



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

August 25, 2006

### **S. 374**

### **Lower Brule and Crow Creek Tribal Compensation Act**

*As ordered reported by the Senate Committee on Indian Affairs on August 2, 2006*

#### **SUMMARY**

S. 374 would increase the size of two existing tribal trust funds established by the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act and the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996. Congress created those funds as compensation for damages to the tribes caused by the Pick-Sloan Missouri River Basin project; this bill would constitute a final settlement of claims by the two tribes against the United States. CBO estimates that enacting S. 374 would increase direct spending by \$66 million in 2007 and \$169 million over the 2007-2016 period. Enacting the bill would not affect revenues.

S. 374 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The payments authorized by this bill would benefit the Lower Brule Sioux and Crow Creek Sioux tribes.

#### **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

The estimated budgetary impact of S. 374 is shown in the table below. The costs of this legislation fall within budget function 450 (community and regional development).

By Fiscal Years, in Millions of Dollars

2007 2008 2009 2010 2011 2012 2013 2014 2015 2016

**CHANGES IN DIRECT SPENDING**

Lower Brule and Crow Creek Funds  
Spending Under Current Law

Interest on Lower Brule Fund										
Estimated Budget Authority	2	2	2	2	2	2	2	2	2	2
Estimated Outlays	2	2	2	2	2	2	2	2	2	2

Interest on Crow Creek Fund										
Estimated Budget Authority	1	1	1	1	1	1	1	1	1	1
Estimated Outlays	1	1	1	1	1	1	1	1	1	1

Proposed Changes:

Transfers to Lower Brule Fund										
Estimated Budget Authority	0	130	0	0	0	0	0	0	0	0
Estimated Outlays	0	130	0	0	0	0	0	0	0	0

Transfers to Crow Creek Fund										
Estimated Budget Authority	69	0	0	0	0	0	0	0	0	0
Estimated Outlays	69	0	0	0	0	0	0	0	0	0

Interest on Lower Brule Fund										
Estimated Budget Authority	-2	-2	-2	-2	-2	-2	-2	-2	-2	-2
Estimated Outlays	-2	-2	-2	-2	-2	-2	-2	-2	-2	-2

Interest on Crow Creek Fund										
Estimated Budget Authority	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1
Estimated Outlays	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1

Total Changes										
Estimated Budget Authority	66	127	-3	-3	-3	-3	-3	-3	-3	-3
Estimated Outlays	66	127	-3	-3	-3	-3	-3	-3	-3	-3

Lower Brule and Crow Creek Tribal Funds  
Spending Under S. 374

Estimated Budget Authority	69	130	0	0	0	0	0	0	0	0
Estimated Outlays	69	130	0	0	0	0	0	0	0	0

## **BASIS OF ESTIMATE**

CBO estimates that enacting this legislation would result in a net increase in direct spending of \$66 million in 2007 and \$169 million over the 2007-2016 period. By increasing the maximum funding level of two tribal trust funds and establishing a final settlement of certain tribal claims against the federal government, CBO estimates that enacting S. 374 would increase direct spending by \$199 million over the 2007-2016 period. The bill also would reduce direct spending for interest payments made to the tribes by \$30 million over the 2007-2016 period. For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2007 and that additional transfers to the trust funds would begin in that year.

### **Trust Fund Activity Under Current Law**

In 1996 and 1997, the Congress enacted legislation creating the Crow Creek Sioux Tribe Infrastructure Development Trust Fund (Crow Creek Fund) and the Lower Brule Sioux Tribe Infrastructure Development Trust Fund (Lower Brule Fund). Both acts authorized the Secretary of the Treasury to transfer certain proceeds from electricity sales made by the Western Area Power Administration (WAPA), the agency that manages the Pick-Sloan project, to each fund. Such transfers were made annually until the funds reached the maximum balances set forth in law. Consistent with the treatment of similar tribal trust funds, both funds are classified as budgetary accounts because all claims against the federal government for related damages have not been extinguished. Thus, transfers to the funds made to date have been considered intragovernmental and have had no net effect on the federal budget.

Current law directs the Secretary to transfer any interest earned by the Crow Creek Fund and the Lower Brule Fund into separate accounts for the benefit of the tribes. Payments from these interest accounts may only occur after the trust fund has reached its maximum funding level. Given that both trust funds are currently at their maximum levels, CBO estimates that such payments will total \$3 million in 2007—\$2 million from the Lower Brule Fund and \$1 million from the Crow Creek Fund—and \$30 million over the 2007-2016 period.

### **Trust Fund Activity Under S. 374**

S. 374 would increase the size of the Lower Brule Fund by \$91 million (for a new maximum of \$130 million), and the Crow Creek Fund by \$42 million (for a new maximum of \$69 million). Each fund would receive deposits equal to 25 percent of the gross revenues from the Pick-Sloan project from the previous year. Those annual deposits would continue until the total balance of the trust fund reaches the new maximum level. Based on

information from WAPA, CBO estimates that gross electricity sales revenues from the Pick-Sloan project will be \$318 million in 2006 and average approximately \$344 million per year thereafter. Thus, CBO estimates that deposits to the Crow Creek Fund would reach its new maximum level in 2007, and the Lower Brule Fund would reach its new maximum level in 2008.

S. 374 would extinguish any future claims against the federal government by the two tribes upon full funding of their trust funds. Consistent with the treatment of similar tribal funds, the balances would thereafter be considered under tribal ownership. The federal budget excludes trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes, so CBO expects that the trust fund will be reclassified as nonbudgetary and the transfer of funds to the tribes would be recorded on the budget as new direct spending equal to the full balance of the trust fund. As a result, CBO estimates that enacting S. 374 would increase direct spending by \$69 million in 2007 for the Crow Creek Fund, and by \$130 million in 2008 for the Lower Brule Fund.

After those funds are transferred, any future interest earnings and payments would not be considered part of the federal budget. Additionally, because under the bill the Lower Brule Fund would fall below its maximum funding level in 2007, no interest payments would be made to the tribe in that year. As such, CBO estimates that enacting S. 374 would reduce direct spending for interest payments to the tribes by \$3 million in 2007 and \$30 million over the 2007-2016 period.

## **PREVIOUS CBO ESTIMATE**

On July 7, 2005, CBO transmitted a cost estimate for S. 374, the Tribal Parity Act, as ordered reported by the Senate Committee on Indian Affairs on June 29, 2005. That version of the legislation also would have increased deposits (by different amounts) to the Lower Brule Fund and the Crow Creek Fund. The July 7, 2005 version of the legislation, however, would not have extinguished all related claims against the federal government as directed in the August 2006 version of the legislation. CBO's current cost estimate reflects those differences.

## **INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT**

S. 374 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Enacting this legislation would benefit the two tribes.

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