Tribe and its members as a result of the Oahe Dam Project. Yet, the Act does not allow the Tribe to use any of the proceeds from the Trust Fund to provide additional compensation to tribal member landowners who suffered the losses. The Tribal Council believes that, consistent with tribal sovereignty, and with the compensatory purpose of Public Law 106-511, it should be able to devote some portion of the interest from the Trust Fund to provide additional equitable compensation to the tribal member landowners or their heirs.

Accordingly, S.1535 would allow the Tribe to amend its plan for the use of the Trust Fund to provide for additional compensation for tribal member landowners who lost lands due to the Project (or their heirs). The bill does not set forth how the Tribe is to provide such compensation, or in what amounts. The Tribe would make those determinations through its own tribal processes, consistent with tribal self-determination. One decision the Tribe has made is that it will first provide compensation to the surviving tribal member landowners who lost their lands, of which there are now about 29, and later to the heirs of the landowners who are deceased. Although the Tribe has not yet decided on the amount of compensation to be paid to tribal member landowners, total landowner compensation will not exceed 44% of the Trust Fund earnings. The tribal landowners support this amendment, and for the perspective of the tribal member landowners who lost their lands to the Oahe Dam, I direct you to the written statement of Freddy LeBeau, being submitted for the hearing record.

Although the Tribe intends to provide compensation to tribal member landowners from the interest from the Trust Fund, the Tribe will also use Fund interest for other important purposes of the Act -- namely, (A) economic development; (B) Infrastructure development; and (C) the educational, health, recreational and social welfare objectives of the Tribe and tribal members.

This proposed amendment to allow compensation to tribal member landowners is revenue neutral, as the compensation

provided to tribal landowners or their heirs would be provided out of the Trust Fund interest, and would not require a separate fund for the landowners on any additional appropriation for the landowners.

Making the Funds Available to the Tribe Sooner

The second purpose of S.1535 is to capitalize the Trust Fund sooner, and to make the interest on the Fund available to the Tribe sooner. Public Law 106-511, as enacted, essentially gives the Tribe an IOU from the United States payable on October 1, 2011, for losses it suffered in the 1950s and that it continues to suffer from today. The Tribe would like to receive payment sooner in order to address significant unmet needs in the areas of economic development, infrastructure development, education, health, social welfare, and recreation. The Tribe's needs, possible programs to remedy those needs, and how immediate funding will help alleviate tribal poverty are the subject of a separate statement being submitted by Sharon Vogel, administrative manager for the Tribal Ventures Project. As noted in Ms. Vogel's statement, we have a concrete plan to move forward to reduce poverty conditions on our reservation. The only thing holding us back from development, from investment, and from job creation is the lack of capital. The interest payments on the Trust Fund will provide much-needed capital to go forward with our development plans for infrastructure and economic development.

The Tribe proposes two amendments to address this issue. First, it proposes to begin to capitalize the Trust Fund immediately. The bill provides that instead of capitalizing the Fund with one payment in 2011, the Fund will be capitalized with annual payments from Treasury. The annual payments will be equal to 25% of receipts of the Western Area Power Administration ("WAPA") from the Pick-Sloan Project. This methodology was used to fund trust funds in equitable compensation acts for some other Missouri River tribes. (When Congress enacted Public Law 106-511, it decided not to make annual payments and instead opted for a payment eleven years out in order to avoid "pay-as-you-go" rules.) Note that the bill does not transfer WAPA receipts to the Trust Fund; it merely uses WAPA receipts from the Pick-Sloan Project as the "yardstick" to determine the amount of money to be deposited annually into the Trust Fund. There should therefore be no negative impact upon WAPA or its customers.

In addition to beginning to capitalize the Trust Fund sooner, the proposed amendments would make the interest on the Fund available to the Tribe even before the Fund is fully capitalized. These two changes would enable the Tribe to begin to fund important tribal programs and initiatives years earlier than under current law.

These changes will not result in increased costs to the United States. To the contrary -- quicker capitalization of the Fund will result in savings to the United States, since the Act provides that the principal will be adjusted as of October 1, 2012 to reflect what the interest would have been on the Fund had it been fully capitalized at \$290 million as of October 1, 2001.

Technical Amendment Regarding Amount Needed to Fully Capitalize the Fund

The third and final purpose of the bill is to make a technical amendment to provide a methodology for calculating the total amount at which the Trust Fund is to be capitalized.

Under current law, when the Fund is capitalized, it is to be invested in an undefined mix of securities issued by the Treasury Department ("treasuries") and federal agencies and corporations ("agencies"). When fully capitalized, the Fund shall contain \$290,722,958 *plus* the interest that would have accrued from October 1, 2001 until the Fund was fully capitalized if the Fund had been invested in the undefined mix of treasuries and agencies. [Section 104(b)(2)] This is unworkable, since no one can say what interest would have accrued on an undefined mix of securities. H.R. 3558 solves this problem by tying the interest to the Lehman Government Bond Index, an index of treasuries and agencies that would leave no ambiguity. Information on the Lehman Government Bond Index is attached to this statement.

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58 Stat. 887.

Senate Report 105-363 at pp. 1-2; Senate Report 106-217 at pp. 1-2.

Report of the Joint Tribal-Federal Advisory Committee ("JTAC"); Indian Issues: Compensation Claims Analyses Overstate Economic Losses (GAO/RCED-91-77, May 21, 1991); Analysis of Economic Losses Resulting from Lands Taken From the Cheyenne River Sioux Tribe for the Oahe Dam, The Robert McLaughlin Company (Solen, N.D., July 1994); Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation Claim for the Oahe Dam (GAO/RCED-98-39, Jan. 28, 1998).

Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, Public Law 102-575, § 3504 (a)(2) & (b) (2), 106 Stat. 4731, 4732-4733; Crow Creek Sioux Tribe Infrastructure and Development Trust Fund Act of 1996, Public Law 104-223, §4(b), 110 Stat. 3026, 3027-3028; Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act, Public Law 105-132, §4(b), 111 Stat. 2563, 2565.