

108TH CONGRESS  
2D SESSION

# S. 2218

To direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States for the purpose of providing a clean, safe, affordable, and reliable water supply to rural residents and for other purposes, to authorize the Secretary to conduct appraisal and feasibility studies for rural water projects, and to establish the guidelines for any projects authorized under this program.

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IN THE SENATE OF THE UNITED STATES

MARCH 22, 2004

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

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1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reclamation Rural  
3 Water Supply Act of 2004”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **FEDERAL RECLAMATION LAWS.**—The term  
7 “Federal Reclamation laws” means the Act of June  
8 17, 1902, 43 U.S.C. 371 et seq., as amended and  
9 supplemented.

10 (2) **INDIAN LANDS.**—The term “Indian lands”  
11 means those lands held by the United States in trust  
12 for a tribe or individual member(s) of an Indian  
13 tribe or those lands owned by a tribe or individual  
14 member(s) of an Indian tribe subject to a Federal  
15 restriction on alienation.

16 (3) **INDIAN TRIBE.**—The term “Indian tribe”  
17 means a tribe included on the list of recognized  
18 tribes which the Secretary publishes under the Fed-  
19 erally Recognized Indian Tribe List Act of 1994 (25  
20 U.S.C. 479a–1), and which are eligible for the spe-  
21 cial programs and services provided by the United  
22 States to Indians because of their status as Indians.

23 (4) **INDIAN.**—The term “Indian” means a per-  
24 son who is a member of an Indian tribe.

25 (5) **NON-FEDERAL PROJECT ENTITY.**—The  
26 term “non-Federal project entity” means a State,

1 regional, or other local authority, Indian tribe or  
2 tribal organization, or other qualifying entity such as  
3 a water conservation district, water conservancy dis-  
4 trict, or rural water district or association.

5 (6) RECLAMATION.—The term “Reclamation”  
6 means the Bureau of Reclamation, an agency within  
7 the Department of the Interior.

8 (7) RECLAMATION STATES.—The term “Rec-  
9 lamation States” means the States and areas re-  
10 ferred to in section 1 of the Reclamation Act of  
11 1902 (Act of June 17, 1902, 43 U.S.C. 371 et seq.),  
12 as amended.

13 (8) RURAL WATER SUPPLY PROJECT.—The  
14 term “rural water supply project” means a water  
15 supply project identified to serve a group of commu-  
16 nities, Indian tribes, tribal organizations, dispersed  
17 homesites, or rural areas with domestic, residential,  
18 and industrial water, and which can include inci-  
19 dental livestock watering, but which does not include  
20 commercial irrigation. The terms “rural” and “rural  
21 area” mean any open country, or any place, town,  
22 village, or city which is not part of or associated  
23 with a metropolitan statistical area and shall be fur-  
24 ther clarified for the purposes of this program in the  
25 criteria developed under section 3(d). Rural water

1 infrastructure includes pumps, pipes, wells, water  
2 treatment facilities, and appurtenances, but does not  
3 include major impoundment structures.

4 (9) SECRETARY.—The term “Secretary” means  
5 the Secretary of the Interior.

6 (10) TRIBAL ORGANIZATION.—The term “tribal  
7 organization” means the recognized governing body  
8 of any Indian tribe; any legally established organiza-  
9 tion of Indians which is controlled, sanctioned, or  
10 chartered by such governing body or which is demo-  
11 cratically elected by the adult members of the Indian  
12 community to be served by such organization and  
13 which includes the maximum participation of Indi-  
14 ans in all phases of its activities: *Provided*, That in  
15 any case where a contract is let or grant made to  
16 an organization to perform services benefiting more  
17 than one Indian tribe, the approval of each such In-  
18 dian tribe shall be a prerequisite to the letting or  
19 making of such contract or grant.

20 (11) CONSTRUCT.—The term “construct”  
21 means to install new infrastructure and to upgrade  
22 or replace existing facilities where they are associ-  
23 ated with the new infrastructure authorized under  
24 the Act.

1           (12) OPERATIONS, MAINTENANCE, AND RE-  
2           PLACEMENT COSTS.—The term “operations, mainte-  
3           nance, and replacement costs” means all costs for  
4           the operations of the project that are necessary for  
5           the safe, efficient and continued functioning of the  
6           project to produce the benefits set forth in the feasi-  
7           bility study. This includes repairs of a routine na-  
8           ture that maintain the project in a well kept condi-  
9           tion, replacement of worn-out project elements and  
10          rehabilitation activities necessary to bring a deterio-  
11          rated project back to its original condition.

12 **SEC. 3. RURAL WATER SUPPLY PROGRAM.**

13          (a) IN GENERAL.—The Secretary is authorized to  
14          undertake a competitive program based upon the criteria  
15          developed under subsection (d) to plan, design and con-  
16          struct rural water supply projects in cooperation with non-  
17          Federal project entities.

18          (b) RECLAMATION STATES.—The program estab-  
19          lished in this Act shall be limited to the Reclamation  
20          States.

21          (c) NON-FEDERAL PROJECT ENTITY.—Each rural  
22          water supply project under the program established in this  
23          Act shall be performed in cooperation with a qualifying  
24          non-Federal project entity as defined in section 2(e) of  
25          this Act.

1 (d) ELIGIBILITY CRITERIA.—The Secretary shall de-  
2 velop and publish criteria for determining which projects  
3 are eligible for participation under the program estab-  
4 lished in this Act. The Secretary, to the maximum extent  
5 possible, shall consider—

6 (1) whether a rural water supply project—

7 (A) serves rural areas and communities or  
8 Indian tribes;

9 (B) shows economic benefits;

10 (C) is cost-effective; and

11 (D) whether and to what extent the local  
12 project sponsors can meet the cost-share and  
13 repayment criteria described in section 3(e),  
14 section 4, and section 5;

15 (2) whether there is an urgent and compelling  
16 need for a rural water supply project that would ad-  
17 dress current or future water supply shortages, and/  
18 or improve the health and/or aesthetic based quality  
19 of water in a manner that results in continuous,  
20 measurable, and significant water quality benefits;

21 (3) whether a rural water supply project helps  
22 meet existing legal requirements;

23 (4) whether a rural water supply project pro-  
24 motes and applies a regional or watershed perspec-  
25 tive to water resource management or cross-bound-

1       ary issues, implements an integrated resources man-  
2       agement approach, increases water management  
3       flexibility, or forms a partnership with other entities;

4               (5) whether a rural water supply project pro-  
5       vides benefits outside the region in which the project  
6       occurs; and

7               (6) the availability of water rights to support  
8       project development and actual water delivery.

9       (e) LIMITATION ON USE OF FEDERAL FUNDS.—

10           (1) IN GENERAL.—Notwithstanding any other  
11       provision of law and except as provided in paragraph  
12       (2), the Federal share of the costs of any individual  
13       project authorized by Congress under the program  
14       established in this Act shall not exceed the portion  
15       of those project costs in excess of the non-Federal  
16       entities' capability-to-pay, as generally described in  
17       section 5(e). Except as provided in paragraph (2),  
18       the local contribution shall be based upon the non-  
19       Federal entities' capability to pay and shall be no  
20       less than 35 percent of the projected total project  
21       costs.

22           (2) REDUCED NON-FEDERAL SHARE.—The Sec-  
23       retary may increase the Federal share of the cost of  
24       a project authorized under the program established  
25       in this Act to an amount that is greater than the

1 amount specified in paragraph (1) of this subsection  
2 if the Secretary determines that—

3 (A) the project is for the benefit of an In-  
4 dian tribe; and

5 (B) application of paragraph (1) would re-  
6 sult in economic hardship for such Indian tribe.

7 **SEC. 4. APPRAISAL INVESTIGATIONS.**

8 (a) **IN GENERAL.**—Upon request of a non-Federal  
9 project entity and consistent with section 3 (d) and (e)  
10 of this Act, the Secretary may undertake, in cooperation  
11 with such non-Federal project entity, appraisal investiga-  
12 tions to identify and study opportunities for construction  
13 of rural water supply projects to determine if they meet  
14 the criteria to be promulgated under Section (3)(d). The  
15 appraisal report shall include a determination of whether  
16 or not to recommend the initiation of a feasibility study  
17 for a proposed rural water supply project.

18 (b) **COOPERATION.**—The Secretary shall consult and  
19 cooperate with appropriate State, regional, tribal and local  
20 authorities during the performance of each appraisal in-  
21 vestigation conducted pursuant to this Act.

22 (c) **COSTS.**—The Federal obligations for costs of such  
23 appraisal investigations shall conform with Reclamation  
24 policy (Reclamation Manual number CMP–05–01).

1 **SEC. 5. FEASIBILITY STUDIES, PROJECT DEVELOPMENT,**  
2 **AND COST SHARE.**

3 (a) IN GENERAL.—The Secretary, in cooperation  
4 with a non-Federal project entity, is authorized to under-  
5 take studies to determine the feasibility of rural water  
6 supply systems recommended for such study pursuant to  
7 section 4 of this Act. The feasibility report shall document  
8 the Secretary’s engineering, environmental, and economic  
9 investigation of a proposed rural water supply project, tak-  
10 ing into consideration the range of potential solutions and  
11 the circumstances and needs of the area to be served by  
12 the proposed project, the potential benefits to the people  
13 of that area, and appropriate water conservation meas-  
14 ures. The highest priority in selecting alternatives shall  
15 be determined by evaluating factors that include, but are  
16 not limited to, the following: the level of net economic ben-  
17 efits; the extent to which the project and alternatives take  
18 advantage of economic incentives and the use of market-  
19 based mechanisms; whether a proposed project is “rural”  
20 or in a “rural area”, as defined in section 1(h) and clari-  
21 fied in the eligibility criteria developed under section 3(d);  
22 a benefit-cost analysis, containing an analysis comparing  
23 different structural and non-structural options for meeting  
24 water needs; whether non-Federal entities have adequate  
25 fiscal controls in place to manage the project; the extent  
26 to which the project involves partnerships with other

1 State, local, tribal government, or Federal entities; and  
2 the extent to which projects intended for Indian tribes and  
3 tribal organizations address the need for economic self suf-  
4 ficiency. The Secretary shall indicate in the Feasibility re-  
5 port whether the project is recommended for implementa-  
6 tion.

7 (b) FEDERAL COST SHARE.—The Federal share of  
8 the costs of such feasibility studies shall not exceed 50  
9 percent of the total study costs, except that the Secretary  
10 may increase the Federal share of the costs of such feasi-  
11 bility studies for an Indian tribe or tribal organization if  
12 the Secretary determines that they would be unable to  
13 contribute at least 50 percent of the costs of such study  
14 based on criteria established by the Secretary in regula-  
15 tions. The Secretary may accept as part of the non-Fed-  
16 eral cost share, the contribution of such in-kind services  
17 by the non-Federal project entity that the Secretary deter-  
18 mines will contribute toward the conduct and completion  
19 of the study.

20 (c) STUDY CONSIDERATIONS.—In addition to the re-  
21 quirements of other Federal laws, feasibility studies con-  
22 ducted under the program established in this Act shall  
23 consider—

24 (1) the need for action;

1           (2) near- and long-term water demand and sup-  
2 plies in the study area;

3           (3) an evaluation of resource capabilities within  
4 the study area to provide a safe and reliable source  
5 of potable water to the communities and rural areas  
6 to be served;

7           (4) all reasonable alternatives, including non-  
8 structural alternatives, that satisfy the need for ac-  
9 tion, including an alternative that is within the non-  
10 Federal entity's capability to pay annual Operations,  
11 Maintenance, and Replacement costs;

12           (5) economic feasibility (measure of project ben-  
13 efits and costs) and cost effectiveness (least cost  
14 method of attaining desired result);

15           (6) impacts to the natural and human environ-  
16 ment;

17           (7) appropriate water conservation and other  
18 demand management measures;

19           (8) the financial capability of the non-Federal  
20 project entity to fund its proportionate share of the  
21 project's capital construction costs and 100 percent  
22 of the identified annual operation, maintenance, and  
23 replacement costs associated with the proposed  
24 project as established in section 5(e). Financial ca-  
25 pability shall be determined by evaluating factors for

1 the project area, relative to the regional average,  
2 that include, but are not limited to, the following:  
3 per capita income, median household income, pov-  
4 erty rate, the ability of the non-Federal entity to  
5 raise tax revenues, the “strength” of the non-Fed-  
6 eral entity’s balance sheet, and the existing cost of  
7 water;

8 (9) whether the project sponsor has diligently  
9 pursued other sources of Federal and non-Federal  
10 assistance to meet their water needs, and can dem-  
11 onstrate that no other options are viable for meeting  
12 the communities’ water needs; and

13 (10) the soundness of any future growth projec-  
14 tions being used to justify either the need for the  
15 project, or the project sponsor’s ability to pay their  
16 cost-share or the operation, maintenance, and re-  
17 placement costs.

18 (d) CAPABILITY TO PAY.—

19 (1) CONSTRUCTION COSTS.—In evaluating a  
20 project, the Secretary shall consider the capability of  
21 the private sources and State and local government  
22 and tribal sources to pay for the capital construction  
23 costs and shall set forth the Secretary’s determina-  
24 tion of the Federal and non-Federal cost share.

1           (2) ALLOCATION.—The Secretary shall deter-  
2 mine, based on the findings in the feasibility report,  
3 the Federal and non-Federal costs for a rural water  
4 supply project recommended to be constructed under  
5 the program established in this Act and apportion  
6 those costs in accordance with the benefits received  
7 and allocate the non-Federal costs to the project  
8 beneficiaries. Grants from other Federal sources  
9 cannot be credited toward the non-Federal cost  
10 share determined under provisions of this Act, un-  
11 less the other Federal source is used by an Indian  
12 tribe or tribal organization to offset their allocation  
13 of project costs.

14           (3) TRIBES.—In determining the capability-to-  
15 pay of Indian project beneficiaries, the Secretary  
16 shall consider non-tribal users living or working on  
17 tribal lands as non-Indian beneficiaries; The Sec-  
18 retary may defer the collection of all non-Federal  
19 construction costs apportioned to Indian project  
20 beneficiaries unless or until the Secretary determines  
21 that such beneficiaries should pay the costs allocated  
22 to it or an appropriate portion of such costs.

1 **SEC. 6. OPERATION, MAINTENANCE, AND REPLACEMENT**  
2 **COSTS.**

3 (a) IN GENERAL.—Except as provided in subsection  
4 (b), non-Federal entities must have the capability to pay  
5 all operation, maintenance, and replacement costs of the  
6 project facilities.

7 (1) OPERATION, MAINTENANCE, AND REPLACEMENT COSTS PLAN.—The non-Federal project entity,  
8 in consultation with the Secretary, shall develop an  
9 operation, maintenance, and replacement costs plan  
10 to provide the necessary framework to establish  
11 rates and fees for beneficiaries of the project.  
12

13 (2) FEASIBILITY REPORT.—The Secretary shall  
14 include in the feasibility report a schedule identifying  
15 the annual operation, maintenance, and replacement  
16 costs that should be allocated to each  
17 non-Federal entity participating in the project, as  
18 well as the current and expected financial capability  
19 of each non-Federal entity to pay its allocated annual  
20 operation, maintenance, and replacement costs.

21 (3) REPLACEMENT COSTS RESPONSIBILITY.—  
22 The non-Federal project entity shall be responsible  
23 for all project replacement costs.

24 (4) OVERSIGHT COSTS.—Federal oversight  
25 costs, as determined by the Secretary, shall be con-

1       sidered project operation, maintenance, and replace-  
2       ment costs.

3               (5) OPERATION, MAINTENANCE, AND REPLACE-  
4       MENT COSTS FOR INDIAN PROJECT BENE-  
5       FICIARIES.—In the exercise of the Secretary’s discre-  
6       tion under this subsection, if there is a difference be-  
7       tween actual operation, maintenance and replace-  
8       ment costs allocated to Indian project beneficiaries  
9       and the revenues anticipated from Indian bene-  
10      ficiaries, and if the Secretary determines that the  
11      Indian project beneficiaries do not have the capa-  
12      bility to pay operation, maintenance, and replace-  
13      ment costs, in order to assist in payment of such op-  
14      eration, maintenance, and replacement costs, the  
15      Secretary may seek appropriations in amounts nec-  
16      essary to fulfill the purposes of this subsection.

17 **SEC. 7. FEDERAL RECLAMATION PROJECTS.**

18       Nothing in this Act shall supersede or amend the pro-  
19      visions of Federal Reclamation law or law associated with  
20      any project, or portion of any project constructed under  
21      any authority of Federal Reclamation law.

22 **SEC. 8. GENERAL AUTHORITY.**

23       (a) IN GENERAL.—The Secretary is authorized to  
24      enter into contracts, financial assistance agreements and  
25      other such agreements and to promulgate such regulations

1 as may be necessary to carry out the purposes and provi-  
2 sions of this Act.

3 (b) DETERMINATIONS.—All determinations, includ-  
4 ing modifications, by the Secretary and the methodologies  
5 selected for making such determinations shall be final and  
6 not subject to judicial review. Such determinations shall  
7 include, but not be limited to, the following: whether or  
8 not to recommend initiation of feasibility studies; feasi-  
9 bility of a project, all project costs, including operation,  
10 maintenance, and replacement costs; payment capability;  
11 payment terms and conditions; allocation or apportion-  
12 ment of costs; allocation or apportionment of water; and  
13 deferral of cost collection.

14 **SEC. 9. REPORTS TO CONGRESS.**

15 The Secretary is directed to submit to Congress feasi-  
16 bility reports described in section 5 for those projects the  
17 Secretary recommends, and to seek, as the Secretary  
18 deems appropriate, specific authority to develop and con-  
19 struct such recommended projects. This report shall in-  
20 clude good faith letters of intent by the non-Federal  
21 project entity or entities that they will share the allocated  
22 costs as determined by the Secretary.

1 **SEC. 10. COORDINATION WITH OTHER FEDERAL AND**  
2 **STATE RURAL WATER SUPPLY PROGRAMS.**

3 The Secretary shall coordinate with existing Federal  
4 and State rural water and wastewater programs to deter-  
5 mine the most appropriate agency to undertake the  
6 project, and to otherwise facilitate the most efficient and  
7 effective solution to meeting the water needs of the non-  
8 Federal project sponsors.

9 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) **IN GENERAL.**—There is hereby authorized to be  
11 appropriated \$70,000,000 per year to carry out the ap-  
12 praisal and feasibility study authorized pursuant to this  
13 Act and the construction activities to be authorized con-  
14 sistent with this Act.

15 (b) **CONSTRUCTION COST INDEXING.**—Appropria-  
16 tions to plan and construct projects authorized under this  
17 Act shall include such sums as are necessary to defray  
18 increases in development costs reflected in appropriate en-  
19 gineering cost indices after the completion date of the ap-  
20 plicable feasibility report, and such sums shall remain  
21 available until expended. The Federal and non-Federal  
22 share of cost increases due to inflation will be allocated  
23 proportionate with the original cost share split.

1 **SEC. 12. PROHIBITION ON USE OF FUNDS FOR IRRIGATION**  
2 **PURPOSES.**

3 None of the funds made available to the Secretary  
4 for planning or construction of a rural water supply  
5 project developed under the program established in this  
6 Act may be used to plan or construct facilities used to  
7 supply water for the purpose of irrigation.

8 **SEC. 13. PROJECT OWNERSHIP.**

9 Title to the components of rural water supply projects  
10 planned, designed, and constructed under the program es-  
11 tablished in this Act shall be held by the non-Federal  
12 project entity.

13 **SEC. 14. APPLICATION OF INDIAN SELF-DETERMINATION**  
14 **ACT.**

15 Any pre-construction or construction activity for any  
16 project authorized pursuant to this Act may be subject  
17 to the requirements of title I or title IV of the Indian Self-  
18 Determination and Education Assistance Act, as amended  
19 (Public Law 93-638; 25 U.S.C. 450 et seq.). Notwith-  
20 standing subsections 105(b), 106(b) and 106(l) of the In-  
21 dian Self-Determination and Education Assistance Act, or  
22 any other provision of law, in the case of amounts appro-  
23 priated pursuant to this Act which are made available to  
24 an Indian project beneficiary under a self-determination  
25 contract or a self-governance agreement, all project reve-  
26 nues, including any interest earned shall be—

1 (1) reported by the Indian project beneficiary to  
2 the Secretary in a manner determined to be ade-  
3 quate by the Secretary;

4 (2) expended by the Indian project beneficiary  
5 only for the purposes for which they were originally  
6 appropriated or for the purposes for which they were  
7 authorized pursuant to the provisions of this Act;  
8 and

9 (3) considered by the Secretary in determining  
10 the amount of funds otherwise obligated to the con-  
11 tract or agreement in subsequent years.

12 **SEC. 15. SAVINGS CLAUSE.**

13 (a) Nothing in this Act shall be construed to—

14 (1) affect any Indian water rights or land  
15 claims of Indian tribes or individual Indians, wheth-  
16 er located inside or outside the external boundaries  
17 of an Indian reservation or on Indian lands; or

18 (2) affect or extinguish tribal sovereignty or the  
19 trust status of Indian lands.

20 (b) Individual rural water projects constructed under  
21 the authority of this Act may be used to satisfy, in part  
22 or in whole, the terms of Indian Water Rights settlements,  
23 to the extent that such arrangements are spelled out in  
24 settlement language.

○