

Calendar No. 685

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-381

A BILL TO IMPROVE THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT REACHED BETWEEN THE PUEBLO DE COCHITI OF NEW MEXICO AND THE CORPS OF ENGINEERS, AND FOR OTHER PURPOSES

NOVEMBER 17, 2016.—Ordered to be printed

Mr. BARRASSO, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 2643]

The Committee on Indian Affairs, to which was referred the bill (S. 2643) to improve the implementation of the settlement agreement reached between the Pueblo de Cochiti of New Mexico and the Corps of Engineers, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 2643 is to amend Public Law No. 102-358, which authorized a Settlement Agreement between the Pueblo de Cochiti, the United States Department of the Interior, and the United States Army Corps of Engineers. The bill would, among other purposes, authorize the transfer of responsibility for the Cochiti Dam drainage system to the Pueblo de Cochiti and release the United States from liability associated with that drainage system.

NEED FOR LEGISLATION

This legislation is needed to amend the negotiated settlement entered into between the Pueblo and the United States for damages to the Pueblo's agricultural lands caused by seepage from the construction of the Cochiti Dam. The settlement agreement, which resulted in the construction of a drainage system by the United States on behalf of the Pueblo, is being amended to transfer responsibility for the operation and maintenance of the Cochiti Dam Drainage System to the Pueblo and to release the United States from liability associated with the drainage system. Other provi-

sions of S. 2643 authorize the use of accumulated reserve funds for the acquisition of ancestral lands (the Caada de Cochiti).

BACKGROUND

Congress authorized the construction of the Cochiti Dam in the *Flood Control Act of 1960*. This Act authorized the construction of the Cochiti Lake and dam by the United States. The dam was completed in 1970. Seepage caused by the construction of the dam resulted in damage to the agricultural lands for members of the Pueblo. The Pueblo brought suit against the federal government to remedy the seepage problems.

The U.S. Army Corps of Engineers, Department of Interior (DOI), and the Department of Justice settled that lawsuit in the early 1990s by agreeing to install a drainage system in the dam to divert seepage away from Cochiti agricultural areas. Congress ratified the settlement terms in Pub. L. No. 102–358.

The Operation and Maintenance Fund (O&M Fund) was established within the DOI in 1993 for the operation and maintenance of this drainage system. In April, 1994, approximately \$4.5 million was transferred to the Bureau of Indian Affairs (BIA) to administer the drainage system O&M Fund. The Pueblo has administered, operated and maintained the Cochiti Dam drainage system for three decades pursuant to agreements under the *Indian Self-Determination and Education Assistance Act of 1975*, Pub. L. No. 93–638.

When interest rates were high, the O&M Fund generated more interest each year than was expended on O&M activities. The O&M Fund agreement was amended by the parties in 2001 to authorize the use of some O&M fund reserves for an agricultural restoration program. That amendment was ratified by Congress in 2004 by Pub. L. No. 108–204. Currently, the O&M Fund balance is still approximately \$7 million.

The Pueblo's ancestral villages and numerous sacred sites are located in the Cañada de Cochiti, a parcel of ancestral lands adjacent to its current reservation. For 75 years, the Pueblo has sought to restore these historically and culturally significant lands to its reservation.

In October 2015, the Pueblo, U.S. Army Corp of Engineers, and the DOI executed an amendment to the settlement. As part of this amendment the parties agreed to grant the Pueblo access to withdraw funds from the O&M Fund to purchase the Cañada de Cochiti parcel.

LEGISLATIVE HISTORY

On March 7, 2016, Senator Udall introduced S. 2643 with Senator Heinrich as a cosponsor. The bill was referred to the Committee on Indian Affairs. On April 13, 2016, the Committee held a legislative hearing on the bill in which Nicholas Garcia, Governor of the Pueblo de Cochiti, testified in favor of the bill. The administration provided testimony in support of the bill. One amendment was offered by Senator Udall to prohibit gaming on any land acquired through the use of the O&M Fund. On February 4, 2015, the Committee met at a duly called business meeting to consider the bill and amendment. The Committee approved the amendment

and the bill, as amended. The Committee then ordered the bill, as amended, to be reported favorably to the Senate by voice vote.

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Section 1—Short title

Section 1 sets forth the short title of this Act as the *Pueblo de Cochiti Self-Governance Act*.

Section 2—Amendments

Section 2 of the Act authorizes amendments to the implementation of the Pueblo de Cochiti Wetlands Settlement ratified in Pub. L. No. 102–358.

The amendments modifying the settlement would transfer responsibility for the operation and maintenance of the Cochiti Dam Drainage System to the Pueblo, release the United States government from liability for the drainage system, and authorize the use of Accumulated Reserve Funds for the acquisition of the Cañada de Cochiti ancestral lands.

The section would also prohibit the Pueblo from conducting gaming on any lands acquired in the future through the use of these settlement funds.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated October 27, 2016, was prepared for S. 2643:

OCTOBER 27, 2016.

Hon. JOHN BARRASSO,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2643, the Pueblo de Cochiti Self-Governance Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

S. 2643—Pueblo de Cochiti Self-Governance Act

Summary: S. 2643 would ratify a settlement agreement between the Pueblo de Cochiti of New Mexico (the pueblo) and the Army Corps of Engineers (Corps). The agreement would transfer responsibility for managing the Cochiti Dam drainage system from the Corps to the pueblo and would transfer all funds in the system's operation and maintenance fund to a tribal fund held in trust for the pueblo. The bill would prohibit certain types of gaming on any lands acquired by the pueblo using those funds.

CBO estimates that enacting S. 2643 would increase direct spending by \$5 million over the 2017–2026 period. Pay-as-you-go procedures apply because enacting S. 2643 would increase direct spending. Enacting the bill would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2643 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would benefit the pueblo. Any costs to the tribal government would be incurred voluntarily as a result of entering into the settlement agreement as ratified in the bill.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 2643 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
	INCREASES OR DECREASES (–) IN DIRECT SPENDING											
Estimated Budget Authority ..	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	7	*	*	*	*	*	*	*	*	*	6	5

Note: * = about –\$200,000.

Basis of estimate: For this estimate, CBO assumes that S. 2643 will be enacted near the start 2017. The legislation would implement a settlement agreement between the Pueblo de Cochiti of New Mexico and the Corps and would transfer approximately \$7 million in federal funds to a tribal trust fund. The fund would be held in trust for the pueblo by the Office of the Special Trustee for American Indians.

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 transferred to this trust fund would be recorded as an outlay at the time of the transfer. The Secretary of the Interior would be required to invest the funds in government securities until those funds are expended by the tribe. (Any interest credited to this fund would be considered a means of financing and thus would not be recorded as an outlay on the budget.)

S. 2643 also would transfer responsibility for the operation, maintenance, repair, and replacement of the Cochiti dam drainage system from the Corps to the pueblo. According to the Department of the Interior, approximately \$200,000 is spent for operating and maintaining the system annually; those expenditures are not subject to annual appropriation. Because the operation and maintenance fund is currently considered a federal fund and is not the property of the tribe, expenditures from the fund are recorded as federal outlays. Therefore, CBO estimates that transferring operation and maintenance responsibilities to the pueblo would reduce direct spending by about \$2 million over the 2017–2026 period.)

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. 2643, AS ORDERED REPORTED BY THE
SENATE COMMITTEE ON INDIAN AFFAIRS ON APRIL 27, 2016

	By fiscal year, in millions of dollars—											2017– 2021	2017– 2026
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026			
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go	7	0	0	0	0	0	0	0	0	0	0	6	5

Note: Components do not sum to totals because of rounding.

Increase in long term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private sector impact: S. 2643 contains no intergovernmental or private sector mandates as defined in UMRA and would benefit the Pueblo de Cochiti of New Mexico. Any costs to the tribal government would be incurred voluntarily as a result of entering into the settlement agreement as ratified in the bill.

Estimate prepared by: Federal Costs: Robert Reese; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2643 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S.2643.

CHANGES IN EXISTING LAW (CORDON RULE)

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2643, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic):

ACT of August 26, 1992 (To authorize funds for the implementation of the settlement agreement reached between the Pueblo de Cochiti and the United States Army Corps of Engineers under the authority of Public Law 100–202, 25 USC 461 note. (Native American Technical Corrections Act of 2004)

SECTION 1. GENERAL AUTHORIZATION.

[The Secretary](a) IN GENERAL.—*The Secretary* of the Interior and the Secretary of the Army are authorized and directed to *implement the settlement.* **[implement—**

[(1) the settlement agreement, and

[(2) the modifications regarding the use of the settlement funds as described in the agreement known as the ‘First

Amendment to Operation and Maintenance Agreement for Implementation of Cochiti Wetlands Solution’, executed—

[(A) on October 22, 2001, by the Army Corps of Engineers;

[(B) on October 25, 2001, by the Pueblo de Cochiti of New Mexico; and

[(C) on November 8, 2001, by the Secretary of the Interior.]

(b) *RATIFICATION.*—Congress ratifies and approves the modifications regarding the use of the settlement funds and transfer of responsibility for the drainage system, as described in the agreement known as ‘Amendment to the Settlement Agreement for Implementation of Cochiti Wetlands Solution’, executed on—

(1) October 15, 2015, by the Department of the Interior;

(2) October 21, 2015, by the Corps of Engineers; and

(3) October 27, 2015, by the Pueblo de Cochiti of New Mexico.

[SEC. 2. DUTIES OF THE SECRETARY OF THE INTERIOR.

[In accordance with the settlement agreement and pursuant to the trust relationship between the United States Government and the Pueblo de Cochiti of New Mexico, upon completion of construction of the drainage system, the Secretary of the Interior, acting through the Bureau of Indian Affairs, shall be responsible for its maintenance, repair, and replacement, as provided in the settlement agreement.]

SEC. 2. DUTIES OF THE SECRETARY OF THE INTERIOR.

(a) *IN GENERAL.*—In accordance with the settlement agreement and pursuant to the government-to-government relationship between the United States and the Pueblo de Cochiti of New Mexico and the modifications to the settlement agreement under section 1(b), the Pueblo de Cochiti of New Mexico, as an exercise of self-determination, assumes any and all legal and financial responsibility for the operation, maintenance, repair, and replacement of the drainage system.

(b) *NO RESPONSIBILITY FOR DRAINAGE SYSTEM.*—The United States shall have no further legal or financial responsibility for the operation, maintenance, repair, or replacement of the drainage system.

(c) *RELEASE FROM LIABILITY.*—Effective beginning on the date on which the Pueblo de Cochiti of New Mexico assumes all legal and financial responsibility for the operation, maintenance, repair, and replacement of the drainage system under subsection (a), the Pueblo de Cochiti of New Mexico, on behalf of the Pueblo de Cochiti of New Mexico and the members of the Pueblo de Cochiti of New Mexico, waives and releases the United States from all past, present, and future liability for any claim relating to the operation, maintenance, repair, or replacement of the drainage system.

(d) *PROHIBITION ON GAMING.*—Notwithstanding any other provision of law, no class I gaming, class II gaming, or class III gaming (as those terms are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)) may be carried out on any land acquired through the use of the settlement funds, as described in the

agreement entitled 'Amendment to the Settlement Agreement for Implementation of Cochiti Wetfields Solution'.

