



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 13, 2009

S. 1105
Aamodt Litigation Settlement Act

*As ordered reported by the Senate Committee on Indian Affairs
on September 10, 2009*

SUMMARY

S. 1105 would approve and ratify a settlement agreement between four Pueblos and the state of New Mexico. The agreement would settle the Pueblos' claims to water rights in the state. As part of the settlement agreement, the bill would authorize the appropriation of funds to construct a regional water system in the Rio Grande River Basin. The bill also would create a trust fund for the Pueblos to maintain that system. In addition, the bill would authorize appropriations for the Department of the Interior (DOI) to operate and maintain certain portions of the system until they are conveyed to the Pueblos. Finally, the bill would authorize appropriations for the Secretary of the Interior to acquire certain water rights on behalf of the Pueblos.

Based on information from DOI and assuming appropriation of the authorized and necessary amounts, CBO estimates that implementing S. 1105 would cost \$71 million over the 2010-2014 period and \$128 million after 2014. Enacting S. 1105 would not affect direct spending or revenues.

S. 1105 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

If the Secretary of the Interior acquires property through eminent domain in order to construct the regional water system under the Aamodt litigation settlement, S. 1105 would impose a private-sector mandate as defined in UMRA. Based on information from the Department of the Interior, CBO expects that the Secretary would use that authority sparingly and that the cost of the mandate, if imposed, would fall well below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1105 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 450 (community and regional development).

| | By Fiscal Year, in Millions of Dollars | | | | | 2010- 2014 |
|---|--|------|------|------|------|---------------|
| | 2010 | 2011 | 2012 | 2013 | 2014 | |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Regional Water System | | | | | | |
| Estimated Authorization Level | 0 | 0 | 10 | 25 | 35 | 70 |
| Estimated Outlays | 0 | 0 | 6 | 18 | 29 | 53 |
| Settlement Trust Fund | | | | | | |
| Estimated Authorization Level | 0 | 0 | 3 | 3 | 4 | 10 |
| Estimated Outlays | 0 | 0 | 3 | 3 | 4 | 10 |
| DOI Operation and Maintenance Costs | | | | | | |
| Estimated Authorization Level | 0 | 0 | 1 | 1 | 1 | 3 |
| Estimated Outlays | 0 | 0 | 1 | 1 | 1 | 3 |
| Water Rights | | | | | | |
| Authorization Level | 5 | 0 | 0 | 0 | 0 | 5 |
| Estimated Outlays | 2 | 2 | 1 | 0 | 0 | 5 |
| Total Changes | | | | | | |
| Estimated Authorization Level | 5 | 0 | 14 | 29 | 40 | 88 |
| Estimated Outlays | 2 | 2 | 11 | 22 | 34 | 71 |

Note: DOI = Department of the Interior.

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 1105 will be enacted early in fiscal year 2010 and that the necessary amounts will be appropriated for each year. Enforcement of the settlement agreement depends on the completion of a number of actions by federal, state, local, and tribal governments. Based on information from DOI, CBO expects that those actions will be completed by fiscal year 2017. Cost estimates for the authorized water projects are based on information from DOI and on historical spending patterns for similar activities.

In 2006, four Pueblos in New Mexico (Nambe, Pojoaque, San Ildefonso, and Tesuque) and the city and county of Santa Fe, New Mexico, signed a settlement agreement resolving a water rights dispute (known as the Aamodt case) in the Rio Grande River Basin. The United States would become party to that agreement upon enactment of S. 1105, provided that certain conditions are met. Among other actions, the Secretary of the Interior would have to publish a statement of findings in the Federal Register indicating that all parties have executed the agreement; the U.S. district court would have to issue a judgment and final decree concerning the agreement; Congress would have to appropriate certain amounts specified in the bill (about \$68 million) to carry out part of the agreement; and New Mexico would have to appropriate funds for the Pueblos.

Based on information from DOI and assuming appropriation of the necessary amounts, CBO estimates that implementing the legislation would cost \$71 million over the 2010-2014 period and \$128 million after 2014. Should the Secretary not publish the required statement of findings by September 15, 2017, verifying that all conditions necessary to execute the agreement have been met, the agreement would not take effect, and no federal funds could be spent after that date.

Regional Water System

Section 101 would authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to construct a regional water system in the Rio Grande River Basin in New Mexico. The system would divert water from the Rio Grande River to certain Pueblos and to the Santa Fe County Water Utility. The state of New Mexico and Santa Fe County would be required to pay a portion of the system's cost. Once construction of that system is complete, the Secretary would be required to convey components of the system to state, local, and tribal entities. Assuming appropriation of the necessary amounts, CBO estimates that constructing the water system would cost \$53 million over the 2010-2014 period and an additional \$75 million after 2014.

Settlement Trust Fund

Section 105 would authorize the appropriation of \$57.5 million to be deposited into the Aamodt Settlement Pueblos' Fund. A portion of that amount would be adjusted for increases in construction costs. Once certain conditions have been met, the Secretary of the Interior would be required to invest amounts in the fund in U.S. Treasury obligations. The fund would be used by the Pueblos to operate and maintain certain portions of the regional water system owned by the Pueblos.

Amounts in the fund could not be spent by the Pueblos until certain conditions specified in the bill are met. About 35 percent of the funds would be available for expenditure after the United States District Court approves the settlement agreement, which we expect would occur in 2012. Those funds would be used by the Pueblos to acquire certain water

rights and to operate and maintain certain water systems. CBO expects that the Pueblos would spend between \$3 million and \$5 million a year over the 2012-2016 period for those purposes.

The remaining 65 percent of the funds could be spent when the Secretary determines that certain portions of the new regional water system are substantially complete. Information from DOI suggests that the system would be substantially complete by the end of 2017. At that time, we expect that the settlement agreement would be executed, the remaining funds would be available to the Pueblos, and the budget would record an expenditure of \$42 million. In total, CBO estimates that implementing this provision would cost \$10 million over the 2010-2014 period and \$51 million after 2014.

Payments to certain tribal trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited into the Aamodt Settlement Pueblos' Fund (excluding amounts made available for certain Pueblo water systems) would be recorded as an outlay in 2017 when the funds could be spent by the Pueblos. Subsequently, any use of such funds would have no effect on the federal budget. Because S. 1105 directs the Secretary to invest amounts in the fund only after those amounts are available to the Pueblos, CBO expects that no interest would accrue on the amounts in the fund until 2017 when federal payments could first be spent by the Pueblos.

DOI Operation and Maintenance Costs

Section 107 would authorize the appropriation of \$5 million for DOI to pay operation and maintenance costs associated with certain portions of the regional water system prior to their conveyance to the Pueblos. Based on information from DOI, CBO expects that land and infrastructure associated with those projects would be conveyed to the Pueblos in 2017. Assuming appropriation of the authorized amounts, CBO estimates that operating and maintaining those projects would cost about \$1 million a year over the 2012-2016 period.

Water Rights

Section 103 would authorize the appropriation of \$5.4 million for the acquisition of water rights pursuant to the settlement agreement. Those funds would be used by the Secretary of the Interior to acquire, on behalf of the Pueblos, a specified amount of water from Santa Fe County. Assuming appropriation of the authorized amounts, CBO estimates that acquiring those water rights would cost \$5.4 million over the 2010-2012 period.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 1105 contains no intergovernmental mandates as defined in UMRA. The bill would authorize water projects and provide other assistance that would benefit state, local, and tribal governments. Any costs to those governments would be incurred voluntarily as a condition of federal assistance.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

If the Secretary of the Interior acquires property through eminent domain in order to construct the regional water system under the proposed settlement, the bill would impose a private-sector mandate as defined in UMRA. The cost of the mandate would be the fair market value of the property and any expenses incurred by the owners in transferring that property to the federal government. Based on information from the DOI, CBO expects that only a few small tracts of private land may need to be acquired and that the value of that land is small. CBO therefore expects that the cost of the mandate, if imposed, would fall well below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

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