

At a Glance

S. 1207, Navajo Utah Water Rights Settlement Act of 2019

As ordered reported by the Senate Committee on Indian Affairs on May 15, 2019

By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	242	242
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	Yes, Cannot Determine Costs
		Contains private-sector mandate?	No

The bill would

- Secure water supplies for the Navajo Nation in Utah by ratifying the Navajo Water Rights Settlement Agreement among the federal government, the State of Utah, and the Navajo Nation
- Authorize the appropriation of \$241 million (including adjustments to account for inflation and interest earnings) to capitalize the Navajo Utah Settlement Trust Fund, which would be administered by the Department of the Interior until its transfer to the Navajo Nation
- Require the Bureau of Reclamation to survey current and past water use on the reservation
- Require the State of Utah to contribute \$8 million to the trust fund
- Prohibit the Navajo Nation from raising claims to certain water rights or for damage to water, land, and other resources

Estimated budgetary effects would primarily stem from

- The transfer of the trust fund's ownership to the Navajo Nation, which would trigger a federal expenditure of the trust fund's balance

Detailed estimate begins on the next page.

Bill Summary

S. 1207 would secure up to 81,500 acre-feet of water annually for the Navajo Nation in Utah by ratifying a settlement among the federal government, the State of Utah, and the Navajo Nation. CBO estimates that the bill would authorize the appropriation of \$241 million (including adjustments to account for inflation and interest earnings) to capitalize the Navajo Utah Settlement Trust Fund, an interest-bearing fund established under the bill that would be administered by the Department of the Interior. After the parties have satisfied certain conditions, the federal government would transfer ownership of the fund (including any appropriated interest earnings) to the nation for constructing projects to deliver water to the Navajo reservation in Utah. The bill also would direct the Bureau of Reclamation (BOR) to survey water use on the reservation.

Estimated Federal Cost

The estimated budgetary effect of S. 1207 is shown in Table 1. The costs of the legislation fall within budget function 300 (natural resources and environment).

Table 1.
Estimated Budgetary Effects of S. 1207

	By Fiscal Year, Millions of Dollars						2019-2024
	2019	2020	2021	2022	2023	2024	
Navajo Utah Settlement Trust Fund							
Estimated Authorization	0	16	50	51	53	54	224
Estimated Outlays	0	0	0	0	0	224	224
Interest Appropriated to the Navajo Utah Settlement Trust Fund							
Estimated Authorization	0	0	1	3	5	7	17
Estimated Outlays	0	0	0	0	0	17	17
Survey of Water Use							
Estimated Authorization	0	1	0	0	0	0	1
Estimated Outlays	0	*	1	*	0	0	1
Total Changes							
Estimated Authorization	0	17	51	54	58	61	242
Estimated Outlays	0	*	1	*	0	241	242

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

Basis of Estimate

For this estimate, CBO assumes that S. 1207 will be enacted by the end of 2019. The bill would authorize the appropriation of specific amounts but does not specify the year in which any appropriation should be provided. CBO has estimated the necessary amounts for each year using information from BOR and assumes that by 2024 all of the following conditions would be met:

- The parties would have finalized and executed the settlement, including amendments required to conform to provisions of S. 1207;

- The State of Utah would have contributed \$8 million to the trust fund and enacted certain necessary legislation;
- All parties would have executed waivers and releases of claims as required under the bill; and
- The courts would have confirmed the water rights of the Navajo Nation in accordance with the bill.

In addition, CBO assumes that the amounts authorized in order to capitalize the fund (with adjustments to account for anticipated inflation, as required by the bill) would be appropriated over the 2020-2024 period. In 2024, BOR would publish a statement of findings in the *Federal Register* that the bill's conditions have been met and ownership of the trust fund would be transferred to the Navajo Nation.

Spending Subject to Appropriation

S. 1207 would authorize the appropriation of \$224 million (including adjustments to account for inflation) in capital, an estimated \$17 million in accrued interest, and \$1 million for a survey of water use over the 2019-2024 period. Assuming appropriation of those amounts, CBO estimates that the bill would cost \$242 million over the same period (see Table 1).

Navajo Utah Settlement Trust Fund. S. 1207 would establish the Navajo Utah Settlement Trust Fund, consisting 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 appropriation of \$198 million for constructing water projects and \$11 million for OM&R, for a total of \$209 million. Because the bill requires adjustments for inflation, CBO estimates that the total amount would rise to \$224 million for the 2020-2024 period.

Under the bill, the federal government would retain ownership of amounts deposited into the trust fund until 2024, when all the settlement conditions are expected to be satisfied. Deposited amounts could be credited with interest earnings if those earnings are appropriated to the trust fund. In 2024, the federal government would transfer ownership of the trust fund to the Navajo Nation; the amount transferred (including any appropriated interest earnings) would be considered a federal expenditure. Based on projections of interest rates and assumptions concerning the timing of appropriations, CBO estimates that interest earnings would total \$17 million. Accordingly, CBO estimates that the total amount transferred would be \$241 million.

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

Survey of Water Use. S. 1207 would authorize the appropriation of \$1 million to implement the bill and to survey historical and current water use on the portion of the Navajo reservation in

Utah. CBO estimates that the survey would take about three years to complete and would cost \$1 million over the 2019-2024 period.

Nonbudgetary Effects

Once the settlement is finalized and executed by the parties, S. 1207 would require the State of Utah to contribute \$8 million to the trust fund in three installments. CBO estimates that the state would pay \$2.67 million in 2021, 2022, and 2023 and that those amounts would be transferred to the Navajo Nation in 2024, when all the settlement conditions are expected to be satisfied. Generally, when the federal government takes control of assets that belong to others, those amounts are considered nonbudgetary and their collection and disbursement do not affect the deficit.

Pay-As-You-Go Considerations: None.

Increase in Long-Term Deficits: None.

Mandates

S. 1207 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 (\$82 million in 2019, adjusted annually for inflation).

The mandates would arise from several of the bill's requirements:

- Ratification of the Navajo Water Rights Settlement Agreement to the extent that the agreement does not conflict with the bill's provisions. Because that agreement has not been finalized by the Navajo Nation 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.
- A requirement that the State of Utah to contribute \$8 million to the Navajo Utah Settlement Trust Fund. That amount is below the UMRA threshold.
- Prohibition of the Navajo Nation from raising claims to certain water rights or for damage to water, land, and other resources resulting from the loss of water or water rights.

In addition to the cost of the state's payment to the trust fund, there would be a tribal mandate that would involve the forgone value of awards and settlements of claims that the Navajo Nation could not raise. 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 mandates' costs. Therefore, CBO cannot determine whether the cost of the intergovernmental mandate would exceed the annual threshold.

S. 1207 contains no private-sector mandates as defined in UMRA.

Estimate Prepared By

Federal Costs: Aurora Swanson

Mandates: Rachel Austin

Estimate Reviewed By

Kim P. Cawley
Chief, Natural and Physical Resources

Susan Willie
Chief, Mandates Unit

Theresa Gullo
Assistant Director for Budget Analysis