



**CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE**

November 16, 2009

**S. 313  
White Mountain Apache Tribe  
Water Rights Quantification Act of 2009**

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

**SUMMARY**

S. 313 would approve and ratify a settlement agreement between the White Mountain Apache Tribe and the state of Arizona. The agreement would resolve tribal claims to water rights in the state. As part of that agreement, the bill would authorize the appropriation of funds to construct a rural water system to deliver water to tribal lands. The bill also would establish two trust funds for the tribe to protect and restore tribal lakes and forests, conduct certain economic development projects, and operate and maintain the rural water system. Finally, the bill would authorize appropriations for the Department of the Interior (DOI) to operate and maintain the water system until it is conveyed to the tribe.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 313 would increase discretionary spending by \$134 million over the 2010-2019 period and \$66 million after 2019. CBO also estimates that enacting S. 313 would increase direct spending by \$125 million over the 2010-2019 period and \$22 million after 2019. Enacting the legislation would not affect revenues.

S. 313 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require the tribe to enact a tribal water code and prohibit it from objecting to the drilling or use of some wells. CBO estimates that the cost of complying with those mandates would be small and far below the threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation).

S. 313 contains no private-sector mandates as defined in UMRA.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 313 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-	2010-	
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2014	2019		
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>a</sup></b>														
Settlement Fund														
Estimated Authorization Level	0	0	0	0	0	0	132	0	0	0	0	132		
Estimated Outlays	0	0	0	0	0	0	132	0	0	0	0	132		
DOI Operation & Maintenance														
Estimated Authorization Level	0	0	0	0	0	0	*	*	*	*	0	2		
Estimated Outlays	0	0	0	0	0	0	*	*	*	*	0	2		
Total Changes														
Estimated Authorization Level	0	0	0	0	0	0	132	*	*	*	0	134		
Estimated Outlays	0	0	0	0	0	0	132	*	*	*	0	134		
<b>CHANGES IN DIRECT SPENDING</b>														
Rural Water System <sup>b</sup>														
Estimated Budget Authority	0	0	0	0	0	0	50	40	30	20	0	140		
Estimated Outlays	0	0	0	0	0	0	44	37	25	19	0	125		

Note: DOI = Department of the Interior; \* = less than \$500,000.  
Amounts may not sum to totals because of rounding.

- a. Excludes amounts authorized to be appropriated for a Tribal Maintenance Fund because CBO expects those amounts would not be needed until 2021.
- b. CBO estimates that an additional \$22 million would be spent for the water system after 2019.

## BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 313 will be enacted by the end of calendar year 2010 and that the necessary amounts will be appropriated when the settlement becomes effective. The enforcement of the settlement agreement depends on the completion of a number of actions by federal, state, local, and tribal entities. CBO expects that those actions will be completed early in fiscal year 2016. The estimated costs for the authorized water projects are based on information from DOI and on historical spending patterns for similar activities.

The White Mountain Apache Tribe and several other parties have signed a settlement agreement resolving a water-rights dispute in northeast Arizona. The United States would become a party to that agreement upon enactment of S. 313, provided that certain other conditions are met. Among those conditions, 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 decree concerning the agreement; sufficient funds to construct a rural water system, which CBO estimates would cost \$147 million, would have to be deposited into the White Mountain Apache Tribe Water Rights Settlement Subaccount; and Arizona would have to appropriate \$2 million for the construction of the rural water system.

Should the Secretary not publish the required statement of findings by October 31, 2015, 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.

### **Spending Subject to Appropriation**

S. 313 would authorize the appropriation of funds for a variety of activities to benefit the White Mountain Apache Tribe. The bill would authorize appropriations to construct a rural water system and to protect and restore tribal lakes and forests, conduct certain economic development projects, and operate and maintain the rural water system. Assuming appropriation of the necessary amounts, CBO estimates that implementing the settlement agreement would increase discretionary spending by \$134 million over the 2010-2019 period and \$66 million after 2019.

Most of the amounts authorized to be appropriated by S. 313 would be allowed to accrue interest on unspent amounts. CBO considers the authority to spend amounts credited as interest on unspent balances of appropriated funds to be an increase in direct spending as discussed later in this cost estimate. CBO expects that funds would be appropriated in the year the settlement becomes effective. If the Congress chose to appropriate funds prior to the year in which those funds would be spent, interest would accrue on the unspent balances, and the legislation's estimated impact on direct spending would be larger.

**Settlement Fund.** The bill would authorize the appropriation of about \$114 million (plus additional amounts needed because of increases in construction costs) for the White Mountain Apache Tribe Settlement Fund. CBO expects that those funds would be appropriated near the beginning of fiscal year 2016—the enforcement date of the settlement. Funds would be used to protect and restore tribal lakes and forests and for certain economic development projects. CBO expects that the entire amount in the fund (including adjustments for inflation) would be recorded as an outlay of \$132 million in 2016.

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 settlement fund would be recorded as an outlay in 2016 when the funds could be spent by the tribe. Subsequently, any use of such funds and interest payments to the tribe would have no effect on the federal budget.

**DOI Operation & Maintenance.** The bill would authorize the appropriation of \$2.5 million for DOI to operate and maintain the new rural water system until 2021 when funds from the tribal maintenance fund could be spent. CBO estimates that operating and maintaining the rural water system would cost about \$500,000 a year over the 2016-2020 period.

**Tribal Maintenance Fund.** The bill would authorize the appropriation of \$50 million (plus additional amounts needed because of increases in construction costs) for the White Mountain Apache Tribe Maintenance Fund. CBO expects that those funds would be appropriated in fiscal year 2021 when the funds could be spent. Funds would be used to operate and maintain the rural water system. CBO expects that the entire amount in the fund (including adjustments for inflation) would be recorded as an outlay of \$66 million in 2021.

**Rural Water System Subaccount.** The bill would authorize the appropriation of \$126 million (plus additional amounts needed because of increases in construction costs) to build a rural water system for the tribe. Following enactment of S. 313, however, the Secretary of the Interior would be authorized to use funds from the Future Indian Water Settlement subaccount established under Public Law 108-451 and designated to implement Indian water settlements in Arizona. CBO expects that amounts in that account would be used to execute the settlement. The expenditure of those funds would increase direct spending (see Direct Spending section, below).

CBO assumes that the full amount necessary to construct the rural water system would be expended from the Future Indian Water Settlement Subaccount, resulting in direct spending. If, instead, the Congress appropriated funds for that purpose, it would reduce the amounts expended from that subaccount and lower the legislation's estimated impact on direct spending.

The bill also would require the Secretary of the Treasury to transfer such sums as are available—up to \$50 million—from the Emergency Fund for Indian Safety and Health (established under Public Law 110-293) to the rural water system subaccount in 2010. Because no funds have been appropriated for the emergency fund, CBO expects that no funds would be available for transfer to the subaccount in 2010.

## **Direct Spending**

**Future Indian Water Settlement Subaccount.** The Arizona Water Settlements Act (Public Law 108-451) established this subaccount and authorized it to receive up to \$250 million of receipts from the Lower Colorado River Basin Development Fund, with deposits into the subaccount starting by January 2010. The Colorado River Basin Development Fund collects receipts from the users of the Central Arizona water project and certain other receipts from the sale of electricity generated at federal water projects. Those amounts are available for federal agencies to spend without further appropriation for a variety of purposes including operating and maintaining certain water projects. The Arizona Water Settlements Act provided that amounts deposited in the Future Indian Water Settlement Subaccount may be used for Indian water rights settlements in Arizona approved by the Congress subsequent to its enactment.

CBO expects that funds from the Future Indian Water Settlement Subaccount would be used to construct the rural water system on tribal lands. Based on information from DOI, CBO also expects that the tribe would enter into a contract with the federal government under the Indian Self-Determination and Education Act, which allows Indian tribes to assume responsibilities for programs, functions, and services or activities that would otherwise be carried out by the federal government. Because CBO expects the tribe to assume responsibility for constructing the water system, we expect that construction of that system would begin in 2016 when the tribe would spend funds designated for that purpose. We estimate that constructing the water system would increase direct spending by \$125 million over the 2016-2019 period and by \$22 million after 2019.

**Interest Earnings on the Settlement Fund and the Maintenance Fund.** Because we expect that funds would be appropriated for both the settlement and maintenance funds during the fiscal years in which those funds would be needed, we estimate that accrued interest earnings would total less than \$500,000 and spending of that interest would have a negligible impact on direct spending.

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

S. 313 would require the White Mountain Apache Tribe to enact policies that would govern tribal water rights and would prohibit the tribe from objecting to the use of some existing wells or the drilling of new wells pursuant to future adjudication proceedings, as detailed in the agreement. Those provisions would be intergovernmental mandates as defined in UMRA because they would place statutory requirements on the tribe that are separate from provisions of the agreement. CBO estimates that the cost of complying with those mandates would be small and well below the threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation). Furthermore, amounts authorized for the settlement fund could be used to develop the tribal water code.

Other provisions of the bill would benefit the tribe. Any costs to the tribe from those provisions would be incurred voluntarily as a result of entering into the settlement agreement.

**ESTIMATED IMPACT ON THE PRIVATE SECTOR**

S. 313 contains no private-sector mandates as defined in UMRA.

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