



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 20, 2009

S. 375

Crow Tribe Water Rights Settlement Act of 2009

*As ordered reported by the Senate Committee on Indian Affairs
on September 10, 2009*

SUMMARY

S. 375 would approve a compact between the Crow Tribe and the state of Montana to settle tribal claims to water rights in the state. The bill also would authorize the construction and rehabilitation of systems that deliver water to tribal lands and would establish a trust fund for the tribe to operate and maintain those systems. Finally, the bill would authorize appropriations for the Department of the Interior (DOI) to develop the water systems.

Based on information from DOI and assuming appropriation of the necessary amounts, CBO estimates that implementing S. 375 would increase discretionary spending by \$193 million over the 2010-2014 period and \$510 million after 2014. Enacting the legislation would not affect direct spending or revenues over the 2010-2019 period. Enacting the bill would increase direct spending by \$29 million after 2019.

S. 375 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would require the tribe to enact a tribal water code. CBO estimates that the cost of complying with the mandate would be small and well below the threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation).

This bill contains no private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 375 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 450 (community and regional development).

	By Fiscal Year, in Millions of Dollars					2010-
	2010	2011	2012	2013	2014	2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
MR&I Water System						
Estimated Authorization Level	10	15	20	25	25	95
Estimated Outlays	6	12	17	22	24	81
Crow Irrigation Project						
Estimated Authorization Level	10	15	15	20	20	80
Estimated Outlays	6	12	14	18	19	69
Crow Settlement Fund						
Estimated Authorization Level	5	0	0	0	0	5
Estimated Outlays	5	0	0	0	0	5
Administrative Costs for Bureau or Reclamation						
Estimated Authorization Level	8	8	7	7	8	38
Estimated Outlays	6	8	8	8	8	38
Total Spending Under S. 375						
Estimated Authorization Level	33	38	42	52	53	218
Estimated Outlays	25	32	38	47	51	193

Note: MR&I = Municipal, Rural, and Industrial Water System.

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 375 will be enacted in fiscal year 2010 and that the necessary amounts will be appropriated in the fiscal years in which those funds would be spent. Enforcement of the settlement depends on the completion of several actions by federal, state, local, and tribal entities. For this estimate, CBO expects that those actions will be completed in fiscal year 2016. Cost estimates for the authorized water projects are based on information from DOI and on historical spending patterns for similar activities.

Spending Subject to Appropriation

S. 375 would authorize appropriations for a variety of activities to benefit the Crow Tribe. The Secretary of the Interior would be authorized to construct and rehabilitate water infrastructure on tribal lands, operate and maintain that infrastructure, and sponsor development projects for the tribe. CBO estimates that implementing the settlement would increase discretionary spending by \$193 million over the 2010-2014 period and \$510 million after 2014.

Municipal, Rural, and Industrial (MR&I) Water System. Section 6 would authorize the appropriation of \$201 million, plus adjustments for increases in construction costs, to build an MR&I water system that would deliver water to communities and businesses on tribal lands. Based on information from DOI, CBO expects that construction of the MR&I water system would begin in 2010 and take about 10 years to complete. CBO estimates that implementing this provision would cost \$81 million over the 2010-2014 period and \$143 million after 2014, assuming appropriation of the necessary amounts (including adjustments for inflation).

Crow Irrigation Project. Section 5 would authorize the appropriation of \$161 million, plus adjustments for increases in construction costs, to rehabilitate and improve the Crow Irrigation Project, which delivers water to farmland on tribal lands. Based on information from DOI, CBO expects that improvements to the Crow Irrigation Project would begin in 2010 and take about 10 years to complete. CBO estimates that implementing this provision would cost \$69 million over the 2010-2014 period and \$110 million after 2014, assuming appropriation of the necessary amounts (including adjustments for inflation).

Crow Settlement Fund. Section 11 would authorize the appropriation of about \$198 million (including \$5 million to administer the tribal compact), plus adjustments for increases in construction costs, to be deposited into the Crow Settlement Fund. Amounts in the fund would be used for economic and water development projects and for operation and maintenance of the Crow Irrigation Project, the MR&I system, and the Yellowtail Dam, in Montana.

Except for amounts appropriated to administer the tribal compact, which could be spent by the tribe after it ratifies the compact, amounts in the fund could not be spent by the tribe until certain conditions are met. Among others, the Secretary of the Interior would have to publish a statement of findings in the Federal Register indicating that all parties have executed the compact; the Montana water court and U.S. district court would have to issue a judgment and final decree concerning the compact; \$198 million would have to be appropriated to the Crow Settlement Fund; and Montana would have to appropriate amounts due to the tribe under the compact. Should the Secretary not publish the required statement of findings by March 31, 2016, verifying that all conditions necessary to execute the agreement have been met, the agreement would not take effect, and no federal funds could be spent after that date.

CBO expects that the tribe would ratify the compact in 2010 based on information from the tribe. At that time, the tribe could spend amounts appropriated to the Crow Settlement Fund to administer the compact, and the budget would record an expenditure of \$5 million. Based on information from DOI, CBO expects that all other conditions necessary to execute the agreement would be met in 2016. At that time, all other amounts in the fund could be spent by the tribe, and the budget would record an expenditure of

\$212 million (including adjustments for inflation). The Secretary of the Interior would then be required to invest those amounts in U.S. Treasury obligations.

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 deposited into the settlement fund (excluding the amount for tribal compact administration) would be recorded as an outlay in 2016 when the funds could be spent by the tribe. Subsequently, any use of such funds would have no effect on the federal budget. Because S. 375 would direct the Secretary to invest amounts in the fund only after those amounts are available to the tribe, CBO expects that no interest would accrue on the amounts in the fund until 2016. CBO estimates that, in total, implementing section 11 would cost \$5 million in 2010 and \$212 million in 2016.

DOI Administrative Costs. S. 375 would authorize the appropriation of such sums as may be necessary for DOI to conduct certain administrative activities related to the compact. Based on information from DOI, CBO estimates that DOI would need about \$8 million a year to carry out its responsibilities under the bill, including \$1 million a year over the 2010-2011 period for environmental compliance activities related to the compact. In total, CBO estimates that those administrative activities would cost \$38 million over the 2010-2014 period and \$45 million after 2014, assuming appropriation of the necessary amounts.

Direct Spending

Section 8 would allocate a portion of the water supply in Bighorn Lake that was created by the construction of the Yellowtail Dam to the Crow Tribe. The legislation would require that any capital costs of the Yellowtail Dam that would be allocated to the tribe as a result of enacting S. 375 would be nonreimbursable by the tribe. (Nonreimbursable costs are costs incurred by the federal government to construct a project that are not recovered from project beneficiaries.)

Under current law, about one-third of the capital costs of the Yellowtail Dam will eventually be repaid to the federal government by private entities that contract for water supplies from Bighorn Lake. (The remaining two-thirds of those costs will be repaid by ratepayers who receive electricity from the dam.) Under the bill, about 90 percent of those capital costs would become nonreimbursable because most of the water in Bighorn Lake would be allocated to the tribe. Currently, the tribe does not purchase water from the lake and, hence, does not pay for any portion of the capital costs of the dam. Further, the tribe is not expected to enter into a contract for water from the dam in the next 10 years. CBO expects that, at some point after 2019, one or more entities will purchase

water from Bighorn Lake. Those entities would repay a portion of the capital costs of the dam (\$29 million) over several years. Such collections are classified as offsetting receipts (a credit against direct spending), are deposited into the Reclamation Fund, and cannot be spent without further appropriation.

By making a portion of the capital costs of the Yellowtail Dam nonreimbursable, enacting this legislation would result in the loss of offsetting receipts totaling about \$29 million sometime after 2019.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 375 would require the Crow tribe to enact policies that would govern tribal water rights as detailed in the agreement. That requirement would be an intergovernmental mandate as defined in UMRA because it would place a statutory requirement on the tribe that is separate from provisions of the agreement. CBO estimates that the cost of the mandate would be small and well below the threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation). Furthermore, amounts authorized for the Crow Settlement Fund could be used to pay for any such costs.

This bill contains no private-sector mandates as defined in UMRA.

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