



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 28, 2018

S. 664

Navajo Utah Water Rights Settlement Act of 2018

As ordered reported by the Senate Committee on Indian Affairs on October 3, 2018

SUMMARY

S. 664 would secure up to 81,500 acre-feet of water annually for the Navajo Nation by ratifying a settlement being negotiated between the United States, the state of Utah, and the Navajo Nation. The bill would authorize the appropriation of \$209 million to capitalize the Navajo Utah Settlement Trust Fund, an interest-bearing fund established under the bill. After the parties meet certain conditions, the federal government would transfer ownership of the fund (including any earned interest that is appropriated to the fund) to the nation for constructing projects to deliver water to the reservation of the Navajo Nation in Utah. The bill also would direct the Bureau of Reclamation (BOR) to survey water use on the reservation. Using information from BOR, CBO estimates that enacting those provisions would cost \$242 million over the 2019-2023 period, assuming appropriation of the authorized and necessary amounts.

Enacting S. 664 would affect direct spending by increasing offsetting receipts because the state of Utah would be required to contribute \$8 million to the trust fund; therefore pay-as-you-go procedures apply. However, because the federal government would record a federal expenditure of the fund's balance when ownership of the fund is transferred to the Navajo Nation, there would be no net effect on direct spending over the 2019-2023 period. Enacting the bill would not affect revenues.

CBO estimates that enacting S. 664 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 664 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO cannot determine whether the cost of those mandates would exceed the annual threshold established in UMRA (\$80 million in 2018, adjusted annually for inflation). S. 664 contains no private-sector mandate as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effect of S. 664 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- 2023
	2019	2020	2021	2022	2023	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Survey of Water Use						
Estimated Authorization Level	1	0	0	0	0	1
Estimated Outlays	*	1	*	0	0	1
Navajo Utah Settlement Trust Fund						
Estimated Authorization Level	16	50	51	53	54	224
Estimated Outlays	0	0	0	0	224	224
Interest Appropriated to the Navajo Utah Settlement Trust Fund						
Estimated Authorization Level	0	1	3	5	7	17
Estimated Outlays	0	0	0	0	17	17
Total Costs						
Estimated Authorization Level	17	51	54	58	61	242
Estimated Outlays	*	1	*	0	241	242
CHANGES IN DIRECT SPENDING						
Utah's Contribution to the Trust Fund						
Estimated Budget Authority	0	-3	-3	-3	8	0
Estimated Outlays	0	-3	-3	-3	8	0

Components may not sum to totals because of rounding; * = between zero and \$500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 664 will be enacted by the end of 2018. The bill would authorize the appropriation of specific amounts but does not specify in which year any appropriation should be provided. CBO has estimated how much would need to be provided each year based on information from BOR. CBO expects all of the following conditions to be met by 2023:

- The parties have finalized and executed the settlement including amendments required to conform with the bill,
- Utah has contributed \$8 million to the trust fund and enacted the necessary legislation,

- All parties have executed waivers and releases of claims as required under the bill, and
- The court has confirmed the water rights of the Navajo Nation in accordance with the bill.

In addition, CBO assumes that the amounts authorized to be appropriated to capitalize the fund (with adjustments to account for anticipated inflation as required by the bill) would be appropriated over the 2019-2023 period. In 2023, BOR would publish a statement of findings in the *Federal Register* that the conditions have been met and the ownership of the trust fund would be transferred to the Navajo Nation.

Spending Subject to Appropriation

CBO estimates that implementing the bill would cost \$242 million over the 2019-2023 period, assuming appropriation of the authorized and necessary amounts.

Survey of Water Use. S. 664 would authorized the appropriation of \$1 million for costs to implement the bill and for conducting a survey of historic and existing water use on the portion of the reservation located within Utah. CBO estimates that the survey would take about three years to complete and would cost \$1 million over the 2019-2023 period.

Navajo Utah Settlement Trust Fund. S. 664 would establish the Navajo Utah Settlement Trust Fund, which would consist of two interest-bearing accounts—the Navajo Water Development Projects Account and the Navajo Operation, Maintenance and Replacement (OM&R) Account. To capitalize those accounts, the bill would authorize the appropriation of \$198 million for constructing water projects and \$11 million for OM&R for a total of \$209 million. CBO estimates that the authorized appropriations would increase by \$15 million because of the authorized adjustments for anticipated inflation. Amounts deposited into the fund would be credited with interest earnings if those earnings are appropriated to the trust fund.

Under the bill, the federal government would retain ownership of amounts deposited into the trust fund until 2023, when all the settlement conditions are expected to be satisfied. At that time, the federal government would transfer the ownership of the trust fund to the Navajo Nation, and the amount in the fund (including any appropriated interest earnings) would be considered a federal expenditure. Based on CBO’s projections of interest rates and the assumed timing of appropriations, CBO estimates those interest earnings would total \$17 million. Accordingly, CBO estimates the total amount transferred would be \$241 million.

The federal government would retain fiduciary responsibility over the amounts until they are needed by the Navajo Nation to plan, design, construct, and maintain water projects, but those expenditures would not affect the federal budget.

Changes in Direct Spending

S. 664 would require the state of Utah to contribute \$8 million to the trust fund in three installments once the settlement is finalized and executed by the parties. CBO estimates that the state would pay those installments of \$2.67 million in 2020, 2021, and 2022 and that those amounts would be recorded in the federal budget as offsetting receipts. CBO estimates that enacting that provision would have no net effect on direct spending over the 2019-2023 period because the total amount contributed by the state to the trust fund would be transferred to the Navajo Nation in 2023.

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. 664, the Navajo Utah Water Rights Settlement Act of 2018, as Ordered Reported by the Senate Committee on Indian Affairs on October 3, 2018

	By Fiscal Year, in Millions of Dollars											2019- 2023	2019- 2028
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028			
NET INCREASE OR DECREASE (-) IN THE DEFICIT													
Statutory Pay-As-You-Go Effect	0	-3	-3	-3	8	0	0	0	0	0	0	0	0

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting S. 664 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

MANDATES

S. 664 contains intergovernmental mandates as defined in UMRA. Specifically, the bill would:

- Ratify the Navajo Water Rights Settlement Agreement to the extent that the agreement does not conflict with provisions in the bill. Because the agreement has not been finalized by the tribe and the state of Utah, actions the parties could take to complete the agreement would be limited to those allowed under the bill. Such a restriction is a mandate under UMRA.
- Require the state of Utah to contribute \$8 million to a trust fund to be administered by the U.S. Department of the Interior.
- Prevent the Navajo Nation from raising claims to some water rights and claims for certain damage to water, land, and other resources resulting from the loss of water or water rights.

The cost of the mandates would include the state's payment to the trust fund as well as the forgone value of awards and settlements of claims that the Navajo Nation would be prevented from raising under the bill. Because both the number of claims that could be barred or terminated and the value of forgone compensation stemming from those claims are uncertain, CBO has no basis for estimating the cost of the mandate. Therefore, CBO cannot determine whether the cost of the intergovernmental mandate would exceed the annual threshold established in UMRA for such mandates (\$80 million in 2018, adjusted annually for inflation).

S. 664 contains no private-sector mandates as defined in UMRA.

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