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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

APRIL 28, 2021.—Ordered to be printed

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

R E P O R T

[To accompany S. 421]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 421) 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 without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 421 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.

BACKGROUND

Under 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 res-

ervation 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. The program has not received any appropriations to date, although EPA noted that from fiscal years 2013 to 2019, it awarded $2.6 million to six different Tribes in the Columbia River Basin for 11 drinking water infrastructure projects.[1]

S. 421 expands the number of eligible projects under current law to include 10 projects in the Columbia River Basin or a coastal basin adjacent to the Columbia River. Currently, the program covers 20 projects, split evenly between the Upper Missouri River Basin and the Upper Rio Grande River Basin. The bill expands the program to authorize 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 extends the authorization of appropriations by an additional two years through 2024 and increases the amount by $30 million (currently set at $20 million) for a total of $50 million over five years. S. 421 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 $2.56 billion in estimated costs for infrastructure projects to address existing drinking water and wastewater infrastructure needs for fiscal year 2019.[2] 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. 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.[3]

The EPA administers the Drinking Water State Revolving Fund (SRF) to provide financial assistance to help water systems achieve health protection objectives of the Safe Drinking Water Act. The Drinking Water SRF program includes a Tribal Set-Aside of two percent from EPA's annual appropriations. 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, a federal credit program for eligible water and wastewater infrastructure projects. Indian tribes are also eligible for funding under the Clean Water SRF (current set-aside for Indian tribes is either 2 percent

[1] *Legislative Hearing on Lands Transfer and Water Bills: Hearing Before the S. Comm. on Indian Affs.*, 116th Cong. (2020) (testimony of the U.S. Environmental Protection Agency).

[2] 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).

[3] ENV'T. PROTECTION AGENCY, DRINKING WATER INFRASTRUCTURE NEEDS SURVEY AND ASSESSMENT: SIXTH REPORT TO CONGRESS, EPA 816–K–17–002 (2018).

or $30 million, whichever is greater) to upgrade or construct sewage treatment works or develop waste management plans.

Despite the availability of these programs, certain Tribal communities continue to lack the resources to finance necessary repairs to their water and wastewater infrastructure.[4] S. 421 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

Senators Merkley and Wyden introduced S. 421, the Western Tribal Water Infrastructure Act of 2021, on February 24, 2021. The Senate referred the bill to the Committee on the same day. The bill, S. 421, is substantially similar to the version favorably reported by the Committee, as amended, in the 116th Congress, except the authorization of appropriation was increased by an additional $20 million. On March 24, 2021, at a duly called business meeting, the Committee considered and ordered S. 421 reported favorably without amendment. A companion bill has not yet been introduced in the House of Representatives.

116th Congress. S. 3044 was introduced on December 12, 2019 by Senators Wyden and 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 and adopted by voice vote. The bill was ordered to be reported favorably, as amended, by voice vote.

Amendment. An amendment 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 2021".

Section 2. Indian reservation drinking water program

Section 2 amends the America's Water Infrastructure Act of 2018 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

[4] According to a record 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.

site that serves an Indian Tribe. Section 2 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, and authorizes the program at $50 million for five years starting in fiscal year 2021.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 15, 2021.

Hon. BRIAN SCHATZ,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHARIMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 421, the Western Tribal Water Infrastructure Act of 2021.

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.

S. 421, Western Tribal Water Infrastructure Act of 2021
As Ordered Reported by the Senate Committee on Indian Affairs on March 24, 2021

By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	2	151	not estimated

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 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

Under current law, the Environmental Protection Agency (EPA) funds projects to connect, expand, or repair public water systems on Indian reservations within the Upper Missouri River Basin and the Upper Rio Grande Basin. For each of fiscal years 2021 and 2022, $20 million is authorized to be appropriated for that purpose; however, no funds have been appropriated to date.

S. 421 would expand that program to include projects on off-reservation sites that serve Indian Tribes and 10 additional projects in the Columbia River Basin. The bill also would require EPA to fund 100 percent of project costs. Finally, the bill would authorize the appropriation of $50 million annually for fiscal years 2021 through 2024 for the program.

Using information from EPA, CBO estimates that funding qualifying projects would cost $148 million over the 2021–2026 period and $12 million after 2026. EPA also would incur administrative

costs to establish and operate the program. Using information from EPA about the resources needed to operate similar programs, CBO estimates that implementing the bill would require about four employees and would cost an additional $3 million over the 2021–2026 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. 421

	By fiscal year, millions of dollars—						
	2021	2022	2023	2024	2025	2026	2021–2026
Indian Reservation Drinking Water Program:							
Authorization [a]	30	30	50	50	0	0	160
Estimated Outlays	2	16	26	39	41	24	148
EPA Administration:							
Estimated Authorization	*	*	*	1	1	1	3
Estimated Outlays	*	*	*	1	1	1	3
Total Changes:							
Estimated Authorization	30	30	50	51	1	1	163
Estimated Outlays	2	16	26	40	42	25	151

*= between zero and $500,000.

a. The bill would authorize the annual appropriation of $50 million for 2021 through 2024 for the Indian Reservation Drinking Water Program. However, $20 million is already authorized for that program for 2021 and 2022. Thus, the authorization in this table shows the difference between those amounts for those years.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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. 314 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

Except as otherwise noted, the Committee has received no communications from the Executive Branch regarding S. 314.

CHANGES IN EXISTING LAW

In accordance with Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived. 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.

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