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## New Managed Trust Funds

### Authority:

The Water Resources Development Act of 1999 (Public Law 106-53) was enacted on August 17, 1999. This act created three new trust funds for the restoration of terrestrial wildlife habitat loss that occurred as a result of flooding related to the Big Bend and Oahe projects carried out as part of the Pick-Sloan Missouri River Basin Program.

The Pick-Sloan Missouri River Basin Program is a major component of Flood Control Act of 1944 (58 Stat. 887, chapter 665: 35 USC 107-1 *et seq.*), that provides for economic development, irrigation, and flood control in the Missouri River Basin. This program forced the relocation of many residents from tribal homeland, which were flooded as a result of this program.

### Names of the Trust Funds:

- South Dakota Terrestrial Wildlife Habitat Restoration Trust Fund
- Cheyenne River Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund
- Lower Brule Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund

The South Dakota Terrestrial Wildlife Habitat Restoration Trust Fund is managed by the Secretary of the Army. Treasury's role is consistent with the role we have for all other agency-managed trust funds.

The Cheyenne River Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund (Cheyenne River Tribe Trust Fund) and the Lower Brule Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund (Lower Brule Tribe Trust Fund) are managed by the Secretary of the Treasury with a more detailed level of responsibility than he normally has. (See Section on Treasury's Role.)

### Funding:

The total funding for the Cheyenne River Tribe and the Lower Brule Tribe Trust Funds combined, will equal \$57,400,000. Appropriated funds will be allocated at a rate of \$5,000,000 per year from the General Fund of the Treasury to the trust funds. Funds will be allocated to the individual funds at the ratio of 74 percent for the Cheyenne River Tribe Trust Fund and 26 percent for the Lower Brule Tribe Trust Fund.

### Investments:

The Secretary of the Treasury shall invest the amounts deposited only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The Secretary shall invest at the highest rate of interest among obligation of the required maturity.

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**Payments:**

No payments shall be made out of the trust funds until they have been fully capitalized (almost 12 years). Principal is not to be spent, only interest, but it can be spent without fiscal year limitations. Payments are to be made directly to the Tribes by the Secretary of the Treasury.

**Purpose of Trust Funds:**

~~Funds shall be used to fully fund work to restore the terrestrial wildlife habitat by the Tribes.~~ A plan for this work must be developed in advance and in conjunction with the Secretary of the Army, the Secretary of the Interior, and the State of South Dakota. The plan must be submitted to the Secretary of the Army for review. Payouts from the trust funds are contingent upon completion of the plan.

If funds remain in the trust funds following the completion of the plans, remaining funds in the trust, may be used by the Tribes to:

- Protect archeological, historical, and cultural sites located along the Missouri river on land transferred to the respective Tribe;
- Funds all costs associated with ownership of recreational areas on land transferred to the Tribes by the Secretary of the Army;
- Purchase and administer wildlife habitat leases; and
- Develop and maintain public access to, and protect wildlife habitat and recreational areas along the Missouri River.

Funds are not to be used for the purchase of land.

**~~Treasury's~~ Role:**

Under the Water Resources Development Act, Treasury is required to take a more direct role in the management of the two trust funds for the Tribes. Specifically, ~~Treasury is~~ required to:

- ~~Invest independently, and without direction from Interior;~~
- Invest at the highest rate of interest among obligation of the required maturity (unusual language);
- Release monies (after notification from a Congressional Committee and after full capitalization of the Funds); and,
- Distribute monies directly to the beneficiaries, the two Indian Tribes.

In addition, Treasury must perform program oversight duties to ensure than the funds are used as the legislation specifies, and not for authorized transactions such as the purchase of land in fee title.

**Bureau of Public Debt Issues:**

The legislative intent for the creation and maintenance of these two funds is unclear. The lack of a named program office leaves Treasury in a quandary as to who is to perform the basic functions of overseeing the projects and outlays of the programs. We may still need to seek an opportunity with the bill's sponsors or the committee to align Treasury's responsibilities here with the manner in which we handle similar trust funds: i.e., we appropriate the monies to the funds, invest it, and transfer monies to the program office who in turn manages the actual project expenditures and issues the payment.

- Requirement to invest amounts "in obligations that carry the highest rate of interest among available obligations of the required maturity'.
- Funds are to be transferred by the Secretary of the Treasury directly to the tribe to fund the annually scheduled work described in the restoration plans. This requires program oversight by the Secretary of the Treasury in order to ensure that funds are being used in a proper manner, prior to disbursement.
- Requirement that Treasury choose the maturity dates for investments.
- Uncertainty as to how the financial position of the Trust Funds will be represented by Treasury. The first appropriation of \$5,000,000 must be made to the Trust Funds as of September 30, 1999. Investment should be made and Treasury should include the balances in its FY 99 Accountability Report.

**Pending Legislation:**

There is pending legislation (S-964, the Cheyenne River Equitable Compensation Act) introduced by Senator Daschle, which establishes a trust for the Cheyenne River Sioux, to be funded with \$290,723,000. Payments from this trust fund are disbursed to the Department of the Interior, and not directly to the Tribe. We have provided comments on the language of the bill.