



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 7, 2017

H.R. 1769

San Luis Unit Drainage Resolution Act

*As ordered reported by the House Committee on Natural Resources
on April 27, 2017*

SUMMARY

H.R. 1769 would ratify a settlement agreement negotiated in 2015 between the United States and the Westlands Water District (district) in California and would amend current law in accordance with provisions of that agreement. Specifically, the bill would:

- Eliminate the statutory requirement for the United States to provide drainage services for farmland irrigated within the district's boundaries;
- Direct the Bureau of Reclamation (BOR) to enter into a water contract with the district consistent with the terms of the settlement agreement;
- Cancel the district's obligation to repay the federal government for its share of constructing the Central Valley Project (CVP) and the costs allocated to the district to plan and design drainage infrastructure; and
- Require BOR to apply a credit against the district's CVP operating costs equal to payments the district made for its capital obligations between the date of the settlement agreement (September 2015) and enactment of the legislation.

CBO estimates that enacting the legislation would reduce offsetting receipts (which has the effect of increasing direct spending) by \$309 million over the 2017-2027 period. Because enacting H.R. 1769 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO also estimates that implementing the legislation would reduce the need for discretionary appropriations to construct the drainage facilities in the district. CBO expects that those facilities will take more than a decade to complete under current law. According to estimates from BOR, completing the part of the project that will provide drainage for the district will cost about \$2.5 billion. By relieving the federal government of those obligations, CBO estimates that implementing H.R. 1769 would reduce spending subject

to appropriation for the project by about \$1.5 billion over the next ten years (and by \$1 billion in later years). Under current law, the district water users are required to repay those costs in the decades following the project's completion (that is, after 2027).

Under the 2015 settlement agreement that would be ratified by H.R. 1769, the district would cooperate with the federal government to resolve pending litigation stemming from the government's failure to provide drainage services to the district. The outcome, timing, and amount of judgments or settlements, if any, that would resolve the litigation under current law are highly speculative. Consequently, this cost estimate does not reflect any potential savings to the federal government from avoiding such litigation. However, on the basis of information from the Department of Justice (DOJ), BOR, and other stakeholders, CBO estimates that the cost of such judgments or settlements to resolve ongoing litigation under current law could range from \$0 to \$2 billion.

Further information about the potential costs of the pending litigation against the federal government is included below under the heading "Additional Information."

CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1769 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.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effects of H.R. 1769 are shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 1769 will be enacted near the end of 2017 and that the provisions of the settlement agreement will be implemented as required by the legislation.

TABLE 1. ESTIMATED BUDGETARY EFFECTS OF H.R. 1769

	By Fiscal Year, in Millions of Dollars											2017-	2017-
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2022	2027
INCREASES IN DIRECT SPENDING													
Capital Obligation Canceled													
Estimated Budget Authority	26	26	26	26	26	26	26	26	26	26	26	157	288
Estimated Outlays	26	26	26	26	26	26	26	26	26	26	26	157	288
Planning Costs Canceled													
Estimated Budget Authority	3	1	1	1	1	1	1	1	1	1	1	6	9
Estimated Outlays	3	1	1	1	1	1	1	1	1	1	1	6	9
Credit for CVP Operating Costs													
Estimated Budget Authority	9	4	0	0	0	0	0	0	0	0	0	13	13
Estimated Outlays	9	4	0	0	0	0	0	0	0	0	0	13	13
Total Costs													
Estimated Budget Authority	38	31	27	27	27	27	27	27	27	27	27	176	309
Estimated Outlays	38	31	27	27	27	27	27	27	27	27	27	176	309
DECREASES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Budget Authority	0	-100	-100	-150	-150	-200	-200	-250	-250	-300	-300	-700	-2,000
Estimated Outlays	0	-30	-50	-80	-100	-140	-160	-190	-210	-240	-260	-400	-1,460

Notes: CVP = Central Valley Project. Components may not sum to totals because of rounding. Enacting the bill also would increase direct spending by about \$96 million after 2027 from additional costs related to canceling the district’s capital obligations and repayment of planning costs.

Increases in Direct Spending

Capital Obligation Canceled. H.R. 1769 would direct BOR to cancel the district’s remaining obligation to repay the federal government for a share of the costs to construct the CVP. That cancelation would be contingent upon BOR and the district negotiating a new contract to repay the costs of supplying irrigation water to the district consistent with the terms specified in the settlement agreement.¹ BOR also would transfer to the district title to seven facilities located within the district’s service area. The district has already assumed the responsibility for operating and maintaining those facilities.

1. The proposed repayment contract would replace existing water service contracts between BOR and the district. Typically, agreements between the federal government and water contractors to deliver water for irrigation, municipal, and industrial purposes from federally built projects are governed by either water service contracts or repayment contracts. Water service contracts are used when a construction project is still in progress and the final costs—including the contractors’ share of those costs—are not yet known. They are also used when a contractor does not want a permanent contract. Repayment contracts are available to contractors when final construction costs and the contractor’s share of those costs are known.

Based on an analysis of information from BOR about the district's remaining obligation to the government for repaying the cost of constructing the CVP, CBO estimates that canceling annual payments from the district to the federal government for those obligations would increase direct spending (by reducing offsetting receipts) by \$288 million over the 2017-2027 period and about \$78 million after 2027.

Planning Costs Canceled. Under current law, the costs to plan and design facilities to drain irrigation water are an obligation of the beneficiaries of the federal irrigation project. The district's share of those costs total \$24 million and will be repaid in annual installments of \$600,000 over a 40-year period. Under the bill, that obligation also would be canceled. Additionally the bill would cancel the district's obligation to pay BOR \$3 million for a portion of costs to operate and maintain a subsurface drainage project that protects wildlife refuges and wetlands in the region.

In total, CBO estimates that enacting those provisions would reduce offsetting receipts by \$9 million over the 2017-2027 period and about \$17 million after 2027.

Credit for CVP Operating Costs. The settlement agreement between the district and the federal government was signed in September 2015. Since then the district has paid the federal government \$13 million toward its share of CVP's construction costs. H.R. 1769 would require BOR to credit those amounts against the district's share of the project's future operating costs. On the basis of information from BOR about the district's annual payments for operating the CVP, CBO estimates that enacting this provision would reduce offsetting receipts by \$9 million in 2017 and \$4 million in 2018.

Decreases in Spending Subject to Appropriation

Under current law, BOR is required to provide services to drain waste water from irrigated farmland in the San Luis Unit (SLU). In 2000, the Ninth Circuit Court of Appeals ordered BOR to provide that service promptly; the ruling stems from litigation (*Firebaugh Canal Co. v. United States*) brought against the federal government for failure to provide drainage pursuant to the San Luis Act (Public Law 86-488). The court temporarily postponed that requirement until January 2018 to allow time to negotiate the settlement and pass related legislation.

In 2012 the district also sued the United States claiming that the federal government's failure to provide drainage services constituted a breach of contract (*Westlands Water District v. United States*). In January 2013 the Court of Federal Claims determined that water contracts between the government and the district did not include an enforceable promise to provide drainage to the district and the United States' request to dismiss the district's claim was granted. The district appealed the decision to the Federal Circuit, which also stayed that case until January 2018.

Under current law, after the stays expire in January 2018, the drainage system could be constructed over the following 10 to 15 years, assuming the Congress appropriated the necessary amounts and the district agreed to repay those costs. Under the bill, CBO estimates that by eliminating that requirement, the federal government would no longer have to spend \$1.5 billion in appropriated funds over the 2018-2027 period (and the district would no longer be obligated to repay those costs in later years).

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 and revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

TABLE 2. CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1769, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON APRIL 27, 2017

	By Fiscal Year, in Millions of Dollars												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017-2022	2017-2027
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	38	31	27	27	27	27	27	27	27	27	27	176	309

INCREASE IN LONG TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting H.R. 1769 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1769 contains no intergovernmental or private-sector mandates as defined in UMRA and would benefit the Westlands Water District in California’s Central Valley. Any costs incurred by the district associated with implementing the terms of settlement agreement would result from voluntary commitments.

ADDITIONAL INFORMATION

Background

The SLU of the Westlands Irrigation District consists of about 500,000 acres of irrigated farm land within the CVP. In 1960, the San Luis Act, which established the SLU, required that water delivered to the unit for irrigation purposes also include services to drain waste water and prevent salt from accumulating in the soil. Despite the 2000 court decision, to date BOR has not provided consistent or comprehensive drainage services and some local landowners contend that the lack of drainage has caused salt to accumulate in the soil, limiting its usefulness for farming.

Some landowners have sued the federal government alleging that damage to the soil from failing to provide drainage has caused them financial harm. Under current law, the Court of Federal Claims may find the federal government owes the landowners compensation for the loss in their property value. However, the statutory requirement for the United States to construct drainage facilities would persist absent the pending settlement agreement and enactment of H.R. 1769.

Enacting H.R. 1769 and implementing the settlement agreement in accordance with the legislation aims to resolve the existing litigation related to drainage in the SLU.

Litigation

In 2011 landowners within the district filed a claim against the United States (*Etchegoinberry v. United States*) alleging that the government's failure to provide drainage services damaged nearly 200,000 acres of farm land resulting in a partial physical taking of their property without just compensation. DOJ and other stakeholders have estimated that the federal government's liability for the pending case could range from nothing to as much as \$2 billion to resolve the claim.

To date, the *Etchegoinberry* court has not issued a decision on the merits, and there is no direct precedent for the claim. Additionally, there is a history of litigation delays, a significant likelihood of appeals, and these parties have been litigating related issues for nearly two decades. For these reasons, it is unclear whether the plaintiffs would ultimately prevail in the takings case, the amount of the damages assessed, if any, and when that litigation would finally be resolved.

A previous settlement reflects one possible outcome. In 2002 the federal government settled a similar takings lawsuit involving landowners in the district for about \$4,200 per acre. Extrapolating from that settlement and assuming additional amounts for appreciation in the market value of farmland, the potential exposure for the pending takings case would total about \$1 billion, roughly in the middle of the range of possible outcomes.

If the federal government incurs compensation costs related to the pending 2011 lawsuit—through a settlement or court order—payments would come from the Judgment Fund (a permanent, indefinite appropriation for claims and judgments against the United States) and would increase direct spending. However, because of uncertainty about the outcome, timing, and magnitude of a potential judgment or settlement payment, CBO has no basis for assessing the outcome of this litigation.

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