



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 19, 2018

S. 436

San Juan County Settlement Implementation Act

*As reported by the Senate Committee on Energy and Natural Resources
on August 15, 2018*

S. 436 would authorize the Secretary of the Interior to provide Ark Coal Company (Ark) with bidding credits to acquire federally owned mineral rights if Ark agrees to relinquish its rights to acquire noncompetitive coal leases on certain federal land. Bidding credits are assigned a dollar value and can be used in lieu of cash to make certain payments to the federal government. The bill also would cancel certain selections of federal land made by the Navajo Nation and allow the tribe to acquire other land owned by the federal government. Finally, the bill would add 9,500 acres of federal land to the National Wilderness Preservation System.

CBO estimates that enacting S. 436 would reduce offsetting receipts, which are treated as increases in direct spending, by \$34 million over the 2019-2025 period; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues or spending subject to appropriation.

CBO estimates that enacting S. 436 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 436 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effect of S. 436 is shown in the following table. The costs of the legislation fall within budget function 300 (natural resources and environment).

	By Fiscal Year, in Millions of Dollars										2019-	2019-
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2023	2028
INCREASES IN DIRECT SPENDING												
Estimated Budget Authority	5	5	5	5	5	5	5	0	0	0	24	34
Estimated Outlays	5	5	5	5	5	5	5	0	0	0	24	34

Amounts may not sum to totals because of rounding.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the legislation will be enacted by the end of 2018.

CBO estimates that enacting S. 436 would increase direct spending by \$34 million over the 2019-2025 period. That estimate reflects a reduction in receipts from mining activities on federal land that would occur if Ark used bidding credits issued under the bill to make certain payments to the federal government that would otherwise be made in cash. That estimate also accounts for the uncertainty associated with the range of possible outcomes under current law and under the bill regarding long-running negotiations between Ark and the federal government.

Coal Settlement

Before 1976, the Mineral Leasing Act (MLA) authorized the Secretary of the Interior to allow companies to prospect for coal on federal land. Under that act, any prospector that discovered commercial quantities of coal could apply for a noncompetitive lease to mine the affected land. In 1976, the Congress repealed the Secretary's authority to issue such leases; however, prospectors that filed for noncompetitive leases before 1976 still have valid claims that require adjudication by the Bureau of Land Management (BLM).

Ark currently holds all of the remaining applications to receive those noncompetitive leases. If granted, those leases would encompass 21,000 acres of federal land in northern New Mexico, including land adjacent to or overlapping areas designated for protection by the Department of the Interior. Consequently, BLM does not want to allow mining on that land. CBO expects that, under current law, a resolution could be reached between BLM and Ark under which Ark's lease rights would terminate and it would receive compensation, either through litigation or administratively.

In 2012, BLM and Ark entered into an agreement that would allow the agency to terminate Ark's lease applications in exchange for bidding credits. To execute that agreement:

- The Congress would have to pass legislation, similar to S. 436, providing BLM with the authority to issue bidding credits;
- Ark and BLM would have to agree on the value of the bidding credits; and
- The legislation would have to provide the Secretary with budget authority to make cash payments to the states when credits would be used in lieu of cash to make federal royalty payments. (Under current law, royalties are shared between the federal government and states.)

Based on the content of the 2012 agreement, CBO estimates that if the parties reached an agreement today, BLM would provide Ark with bidding credits valued at \$134 million, which Ark would be required to use within seven years. The agreement contains a framework for negotiating the value of bidding credits that is based on the amount of the bonus bid necessary to acquire leases on the affected land today. That framework stipulates that the affected land contains 267 million tons of commercially mineable coal, that the market value of that coal is between \$20 and \$30 per ton, and that bonus bids for coal in New Mexico typically range from 1 percent to 3 percent of the market price. CBO's estimate of the value of the bidding credits is derived by multiplying 267 million tons by the estimated bonus bid per ton.

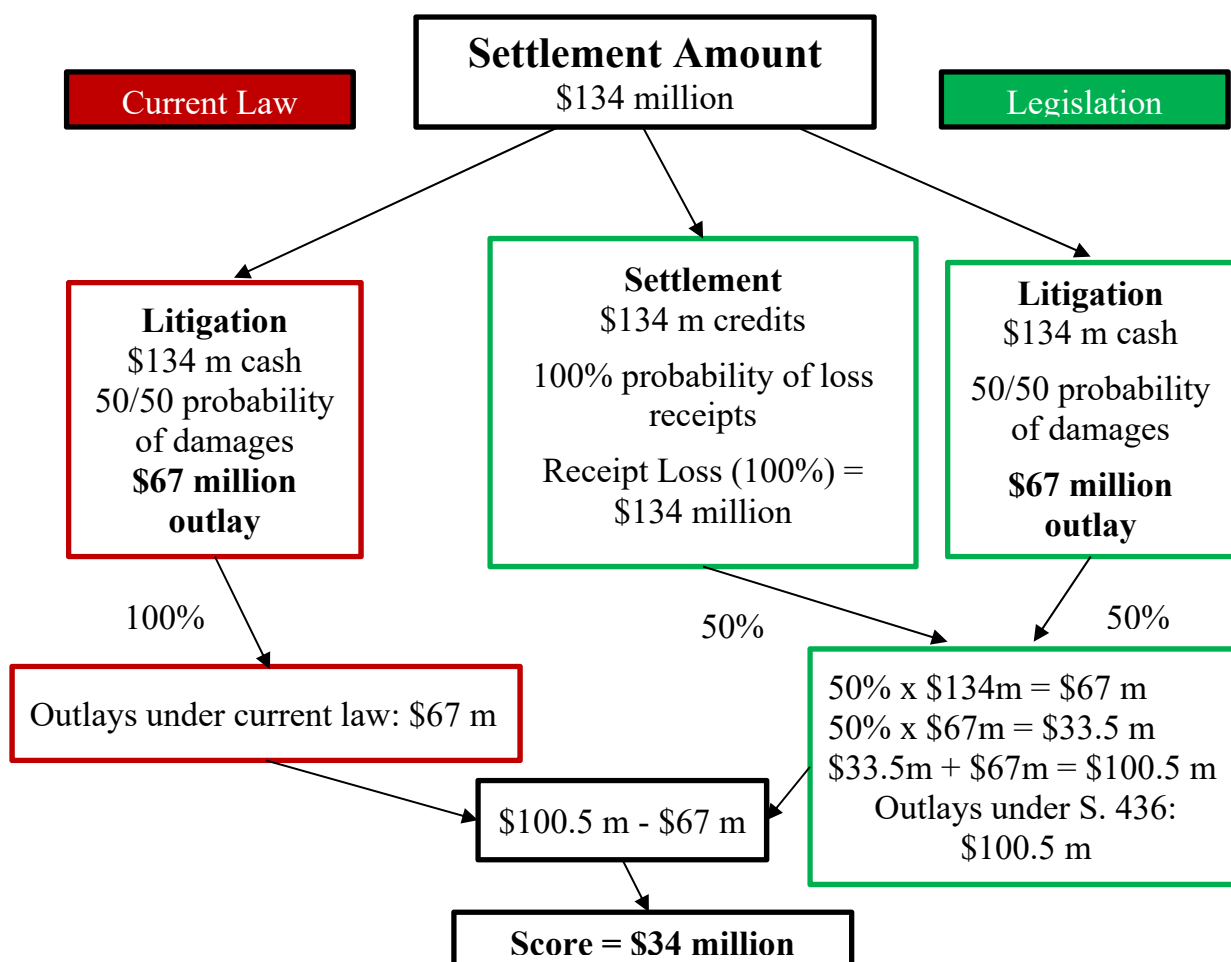
CBO expects that any resolution to the ongoing negotiations reached under current law will cost \$134 million. That is the same amount that CBO estimates Ark would receive under S. 436 to implement the 2012 agreement. It is possible that BLM and Ark would not be able to agree on the value of the bidding credits or other compensation and that Ark would resort to litigation to resolve its claims. CBO expects that the cost of settling that litigation would be the same under current law as under the bill.

Because BLM and Ark would still need to negotiate after S. 436 was enacted, CBO assumes that under the bill two equally likely outcomes are possible:

- The parties reach an agreement under which BLM would terminate Ark's applications for noncompetitive leases, the agency would provide Ark with bidding credits, and the Secretary would use most of the cash provided by the user of the credits to make payments to states while retaining the remaining cash; or
- The parties fail to reach an agreement, BLM would deny Ark's applications for noncompetitive leases on the affected land, ARK would pursue litigation or some other resolution, and the Secretary would not make payments to states.

After accounting for the uncertainties under the bill and under current law, CBO estimates that enacting S. 436 would reduce net offsetting receipts from payments under the MLA by \$34 million. That number is the difference between the expected costs to the federal government under the bill (\$101 million) and under current law (\$67 million). Those costs could be incurred anytime over the 2019-2025 period. To account for the uncertainty of the time at which a settlement would occur, CBO distributed the total cost evenly over the period (about \$5 million a year). The estimated cost under current law and the different paths that resolution of the coal leases could take are illustrated in the figure below.

Potential Costs Under Current Law and S. 436



Navajo Land Selections

S. 436 would cancel land selections totaling about 12,000 acres that were made by the Navajo Nation under the Navajo-Hopi Land Settlement Act of 1974. The bill would authorize the tribe to select up to 15,000 acres of new land with an appraised value equal

to the 12,000 acres previously selected. The bill would require that any new selections be completed within seven years of enactment. The legislation also would prohibit the tribe from selecting land with active mineral leases. Because CBO expects that the tribe would select land that would enhance economic development on its reservation, the tribe would probably select federal land with a high potential to generate receipts. Because CBO expects that the land selections would not be completed until the deadline established under the bill, and after accounting for the possibility that the tribe would select land that would not generate receipts over the next 10 years, CBO estimates that enacting this provision would have no significant effect on direct spending through 2028.

Wilderness Designations

S. 436 would designate 10,000 acres of federal land in New Mexico as wilderness. Using information provided by BLM, CBO estimates that implementing the legislation would have no significant effect on the federal budget. The land that would be added to the National Wilderness Preservation System is already owned by the federal government and is currently being managed to protect their wilderness values. CBO expects that designating those areas as wilderness would not increase the costs of managing or protecting them. In addition, because BLM already manages the affected land for conservation, under current law, that land would not produce income from commercial activities over the next 10 years.

UNCERTAINTY

CBO aims to produce estimates that generally reflect the middle of a range of the most likely budgetary outcomes that would result if the legislation was enacted. In estimating the effects of S. 436, CBO had to account for the fact that whether or how the matter between Ark and DOI is resolved, either under current law or under the bill, is unknown. For this estimate CBO has attempted to weigh all possible outcomes equally. The specific terms of a resolution to this matter could be more or less costly to the government than the assumptions CBO used to prepare this estimate.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for S. 436, the San Juan County Settlement Implementation Act, as Ordered Reported by the Senate Committee on Energy and Natural Resources on May 17, 2018

	By Fiscal Year, in Millions of Dollars											
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019-2023	2019-2028
NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Effect	5	5	5	5	5	5	5	0	0	0	24	32

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting S. 436 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

MANDATES

S. 436 contains no intergovernmental or private-sector mandates as defined in UMRA.

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