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# INDIANS' ADDITIONAL COMPENSATION CLAIMS

## Calculations for the Crow Creek Sioux and Lower Brule Sioux Tribes Differ from Approach Used in Prior GAO Reports

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Natural Resources and Environment





Highlights of [GAO-06-849T](#), a testimony before the Committee on Indian Affairs, U.S. Senate

### Why GAO Did This Study

From 1946 to 1966, the government constructed the Fort Randall and Big Bend Dams as flood control projects on the Missouri River in South Dakota. The reservoirs created behind the dams flooded about 38,000 acres of the Crow Creek and Lower Brule Indian reservations. The tribes received compensation when the dams were built and additional compensation in the 1990s. The tribes are seeking a third round of compensation on the basis of a consultant’s analysis.

The Congress provided additional compensation to other tribes after two prior GAO reports in 1991 and 1998 ([GAO/RCED-91-77](#) and [GAO/RCED-98-77](#)). For those reports, GAO proposed that one recommended approach to providing additional compensation would be to calculate the difference between the tribe’s final asking price and the amount that was appropriated by the Congress and then adjust that difference using the inflation rate and an interest rate to reflect a range of current values.

This testimony is based on GAO’s report, *Indian Issues: Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes’ Additional Compensation Claims* ([GAO-06-517](#), May 19, 2006). Specifically, this testimony notes that the tribes’ consultant did not follow the approach in GAO’s 1991 and 1998 reports. The additional compensation amounts calculated by the tribes’ consultant are contained in H.R. 109 and S. 374.

[www.gao.gov/cgi-bin/getrpt?GAO-06-849T](http://www.gao.gov/cgi-bin/getrpt?GAO-06-849T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin M. Nazzaro at (202) 512-3841 or [nazzaror@gao.gov](mailto:nazzaror@gao.gov).

# INDIANS’ ADDITIONAL COMPENSATION CLAIMS

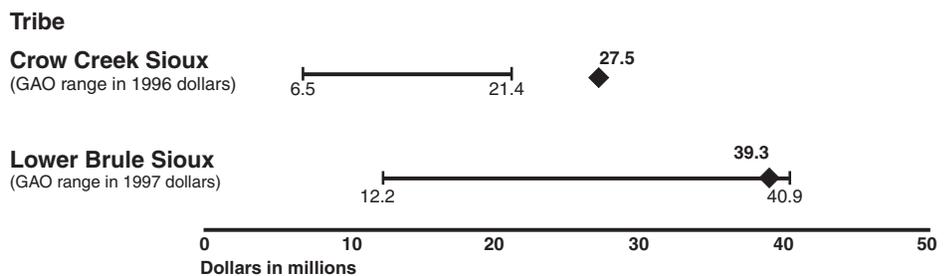
## Calculations for the Crow Creek Sioux and Lower Brule Sioux Tribes Differ from Approach Used in Prior GAO Reports

### What GAO Found

The approach the tribes’ consultant used differed from the approach used in prior GAO reports by (1) not using the tribes’ final asking prices as the starting point of the analysis and (2) not providing a range of additional compensation. First, in calculating additional compensation amounts, GAO used the tribes’ final asking prices, recognizing that their final settlement position should be the most complete and realistic. In contrast, the consultant used selected figures from a variety of tribal settlement proposals. For example, for the rehabilitation component of the tribes’ settlement proposals, the consultant used \$13.1 million from proposals in 1957, rather than \$6.7 million from the tribes’ final rehabilitation proposals in 1961. Second, the tribes’ consultant calculated only the highest additional compensation dollar value rather than providing the Congress with a range based on different adjustment factors, as in the earlier GAO reports.

Based on calculations using the tribes’ final asking prices, GAO’s estimated range of additional compensation is generally comparable with what the tribes were authorized in the 1990s (see figure below). GAO determined that the tribes’ final asking prices were a reasonable starting point for the calculations, as was the case for the tribes GAO reviewed in two prior reports. By contrast, the consultant estimated about \$106 million and \$186 million for additional compensations for the Crow Creek Sioux and Lower Brule Sioux tribes, respectively (in 2003 dollars). Rather than bringing the Crow Creek Sioux and Lower Brule Sioux tribes into parity with the additional compensation provided to other tribes, GAO believes that the two bills under consideration in the 109<sup>th</sup> Congress—H.R. 109 and S. 374—would have the opposite effect. The bills would catapult the Crow Creek Sioux and Lower Brule Sioux tribes ahead of the other tribes and set a precedent for the other tribes to seek a third round of compensation. While our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374, the Congress will ultimately decide whether or not additional compensation should be provided, and if so, how much it should be.

**GAO’s Estimated Range of Additional Compensation Versus the Additional Compensation the Tribes Were Authorized in the 1990s**



◆ Additional compensation that the Congress authorized for the tribes in 1996 and 1997

Source: GAO.

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss our work on the additional compensation claims for the Crow Creek Sioux and Lower Brule Sioux tribes. As you know, during a 20-year period, from 1946 to 1966, the federal government constructed the Fort Randall and Big Bend Dams as flood control projects on the Missouri River in South Dakota. Installation of the dams caused the permanent flooding of approximately 38,000 acres of the tribes' reservations. During the construction of the two dams, the tribes entered into negotiations with the federal government for compensation for their land that would be flooded by the reservoirs that the dams created. In both cases, the tribes and the federal government were unable to reach a negotiated settlement, and the legislative settlements imposed by the Congress were for less than the amounts that the tribes' had requested.

In 1958, the Congress authorized the payment of \$2.6 million to the two tribes for damages and administrative expenses related to the Fort Randall Dam.<sup>1</sup> Similarly, in 1962, the Congress authorized the payment of about \$7.7 million to the two tribes for damages, rehabilitation (funds for improving the tribes' standard of living), and administrative expenses related to the Big Bend Dam.<sup>2</sup> However, the tribes did not consider the compensation they received in 1958 and 1962 to be sufficient, and they sought additional compensation to address the effects of both dams. As a result, in 1996 and 1997, the Congress authorized the Crow Creek Sioux and the Lower Brule Sioux tribes additional compensation of \$27.5 million and \$39.3 million, respectively, through the establishment of development trust funds for each tribe.<sup>3</sup>

In addition to the Crow Creek Sioux and Lower Brule Sioux tribes, Indian tribes at five other reservations also (1) lost land to flood control projects on the Missouri River, (2) received compensation for damages in the mid-1900s, and (3) requested and received additional compensation in the

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<sup>1</sup>Crow Creek, Pub. L. No. 85-916, 72 Stat. 1766 (1958); and Lower Brule, Pub. L. No. 85-923, 72 Stat. 1773 (1958).

<sup>2</sup>Crow Creek, Pub. L. No. 87-735, 76 Stat. 704 (1962); and Lower Brule, Pub. L. No. 87-734, 76 Stat. 698 (1962).

<sup>3</sup>Crow Creek, Pub. L. No. 104-223, 110 Stat. 3026 (1996); and Lower Brule, Pub. L. No. 105-132, 111 Stat. 2563 (1997).

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1990s or early 2000s.<sup>4</sup> Before the Congress authorized additional compensation to Indian tribes at three—Fort Berthold, Standing Rock, and Cheyenne River—of these five other reservations, we were asked to review their additional compensation claims. In 1991, we reported on the additional compensation claims for the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux tribe, and, in 1998, we reported on the additional compensation claims for the Cheyenne River Sioux tribe.<sup>5</sup> For the tribes at these three reservations, we found the economic analyses used to justify their additional compensation claims to be unreliable, and we suggested that the Congress not rely on them as a basis for providing the tribes with additional compensation.

As an alternative, we suggested that if the Congress determined that additional compensation was warranted, it could determine the amount of compensation by calculating the difference between the tribe’s final settlement proposal (referred to in this report as the tribe’s “final asking price”) and the amount of compensation the Congress originally authorized the tribes. We used the inflation rate and an interest rate to adjust the difference to reflect a range of current values, using the inflation rate for the lower end of the range and the interest rate for the higher end. Using this approach, we calculated how much additional compensation it would take today to make up for the difference between the tribes’ final asking prices and the original compensation provided.

In 2003, the Crow Creek Sioux and Lower Brule Sioux tribes hired a consultant to determine if they were due even further additional compensation based on the method we proposed in our two prior reports. As a result of the consultant’s analysis, the two tribes are currently seeking a third round of compensation totaling an additional \$226 million (in 2003

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<sup>4</sup>Fort Berthold and Standing Rock, Pub. L. No. 102-575, title XXXV, 106 Stat. 4600, 4731 (1992); Cheyenne River, Pub. L. No. 106-511, title I, 114 Stat. 2365 (2000); and Yankton and Santee, Pub. L. No. 107-331, title II, 116 Stat. 2834, 2838 (2002).

<sup>5</sup>GAO, *Indian Issues: Compensation Claims Analyses Overstate Economic Losses*, [GAO/RCED-91-77](#) (Washington, D.C.: May 21, 1991); and *Indian Issues: Cheyenne River Sioux Tribe’s Additional Compensation Claim for the Oahe Dam*, [GAO/RCED-98-39](#) (Washington, D.C.: Jan. 28, 1998).

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dollars).<sup>6</sup> The tribes assert that their new calculations for additional compensation will bring them into parity with the additional compensation provided to the other tribes on the Missouri River. The additional compensation amounts the consultant recommended are included in two bills pending in the 109th Congress, H.R. 109 and S. 374, referred to as the Tribal Parity Act. Our testimony today is based on our May 2006 report in which we assessed whether the tribes' consultant followed the approach in our prior reports in calculating the additional compensation amounts for the Crow Creek Sioux and Lower Brule Sioux tribes.<sup>7</sup>

To assess the consultant's methods and analysis for determining additional compensation for the Crow Creek Sioux and Lower Brule Sioux tribes, we used standard economic principles and the analysis we conducted in our two prior reports on additional compensation. In order to ensure that we obtained and reviewed all relevant data, we conducted a literature search for congressional, agency, and tribal documents at the National Archives and the Department of the Interior's library. We used original documents to learn about the negotiation process and to identify the appraised land prices and various proposed settlement amounts. As a result, we determined that the data were sufficiently reliable for purposes of this report. We met with representatives of the two tribes and the tribes' consultant to discuss the analysis that was the basis for the tribes' additional compensation claims. Our May 2006 report, on which this testimony is based, was prepared in accordance with generally accepted government auditing standards.

In summary,

- The tribes' consultant differed from the approach used in prior GAO reports by (1) not using the tribes' final asking prices as the starting point of the analysis and (2) not providing a range of additional compensation. First, in calculating additional compensation amounts, GAO used the

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<sup>6</sup>Michael L. Lawson, Ph.D., Morgan Angel & Associates, *The Lower Brule and Crow Creek Sioux Tribes of South Dakota: Parity Compensation for Losses from Missouri River Pick-Sloan Dam Projects* (Washington, D.C.: June 15, 2004). See S. Hrg. No. 108-620, at 34-112 (2004). The consultant calculated a gross amount of additional compensation of \$292.3 million (in 2003 dollars)—\$105.9 million for the Crow Creek Sioux tribe and \$186.4 million for the Lower Brule Sioux tribe. After subtracting the \$66.8 million in additional compensation that the tribes received in the 1990s, the consultant arrived at a net additional request of \$225.5 million.

<sup>7</sup>GAO, *Indian Issues: Analysis of the Crow Creek Sioux and Lower Brule Sioux Tribes' Additional Compensation Claims*, [GAO-06-517](#) (Washington, D.C.: May 19, 2006).

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tribes' final asking prices, recognizing that their final settlement position should be the most complete and realistic. In contrast, the consultant used selected figures from a variety of tribal settlement proposals. For example, for the rehabilitation component of the tribes' settlement proposals, the consultant used \$13.1 million from proposals in 1957, rather than \$6.7 million from the tribes' final rehabilitation proposals in 1961. Second, the tribes' consultant calculated only the highest additional compensation dollar value rather than providing the Congress with a range of possible additional compensation based on different adjustment factors, as in the earlier GAO reports.

- Using the approach we followed in our prior reports, we determined in this analysis that the additional compensation the Congress authorized for the tribes in the 1990s was already at the high end or was above the range of possible additional compensation. For the Crow Creek Sioux tribe, we estimated that the difference—adjusted to account for inflation and interest rates through 1996—would range from \$6.5 million to \$21.4 million, compared with the \$27.5 million the Congress authorized for the tribe in 1996. For the Lower Brule Sioux tribe, we estimated that the adjusted difference would range from \$12.2 million to \$40.9 million, compared with the \$39.3 million the Congress authorized for the tribe in 1997. We determined that the tribes' final asking prices were a reasonable starting point for the calculations, as was the case for the tribes GAO reviewed in two prior reports. By contrast, the consultant estimated about \$106 million and \$186 million for additional compensation for the Crow Creek Sioux and Lower Brule Sioux tribes, respectively (in 2003 dollars). Rather than bringing the Crow Creek Sioux and Lower Brule Sioux tribes into parity with the additional compensation provided to other tribes, GAO believes that the two bills under consideration in the 109th Congress—H.R. 109 and S. 374—would have the opposite effect. While our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374, the Congress will ultimately decide whether or not additional compensation should be provided, and if so, how much it should be.

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## Background

The Flood Control Act of 1944 established a comprehensive plan for flood control and other purposes, such as hydroelectric power production, in the Missouri River Basin.<sup>8</sup> The Pick-Sloan Plan—a joint water development program designed by the U.S. Army Corps of Engineers (the Corps) and the Department of the Interior's (Interior) Bureau of Reclamation—

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<sup>8</sup>Pub. L. No. 78-534, 59 Stat. 887 (1944).

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included the construction of five dams on the Missouri River, including the Garrison Dam in North Dakota, and the Oahe, Fort Randall, Big Bend, and Gavins Point Dams in South Dakota. The construction of the Fort Randall Dam, located 7 miles above the Nebraska line in south-central South Dakota, began in May 1946 and was officially dedicated in August 1956. The dam is 160 feet high, and the reservoir behind it, known as Lake Case, stretches 107 miles to the northwest. (See fig. 1.)

**Figure 1: The Fort Randall Dam and Lake Case (February 2006)**



Source: GAO.

In September 1959, the Corps began work on the Big Bend Dam, which is about 100 miles northwest of the Fort Randall Dam on land belonging to both the Crow Creek Sioux and Lower Brule Sioux tribes. The Big Bend Dam is 95 feet high and was completed in September 1966. The reservoir behind the dam, known as Lake Sharpe, is 20 miles long. (See fig. 2.)

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**Figure 2: The Big Bend Dam and Lake Sharpe (July 1998)**



Source: U.S. Army Corps of Engineers.

The Crow Creek Sioux and Lower Brule Sioux tribes reside on reservations located across the Missouri River from one another in central South Dakota. Each reservation includes about 225,000 acres. The major economic activities for both the Crow Creek Sioux and Lower Brule Sioux tribes are cattle ranching and farming, and both tribes provide guided hunting for fowl and other game. Each tribe also operates a casino and a hotel. Both tribes are governed by a tribal council under their respective tribal constitutions, and each tribal council is led by a tribal chairman. The major employers on the reservations are the tribes, the casinos, the Bureau of Indian Affairs, and the Indian Health Service.

The construction of the Fort Randall Dam caused the flooding of more than 17,000 acres of Crow Creek and Lower Brule reservation land and the displacement of more than 100 tribal families. After these two tribes sustained major damage from this project, the construction of the Big Bend Dam inundated over 20,000 additional acres of their reservations. This flooding displaced more families, some of whom had moved earlier as a result of flooding from the Fort Randall Dam. (See table 1.) Flooding from the installation of both dams resulted in the loss of valuable timber and pasture and forced families to move to less desirable land, which affected their way of life.

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**Table 1: Acreage Lost and Families Displaced by the Fort Randall and Big Bend Dams**

Tribe	Fort Randall Dam		Big Bend Dam	
	Acreage lost	Number of Families displaced	Acreage lost	Number of families displaced
Crow Creek Sioux	9,418	84	6,179	27
Lower Brule Sioux	7,997	35	14,299	62
<b>Total</b>	<b>17,415</b>	<b>119</b>	<b>20,478</b>	<b>89</b>

Sources: House and Senate reports.

During the 1950s and 1960s, the Corps, Interior, through its Missouri River Basin Investigations Unit (MRBI),<sup>9</sup> and the tribes—represented through tribal negotiating committees—developed their own estimates of the damages caused by the Fort Randall and Big Bend dams. The settlement negotiations for the Fort Randall Dam stretched over several years, and the tribes put forward a number of different settlement proposals. The settlement negotiations for the Big Bend Dam were conducted in a much shorter time frame, but there still were a number of settlement proposals and counter-proposals. See table 2 for summary of the tribes’ initial settlement proposals and final asking prices for both dams.

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<sup>9</sup>The Secretary of the Interior created this unit in 1945 to study the impact of the various Missouri River flood control projects.

**Table 2: Initial Settlement Proposals and Final Asking Prices by the Crow Creek Sioux and Lower Brule Sioux tribes for the Fort Randall and Big Band Dams**

Current year dollars		
Settlement components, by dam and by tribe	Initial settlement proposals (1954, 1960, and 1961)	Final asking prices (1958 and 1961)
<b>Fort Randall Dam</b>		
Crow Creek Sioux		
Direct damages	\$566,967	\$641,588
Indirect damages	1,132,452	1,463,433
Administrative expenses	100,000 <sup>a</sup>	100,000
<b>Subtotal</b>	<b>\$1,799,419</b>	<b>\$2,205,021</b>
Rehabilitation	\$2,560,000	\$0
Lower Brule Sioux		
Direct damages	\$739,904	\$771,998
Indirect damages	1,790,568	788,904
Administrative expenses	100,000 <sup>a</sup>	200,000
<b>Subtotal</b>	<b>\$2,630,472</b>	<b>\$1,760,902</b>
Rehabilitation	\$2,530,000	\$0
<b>Subtotal</b>	<b>\$4,429,891<sup>b</sup></b>	<b>\$3,965,923</b>
<b>Big Bend Dam</b>		
Crow Creek Sioux		
Direct damages	\$494,890	\$355,000
Indirect damages	421,034	467,004
Administrative expenses	125,000	125,000
Rehabilitation	2,790,000	4,002,000
<b>Subtotal</b>	<b>\$3,830,924</b>	<b>\$4,949,004</b>
Lower Brule Sioux		
Direct damages	\$1,111,910	\$825,000
Indirect damages	783,998	884,472
Administrative expenses	125,000	125,000
Rehabilitation	1,620,000	2,670,300
New school	350,000	350,000
<b>Subtotal</b>	<b>\$3,990,908</b>	<b>\$4,854,772</b>
<b>Subtotal</b>	<b>\$7,821,832</b>	<b>\$9,803,776</b>
<b>Total</b>	<b>\$12,251,723<sup>b</sup></b>	<b>\$13,769,699</b>

Source: National Archives.

<sup>a</sup>Administrative expenses were first proposed in H.R. 3544 and H.R. 3602, 84th Cong., 1st Sess., introduced on February 3, 1955.

<sup>b</sup>To avoid double counting the rehabilitation component, the rehabilitation amounts for the Fort Randall Dam are not included in the subtotal for the Fort Randall Dam nor in the total for the entire table. During the negotiations for the Fort Randall Dam, the tribes agreed to defer the negotiations on the rehabilitation component to the settlement negotiations for the Big Bend Dam. The initial settlement proposals for rehabilitation for the Fort Randall Dam totaled \$5,090,000, compared to \$4,410,000 for the initial rehabilitation proposals for the Big Bend Dam. Using the higher rehabilitation amounts from the Fort Randall Dam negotiations, the total would increase to \$12,931,723, which is still less than the total of the tribes' final asking prices.

Tribes at five other reservations affected by flood control projects along the Missouri River incurred losses ranging from about 600 acres to over 150,000 acres. These tribes received some compensation, primarily during the 1950s, for the damages they sustained. However, beginning in the 1980s, some of these tribes began requesting additional compensation. The Congress responded to their requests by authorizing the establishment of development trust funds. (See table 3.) The tribes at the Fort Berthold, Standing Rock, and Cheyenne River reservations received compensation within the ranges we had suggested the Congress consider in our reviews of the tribes' additional compensation claims. The ranges were based on the current value of the difference between each tribes' final asking price and the amount that the Congress authorized. We were not asked to review the additional compensation claims for the Crow Creek Sioux and Lower Brule Sioux tribes in the 1990s or for the Santee Sioux and Yankton Sioux tribes in 2002.

**Table 3: Additional Compensation Authorized by Congress for Tribes on the Missouri River**

Current year dollars in millions

Tribe	Dam	Acreage lost	Year additional compensation enacted	Additional compensation authorized
Three Affiliated Tribes of the Fort Berthold Reservation	Garrison	152,360	1992 <sup>a</sup>	\$149.2
Standing Rock Sioux	Oahe	55,994	1992 <sup>a</sup>	90.6
Crow Creek Sioux	Fort Randall; Big Bend	15,597	1996 <sup>b</sup>	27.5
Lower Brule Sioux	Fort Randall; Big Bend	22,296	1997 <sup>c</sup>	39.3
Cheyenne River Sioux	Oahe	104,420	2000 <sup>d</sup>	290.7
Yankton Sioux	Fort Randall	2,851	2002 <sup>e</sup>	23.0
Santee Sioux	Gavins Point	593	2002 <sup>e</sup>	4.8

Source: GAO analysis of the additional compensation acts.

<sup>a</sup>Pub. L. No. 102-575, title XXXV, 106 Stat. 4600, 4731 (1992).

<sup>b</sup>Pub. L. No. 104-223, 110 Stat. 3026 (1996).

<sup>c</sup>Pub. L. No. 105-132, 111 Stat. 2563 (1997).

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<sup>4</sup>Pub. L. No. 106-511, title I, 114 Stat. 2365 (2000). The development trust fund for the Cheyenne River Sioux tribe will not be created until the first day of the 11th fiscal year after enactment, or October 1, 2011.

<sup>5</sup>Pub. L. No. 107-331, title II, 116 Stat. 2834, 2838 (2002). The development trust funds for the Yankton Sioux and Santee Sioux tribes will not be created until the first day of the 11th fiscal year after enactment, or October 1, 2013.

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## Consultant's Compensation Analysis Differs from the Approach GAO Previously Used for Other Tribes

The approach used by the Crow Creek Sioux and Lower Brule Sioux tribes' consultant differed from the approach we used in our prior reports. The consultant used a variety of settlement proposals, instead of consistently using the tribes' final asking prices, in calculating the difference between what the tribes asked for and what the Congress authorized. As a result, the consultant's proposed compensation estimates are higher than if he had consistently used the tribes' final asking prices. In addition, the consultant provided only the highest additional compensation value, rather than a range of possible additional compensation from which the Congress could choose.

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## Consultant Used Various Settlement Proposals Rather Than Consistently Using the Tribes' Final Asking Prices

To arrive at an additional compensation estimate, the consultant did not consistently use the tribes' final asking prices when calculating the difference between what the tribes asked for and what they finally received. In determining possible additional compensation for the tribes at the Fort Berthold and Standing Rock reservations in 1991, and Cheyenne River reservation in 1998, we used the tribes' final asking prices to calculate the difference between what the tribes asked for and what they received. In our prior reports, we used the tribes' final position because we believed that it represented the most up-to-date and complete information and that their final position was more realistic than their initial asking prices. In contrast, the consultant used figures from a variety of settlement proposals—several of which were not the tribes' final asking prices—to estimate additional compensation for damages (including direct and indirect damages), administrative expenses, and rehabilitation. As a result, the consultant's estimate of the tribes' asking prices in the late 1950s and early 1960s was about \$7.7 million higher than it would have been if he had consistently used the tribes' final asking prices. Choosing which settlement proposal to use to calculate the difference between what the tribe asked for and what it finally received is critically important, because a small numerical difference 50 years ago can result in a large difference today, once it is adjusted to reflect more current values.

With respect to the Fort Randall Dam, the consultant used amounts from a variety of settlement proposals for damages and administrative expenses. To determine additional compensation, the consultant used a \$2.2 million

settlement proposal by the Crow Creek Sioux tribe and a \$2.6 million settlement proposal by the Lower Brule Sioux tribe. (See table 4.) The Crow Creek proposal was from May 1957, and was the same as the tribe's final asking price requested about 1 year later, in February 1958. However, the Lower Brule proposal was from the first compensation bill introduced in the Congress in July 1954, almost 4 years before the tribe's final asking price of about \$1.8 million in March 1958—a difference of more than \$850,000.

**Table 4: Comparison of the Settlement Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices for the Fort Randall Dam**

Current year dollars

Type of compensation, by tribe	Settlement figure used by the tribes' consultant <sup>a</sup>	Date of settlement figure	Tribes' final asking prices	Date of final asking price	Difference
Crow Creek Sioux					
Direct damages	\$641,588	May 1957	\$641,588	Feb. 1958	\$0
Indirect damages	1,463,433	May 1957	1,463,433	Feb. 1958	0
Administrative expenses	100,000	May 1957	100,000	Feb. 1958	0
<b>Subtotal</b>	<b>\$2,205,021</b>		<b>\$2,205,021</b>		<b>\$0</b>
Lower Brule Sioux					
Direct damages	\$739,904	July 1954	\$771,998	Mar. 1958	(\$32,094)
Indirect damages	1,790,568	July 1954	788,904	Mar. 1958	1,001,664
Administrative expenses	100,000	Feb. 1955	200,000	Mar. 1958	(100,000)
<b>Subtotal</b>	<b>\$2,630,472</b>		<b>\$1,760,902</b>		<b>\$869,570</b>
<b>Total</b>	<b>\$4,835,493</b>		<b>\$3,965,923</b>		<b>\$869,570</b>

Sources: National Archives and the consultant's analysis.

<sup>a</sup>The consultant's figures for the Crow Creek Sioux tribe were from H.R. 7758, 85th Cong., 1st Sess., (companion bill S. 2152) introduced on May 24, 1957. The consultant's damage figures for the Lower Brule Sioux tribe were from H.R. 9832, 83rd Cong., 2nd Sess., (companion bill S. 3748) introduced on July 8, 1954. The administrative expenses figure for Lower Brule was from H.R. 3544, 84th Cong., 1st Sess., (companion bill S. 953) introduced on February 3, 1955. The direct damages in H.R. 3544 were reduced to \$708,493.29, and the indirect damages were reduced to \$788,904.

For the Big Bend Dam, the consultant also used amounts from different settlement proposals for damages and administrative expenses. To determine additional compensation, the consultant used amounts from congressional bills introduced in March 1961 for direct damages, but used amounts from proposed amendments to the bills in June 1961 for indirect damages. The tribes' asking prices from June 1961 can be considered their final asking prices because the proposed amendments are the last evidence of when the tribes requested specific compensation (indirect

damages) or agreed to a compensation amount (direct damages). The consultant would have been more consistent had he used both the indirect and direct damage settlement figures in the proposed amendments from June 1961, rather than a mixture of these figures. As a result, the total amount for damages the consultant used to calculate the difference between what the tribes requested and what it finally received is about \$427,000 (in 1961 dollars), which is higher than if the tribes' final asking prices from June 1961 had been used consistently. (See table 5.)

**Table 5: Comparison of the Settlement Figures Used by the Tribes' Consultant Versus the Tribes' Final Asking Prices for the Big Bend Dam**

Current year dollars

Type of compensation, by tribe	Settlement figure used by the tribes' consultant <sup>a</sup>	Date of settlement figure	Tribes' final asking prices	Date of final asking price	Difference
Crow Creek Sioux					
Direct damages	\$494,890	Mar. 1961	\$355,000	June 1961	\$139,890
Indirect damages	467,004	June 1961	467,004	June 1961	0
Administrative expenses	125,000	Mar. 1961	125,000	June 1961 <sup>b</sup>	0
<b>Subtotal</b>	<b>\$1,086,894</b>		<b>\$947,004</b>		<b>\$139,890</b>
Lower Brule Sioux					
Direct damages	\$1,111,910	Mar. 1961	\$825,000	June 1961	\$286,910
Indirect damages	884,472	June 1961	884,472	June 1961	0
Administrative expenses	125,000	Mar. 1961	125,000	June 1961 <sup>b</sup>	0
New school	350,000	Mar. 1961	350,000	June 1961 <sup>b</sup>	0
<b>Subtotal</b>	<b>\$2,471,382</b>		<b>\$2,184,472</b>		<b>\$286,910</b>
<b>Total</b>	<b>\$3,558,276</b>		<b>\$3,131,476</b>		<b>\$426,800</b>

Sources: National Archives and the consultant's analysis

<sup>a</sup>The consultant used figures from H.R. 5165 (companion bill S. 1252) and H.R. 5144 (companion bill S. 1251) for direct damages and administrative expenses for the Crow Creek Sioux and Lower Brule Sioux tribes, respectively. The figure for the new school for the Lower Brule Sioux Tribe was also from H.R. 5144 (companion bill S. 1251). The figures for indirect damages were from proposed amendments to these bills. An Assistant Secretary for the Department of the Interior included a composite of the recommended amendments of the Secretary of the Interior, the Secretary of the Army, and the tribes to H.R. 5144 and H.R. 5165 in a letter to the Chairman of the House, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, on June 16, 1961.

<sup>b</sup>The tribes' final asking prices for administrative expenses and the new school for the Lower Brule Sioux tribe were represented in congressional bills introduced in March 1961. No changes were proposed to these figures in the proposed amendments to the bills, so we assumed these figures represented the tribes' final asking prices as of June 1961.

Lastly, the consultant did not use the tribes' final asking prices for the rehabilitation component of the settlement payment. The consultant used

a \$6.7 million rehabilitation figure that the Crow Creek Sioux tribe’s negotiating committee proposed in May 1957 and a \$6.3 million rehabilitation figure that was proposed in congressional bills in 1955 and 1957 for the Lower Brule Sioux tribe. (See table 6.) Both of these figures were developed during the negotiations for the Fort Randall Dam. However, the tribes agreed in their February and March 1958 proposals—their final asking prices for the Fort Randall Dam—to defer consideration of their rehabilitation proposals until after land acquisitions were made for the construction of the Big Bend Dam. The Big Bend Dam’s installation would once again result in the flooding of their lands. In our view, the consultant should have used the final rehabilitation figures proposed by the tribes in 1961—that is, \$4 million for the Crow Creek Sioux tribe and \$2.7 million for the Lower Brule Sioux tribe.

**Table 6: Comparison of Rehabilitation Figures Used by the Tribes’ Consultant Versus the Tribes’ Final Asking Prices**

Current year dollars

Rehabilitation payment, by tribe	Settlement figure used by the tribes’ consultant <sup>a</sup>	Date of settlement figure	Tribes’ final asking prices	Date of final asking price	Difference
Crow Creek Sioux	\$6,715,311	May 1957	\$4,002,000	Mar. 1961	\$2,713,311
Lower Brule Sioux	6,348,316	Apr. 1957 <sup>b</sup>	2,670,300	Mar. 1961	3,678,016
<b>Total</b>	<b>\$13,063,627</b>		<b>\$6,672,300</b>		<b>\$6,391,327</b>

Sources: National Archives and the consultant’s analysis.

<sup>a</sup>The consultant’s rehabilitation figure for the Crow Creek Sioux tribe was from H.R. 7758, 85th Cong., 1st Sess., (companion bill S. 2152) introduced on May 24, 1957. The figure was also presented by the tribe’s negotiating committee in May 1957. The consultant’s rehabilitation figure for the Lower Brule Sioux tribe was from H.R. 6569, 85th Cong., 1st Sess., introduced on April 2, 1957.

<sup>b</sup>The same rehabilitation figure was also included in settlement proposals from February 1955 (H.R. 3544 and S. 953) and March 1957 (H.R. 6074). As shown in table 5, the damage settlement figures the consultant used were from H.R. 9832 (companion bill S. 3748) in 1954, years earlier than the date of the rehabilitation figure that was used. In 1954, H.R. 9832 and S. 3748 both included a rehabilitation figure of \$2.53 million—over \$3.8 million less than the figure the consultant used.

During the settlement negotiations for the two dams, the tribes never submitted a settlement proposal at a singular point in time that consisted of the settlement figures that the tribes’ consultant grouped together for the purposes of his calculations.

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## Consultant Developed a Single Compensation Estimate for Each Tribe, Rather Than a Range of Estimates

In our two prior reports, we suggested that, for the tribes of Fort Berthold, Standing Rock, and Cheyenne River, the Congress consider a range of possible compensation based on the current value of the difference between the final asking price of each tribe and the amount that it received. In calculating the current value, we used two different rates to establish a range of additional compensation. For the lower end of the range, we used the inflation rate to estimate the amount the tribes would need to equal the purchasing power of the difference. For the higher range, we used an interest rate to estimate the amount the tribes might have earned if they had invested the difference in Aaa corporate bonds as of the date of the settlement.<sup>10</sup> The consultant did not follow this approach when he calculated the compensation estimates for the Crow Creek Sioux and Lower Brule Sioux tribes. Instead, he used the corporate bond rate to develop a single figure for each tribe, rather than a range.

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## Amounts Calculated by GAO Are Similar to the Amounts Received by the Tribes in the 1990s

Using the approach we followed in our prior reports, which was based on the tribes' final asking prices, we found that the additional compensation the Crow Creek Sioux and Lower Brule Sioux tribes received in the 1990s was either at the high end or above the range of possible additional compensation. For both tribes, we calculated the difference between the final asking prices and the compensation authorized in 1958 and 1962. We then took the difference and adjusted it to account for the inflation rate and the Aaa corporate bond rate through either 1996 or 1997 to produce a possible range of additional compensation to compare it with the additional compensation the Congress authorized for the tribes in 1996 and 1997. For the Crow Creek Sioux tribe, we estimated that the difference adjusted to 1996 values for both dams would range from \$6.5 million to \$21.4 million (see table 7), compared with the \$27.5 million the Congress authorized for the tribe in 1996. The \$27.5 million in additional compensation already authorized for the Crow Creek Sioux tribe is therefore higher than the amount that we would have proposed in 1996 using our approach.

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<sup>10</sup>Aaa is the highest grade of corporate bonds in the estimate of bond rating services, such as Moody's Investment Services.

**Table 7: Estimate of Additional Compensation Range for the Crow Creek Sioux Tribe**

Current year dollars

Type of payment	Tribes' final asking prices (1958 and 1961) <sup>a</sup>	Payment authorized (1958 and 1962) <sup>b</sup>	Difference	Additional compensation range (in 1996 dollars)	
				Low end (inflation rate) <sup>c</sup>	High end (interest rate) <sup>d</sup>
<b>Fort Randall Dam</b>					
Damages	\$2,105,021	\$1,395,812	\$709,209	\$3,848,314	\$13,369,732
Administrative expenses	100,000	100,000	0	0	0
<b>Subtotal</b>	<b>\$2,205,021</b>	<b>\$1,495,812</b>	<b>\$709,209</b>	<b>\$3,848,314</b>	<b>\$13,369,732</b>
<b>Big Bend Dam</b>					
Damages	\$822,004	\$564,302	\$257,702	\$1,338,508	\$4,094,541
Administrative expenses	125,000	75,000	50,000	259,701	794,433
<b>Subtotal</b>	<b>\$947,004</b>	<b>\$639,302</b>	<b>\$307,702</b>	<b>\$1,598,209</b>	<b>\$4,888,974</b>
Rehabilitation	\$4,002,000	\$3,802,500	\$199,500	\$1,036,206	\$3,169,789
<b>Total</b>	<b>\$7,154,025</b>	<b>\$5,937,614</b>	<b>\$1,216,411</b>	<b>\$6,482,729</b>	<b>\$21,428,495</b>

Source: GAO analysis of National Archives legislative files and the consultant's analysis.

<sup>a</sup>The damages figure for the Fort Randall Dam is from the Statement and Estimates of the Crow Creek Sioux Tribal Council and Negotiating Committee, dated February 21, 1958, presented at a hearing on H.R. 10786 before the House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, March 25, 1958. The tribe's final asking price for the damages caused by the Fort Randall Dam was embodied in H.R. 10786, 85th Cong., 2nd Sess., (companion bill S. 3225) introduced on February 18, 1958. The administrative expenses figure for the Fort Randall Dam is from H.R. 10786. The damage figure for the Big Bend Dam is from proposed amendments to H.R. 5165, dated June 16, 1961, and the figures for administrative expenses and rehabilitation are from H.R. 5165 (companion S. 1252) because the tribes did not ask for any changes to these components in the June 1961 proposed amendments.

<sup>b</sup>Fort Randall Dam, Pub. L. No. 85- 916, 72 stat. 1766 (1958); and Big Bend Dam, Pub. L. No. 87- 735, 76 Stat. 704 (1962).

<sup>c</sup>Data in this column reflect the annual inflation rate (consumer price index for all items) from 1959 through 1996 for the Fort Randall Dam items and from 1962 through 1996 for the Big Bend Dam items and rehabilitation.

<sup>d</sup>Data in this column reflect the annual average rate of interest earned on investments in Aaa corporate bonds from 1959 through 1996 for the Fort Randall Dam items and from 1962 through 1996 for the Big Bend Dam items and rehabilitation.

For the Lower Brule Sioux tribe, we estimated that the difference adjusted to 1997 values for both dams would range from \$12.2 million to \$40.9 million (see table 8), compared with the \$39.3 million the Congress authorized for the tribe in 1997. The \$39.3 million falls toward the high end of the range that we would have proposed in 1997 using our approach.

**Table 8: Estimate of Additional Compensation Range for the Lower Brule Sioux Tribe**

Current year dollars					
Type of payment	Tribes' final asking prices (1958 and 1961) <sup>a</sup>	Payment authorized (1958 and 1962) <sup>b</sup>	Difference	Additional compensation range (in 1997 dollars)	
				Low end (inflation rate) <sup>c</sup>	High end (interest rate) <sup>d</sup>
<b>Fort Randall Dam</b>					
Damages	\$1,560,902	\$976,523	\$584,379	\$3,243,892	\$11,816,283
Administrative expenses	200,000	100,000	100,000	555,101	2,022,024
<b>Subtotal</b>	<b>\$1,760,902</b>	<b>\$1,076,523</b>	<b>\$684,379</b>	<b>\$3,798,993</b>	<b>\$13,838,307</b>
<b>Big Bend Dam</b>					
Damages	\$1,709,472	\$1,225,715	\$483,757	\$2,570,431	\$8,244,275
Administrative expenses	125,000	75,000	50,000	265,674	852,109
New school	350,000	0	350,000	1,859,716	5,964,764
<b>Subtotal</b>	<b>\$2,184,472</b>	<b>\$1,300,715</b>	<b>\$883,757</b>	<b>\$4,695,821</b>	<b>\$15,061,148</b>
Rehabilitation	\$2,670,300	\$1,968,750	\$701,550	\$3,727,669	\$11,955,943
<b>Total</b>	<b>\$6,615,674</b>	<b>\$4,345,988</b>	<b>\$2,269,686</b>	<b>\$12,222,483</b>	<b>\$40,855,398</b>

Source: GAO analysis of National Archives legislative files and the consultant's analysis.

<sup>a</sup>The damages figure and administrative expenses for the Fort Randall Dam are from the Lower Brule Proposed Program in Support of H.R. 6074, which was presented at a hearing on H.R. 6074 before the House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, March 25, 1958. The tribe's final asking price for damages caused by the Fort Randall Dam was embodied in H.R. 6074, 85th Cong., 1st Sess., introduced on March 18, 1957. The damages figure for the Big Bend Dam is from proposed amendments to H.R. 5144, dated June 16, 1961, and the figures for administrative expenses and rehabilitation are from H.R. 5144 (companion bill S. 1251) because there were no changes requested by the tribe to these components in the June 1961 proposed amendments.

<sup>b</sup>Fort Randall Dam, Pub. L. No. 85-923, 72 Stat. 1773 (1958); and Big Bend Dam, Pub. L. No. 87-734, 76 Stat. 698 (1962).

<sup>c</sup>Data in this column reflect the annual inflation rate (consumer price index for all items) from 1959 through 1997 for the Fort Randall Dam items and from 1962 through 1997 for the Big Bend Dam items and rehabilitation.

<sup>d</sup>Data in this column reflect the annual average rate of interest earned on investments in Aaa corporate bonds from 1959 through 1997 for the Fort Randall Dam items and from 1962 through 1997 for the Big Bend Dam items and rehabilitation.

Our estimates of additional compensation for the two tribes vary significantly from the amounts calculated by the tribes' consultant. Our estimated range for the two tribes combined is about \$18.7 million to \$62.3 million. The consultant calculated an additional compensation figure for

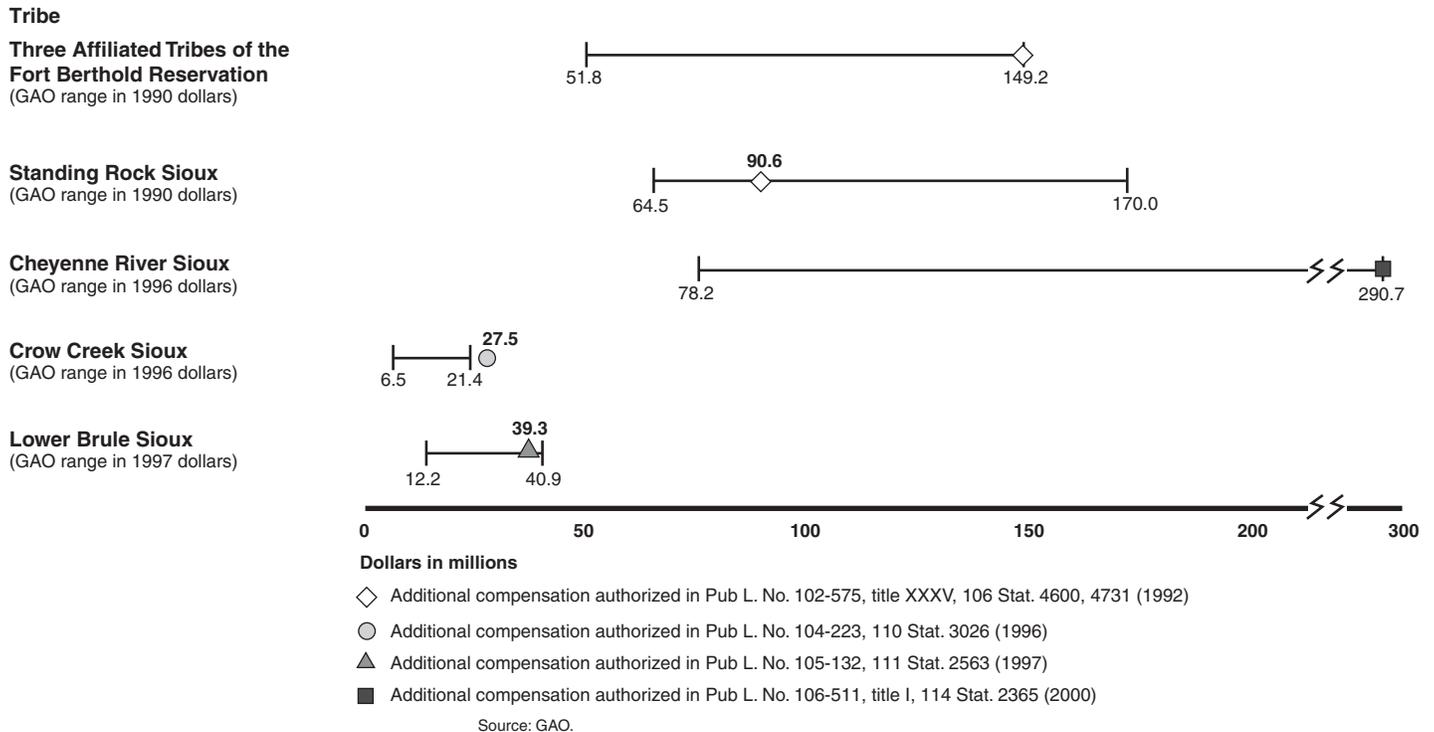
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the two tribes of \$292.3 million (in 2003 dollars)—that is, \$105.9 for the Crow Creek Sioux tribe and \$186.4 for the Lower Brule Sioux tribe—before subtracting the amounts received by the tribes in 1996 and 1997, respectively.

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In conclusion, the additional compensation already authorized for the Crow Creek Sioux and Lower Brule Sioux tribes in 1996 and 1997, respectively, is consistent with the additional compensation authorized for the other tribes on the Missouri River. Rather than bringing the Crow Creek Sioux and Lower Brule Sioux tribes into parity with the other tribes, the two bills under consideration in the 109th Congress—H.R. 109 and S. 374—would have the opposite effect. As such, should the Congress rely on our analysis in this report and not provide these two tribes a third round of compensation, then the additional compensation provided to five of the seven tribes affected by Pick-Sloan dam projects on the Missouri River would generally be within the ranges we have calculated. (See fig. 3.) Accordingly, we believe our approach would provide more consistency among the tribes.

**Figure 3: GAO's Estimated Range of Additional Compensation Versus the Additional Compensation Authorized for Five Tribes Since 1992**



Providing a third round of compensation to the Crow Creek Sioux and Lower Brule Sioux tribes, in the amounts proposed in the bills, would catapult them ahead of the other tribes and set a precedent for the other tribes to seek a third round of compensation. Our analysis does not support the additional compensation amounts contained in H.R. 109 and S. 374. Notwithstanding the results of our analysis, the Congress will ultimately decide whether or not additional compensation should be provided, and if so, how much it should be. Our analysis will assist the Congress in this regard.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

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## Contact and Acknowledgments

For further information, please contact Robin M. Nazzaro on (202) 512-3841 or [nazzaror@gao.gov](mailto:nazzaror@gao.gov). Individuals making key contributions to this testimony and the report on which it was based are Greg Carroll, Timothy J. Guinane, Susanna Kuebler, Jeffery D. Malcolm, and Carol Herrnstadt Shulman.

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