

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.

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

A BILL

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.

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 the annual operation, maintenance, and replacement costs that should be allocated to each
15 non-Federal entity participating in the project, as
16 well as the current and expected financial capability
17 of each non-Federal entity to pay its allocated annual operation, maintenance, and replacement costs.
18

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

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

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.

○