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SENATE

{ REPORT
118-131

RIO SAN JOSÉ AND RIO JEMEZ WATER SETTLEMENT ACT OF 2023

DECEMBER 12, 2023.—Ordered to be printed

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

R E P O R T

[To accompany S. 595]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 595) to approve the settlement of water rights claims of the Pueblos of Acoma and Laguna in the Rio San José Stream System and the Pueblos of Jemez and Zia in the Rio Jemez Stream System in the State of New Mexico, 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. 595 is to (1) resolve the claims of the Pueblo of Jemez and Pueblo of Zia to water rights in the Jemez River Stream System, and authorize, ratify, and confirm the May 11, 2022, water settlement agreement between the Pueblos, the State of New Mexico, and other interested parties; and (2) resolve the claims of the Pueblo of Acoma and the Pueblo of Laguna to water rights in the general stream adjudication of the Rio San Jose Stream System captioned “*State of New Mexico, ex rel. State Engineer v. Kerr-McGee, et al*” in the Thirteenth Judicial District Court for the State of New Mexico, and authorize, ratify, and confirm the “Rio San Jose Stream System Water Rights Local Settlement Agreement Among the Pueblo of Acoma, the Pueblo of Laguna, the Navajo Nation, the State of New Mexico, the City of Grants, the Village of Milan, the Association of Community Ditches of the Rio

San Jose and Nine Individual Acequias and Community Ditches” dated May 13, 2022 (2022 Agreement).

BACKGROUND

Pueblos of Jemez and Zia. The Pueblos are located on two separate Reservations within their respective ancestral territories, approximately 40 miles northwest of Albuquerque in central New Mexico. The Pueblo of Jemez includes over 89,000 acres of land and has 3,400 Tribal members;¹ and the Pueblo of Zia is comprised of more than 170,000 acres of land and has over 900 Tribal members.² For centuries, both Pueblos have functioned as agricultural communities and irrigated to farm corn, squash, and other crops, as well as support of livestock.³

The Jemez River flows through the boundaries of both Pueblos, providing water for irrigation and recharging the alluvial aquifers that supply the Pueblos’ drinking water.⁴ The river also supplies water throughout the Jemez River Basin for domestic, municipal, commercial, agricultural and environmental purposes, and it supports sacred and culturally significant Pueblo resources that rely on the River and related groundwater for survival.⁵

Despite their proximity to the river, the Pueblos have consistently struggled to meet the modern water and wastewater needs of their Reservation populations due to lack of water pressure, water quality concerns, insufficient storage capacity, and outdated infrastructure.⁶ Without intervention, these issues will continue to worsen as the populations and economic activities of Pueblos continue to expand.⁷ Accordingly, for the past 40 years, the Pueblos have been actively seeking remedies in and out of court to improve the dependability and quality of their water supply, as well as their drinking water and wastewater systems.

S. 595 would fully and finally settle the Pueblos’ outstanding legal claims by authorizing, ratifying, and confirming the 2022 Agreement that resolves the matter through a fund-based settlement that supports: completion of a water and wastewater feasibility study; construction of new water and wastewater systems; improvement and augmentation of existing irrigation systems; establishment of a Pueblo Water Resources Department; quantification of the Pueblos’ additional domestic, commercial, municipal, and industrial water rights; rehabilitation and new construction of livestock watering facilities; acquisition of land and water rights adjacent to the Pueblo ditches and around the Jemez River stream restoration projects; and construction of a water pipeline.

¹Legislative Hearing on Tule River Tribe Reserved Water Rights Settlement Act of 2022, S. 4896, Pueblos of Jemez and Zia Water Rights Settlement Act of 2022, and S. 4898 Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022 Before the Senate Committee on Indian Affairs, 117th Cong. (2022) (written testimony of the Honorable Raymond Loretto, DVM, Governor of the Pueblo of Jemez).

²Application for Treatment in a Similar Manner as a State Under Clean Air Act 2018, page 5 at <https://www.epa.gov/sites/default/files/2018-07/documents/pueblo-zia-tas-application-supporting-documentation.pdf>.

³See *supra*, note 1.

⁴*Id.*

⁵*Id.*

⁶*Id.* The Pueblos’ drinking water infrastructure was built in the 1960s, and the Pueblos’ wastewater treatment needs are currently served by non-discharging evaporation lagoons rather than modern and scalable forms of sewer treatment and discharge.

⁷*Id.*

Pueblos of Acoma and Laguna. The Pueblos are located in the river basin of the Rio San Jose, west of Albuquerque along Route 66. The Pueblo of Acoma includes approximately 450,000 acres of land⁸ and has over 6,000 enrolled members;⁹ the Pueblo of Laguna is comprised of approximately 500,000 acres of land and has over 7,800 enrolled members.¹⁰ The Pueblos' economies historically relied on irrigated agriculture, including subsistence style farming and trade, and they designed and built vast systems of irrigation ditches and massive reservoirs before first contact with the Spanish and Pueblo people.¹¹

The Pueblos historically irrigated thousands of acres of agricultural fields along the Rio San Jose, until late 19th Century diversions on the mainstem of the river began depriving both Pueblos of surface water.¹² Since then, over a century of diversions by junior water users have resulted in irreversible damage to the Pueblos' water supply, including loss of most of the flow from Rio San Jose.¹³ This water loss has affected the Pueblos by substantially reducing agriculture, limiting flow to the riparian zone that nurtures native plants, and preventing important cultural ceremonies that require a flowing river.¹⁴ The loss is so significant that, even if all junior users immediately ceased use, historical flows could not be restored to the Pueblos for decades, if at all.¹⁵ As such, the Pueblos have spent 40 years in litigation and eight years in negotiations attempting to find a solution to their water crisis.

NEED FOR LEGISLATION

This bill would fully and finally settle the Pueblos' outstanding claims by authorizing, ratifying, and confirming the Rio San Jose Agreement, providing for a fund-based settlement, and supporting administration of Pueblo Water Rights on Pueblo lands under a Pueblo Water Code, similar to the manner in which water rights are administered by the New Mexico State Engineer on non-Indian lands.

SUMMARY OF S. 595 AS ORDERED REPORTED

S. 595 authorizes, ratifies, and confirms the Rio San Jose Agreement, as amended; requires the Pueblo Water Rights to be held in trust by the United States; makes certain authorizations and prohibitions regarding the Pueblo Water Rights; establishes Settlement Trust Funds for the Pueblos of Acoma, Laguna, Jemez, and Zia; authorizes mandatory appropriations for the Settlement Trust Funds

⁸*Pueblo of Acoma Land Holdings* at https://www.puebloofacoma.org/wp-content/uploads/2021/01/Acoma-Landholdings_Final.pdf.

⁹Raymond Concho Jr. & Arvind Patel, *Enhancement of Pueblo of Acoma Utility Authority*, presentation to the United States Department of Energy, Office of Indian Energy (2017) at <https://www.energy.gov/sites/prod/files/2017/11/f46/48-acoma-pueblo.pdf>.

¹⁰Laguna Department of Education, *Pueblo of Laguna*, at <https://www.lagunaed.net/pueblolaguna#:~:text=Laguna%20Pueblo%20is%20one%20of,over%207%2C800%20enrolled%20tribal%20members>.

¹¹*Legislative Hearing on Tule River Tribe Reserved Water Rights Settlement Act of 2022, S. 4896, Pueblos of Jemez and Zia Water Rights Settlement Act of 2022, and S. 4898 Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022 Before the Senate Committee on Indian Affairs*, 117th Cong. (2022) (written testimony of the Honorable Martin Kowemy, Jr., Governor of the Pueblo of Laguna).

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

and other purposes; and places certain requirements on the Secretary of the Interior.

LEGISLATIVE HISTORY

Senators Heinrich (D–NM) and Luján (D–NM) introduced S. 595 on March 1, 2023. It was referred to the Committee on the same day. On March 29, 2023, the Committee met at a duly convened business meeting to consider S. 595 with three other bills. The Committee passed three of the four bills, including S. 595, en bloc by voice vote without amendment, and ordered the bills to be reported favorably.

Representatives Leger Fernandez (D–NM), Stansbury (D–NM), and Vasquez (D–NM), introduced H.R. 1304, an identical companion bill, on March 1, 2023. On the same day, it was referred to the House Committee on Natural Resources. On March 22, 2023, the bill was further referred to the Subcommittee on Water, Wildlife, and Fisheries. To date, the House has taken no further action on H.R. 1304.

117th Congress. Senator Heinrich (D–NM) introduced S. 4898, a bill substantially similar to Title I of S. 595 (Pueblos of Acoma and Lugan Water Rights Settlement), and S. 4896, a bill substantially similar to Title II of S. 595 (Pueblos of Jemez and Zia Water Rights Settlement), in the Senate on September 20, 2022. Both bills were referred to the Committee on Indian Affairs. The Committee held a hearing on the bills on November 16, 2022. The Committee took no further action on the bills before the conclusion of the 117th Congress.

Representative Leger Fernandez (D–NM) introduced H.R. 8920, a companion bill to S. 4898, and H.R. 8921, a companion bill to S. 4896, in the House on September 20, 2022. On the same day, H.R. 8920 and H.R. 8921 were referred to the House Committee on Natural Resources. The House took no further action on the bills before the conclusion of the 117th Congress.

SECTION-BY-SECTION ANALYSIS OF S. 595 AS ORDERED REPORTED

Section 1—Short title; Table of Contents

This section sets forth the short title as the “Rio San José and Rio Jemez Water Settlements Act of 2023,” and includes a table of contents.

TITLE I—PUEBLOS OF ACOMA AND LAGUNA WATER RIGHTS SETTLEMENT

Section 101—Purposes

This section sets forth the purposes of the bill to:

- resolve the water rights claims of the Pueblo of Acoma, the Pueblo of Laguna, and the United States as their trustee, in the adjudication titled “*State of New Mexico, ex rel. State Engineer v. Kerr-McGee, et al.*”;
- authorize, ratify, and confirm the Agreement entered into by the Pueblos, the State, and various other parties;
- authorize the Secretary to execute and modify the Agreement; and
- authorize funding to implement the Agreement.

Section 102—Definitions

This section provides definitions for various terms used throughout the bill.

Section 103—Ratification of agreement

This section authorizes, ratifies, and confirms the Agreement and conforming amendments; directs the Secretary to execute the Agreement, and authorizes the Secretary to make modifications consistent with congressional approval requirements and federal law. This section also requires the Secretary and the Pueblos to comply with federal environmental laws as applicable, affirms that execution of the Rio San Jose Agreement does not constitute a major federal action under the National Environmental Policy Act, and provides for the Pueblos' costs for related compliance activities to be paid from the Pueblo Trust Funds.

Section 104—Pueblo Water Rights

This section requires the Pueblo Water Rights to be held in trust by the United States; protects the rights from loss through non-use, forfeiture, abandonment, or other operation of law; preserves after-acquired state-law based water rights; and clarifies that the rights do not include water uses or water rights claims on an allotment. This section also authorizes the Pueblos to allocate, distribute, and lease the rights on and off Pueblo lands; requires the Pueblos to recognize, and not object to, allottee water rights in any general stream adjudication, including the Adjudication; prohibits alienation and forfeiture of the Pueblo Water Rights; provides that authorizations of the Act satisfy the requirements for federal authorization of purchases or grants of land from Indians; and clarifies that non-use of all or any portion of the Pueblo Water Rights by any water user shall not result in forfeiture of those rights.

Section 105—Settlement Trust Funds

This section establishes the Pueblo of Acoma Settlement Trust Fund, the Pueblo of Laguna Settlement Trust Fund, and the joint Acomita Reservoir Works Trust Fund. It also requires the Secretary to:

- manage the Pueblo Trust Funds in accordance with the American Indian Trust Fund Management Reform Act of 1994 and other federal laws governing the deposit and investment of Tribal funds;
- invest the funds with earnings accruing to the Pueblos; and
- make most funds available to the Pueblos on the enforceability date, with certain specified funds made available upon deposit.

This section permits withdrawals from the Pueblo Trust Funds for certain specified purposes pursuant to a Tribal management plan in accordance with the American Indian Trust Fund Management Reform Act of 1994, or expenditure plans approved and enforced by the Secretary; withdrawals from the Acomita Reservoir Works Trust Fund may be submitted to the Secretary through a joint expenditure plan and subject to certain requirements. A right of judicial review of the Secretary's determination with respect to

any of these plans is not allowed other than through the Administrative Procedures Act.

This section also limits the uses for each of the Pueblos' accounts and Acomita Reservoir Works Trust Fund; requires annual reporting regarding withdrawals, and limits federal liability for expenditures and investments made by the Pueblos after withdrawal. It also prohibits per capita distribution of any portion of the Pueblo Trust Funds; confirms the Pueblo or Pueblos will retain title, control, and operation of any project constructed with trust funds; and makes the Pueblos responsible for the operation, maintenance, and replacement costs of such projects.

Section 106—Funding

This section authorizes mandatory appropriations for:

- the Pueblo of Acoma Settlement Trust Fund, including:
 - \$296,000,000 for the Water Rights Settlement Account,
 - \$14,000,000 for the Water Infrastructure Operations and Maintenance Account, and
 - \$1,750,000 for the Feasibility Studies Settlement Account.
- the Pueblo of Laguna Settlement Trust Fund, including:
 - \$464,000,000 for the Water Rights Settlement Account,
 - \$26,000,000 for the Water Infrastructure Operations and Maintenance Account, and
 - \$3,250,000 for the Feasibility Studies Settlement Account; and
- the Acomita Reservoir Works Trust Fund, in the amount of \$45,000,000.

This section also provides for adjustments of the Pueblo Trust Funds to address cost fluctuation and market volatility, and requires the State of New Mexico to contribute a cost share of \$36,000,000.

Section 107—Enforceability date

This section requires the Secretary of the Interior to publish a statement of findings in the Federal Register to render the settlement agreement enforceable.

Section 108—Waivers and releases of claims

This section requires the parties to execute waivers and releases of claims related to the Pueblos' water rights, while reserving certain rights and retaining certain claims. This section also preserves the sovereignty and jurisdiction of the government entities; preserves the United States' authority to fulfill its trust responsibilities and enforce its laws, including environmental and jurisdictional laws; clarifies that the Act does not waive claims relating to quality of water and the environment under various federal laws or individual Tribal member claims; preserves claims relating to hunting, fishing, gathering, or cultural rights; and states that the Act does not confer jurisdiction on any state court to interpret federal health, safety, or environmental laws or determine the duties of any party thereunder, or conduct judicial review of any federal agency action.

This section further provides for tolling of claims and defenses between the enactment and enforceability dates, and provides for termination of the agreement if the Secretary's statement of findings is not issued by July 1, 2030, or a later date mutually agreed upon by the Pueblos and the United States with notice to the State. This section also provides for the consequences of such termination.

Section 109—Satisfaction of claims

This section provides that benefits realized under the Act shall serve as full satisfaction of any claim of the Pueblos against the United States that the Pueblos waive and release under the Act.

Section 110—Consent of United States to jurisdiction for judicial review of a Pueblo Water Right permit decision

This section provides the United States' consent to the limited jurisdiction of the District Court for the Thirteenth Judicial District of the State of New Mexico, the New Mexico Court of Appeals, and the New Mexico Supreme Court to provide judicial review in an action appealing a Pueblo Water Right Permit decision under the Agreement, and sets standards for such review.

Section 111—Miscellaneous provisions

This section affirms the federal government's sovereign immunity is not waived, states that the land and water rights of allottees and other Tribes are not quantified or diminished, and confirms that the Act does not affect laws or regulations in effect prior to enactment regarding pre-enforcement review of federal environmental enforcement actions. This section also provides that the Act controls over the Agreement in the event of a conflict.

Section 112—Antideficiency

This section states that the United States shall not be liable for failure to perform if adequate appropriations are not provided by Congress.

TITLE II—PUEBLOS OF JEMEZ AND ZIA WATER RIGHTS SETTLEMENT

Section 201—Purposes

This section sets forth the 4-fold purpose of the bill to: (1) resolve the water rights claims of the Pueblo of Jemez, the Pueblo of Zia, and the United States as their trustee, in the Jemez River Stream System; (2) authorize, ratify, and confirm the Agreement entered into by the Pueblos, the State, and various other parties; (3) authorize the Secretary to execute and carry out the Agreement; and (4) authorize funding to implement the Agreement.

Section 202—Definitions

This section provides definitions for various terms used throughout the bill.

Section 203—Ratification of Agreement

This section authorizes, ratifies, and confirms the Agreement and conforming amendments; directs the Secretary to execute the Agreement, and authorizes the Secretary to make modifications

consistent with congressional approval requirements and federal law. This section also requires the Secretary and the Pueblos to comply with federal environmental laws as applicable, affirms that execution of the Agreement does not constitute a major federal action under the National Environmental Policy Act, and provides for the Pueblos' costs for related compliance activities to be paid from the Pueblo Trust Funds.

Section 204—Pueblo Water Rights

This section requires the Pueblo Water Rights to be held in trust by the United States; protects the rights from loss through non-use, forfeiture, abandonment, or other operation of law; preserves after-acquired state-law based water rights; and clarifies that use of the Pueblo Water Rights shall be subject to the terms and conditions of the Agreement and the Act. This section also authorizes the Pueblos to allocate, distribute, and lease the rights on and off Pueblo lands; prohibits alienation and forfeiture of the Pueblo Water Rights; and provides that authorizations of the Act satisfy the requirements for federal authorization of purchases or grants of land from Indians.

Section 205—Settlement Trust Funds

This section establishes the Pueblo of Jemez Settlement Trust Fund and the Pueblo of Zia Settlement Trust Fund, and it requires the Secretary to:

- manage the Pueblo Trust Funds in accordance with the American Indian Trust Fund Management Reform Act of 1994 and other federal laws governing the deposit and investment of Tribal funds;
- invest the funds with earnings accruing to the Pueblos;
- and
- make most funds available to the Pueblos on the enforceability date, with \$25,000,000 made available immediately to each Pueblo for designated purposes.

This section permits withdrawals from the Pueblo Trust Funds for certain specified purposes pursuant to Tribal management or expenditure plans approved and enforced by the Secretary, requires annual reporting regarding withdrawals, and limits federal liability for expenditures and investments made by the Pueblos after withdrawal. It also prohibits per capita distribution of any portion of the Pueblo Trust Funds; confirms the Pueblos will retain title, control, and operation of any project constructed with trust funds; and makes the Pueblos responsible for the operation, maintenance, and replacement costs of such projects.

Section 206—Funding

This section authorizes mandatory appropriations of \$290,000,000 for the Pueblo of Jemez Settlement Trust Fund and \$200,000,000 for the Pueblo of Zia Settlement Trust Fund. This section also provides for adjustments of the Pueblo Trust Funds to address cost fluctuation and market volatility, and requires the State of New Mexico to contribute a cost share of \$20,059,000.

Section 207—Enforceability date

This section requires the Secretary of the Interior to publish a statement of findings in the Federal Register to render the settlement agreement enforceable.

Section 208—Waivers and releases of claims

This section requires the parties to execute waivers and release claims related to the Pueblos' water rights, while reserving certain rights and retaining certain claims. This section also preserves the sovereignty and jurisdiction of the government entities; preserves the United States' authority to fulfill its trust responsibilities and enforce its laws, including environmental and jurisdictional laws; clarifies that the Act does not waive claims relating to quality of water and the environment under various federal laws or individual Tribal member claims; preserves claims relating to hunting, fishing, gathering, or cultural rights; and states that the Act does not confer jurisdiction on any state court to interpret federal health, safety, or environmental laws or determine the duties of any party thereunder, or conduct judicial review of any federal agency action.

This section further provides for tolling of claims and defenses between the enactment and enforceability dates, and provides for termination of the agreement if the Secretary's statement of findings is not issued by July 1, 2030, or a later date mutually agreed upon by the Pueblos and the United States with notice to the State. This section also provides for the consequences of such termination.

Section 209—Satisfaction of claims

This section provides that benefits realized under the Act shall serve as full satisfaction of any claim of the Pueblos against the United States that the Pueblos waive and release under the Act.

Section 210—Miscellaneous provisions

This section affirms the federal government's sovereign immunity is not waived, states that the land and water rights of other Tribes are not quantified or diminished, and confirms that the Act does not affect laws or regulations in effect prior to enactment regarding pre-enforcement review of federal environmental enforcement actions. This section also provides that the Act controls over the Agreement in the event of a conflict.

Section 211—Antideficiency

This section states that the United States shall not be liable for failure to perform if adequate appropriations are not provided by Congress.

COST AND BUDGETARY CONSIDERATIONS

At a Glance			
S. 595, Rio San José and Rio Jemez Water Settlements Act of 2023			
As ordered reported by the Senate Committee on Indian Affairs on March 29, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2028	2024-2033
Direct Spending (Outlays)	21	111	1,703
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	21	111	1,703
Spending Subject to Appropriation (Outlays)	*	2	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

The bill would:

- Secure water rights for four Pueblo tribes in New Mexico by ratifying agreements among various parties
- Establish and appropriate funds for five trust funds to be administered by the Department of the Interior until their transfer to the Pueblo tribes

Estimated budgetary effects would mainly stem from:

- Transfer of the trust funds' ownership to the Pueblo tribes

Areas of significant uncertainty include:

- Anticipating when the water right settlements would be finalized

Bill Summary: S. 595 would secure about 30,000 acre-feet of water annually for four Pueblo tribes in New Mexico by ratifying two agreements:

- The Rio San José Stream System Water Rights Local Settlement Agreement, reached in 2022 between the Pueblo of Acoma, the Pueblo of Laguna, the Navajo Nation, the State of New Mexico, and other parties, would secure 20,200 acre-feet of water annually for the Pueblos of Acoma and Laguna.
- The Pueblos of Jemez and Zia Water Rights Settlement Agreement, reached in 2022 between the Pueblo of Jemez, the Pueblo of Zia, the State of New Mexico, and other parties, would secure 9,800 acre-feet of water annually for those tribes.

The bill would provide appropriations to capitalize five different trust funds and those trust funds would accrue interest during the period they are administered by the Department of the Interior (DOI). Once the parties to the settlements have satisfied specified conditions, the federal government would transfer ownership of each trust fund, including interest credited to the fund, to the relevant tribe for use in developing, constructing, and maintaining water projects.

Estimated Federal cost: The estimated budgetary effect of S. 595 is shown in Table 1. The costs of the legislation fall within budget function 300 (natural resources and environment).

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2023 and that the amounts appropriated will be deposited into the trust funds soon thereafter.

Using information from DOI about specifications in the bill, CBO expects that the following conditions would be met seven years after enactment:

- All settlements, including amendments required to conform to the bill would be final and executed,
- All waivers and releases of claims required under the bill would be executed,
- All appeals would have been exhausted and the courts would have approved agreements as binding on all parties, and
- The State of New Mexico would have contributed to or entered into funding agreements for the required amounts.

CBO expects that DOI would publish findings in the *Federal Register* for each settlement, stating that the bill's conditions have been met and that ownership of the trust funds is to be transferred.

TABLE 1.—ESTIMATED INCREASES IN DIRECT SPENDING UNDER S. 595

	By fiscal year, millions of dollars—													
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2024– 2028	2024– 2033		
Pueblos of Acoma and Laguna Set- tlement Trust Funds:														
Estimated Budget Authority	901	0	0	0	0	0	0	0	0	0	901	901		
Estimated Outlays	11	13	17	14	14	14	818	0	0	0	69	901		
Interest Credited to the Trust Funds:														
Estimated Budget Authority	31	32	24	24	24	25	19	0	0	0	135	179		
Estimated Outlays	0	0	0	0	0	0	179	0	0	0	0	179		
Subtotal:														
Estimated Budget Authority	932	32	24	24	24	25	19	0	0	0	1,036	1,080		
Estimated Outlays	11	13	17	14	14	14	997	0	0	0	69	1,080		
Pueblos of Jemez and Zia Settlement Trust Funds:														
Estimated Budget Authority	519	0	0	0	0	0	0	0	0	0	519	519		
Estimated Outlays	10	8	8	8	8	8	469	0	0	0	42	519		
Interest Credited to the Trust Funds:														
Estimated Budget Authority	17	18	13	14	14	14	14	0	0	0	76	104		
Estimated Outlays	0	0	0	0	0	0	104	0	0	0	0	104		
Subtotal:														
Estimated Budget Authority	536	18	13	14	14	14	14	0	0	0	595	623		
Estimated Outlays	10	8	8	8	8	8	573	0	0	0	42	623		
Total Increases:														
Estimated Budget Authority	1,468	50	37	38	38	39	33	0	0	0	1,631	1,703		
Estimated Outlays	21	21	25	22	22	22	1,570	0	0	0	111	1,703		

CBO estimates that implementing S. 595 would increase spending subject to appropriation by less than \$500,000 in every year and would total \$2 million over the 2024–2028 period.

Direct spending: CBO estimates that enacting S. 595 would increase direct spending by \$1.7 billion over the 2024–2033 period.

Pueblos of Acoma and Laguna Settlement Trust Funds: Title I would establish one trust fund for each tribe and a third fund for the benefit of both tribes. The amounts in the trust funds would

be capitalized with appropriations totaling \$850 million, distributed as follows:

- \$312 million for the Pueblo of Acoma Settlement Trust Fund, consisting of the Water Rights Settlement Account (\$296 million), a Water Infrastructure Operations and Maintenance Account (\$14 million), and a Feasibility Studies Settlement Account (\$2 million);
- \$493 million for the Pueblo of Laguna Settlement Trust Fund, consisting of the Water Rights Settlement Account (\$464 million), a Water Infrastructure Operations and Maintenance Account (\$26 million), and a Feasibility Studies Settlement Account (\$3 million); and
- \$45 million for the Acomita Reservoir Works Trust Fund, consisting of the Water Rights Settlement Account.

Title I would appropriate whatever amounts are necessary to account for inflation from October 2021 through the time those amounts are deposited into each trust fund. Based on the assumption that the bill will be enacted by the end of calendar year 2023, CBO estimates that the amount for inflation would be \$51 million; thus, the total appropriation would be \$901 million.

Under the bill, the Acoma and Laguna Pueblos would have immediate access to \$80 million from the funds to use for feasibility studies, installing groundwater wells, and construction projects to rehabilitate and expand the Acomita reservoir, dam, and water conveyance infrastructure. The federal government would retain ownership of the remaining amounts until 2030, when CBO expects that all settlement conditions will be satisfied. Interest would be credited to the deposited amounts.

In 2030, the federal government would transfer ownership of the trust funds to the tribes; those transfers (including credited interest) would be considered federal expenditures. Based on CBO's projections of interest rates and on an assumption that all conditions will be met by 2030, CBO estimates that \$997 million would be transferred in 2030; \$179 million of that amount would be for interest credited to the trust funds. On that basis, CBO estimates that enacting title I would increase direct spending by \$1.1 billion over the 2024–2033 period.

The federal government would retain fiduciary responsibility over the trust funds until the tribes are ready to acquire water rights and to plan, design, build, and maintain water projects; those subsequent actions would not affect the federal budget.

Pueblos of Jemez and Zia Settlement Trust Funds: Title II would establish an interest-bearing trust fund for each tribe, capitalized with appropriations of \$290 million for the Pueblo of Jemez Settlement Trust Fund and \$200 million for the Pueblo of Zia Settlement Trust Fund. Title II would appropriate whatever amounts are necessary to account for inflation from October 2021 through the time those amounts are deposited into each fund. Based on the assumption that the bill will be enacted by the end of calendar year 2023, CBO estimates that amount for inflation would be \$29 million; thus, the total appropriation would be \$519 million.

Under the bill, the Jemez and Zia Pueblos would have immediate access to \$50 million for developing economic water plans, preparing environmental documents, and designing and installing groundwater wells. The federal government would retain owner-

ship of the remaining amounts until 2030, when CBO expects that all settlement conditions will be satisfied. Interest would be credited to the deposited amounts.

In 2030, the federal government would transfer ownership of the trust funds to the tribes; those transfers (including credited interest) would be considered federal expenditures. Based on CBO's projections of interest rates and the assumption that all of the conditions will be met by 2030, CBO estimates that \$573 million would be transferred to the tribes in 2030; \$104 million would be for interest credited to the account. Accordingly, CBO estimates that enacting title II would increase direct spending by \$623 million over the 2024–2033 period.

The federal government would retain fiduciary responsibility over the contents of the trust funds until the money is needed by the tribes to design, rehabilitate, and construct water projects for domestic, municipal, and agricultural use; those subsequent actions would not affect the federal budget.

Spending subject to appropriation: DOI would incur administrative costs to implement S. 595, such as overseeing environmental and technical compliance during construction projects. Using information about average costs for other water settlements, CBO estimates that the annual cost of those activities would be less than \$500,000 and would total \$2 million over the 2024–2028 period; any spending would be subject to the availability of appropriated funds.

Nonbudgetary effects: The settlements would require New Mexico to contribute \$36 million for the Pueblos of Acoma and Laguna Water Rights Settlement and \$20 million for the Pueblos of Jemez and Zia Water Rights Settlement. Generally, when the federal government takes control of assets that belong to other entities, those amounts are considered nonbudgetary and their collection and disbursement does not affect the deficit.

Uncertainty: This estimate is subject to uncertainty because the amount of interest credited to each fund will depend on when the water settlements are finalized. S. 595 allows the parties to delay the finalization of the settlements if additional time is needed to satisfy the required conditions. Thus, interest credited to the funds could be lower if the settlements are finalized earlier than CBO anticipates or higher if those settlements are finalized after 2030.

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 changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 2.

TABLE 2.—CBO'S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF S. 595, THE RIO SAN JOSÉ AND RIO JEMEZ WATER SETTLEMENTS ACT OF 2023, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON INDIAN AFFAIRS ON MARCH 29, 2023

	By fiscal year, millions of dollars—												
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2024–2028	2024–2033	
INCREASE IN THE DEFICIT													
Pay-As-You-Go Effect	21	21	25	22	22	22	1,570	0	0	0	111	1,703	

Increase in long-term net direct spending and deficits: CBO estimates that enacting S. 595 would not increase net direct spending or deficits in any of the four consecutive 10-year periods beginning in 2034.

Mandates: The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Estimate prepared by: Federal costs: Aurora Swanson; Mandates: Rachel Austin.

Estimate reviewed by: Ann E. Futrell, Senior Adviser for Budget Analysis; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

Estimate approved by: Phillip L. Swagel, Director, Congressional Budget Office.

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. 595 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 595.

CHANGES IN EXISTING LAW

On February 9, 2023, 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.

