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SENATE

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{ 116-309

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TO AMEND THE AMERICA'S WATER INFRASTRUCTURE ACT OF 2018 TO EXPAND THE INDIAN RESERVATION DRINKING WATER PROGRAM, AND FOR OTHER PURPOSES

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DECEMBER 9, 2020.—Ordered to be printed

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

### R E P O R T

[To accompany S. 3044]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 3044), to amend the *America's Water Infrastructure Act of 2018* to expand the Indian reservation drinking water program, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE

The purpose of S. 3044 is to expand a program to carry-out projects that connect, expand, or repair existing public water systems or improve water quality, water pressure, or water services on reservations in the Upper Missouri River Basin and Upper Rio Grande River Basin.

Section 2001 of the *America's Water Infrastructure Act of 2018* (P.L. 115-270), the Environmental Protection Act (EPA) was directed, subject to the availability of appropriations, to carry out a program to connect, expand, or repair an existing public water system or improve water quality, water pressure, or water services, split between projects that serve reservations in the Upper Missouri River Basin and the Upper Rio Grande River Basin. Section 2001 provides that at least one qualifying pilot project for a reservation must be selected that serves more than one federally recognized Indian tribe. The program was authorized for \$20 million in each fiscal years 2019 through 2022, but it has not received any appropriations to date.

S. 3044 expands the number of eligible projects under current law to include 10 projects in the Columbia River Basin. Currently the program covers 20 projects, split evenly between the Upper Missouri River Basin and the Upper Rio Grande River Basin. The bill allows projects that connect, expand, or repair an existing public water system to extend to off-reservation sites that serve Indian Tribes (currently limited to on-reservation projects). The bill permanently extends the authorization of appropriations and increases the amount by \$10 million (currently set at \$20 million). S. 3044 requires eligible projects in the Columbia River Basin to include “a project that serves one or more Tribal communities of federally recognized Indian Tribes the Federal recognition of which has been terminated and subsequently restored.”

#### NEED FOR LEGISLATION

Tribal communities across the nation continue lack access to basic water and wastewater services. The Indian Health Service (IHS) identified at least \$2.57 billion in estimated costs for infrastructure projects to address existing drinking water and wastewater infrastructure needs for fiscal year 2019.<sup>1</sup> Furthermore, IHS identified 110,552 American Indian and Alaska Native (AI/AN) homes as needing some form of sanitation facility improvement, 51,784 AI/AN homes without access to adequate sanitation facilities, and 6,626 AI/AN homes without access to a safe water supply systems and/or sewage disposal systems.<sup>2</sup> The EPA’s most recent drinking water infrastructure needs survey and assessment estimated the total 20-year need for tribal water systems to be \$3.1 billion.<sup>3</sup>

Several federal programs provide assistance and support for drinking water and waste water infrastructure to rural communities in the U.S. There are approximately 10 programs housed in the Departments of the Interior (Bureau of Reclamation), Agriculture (Rural Utilities Services), Housing and Urban Development (HUD), Commerce (Economic Development Administration), the Army Corps of Engineers, and the EPA. The EPA, USDA, HUD and Commerce account for 98 percent of the total federal funding for drinking water and wastewater capital improvements.<sup>4</sup>

The EPA administers the Drinking Water State Revolving Fund to provide financial assistance to help water systems achieve health protection objectives of the Safe Drinking Water Act. Many of the programs include set-asides for Tribal communities. The DWSRF program includes a Tribal Set-Aside of 2 percent from EPA’s annual appropriations. Federally recognized Indian tribes are eligible for grants under the program. Tribes are also eligible for \$3 million to fund tribal drinking water infrastructure projects under the *Water Infrastructure Improvements for the Nation Act*, and the *Water Infrastructure Finance and Innovation Act of 2014*,

<sup>1</sup> INDIAN HEALTH SERVICE ET AL., ANNUAL REPORT TO THE CONGRESS OF THE UNITED STATES ON SANITATION DEFICIENCY LEVELS FOR INDIAN HOMES AND COMMUNITIES: FISCAL YEAR 2019 (2019).

<sup>2</sup> *Id.*

<sup>3</sup> ENVIRONMENTAL PROTECTION AGENCY, EPA 816-K-17-002, DRINKING WATER INFRASTRUCTURE NEEDS SURVEY AND ASSESSMENT: SIXTH REPORT TO CONGRESS (MARCH 2018).

<sup>4</sup> U.S. GEN. ACCOUNTING OFFICE, GAO-02-134, WATER INFRASTRUCTURE: INFORMATION ON FEDERAL AND STATE FINANCIAL ASSISTANCE, 2 (2001).

a federal credit program for eligible water and wastewater infrastructure projects.

Despite the availability of these programs, certain Tribal communities continue to lack the resources to finance necessary repairs to their water and wastewater infrastructure. According to a statement submitted by the Confederated Tribes of Warm Springs, three of its four water delivery systems require major upgrades or replacement, and the Tribes face a minimum cost of \$5–6 million to maintain existing systems. The Tribes noted that to provide for future improvements to meet the growing population, it faces a cost of \$40–50 million for water infrastructure. S. 3044 aims to target Tribal communities in need of water and wastewater infrastructure assistance by prioritizing projects that respond to emergency situations where lack of access to clean drinking water threatens the health of Tribal populations.

#### LEGISLATIVE HISTORY

S. 3044 was introduced on December 12, 2019 by Senator Wyden and Senator Merkley. The bill was referred to the Committee on Indian Affairs. On June 24, 2020, the Committee held a legislative hearing on S. 3044. The Committee received a statement for the record from the EPA, which provided technical assistance comments but did not take an official position on S. 3044. On July 29, 2020, the Committee met at a duly called business meeting to consider the bill. An amendment, in the nature of a substitute, was filed by Senator Udall, on behalf of Senator Wyden. The amendment, MAZ20559, was adopted by voice vote. The bill was ordered to be reported favorably, as amended, to the Senate by voice vote, with Senator Lankford recorded as voting no. Senator Lankford has concerns the bill lacks any sunset provisions.

*Amendment.* The amendment, MAZ20559, broadened the geographical scope of the area within the Columbia River Basin under which Tribes are eligible for funding to include Tribes in Washington, and created a priority for projects that respond to emergency situations where lack of access to clean drinking water threatens the health of Tribal populations.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1—Short title*

This section states that the bill may be cited as the “Western Tribal Water Infrastructure Act of 2019”.

##### *Section 2—Indian reservation drinking water program*

Section 2 amends the *America’s Water Infrastructure Act of 2019* to add 10 eligible projects that connect, expand, or repair an existing public water system or improve water quality, water pressure, or water services and are within the Columbia River Basin or a coastal basin adjacent to the Columbia River. Section 2 expands the authorization to include projects that serve an off-reservation site that serves an Indian Tribe. Section 3 requires the Administrator of the EPA to select not less than one project that serves one or more Tribal communities that has been terminated and subsequently restored. Section 3 permanently authorizes the program at \$30 million, starting in fiscal year 2020.

## COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, November 5, 2020.

Hon. JOHN HOEVEN,  
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. 3044, the Western Tribal Water Infrastructure Act of 2020.

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

Sincerely,

PHILLIP L. SWAGEL,  
Director.

Enclosure.

<b>Bill #, Western Tribal Water Infrastructure Act of 2020</b>			
As ordered reported by the Senate Committee on Indian Affairs on July 29, 2020			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	64	not estimated
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

Under current law, the Environmental Protection Agency (EPA) is directed to carry out a program that funds projects to connect, expand, or repair public water systems in order to improve water quality, pressure, or services on Indian reservations within the Upper Missouri River Basin and Upper Rio Grande Basin. Over the 2019–2022 period, \$20 million annually is authorized to be appropriated for that purpose; however, no funds have been appropriated to date.

S. 3044 would expand that program to include projects on off-reservation sites that serve Indian Tribes, and it would direct EPA to carry out 10 additional projects within the Columbia River Basin. The bill would require EPA to fund 100 percent of project costs. Finally, the bill would permanently authorize the appropriation of \$30 million annually for the program.

Using information from EPA, CBO estimates that implementing the program would cost \$62 million over the 2021–2025 period for qualifying projects. CBO expects that the funds authorized under S. 3044 would be used entirely to fund projects and not for administrative costs. EPA also would incur administrative costs for establishing and operating the program. Using information from EPA

about the resources required to operate similar programs, CBO estimates that implementing the bill would require about four additional employees and would cost an additional \$2 million over the 2021–2025 period. The costs of the legislation, detailed in Table 1, fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 3044

	By fiscal year, millions of dollars—					
	2021	2022	2023	2024	2025	2021– 2025
Indian Reservation Drinking Water Program:						
Authorization .....	10	10	30	30	30	110
Estimated Outlays .....	1	5	10	20	26	62
EPA Administration:						
Estimated Authorization .....	*	*	1	1	1	3
Estimated Outlays .....	*	*	*	1	1	2
Total Changes:						
Estimated Authorization .....	10	10	31	31	31	113
Estimated Outlays .....	1	5	10	21	27	64

\* = between zero and \$500,000.

On October 19, 2020, CBO transmitted a cost estimate for S. 3590, the Drinking Water Infrastructure Act of 2020, as reported by the Senate Committee on Environment and Public Works on May 11, 2020. S. 3590 contains provisions similar to those in S. 3044; however, S. 3590 would increase the authorization of appropriations for the program to improve drinking water on Indian reservations to \$50 million over the 2021–2024 period. CBO’s estimates of the budgetary effects of the similar provisions reflect those differences in the authorized amounts.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

#### EXECUTIVE COMMUNICATIONS

The Committee did not receive any Executive communications on this bill.

#### 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. 3044 will have a minimal impact on regulatory or paperwork requirements.

#### CHANGES IN EXISTING LAW

On February 6, 2019, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.