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SENATE

{ REPORT  
{ 109-148

### RURAL WATER SUPPLY ACT OF 2005

OCTOBER 19, 2005.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 895]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 895) to direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States to provide a clean, safe, affordable, and reliable water supply to rural residents, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Rural Water Supply Act of 2005”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—RECLAMATION RURAL WATER SUPPLY ACT OF 2005

- Sec. 101. Short title.
- Sec. 102. Definitions.
- Sec. 103. Rural water supply program.
- Sec. 104. Rural water programs assessment.
- Sec. 105. Appraisal investigations.
- Sec. 106. Feasibility studies.
- Sec. 107. Miscellaneous.
- Sec. 108. Authorization of appropriations.

#### TITLE II—TWENTY-FIRST CENTURY WATER WORKS ACT

- Sec. 201. Short title.
- Sec. 202. Definitions.
- Sec. 203. Project eligibility.
- Sec. 204. Loan guarantees.
- Sec. 205. Operations, maintenance, and replacement costs.
- Sec. 206. Title to newly constructed facilities.
- Sec. 207. Water rights.

Sec. 208. Interagency coordination and cooperation.

Sec. 209. Authorization of appropriations.

## **TITLE I—RECLAMATION RURAL WATER SUPPLY ACT OF 2005**

### **SEC. 101. SHORT TITLE.**

This title may be cited as the “Reclamation Rural Water Supply Act of 2005”.

### **SEC. 102. DEFINITIONS.**

In this title:

(1) **CONSTRUCTION.**—The term “construction” means the installation of new infrastructure and the upgrading of existing facilities in locations in which the infrastructure or facilities are associated with the infrastructure of a rural water project recommended by the Secretary pursuant to this title.

(2) **FEDERAL RECLAMATION LAW.**—The term “Federal reclamation law” means the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

(3) **INDIAN.**—The term “Indian” means an individual who is a member of an Indian tribe.

(4) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) **NON-FEDERAL PROJECT ENTITY.**—The term “non-Federal project entity” means a State, regional, or local authority, Indian tribe or tribal organization, or other qualifying entity, such as a water conservation district, water conservancy district, or rural water district or association.

(6) **OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.**—

(A) **IN GENERAL.**—The term “operations, maintenance, and replacement costs” means all costs for the operation of a rural water supply project that are necessary for the safe, efficient, and continued functioning of the project to produce the benefits described in a feasibility study.

(B) **INCLUSIONS.**—The term “operations, maintenance, and replacement costs” includes—

- (i) repairs of a routine nature that maintain a rural water supply project in a well kept condition;
- (ii) replacement of worn-out project elements; and
- (iii) rehabilitation activities necessary to bring a deteriorated project back to the original condition of the project.

(C) **EXCLUSION.**—The term “operations, maintenance, and replacement costs” does not include construction costs.

(7) **PROGRAM.**—The term “Program” means the rural water supply program established under section 103.

(8) **RECLAMATION STATES.**—The term “Reclamation States” means the States and areas referred to in the first section of the Act of June 17, 1902 (43 U.S.C. 391).

(9) **RURAL WATER SUPPLY PROJECT.**—

(A) **IN GENERAL.**—The term “rural water supply project” means a project that is designed to serve a community or group of communities, each of which has a population of not more than 50,000 inhabitants, which may include Indian tribes and tribal organizations, dispersed homesites, or rural areas with domestic, industrial, municipal, and residential water.

(B) **INCLUSION.**—The term “rural water supply project” includes—

- (i) incidental noncommercial livestock watering and noncommercial irrigation of vegetation and small gardens of less than 1 acre; and
- (ii) a project to improve rural water infrastructure, including—
  - (I) pumps, pipes, wells, and other diversions;
  - (II) storage tanks and small impoundments;
  - (III) water treatment facilities for potable water supplies, including desalination facilities;
  - (IV) equipment and management tools for water conservation, ground-water recovery, and water recycling; and
  - (V) appurtenances.

(C) **EXCLUSION.**—The term “rural water supply project” does not include—

- (i) commercial irrigation; or
- (ii) major impoundment structures.

(10) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

- (11) **TRIBAL ORGANIZATION.**—The term “tribal organization” means—
- (A) the recognized governing body of an Indian tribe; and
  - (B) any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body or democratically elected by the adult members of the Indian community to be served by the organization.

**SEC. 103. RURAL WATER SUPPLY PROGRAM.**

(a) **IN GENERAL.**—The Secretary, in cooperation with non-Federal project entities and consistent with this title, shall establish and carry out a rural water supply program in Reclamation States to—

- (1) investigate and identify opportunities to ensure safe and adequate rural water supply projects for domestic, municipal, and industrial use in small communities and rural areas of the Reclamation States;
- (2) plan the design and construction, through the conduct of appraisal investigations and feasibility studies, of rural water supply projects in Reclamation States; and
- (3) oversee, as appropriate, the construction of rural water supply projects in Reclamation States that are recommended by the Secretary in a feasibility report developed pursuant to section 106 and subsequently authorized by Congress.

(b) **NON-FEDERAL PROJECT ENTITY.**—Any activity carried out under this title shall be carried out in cooperation with a qualifying non-Federal project entity, consistent with this title.

(c) **ELIGIBILITY CRITERIA.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall, consistent with this title, develop and publish in the Federal Register criteria for—

- (1) determining the eligibility of a rural community for assistance under the Program; and
- (2) prioritizing requests for assistance under the Program.

(d) **FACTORS.**—The criteria developed under subsection (c) shall take into account such factors as whether—

- (1) a rural water supply project—
  - (A) serves—
    - (i) rural areas and small communities; or
    - (ii) Indian tribes; or
  - (B) promotes and applies a regional or watershed perspective to water resources management;
- (2) there is an urgent and compelling need for a rural water supply project that would—
  - (A) improve the health or aesthetic quality of water;
  - (B) result in continuous, measurable, and significant water quality benefits; or
  - (C) address current or future water supply needs;
- (3) a rural water supply project helps meet applicable requirements established by law; and
- (4) a rural water supply project is cost effective.

(e) **INCLUSIONS.**—The Secretary may include—

- (1) to the extent that connection provides a reliable water supply, a connection to preexisting infrastructure (including impoundments and conveyance channels) as part of a rural water supply project; and
- (2) notwithstanding the limitation on population under section 102(9)(A), a town or community with a population in excess of 50,000 inhabitants in an area served by a rural water supply project if, at the discretion of the Secretary, the town or community is considered to be a critical partner in the rural supply project.

**SEC. 104. RURAL WATER PROGRAMS ASSESSMENT.**

(a) **IN GENERAL.**—In consultation with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Director of the Indian Health Service, the Secretary of Housing and Urban Development, and the Secretary of the Army, the Secretary shall develop an assessment of—

- (1) the status of all rural water supply projects under the jurisdiction of the Secretary authorized but not completed prior to the date of enactment of this Act, including appropriation amounts, the phase of development, total anticipated costs, and obstacles to completion;
- (2) the current plan (including projected financial and workforce requirements) for the completion of the projects identified in paragraph (1) within the time frames established under the provisions of law authorizing the projects or the final engineering reports for the projects;

- (3) the demand for new rural water supply projects;
- (4) rural water programs within other agencies and a description of the extent to which those programs provide support for rural water supply projects and water treatment programs in Reclamation States, including an assessment of the requirements, funding levels, and conditions of eligibility for the programs assessed;
- (5) the extent of the demand that the Secretary can meet with the Program;
- (6) how the Program will complement authorities already within the jurisdiction of the Secretary and the heads of the agencies with whom the Secretary consults; and
- (7) improvements that can be made to coordinate and integrate the authorities of the agencies with programs evaluated under paragraph (4), including any recommendations to consolidate some or all of the activities of the agencies with respect to rural water supply.

(b) **CONSULTATION WITH STATES.**—Before finalizing the assessment developed under subsection (a), the Secretary shall solicit comments from States with identified rural water needs.

(c) **REPORT.**—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a detailed report on the assessment conducted under subsection (a).

**SEC. 105. APPRAISAL INVESTIGATIONS.**

(a) **IN GENERAL.**—On request of a non-Federal project entity with respect to a proposed rural water supply project that meets the eligibility criteria published under section 103(c) and subject to the availability of appropriations, the Secretary may—

- (1) receive and review an appraisal investigation that is—
  - (A) developed by the non-Federal project entity, with or without support from the Secretary; and
  - (B) submitted to the Secretary by the non-Federal project entity;
- (2) conduct an appraisal investigation; or
- (3) provide a grant to, or enter into a cooperative agreement with, the non-Federal project entity to conduct an appraisal investigation, if the Secretary determines that—
  - (A) the non-Federal project entity is qualified to complete the appraisal investigation in accordance with the criteria published under section 103(c); and
  - (B) using the non-Federal project entity to conduct the appraisal investigation is a cost-effective alternative for completing the appraisal investigation.

(b) **DEADLINE.**—An appraisal investigation conducted under subsection (a) shall be scheduled for completion not later than 2 years after the date on which the appraisal investigation is initiated.

(c) **APPRAISAL REPORT.**—In accordance with subsection (f), after an appraisal investigation is submitted to the Secretary under section (a)(1) or completed under paragraph (2) or (3) of subsection (a), the Secretary shall prepare an appraisal report that—

- (1) considers—
  - (A) whether the project meets—
    - (i) the appraisal criteria developed under subsection (d); and
    - (ii) the eligibility criteria developed under section 103(c);
  - (B) whether viable water supplies and water rights exist to supply the project, including all practicable water sources such as lower quality waters, nonpotable waters, and water reuse-based water supplies;
  - (C) whether the project has a positive effect on public health and safety;
  - (D) whether the project will meet water demand, including project future needs;
  - (E) the extent to which the project provides environmental benefits, including source water protection;
  - (F) whether the project applies a regional or watershed perspective and promotes benefits in the region in which the project is carried out;
  - (G) whether the project—
    - (i)(I) implements an integrated resources management approach; or
    - (II) enhances water management flexibility, including providing for—
      - (aa) local control to manage water supplies under varying water supply conditions; and
      - (bb) participation in water banking and markets for domestic and environmental purposes; and
    - (ii) promotes long-term protection of water supplies;

- (H) preliminary cost estimates for the project; and
  - (I) whether the non-Federal project entity has the capability to pay 100 percent of the costs associated with the operations, maintenance, and replacement of the facilities constructed or developed as part of the rural water supply project; and
  - (2) provides recommendations on whether a feasibility study should be initiated under section 106(a).
- (d) APPRAISAL CRITERIA.—
- (1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate criteria (including appraisal factors listed under subsection (c)) against which the appraisal investigations shall be assessed for completeness and appropriateness for a feasibility study.
  - (2) INCLUSIONS.—To minimize the cost of a rural water supply project to a non-Federal project entity, the Secretary shall include in the criteria methods to scale the level of effort needed to complete the appraisal investigation relative to the total size and cost of the proposed rural water supply project.
- (e) REVIEW OF APPRAISAL INVESTIGATION.—
- (1) IN GENERAL.—Not later than 90 days after the date of submission of an appraisal investigation under paragraph (1) or (3) of subsection (a), the Secretary shall provide to the non-Federal entity that conducted the investigation a determination of whether the investigation has included the information necessary to determine whether the proposed rural water supply project satisfies the criteria promulgated under subsection (d).
  - (2) NO SATISFACTION OF CRITERIA.—If the Secretary determines that the appraisal investigation submitted by a non-Federal entity does not satisfy the criteria promulgated under subsection (d), the Secretary shall inform the non-Federal entity of the reasons why the appraisal investigation is deficient.
  - (3) RESPONSIBILITY OF SECRETARY.—If an appraisal investigation as first submitted by a non-Federal entity does not provide all necessary information, as defined by the Secretary, the Secretary shall have no obligation to conduct further analysis until the non-Federal project entity submitting the appraisal study conducts additional investigation and resubmits the appraisal investigation under this subsection.
- (f) APPRAISAL REPORT.—Once the Secretary has determined that an investigation provides the information necessary under subsection (e), the Secretary shall—
- (1) complete the appraisal report required under subsection (c);
  - (2) make available to the public, on request, the appraisal report prepared under this title; and
  - (3) promptly publish in the Federal Register a notice of the availability of the results.
- (g) COSTS.—
- (1) FEDERAL SHARE.—The Federal share of an appraisal investigation conducted under subsection (a) shall be 100 percent of the total cost of the appraisal investigation, up to \$200,000.
  - (2) NON-FEDERAL SHARE.—
    - (A) IN GENERAL.—Except as provided in subparagraph (B), if the cost of conducting an appraisal investigation is more than \$200,000, the non-Federal share of the costs in excess of \$200,000 shall be 50 percent.
    - (B) EXCEPTION.—The Secretary may reduce the non-Federal share required under subparagraph (A) if the Secretary determines that there is an overwhelming Federal interest in the appraisal investigation.
    - (C) FORM.—The non-Federal share under subparagraph (A) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the appraisal investigation.
- (h) CONSULTATION; IDENTIFICATION OF FUNDING SOURCES.—In conducting an appraisal investigation under subsection (a)(2) the Secretary shall—
- (1) consult and cooperate with the non-Federal project entity and appropriate State, tribal, regional, and local authorities;
  - (2) consult with the heads of appropriate Federal agencies to—
    - (A) ensure that the proposed rural water supply project does not duplicate a project carried out under the authority of the agency head; and
    - (B) if a duplicate project is being carried out, identify the authority under which the duplicate project is being carried out; and
  - (3) identify what funding sources are available for the proposed rural water supply project.

**SEC. 106. FEASIBILITY STUDIES.**

(a) **IN GENERAL.**—On completion of an appraisal report under section 105(c) that recommends undertaking a feasibility study and subject to the availability of appropriations, the Secretary shall—

- (1) in cooperation with a non-Federal project entity, carry out a study to determine the feasibility of the proposed rural water supply project;
- (2) receive and review a feasibility study that is—
  - (A) developed by the non-Federal project entity, with or without support from the Secretary; and
  - (B) submitted to the Secretary by the non-Federal project entity; or
- (3) provide a study to, or enter into a cooperative agreement with, a non-Federal project entity to conduct a feasibility study, for submission to the Secretary, if the Secretary determines that—
  - (A) the non-Federal entity is qualified to complete the feasibility study in accordance with the criteria promulgated under subsection (d), and
  - (B) using the non-Federal project entity to conduct the feasibility study is a cost-effective alternative for completing the appraisal investigation.

(b) **REVIEW OF NON-FEDERAL FEASIBILITY STUDIES.**—

(1) **IN GENERAL.**—In conducting a review of a feasibility study submitted under paragraph (2) or (3) of subsection (a), the Secretary shall—

- (A) in accordance with the feasibility factors described in subsection (c) and the criteria promulgated under subsection (d), assess the completeness of the feasibility study; and
- (B) if the Secretary determines that a feasibility study is not complete, notify the non-Federal entity of the determination.

(2) **REVISIONS.**—If the Secretary determines under paragraph (1)(B) that a feasibility study is not complete, the non-Federal entity shall pay any costs associated with revising the feasibility study.

(c) **FEASIBILITY FACTORS.**—Feasibility studies authorized or reviewed under this title shall include an assessment of—

- (1) near- and long-term water demand in the area to be served by the rural water supply project;
- (2) advancement of public health and safety of any existing rural water supply project and other benefits of the proposed rural water supply project;
- (3) alternative new water supplies in the study area, including any opportunities to treat and use low-quality water, nonpotable water, water reuse-based supplies, and brackish and saline waters through innovative and economically viable treatment technologies;
- (4) environmental quality and source water protection issues rebated to the rural water supply project;
- (5) innovative opportunities for water conservation in the study area to reduce water use and water system costs, including—
  - (A) nonstructural approaches to reduce the need for the project; and
  - (B) demonstration technologies;
- (6) the extent to which the project and alternatives take advantage of economic incentives and the use of market-based mechanisms;
- (7)(A) the construction costs and projected operations, maintenance, and replacement costs of all alternatives; and
  - (B) the economic feasibility and lowest cost method of obtaining the desired results of each alternative, taking into account the Federal cost-share;
- (8) the availability of guaranteed loans for a proposed rural water supply project;
- (9) the financial capability of the non-Federal project entity to pay the non-Federal project entity's proportionate share of the design and construction costs and 100 percent of operations, maintenance, and replacement costs, including the allocation of costs to each non-Federal project entity in the case of multiple entities;
- (10) whether the non-Federal project entity has developed an operations, management, and replacement plan to assist the non-Federal project entity in establishing rates and fees for beneficiaries of the rural water supply project that includes a schedule identifying the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the project;
- (11)(A) the non-Federal project entity administrative organization that would implement construction, operations, maintenance, and replacement activities; and
  - (B) the fiscal, administrative, and operational controls to be implemented to manage the project;

(12) the extent to which assistance for rural water supply is available under other Federal authorities;

(13) the engineering, environmental, and economic activities to be undertaken to carry out the proposed rural water supply project;

(14) the extent to which the project involves partnerships with other State, local, or tribal government or Federal entities; and

(15) in the case of a project intended for Indian tribes and tribal organizations, the extent to which the project addresses the goal of economic self-sufficiency.

(d) FEASIBILITY STUDY CRITERIA.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate criteria (including the feasibility factors listed under subsection (c)) under which the feasibility studies shall be assessed for completeness and appropriateness.

(2) INCLUSIONS.—The Secretary shall include in the criteria promulgated under paragraph (1) methods to scale the level of effort needed to complete the feasibility assessment relative to the total size and cost of the proposed rural water supply project and reduce total costs to non-Federal entities.

(e) FEASIBILITY REPORT.—

(1) IN GENERAL.—After completion of appropriate feasibility studies for rural water supply projects that address the factors described in subsection (c) and the criteria promulgated under subsection (d), the Secretary shall—

(A) develop a feasibility report that includes—

(i) a recommendation of the Secretary on—

(I) whether the rural water supply project should be authorized for construction; and

(II) the appropriate non-Federal share of construction costs, which shall be—

(aa) at least 25 percent of the total construction costs; and

(bb) determined based on an analysis of the capability-to-pay information considered under subsections (c)(9) and (f); and

(ii) if the Secretary recommends that the project should be authorized for construction—

(I) what amount of grants, loan guarantees, or combination of grants and loan guarantees should be used to provide the Federal cost share;

(II) a schedule that identifies the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the rural water supply project; and

(III) an assessment of the financial capability of each non-Federal entity participating in the rural water supply project to pay the allocated annual operation, maintenance, and replacement costs for the rural water supply project;

(B) submit the report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives;

(C) make the report publicly available, along with associated study documents; and

(D) publish in the Federal Register a notice of the availability of the results.

(f) CAPABILITY-TO-PAY.—

(1) IN GENERAL.—In evaluating a proposed rural water supply project under this section, the Secretary shall—

(A) consider the financial capability of any non-Federal project entities participating in the rural water supply project to pay 25 percent or more of the capital construction costs of the rural water supply project; and

(B) recommend an appropriate Federal share and non-Federal share of the capital construction costs, as determined by the Secretary.

(2) FACTORS.—In determining the financial capability of non-Federal project entities to pay for a rural water supply project under paragraph (1), the Secretary shall evaluate factors for the project area, relative to the State average, including—

(A) per capita income;

(B) median household income;

(C) the poverty rate;

(D) the ability of the non-Federal project entity to raise tax revenues or assess fees;

(E) the strength of the balance sheet of the non-Federal project entity; and

(F) the existing cost of water in the region.

(3) INDIAN TRIBES.—In determining the capability-to-pay of Indian tribe project beneficiaries, the Secretary may consider deferring the collection of all or part of the non-Federal construction costs apportioned to Indian tribe project beneficiaries unless or until the Secretary determines that the Indian tribe project beneficiaries should pay—

(A) the costs allocated to the beneficiaries; or

(B) an appropriate portion of the costs.

(g) COST-SHARING REQUIREMENT.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the Federal share of the cost of a feasibility study carried out under this section shall not exceed 50 percent of the study costs.

(2) FORM.—The non-Federal share under paragraph (1) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the study.

(3) FINANCIAL HARDSHIP.—The Secretary may increase the Federal share of the costs of a feasibility study if the Secretary determines, based on a demonstration of financial hardship, that the non-Federal participant is unable to contribute at least 50 percent of the costs of the study.

(4) LARGER COMMUNITIES.—In conducting a feasibility study of a rural water supply system that includes a community with a population in excess of 50,000 inhabitants, the Secretary may require the non-Federal project entity to pay more than 50 percent of the costs of the study.

(h) CONSULTATION AND COOPERATION.—In addition to the non-Federal project entity, the Secretary shall consult and cooperate with appropriate Federal, State, tribal, regional, and local authorities during the conduct of each feasibility assessment and development of the feasibility report conducted under this title.

#### SEC. 107. MISCELLANEOUS.

(a) AUTHORITY OF SECRETARY.—The Secretary may enter into contracts, financial assistance agreements, and such other agreements, and promulgate such regulations, as are necessary to carry out this title.

(b) TRANSFER OF PROJECTS.—Nothing in this title authorizes the transfer of pre-existing facilities or pre-existing components of any water system from Federal to private ownership or from private to Federal ownership.

(c) FEDERAL RECLAMATION LAW.—Nothing in this title supersedes or amends any Federal law associated with a project, or portion of a project, constructed under Federal reclamation law.

(d) INTERAGENCY COORDINATION.—The Secretary shall coordinate the Program carried out under this title with existing Federal and State rural water and wastewater programs to facilitate the most efficient and effective solution to meeting the water needs of the non-Federal project sponsors.

(e) MULTIPLE INDIAN TRIBES.—in any case in which a contract is entered into with, or a grant is made, to an organization to perform services benefiting more than 1 Indian tribe under this title, the approval of each such Indian tribe shall be a prerequisite to entering into the contract or making the grant.

(f) OWNERSHIP OF FACILITIES.—Title to any facility planned, designed, and recommended for construction under this title shall be held by the non-Federal project entity.

(g) EXPEDITED PROCEDURES.—If the Secretary determines that a community to be served by a proposed rural water supply project has urgent and compelling water needs, the Secretary shall, to the maximum extent practicable, expedite appraisal investigations and reports conducted under section 105 and feasibility studies and reports conducted under section 106.

(h) EFFECT ON STATE WATER LAW.—

(1) IN GENERAL.—Nothing in this title preempts or affects State water law or an interstate compact governing water.

(2) COMPLIANCE REQUIRED.—The Secretary shall comply with State water laws in carrying out this title.

(i) NO ADDITIONAL REQUIREMENTS.—Nothing in this title requires a feasibility study for, or imposes any other additional requirements with respect to, rural water supply projects or programs that are authorized before the date of enactment of this Act.

#### SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title \$20,000,000 for the period of fiscal years 2006 through 2015, to remain available until expended.



(b) **RURAL WATER PROGRAMS ASSESSMENT.**—Of the amounts made available under subsection (a), not more than \$1,000,000 may be made available to carry out section 104 for each of fiscal years 2006 and 2007.

(c) **LIMITATION.**—No amounts made available under this section shall be used to pay construction costs associated with any rural water supply project.

## **TITLE II—TWENTY-FIRST CENTURY WATER WORKS ACT**

### **SEC. 201. SHORT TITLE.**

This title may be cited as the “Twenty-First Century Water Works Act”.

### **SEC. 202. DEFINITIONS.**

In this title:

(1) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(2) **LENDER.**—The term “lender” means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulation (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)).

(3) **LOAN GUARANTEE.**—The term “loan guarantee” has the meaning given the term “loan guarantee” in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(4) **NON-FEDERAL BORROWER.**—The term “non-Federal borrower” means—  
 (A) a State (including a department, agency, or political subdivision of a State); or  
 (B) a conservancy district, irrigation district, canal company, water users’ association, Indian tribe, an agency created by interstate compact, or any other entity that has the capacity to contract with the United States under Federal reclamation law.

(5) **OBLIGATION.**—The term “obligation” means a loan or other debt obligation that is guaranteed under this section.

(6) **PROJECT.**—The term “project” means—  
 (A) a rural water supply project (as defined in section 102(9)); or  
 (B) an extraordinary operation and maintenance activity for, or the rehabilitation of, a facility—  
 (i) that is authorized by Federal reclamation law and constructed by the United States under such law; or  
 (ii) in connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law.

(7) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

### **SEC. 203. PROJECT ELIGIBILITY.**

(a) **ELIGIBILITY CRITERIA.**—

(1) **IN GENERAL.**—The Secretary shall develop and publish in the Federal Register criteria for determining the eligibility of a project for financial assistance under 204.

(2) **INCLUSIONS.**—Eligibility criteria shall include—  
 (A) submission of an application by the lender to the Secretary;  
 (B) demonstration of the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment;  
 (C) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to repay the project financing from user fees or other dedicated revenue sources;  
 (D) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to pay all operations, maintenance, and replacement costs of the project facilities; and  
 (E) such other criteria as the Secretary determines to be appropriate.

(b) **WAIVER.**—The Secretary may waive any of the criteria in subsection (a)(2) that the Secretary determines to be duplicative or rendered unnecessary because of action already taken by the United States.

(c) **PROJECTS PREVIOUSLY AUTHORIZED.**—A project that was authorized for construction under Federal reclamation laws prior to the date of enactment of this Act shall be eligible for assistance under this title, subject to the criteria established by the Secretary under subsection (a).

(d) **CRITERIA FOR RURAL WATER SUPPLY PROJECTS.**—A rural water supply project that is determined to be feasible under section 106 is eligible for a loan guarantee under section 204.

**SEC. 204. LOAN GUARANTEES.**

(a) **AUTHORITY.**—Subject to the availability of appropriations, the Secretary may make available to lenders for a project meeting the eligibility criteria established in section 203 loan guarantees to supplement private-sector or lender financing for the project.

(b) **TERMS AND LIMITATIONS.**—

(1) **IN GENERAL.**—Loan guarantees under this section for a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements as the Secretary determines to be appropriate to protect the financial interests of the United States.

(2) **AMOUNT.**—Loan guarantees by the Secretary shall not exceed an amount equal to 90 percent of the costs of the project that is the subject of the loan guarantee, as estimated at the time at which the loan guarantee is issued.

(3) **INTEREST RATE.**—An obligation shall bear interest at a rate that does not exceed a level that the Secretary determines to be appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks.

(4) **AMORTIZATION.**—A loan guarantee under this section shall provide for complete amortization of the loan guarantee within not more than 40 years.

(5) **NONSUBORDINATION.**—An obligation shall be subject to the condition that the obligation is not subordinate to other financing.

(c) **PREPAYMENT AND REFINANCING.**—Any prepayment or refinancing terms on a loan guarantee shall be negotiated between the non-Federal borrower and the lender with the consent of the Secretary.

**SEC. 205. DEFAULTS.**

(a) **PAYMENTS BY SECRETARY.**—

(1) **IN GENERAL.**—If a borrower defaults on the obligation, the holder of the loan guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(2) **PAYMENT REQUIRED.**—By such date as may be specified in the loan guarantee or related agreements, the Secretary shall pay to the holder of the loan guarantee the unpaid interest on, and unpaid principal of, the obligation with respect to which the borrower has defaulted, unless the Secretary finds that there was not default by the borrower in the payment of interest or principal or that the default has been remedied.

(3) **FORBEARANCE.**—Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the non-Federal borrower that may be agreed on by the parties to the obligation and approved by the Secretary.

(b) **SUBROGATION.**—

(1) **IN GENERAL.**—If the Secretary makes a payment under subsection (a), the Secretary shall be subrogated to the rights of the recipient of the payment as specified in the loan guarantee or related agreements, including, as appropriate, the authority (notwithstanding any other provision of law) to—

(A) complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to the loan guarantee or related agreements; or

(B) permit the non-Federal borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines the purposes to be in the public interest.

(2) **SUPERIORITY OF RIGHTS.**—The rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreement, shall be superior to the rights of any other person with respect to the property.

(c) **PAYMENT OF PRINCIPAL AND INTEREST BY SECRETARY.**—With respect to any obligation guaranteed under this section, the Secretary may enter into a contract to pay, and pay, holders of the obligation, for and on behalf of the non-Federal borrower, from funds appropriated for that purpose, the principal and interest payments that become due and payable on the unpaid balance of the obligation if the Secretary finds that—

(1)(A) the non-Federal borrower is unable to meet the payments and is not in default;

(B) it is in the public interest to permit the non-Federal borrower to continue to pursue the purposes of the project; and

(C) the probable net benefit to the Federal Government in paying the principal and interest will be greater than that which would result in the event of a default;

(2) the amount of the payment that the Secretary is authorized to pay shall be no greater than the amount of principal and interest that the non-Federal borrower is obligated to pay under the agreement being guaranteed; and

(3) the borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary.

(d) **ACTION BY ATTORNEY GENERAL.**—

(1) **NOTIFICATION.**—If the non-Federal borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

(2) **RECOVERY.**—On notification, the Attorney General shall take such action as is appropriate to recover the unpaid principal and interest due from—

(A) such assets of the defaulting non-Federal borrower as are associated with the obligation; or

(B) any other security pledged to secure the obligation.

**SEC. 206. OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.**

(a) **IN GENERAL.**—The non-Federal share of operations, maintenance, and replacement costs for a project receiving Federal assistance under this title shall be 100 percent.

(b) **PLAN.**—On request of the non-Federal borrower, the Secretary may assist in the development of an operation, maintenance, and replacement plan to provide the necessary framework to assist the non-Federal borrower in establishing rates and fees for project beneficiaries.

**SEC. 207. TITLE TO NEWLY CONSTRUCTED FACILITIES.**

(a) **NEW PROJECTS AND FACILITIES.**—All new projects or facilities constructed in accordance with this title shall remain under the jurisdiction and control of the non-Federal borrower subject to the terms of the repayment agreement.

(b) **EXISTING PROJECTS AND FACILITIES.**—Nothing in this title affects the title of—

(1) reclamation projects authorized prior to the date of enactment of this Act;

(2) works supplemental to existing reclamation projects; or

(3) works constructed to rehabilitate existing reclamation projects.

**SEC. 208. WATER RIGHTS.**

(a) **IN GENERAL.**—Nothing in this title preempts or affects State water law or an interstate compact governing water.

(b) **COMPLIANCE REQUIRED.**—The Secretary shall comply with State water laws in carrying out this title. Nothing in this title affects or preempts State water law or an interstate compact governing water.

**SEC. 209. INTERAGENCY COORDINATION AND COOPERATION.**

(a) **CONSULTATION.**—The Secretary shall consult with the Secretary of Agriculture before promulgating criteria with respect to financial appraisal functions and loan guarantee administration for activities carried out under this title.

(b) **MEMORANDUM OF AGREEMENT.**—The Secretary and the Secretary of Agriculture may enter into a memorandum of agreement providing for Department of Agriculture financial appraisal functions and loan guarantee administration for activities carried out under this title.

**SEC. 210. RECORDS; AUDITS.**

(a) **IN GENERAL.**—A recipient of a loan guarantee shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

(b) **ACCESS.**—The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access, for the purpose of audit, to the records and other pertinent documents.

**SEC. 211. FULL FAITH AND CREDIT.**

The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

**SEC. 212. AUTHORIZATIONS OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this title, to remain available until expended.

**PURPOSE OF THE MEASURE**

The purpose of S. 895 is to direct the Secretary of the Interior to assess the rural water supply programs within the Federal Government, to establish a rural water supply program in the Reclamation States and to establish a loan guarantee program for certain purposes in the Reclamation States.

## BACKGROUND AND NEED

Millions of Americans live without safe and reliable drinking water supplies. Lack of adequate drinking water is especially prevalent in rural America which, in many cases, is unable to afford the capital outlays for new water infrastructure or to upgrade deteriorating infrastructure. A 1995 needs assessment conducted by the United States Department of Agriculture's Rural Development State Offices found over one million people in the United States had no water piped into their homes, and more than 2.4 million had critical drinking water needs. According to a 2001 Environmental Protection Agency (EPA) survey of capital improvement needs for public water systems, total funding needs for small systems serving populations of 3,300 or less will be \$31.2 billion over 20 years (1999–2018). The EPA determined that, on average, over 10 percent of rural communities in the 17 Reclamation States have contaminated water supplies. The Indian Health Service estimates that approximately 20,000 households in American Indian Communities and Alaska Native Villages lack potable water supplies. Additionally, compliance with water quality requirements derived from the Federal Clean Water and Safe Drinking Water Acts has proven especially onerous and expensive for rural communities required to invest in water supply and wastewater infrastructure.

Over the past 30 years, Congress has authorized and amended various programs to assist communities in addressing their water and wastewater problems. In 1995, the General Accounting Office reported that eight Federal agencies had 17 programs designed specifically for rural areas to construct or improve water and wastewater facilities. Water and wastewater programs are primarily found within the Bureau of Reclamation (hereinafter "Bureau"), Department of Agriculture, Department of Commerce, Department of Housing and Urban Development, the Army Corps of Engineers and the Environmental Protection Agency. These programs differ in purpose, scope, eligibility criteria, and assistance provided.

Unlike rural water supply programs within other agencies that have standing program authorization, the Bureau undertakes individual rural water supply projects at the express direction of Congress. Because rural water projects undertaken by the Bureau do not have clear eligibility and lack programmatic criteria, communities that do not meet criteria for other, authorized programs often approach Congress with proposals for water supply projects. Since the early 1980's, Congress has directed the Bureau to develop ten independently authorized single-purpose municipal and industrial water supply projects for rural communities throughout the Western United States. The Federal cost share, typically between 75 percent and 85 percent, of these projects tends to be much larger than programs administered by other agencies. Some have raised concerns that these projects could overwhelm the Bureau's resources particularly when the Bureau's budget is limited to approximately \$800 million annually. For example, the Lewis and Clark project has an estimated Federal cost of \$214 million and the Mni Wiconi Project has an estimated cost of \$417 million.

During the 108th Congress, Commissioner Keys testified that the Bureau has no general authority to plan, design, and construct

rural water projects, and therefore has a limited ability to set priorities or promulgate criteria for project development and, as a result, to budget accordingly for these projects. For this reason, there is no predictable funding as it must be secured annually through the appropriations process. As a result, a backlog of authorized but uncompleted rural water supply projects remains. Outstanding construction authorization totals approximately \$2.3 billion.

Because the Bureau does not have an authorized rural water program, small communities seeking to address long-term water needs are unable to seek assistance from the Bureau. Rural communities must wait for Congress to direct the Bureau to proceed with appraisal and feasibility studies for a water supply project. To expedite the process, rural communities frequently undertake project studies independently which later become the basis for Bureau project authorizations. Because the Bureau was uninvolved in this process, some of these projects are not prepared according to Federal engineering and planning standards and do not provide the best alternative for a water supply project. The Bureau has expressed interest in becoming involved during the planning stages for rural water supply projects and establishing a Bureau “rural water program with adequate controls and guidelines.”

#### LEGISLATIVE HISTORY

S. 895 was introduced on April 25, 2005, by Senator Domenici for himself and Senator Bingaman and referred to the Committee on Energy and Natural Resources. Senators Bennett, Bingaman, Burns, Dorgan, Feinstein, Johnson, Kyl, Murkowski, and Salazar are co-sponsors. The full committee held a hearing on S. 895 on May 11, 2005. S. Hrg. 109–105. At the business meeting on September 28, 2005, the Committee on Energy and Natural Resources ordered S. 895 favorably reported with an amendment in the nature of a substitute.

During the 108th Congress, three similar measures were introduced. S. 1085 was introduced by Senator Bingaman on May 20, 2003. This measure was co-sponsored by Senators Baucus, Daschle, Dorgan, and Johnson. S. 1732 was introduced by Senator Domenici on October 15, 2003 and S. 2218 was also introduced by Senator Domenici on behalf of the administration on March 22, 2004. All three bills were referred to the Committee on Energy and Natural Resources. The Subcommittee on Water and Power held a hearing on all three bills on April 25, 2004. S. Hrg. 108–539.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business meeting on September 28, 2005, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 895, if amended as described herein.

#### COMMITTEE AMENDMENT

During consideration of S. 895, the Committee adopted an amendment in the nature of a substitute which addresses concerns raised during the committee hearing and in written submissions.

The first change adds a provision directing the Secretary of the Interior, in collaboration with the heads of agencies that admin-

ister rural water programs, to provide an assessment of how the program authorized by this Act will complement the authorities within other programs and to suggest improvements that can be made to better coordinate with the other programs. The second addition directs the Secretary of the Interior to solicit comment from States with rural water supply needs before finalizing the aforementioned assessment. The third addition provides that, if the Secretary of the Interior determines that a community to be served by a rural water supply project has urgent and compelling water needs, the Secretary of the Interior shall expedite the appraisal and feasibility study process to the maximum extent practicable. The fourth change was the addition of a provision that details the obligations of the Secretary of the Interior in the event that the non-Federal borrower defaults on a loan guaranteed by the Federal Government. The fifth change states that the Secretary of the Interior shall consult with the Secretary of Agriculture before promulgating criteria with respect to financial appraisal functions and loan guarantee administration and may enter into a memorandum of agreement with the Secretary of Agriculture, providing that the Secretary of Agriculture will perform appraisal functions and loan guarantee administration. The sixth change was the addition of section 210 which requires recipients of loan guarantees to keep financial records as determined by the Secretary of the Interior and provides that the Secretary of the Interior shall have access to those records. The final change was the addition of section 211 which states that all loans guaranteed under this Act shall have the full faith and credit of the United States.

#### SECTION-BY-SECTION ANALYSIS

*Section 101* provides the short title, the “Rural Water Supply Act of 2005.”

*Section 102* defines the terms used in title I of this Act.

*Section 103* subsection (a) directs the Secretary to carry out a rural water supply program in the Reclamation States to provide water to small communities for domestic, municipal and industrial use.

Subsection (b) provides that any activity carried out under this title shall be in cooperation with a qualifying non-Federal entity.

Subsection (c) directs the Secretary, not later than 1 year after the date of enactment of this Act, to promulgate criteria for eligibility under the program.

Subsection (d) provides factors that the Secretary shall consider when promulgating criteria under subsection (c).

Subsection (e) provides that the Secretary may include a connection to preexisting infrastructure if it provides a reliable water supply and may consider a community in excess of 50,000 inhabitants as part of a project if the Secretary determines the community is a critical partner.

*Section 104* subsection (a) directs the Secretary, in collaboration with the heads of agencies that administer rural water supply programs, to assess the status of all authorized but uncompleted rural water supply projects under the jurisdiction of the Secretary, the demand for rural water supply projects, the demand for rural water projects that the Secretary can meet with the authority provided under this title, how the authority provided under this Act will

compliment existing rural water supply programs and improvements that can be made to coordinate rural water supply programs within the federal government.

Subsection (b) directs the Secretary to consult with States with identified rural water needs before finalizing the assessment under subsection (a).

Subsection (c) directs the Secretary to report on the assessment conducted under subsection (a).

*Section 105* subsection (a) directs the Secretary, upon request of a non-Federal project entity to either: accept an appraisal investigation developed and submitted by a non-Federal project entity; conduct an appraisal investigation; or provide a grant or enter into a cooperative agreement with a non-Federal project entity to conduct an appraisal investigation. It is the intent of the Committee that when the Secretary undertakes an appraisal study pursuant to section 105 subsection (a), the Secretary shall comply with section 208 of the Energy and Water Development Appropriations Act, 2003 Act (Public Law 108–7; 117 Stat. 11) and that the Secretary will also ensure that appraisal level work is performed by qualified entities with demonstrated competence and qualifications.

Subsection (b) requires an appraisal investigation be completed not later than 2 years after it is initiated.

Subsection (c) directs the Secretary to prepare an appraisal report based on the investigation.

Subsection (d) directs the Secretary to promulgate appraisal criteria for appraisal investigations.

Subsection (e) directs the Secretary to assess for completeness any appraisal investigation that not performed by the Secretary.

Subsection (f) directs the Secretary to develop an appraisal report if all necessary information is provided under subsection (e)

Subsection (g) sets forth the Federal cost share of appraisal investigations.

Subsection (h) directs the Secretary to consult with appropriate entities in conducting appraisal investigations.

*Section 106* subsection (a) provides that, if the appraisal report completed under section 105(a) recommends undertaking a feasibility study, the Secretary shall: conduct a feasibility study, accept a feasibility study developed and submitted by a non-Federal project entity, or provide a grant or enter into a cooperative agreement with a non-Federal project entity to conduct a feasibility study. It is the intent of the Committee that when the Secretary undertakes a feasibility study pursuant to section 106 subsection (a), the Secretary shall comply with section 208 of the Energy and Water Development Appropriations Act, 2003 Act (Public Law 108–7; 117 Stat. 11) and that the Secretary will also ensure that feasibility level work is performed by qualified entities with demonstrated competence and qualifications.

Subsection (b) directs the Secretary to assess for completeness any feasibility study not performed by the Secretary.

Subsection (c) sets forth criteria to be considered by the Secretary.

Subsection (d) directs the Secretary to promulgate feasibility criteria to be used for assessing feasibility studies.

Subsection (e) directs the Secretary to prepare a feasibility report if the criteria under subsection (c) and subsection (d) are addressed

and make a recommendation if the project should be authorized for construction.

Subsection (f) directs the Secretary to assess a non-Federal project entity's financial capability to pay at least 25 percent of rural water supply construction costs and recommend an appropriate Federal and non-Federal cost share.

Subsection (g) requires that the Federal share of any feasibility study carried out under this section shall not exceed 50 percent.

Subsection (h) directs the Secretary to consult with appropriate entities while conducting a feasibility assessment and developing a feasibility report

*Section 107* subsection (a) authorizes the Secretary to enter into such agreements and promulgate such regulations as necessary to carry out this title.

Subsection (b) states that this title does not authorize the transfer of pre-existing facilities or components from private to Federal ownership or from Federal to private ownership.

Subsection (c) states that this title does not affect any Federal law associated with a project, or portion of a project constructed under Federal reclamation law.

Subsection (d) directs the Secretary to coordinate with existing Federal and State rural water and wastewater programs to most effectively meet the needs of non-Federal project sponsors.

Subsection (e) states that the approval of every tribe is required before a contract or grant is made to an organization to perform services benefiting more than one Indian tribe.

Subsection (f) states that any facility planned, designed and recommended for construction under this title shall be held by the non-Federal project entity.

Subsection (g) directs the Secretary to expedite appraisal investigations and reports and feasibility investigations and reports if a community has an urgent and compelling water need.

Subsection (h) states that this title has no effect on State water law or an interstate compact governing water and the Secretary shall comply with State water law in carrying out this title.

Subsection (i) states that nothing in this title requires a feasibility study, or imposes any other additional requirements for rural water supply projects or programs authorized before the date of enactment of this Act.

*Section 108* subsection (a) authorizes \$20,000,000 to be appropriated for this title for fiscal years 2006 through 2015

Subsection (b) requires that not more than \$1 million shall be made available to carry out section 104 for fiscal years 2006 and 2007.

Subsection (c) prohibits the use of any funds provided under this section from being used for construction costs.

*Section 201* provides the short title, "Twenty-First Century Water Works Act."

*Section 202* defines the terms used in title II of this Act.

*Section 203* subsection (a) directs the Secretary to promulgate criteria for eligibility of a project for financial assistance under section 204 and provides inclusions.

Subsection (b) provides that the Secretary may waive any criteria under subsection (a) that the Secretary determines unnecessary.



Subsection (c) states that, subject to the criteria developed under subsection (a), any project authorized under Federal reclamation law prior to the date of enactment of this Act shall be eligible for assistance under this title.

Subsection (d) states that any rural water supply project determined to be feasible under section 106 is eligible for a loan guarantee under section 204.

*Section 204* subsection (a) provides that, subject to the availability of appropriations and the eligibility criteria established in section 203, the Secretary may make available loan guarantees to lenders.

Subsection (b) states that loan guarantees made available under this section be on such conditions the Secretary determines appropriate, shall not exceed 90 percent of the cost of the project that is the subject of the loan guarantee, shall provide for amortization of the loan guarantee within not more than 40 years, and shall not be subordinate to other financing.

Subsection (c) states that any prepayment or refinancing of a loan guarantee shall be between the non-Federal borrower and the lender with the consent of the Secretary.

*Section 205* subsection (a) sets forth the obligations of the Secretary in the event that the non-Federal borrower defaults.

Subsection (b) states that, if the Secretary makes a payment under subsection (a), the Secretary shall be subrogated to the rights to the recipient of the payment as specified in the loan guarantee or related agreements.

Subsection (c) provides that, under specified circumstances, the Secretary may enter into a contract to pay, and pay, holders of the obligation, on behalf of the non-Federal borrower, from funds appropriated for that purpose, principal and interest payments associated with the obligation.

Section (d) requires that the Secretary inform the Attorney General if the non-Federal borrower defaults on an obligation and directs the Attorney General to take such action as necessary to recover unpaid principal and interest from the non-Federal borrower.

*Section 206* subsection (a) requires that the non-Federal borrower be responsible for 100 percent of operations and maintenance costs.

Subsection (b) states that the Secretary may assist the non-Federal borrower in developing an operations and maintenance plan.

*Section 207* subsection (a) provides that all facilities constructed under this title shall remain under the control of the non-Federal borrower subject to the terms of the repayment contract.

Subsection (b) provides that nothing in this title affects the title of any reclamation projects authorized prior to the date of enactment of this Act or works associated with existing reclamation projects.

*Section 208* provides that nothing in this title affects or preempts State water law or an interstate compact governing water and provides that the Secretary shall comply with State water laws in carrying out this title.

*Section 209* provides that the Secretary shall consult with the Secretary of Agriculture prior to promulgating criteria with respect to financial appraisal functions and program administration and the Secretary may enter into a memorandum of agreement with

the Secretary of Agriculture to have the Secretary of Agriculture provide those services.

*Section 210* provides that the recipient of a loan guarantee shall keep records as required by the Secretary and shall make the records available to the Secretary.

*Section 211* provides that all guarantees issued under this section have the full faith and credit of the United States.

*Section 212* authorizes such sums as necessary to be appropriated as necessary to carry out this title.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 895. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 895.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau at the Subcommittee hearing on S. 895 in the 109th Congress follows:

##### STATEMENT OF JOHN W. KEYS, III, COMMISSIONER, BUREAU OF RECLAMATION

Mr. Chairman, I am John W. Keys, III, Commissioner of the Bureau of Reclamation.

It is my pleasure to present the Administration's views on S. 895, the Rural Water Supply Act of 2005, which would establish a rural water supply program within the Department of the Interior and authorize Reclamation to develop programmatic criteria and guidelines giving Reclamation and rural communities a consistent and fair process for evaluating water supply needs and prospects in rural communities.

During the last Congress, three distinct bills were introduced for the purpose of creating a coherent rural water program within the Department: S. 1732, Senator Domenici's bill, S. 1085, Senator Bingaman's bill, and S. 2218, the bill which Senator Domenici introduced by request of the Administration.

The fact that there is but a single rural water bill before the Committee in this Congress reflects the positive spirit of consultation and collaboration among this Committee's

bipartisan leadership and the Department as we have brainstormed solutions and narrowed issues that require more work. It is a pleasure to be a part of this process which we hope very much will culminate in enactment of a rural water program that meets the fair expectations of rural communities and U.S. taxpayers.

Before addressing the specific provisions of S. 895, I think it is important to place our shared desire for a rational rural water program in historical context.

#### HISTORICAL BACKGROUND

Since the early 1980s, Congress has authorized thirteen separate single purpose Reclamation projects for municipal and industrial water supply in rural communities in Reclamation States. The total federal budget authorization for those projects is over \$2.3 billion. These have all come at a time when security and law enforcement costs, operation and maintenance costs, dam safety costs, and other program obligations continue to pressure Reclamation's already tight budget.

Congress authorized and funded these projects without the benefit of rigorous economic justification and objective design review. Was the least cost alternative chosen? Once constructed, could the project deliver national economic benefits to outweigh its costs? These questions were never asked.

By no means can we assume that those thirteen projects will be the last rural water projects ever authorized and funded. A 1995 needs assessment conducted by the U. S. Department of Agriculture's Rural Development State Offices estimated that over 1 million people in the United States had no water piped into their homes, and more than 2.4 million had critical unmet drinking water needs. Recently released Environmental Protection Agency data revealed \$31 billion in total funding needs for small systems serving populations of 3,300 or less. As expensive as the original thirteen Reclamation rural water projects are, they represent only the tip of the iceberg if no order and economic justification is introduced to screen projects.

Compared to other Federal agencies with water-management mandates, Reclamation has maintained less control over rural water projects. Programs managed in the Departments of Agriculture, Commerce, Health and Human Services, and the Environmental Protection Agency feature specific eligibility criteria relating to the missions and authorities of their agencies and programs. In contrast, Reclamation currently has no program, therefore no eligibility criteria and no mechanism for qualitative or quantitative analysis.

#### *"Program" Performance*

The thirteen rural water projects authorized for Reclamation's involvement constitute a major Federal budget issue that we are currently attempting to manage without benefit of an integrated rural water program.

Lacking generic authority to screen, plan, design, and construct rural water projects, Reclamation has limited ability to set priorities and criteria for project development, and to budget accordingly. This deficiency was brought starkly to light when in 2002, as part of the President's budget and performance integration initiative, Reclamation's rural water activities were assessed under two lenses: the Program Assessment Rating Tool (PART) and the Common Measures exercise. Under the PART exercise our rural water program was rated "Results Not Demonstrated," despite the fact that Reclamation's rural water projects were meeting authorized project purposes. Further, the assessment concluded that stronger controls for project development were needed and "lack of agency involvement during project development may result in a project that is not in the best Federal interest."

As a result of the PART exercise, the Administration concluded that legislation should be developed to establish a Reclamation rural water program with adequate controls and guidelines. We are gratified that S. 895 reflects its sponsors' agreement that this is necessary.

Let me turn now to several specific elements of S. 895 that the Administration strongly supports.

#### AUTHORITY TO DEVELOP ELIGIBILITY CRITERIA

Because each of the existing rural water projects has been authorized individually, and because of a lack of general programmatic authority, Reclamation and the Department have been limited in our ability to plan for projects effectively or to establish relative priorities both within the budget for rural water activities and within Reclamation's budget as a whole.

Establishing a rural water program as proposed in S. 895 will allow for more realistic planning so that rural water projects are not proposed in a vacuum, but instead are guided through the program's planning process to use a consistent set of eligibility criteria. This approach will foster some competition, allow for the development of priorities, and create more realistic expectations when a project is authorized for construction that it will actually be developed.

#### NON-FEDERAL COST SHARE BASED UPON "CAPABILITY TO PAY"

The non-Federal cost shares for each of the currently authorized rural water projects range from zero for the Indian portion of the Mni Wiconi Project in South Dakota to 25 percent for the non-Indian Dry Prairie Rural Water System connected to the Fort Peck Reservation Rural Water System in Montana.

In contrast, capital investment costs associated with traditional Reclamation projects or portions of projects authorized for municipal and industrial (M&I) use must be fully repaid with interest. Further, traditional Reclamation irrigation projects require that repayment of costs be based

upon a project sponsor's ability to pay, as determined through the study of both the project sponsor's financial information and the project's economic (cost/benefit) feasibility.

S. 895 would require Reclamation to identify the "capability to pay" of rural communities to determine the appropriate level of their contribution for development and construction costs. The Administration strongly supports this approach. It will establish a fair matrix to identify the appropriate level of non-Federal contribution.

#### EARLY RECLAMATION INVOLVEMENT AND DEVELOPMENT OF CRITERIA FOR APPRAISAL AND FEASIBILITY STUDIES

Because Reclamation does not have an integrated rural water program, communities initiate studies that have not been reviewed by Reclamation and do not meet current Federal planning and engineering standards. They do not necessarily explore all of the available options to meet their water supply needs beyond those designs that preceded them. While these plans become the basis for legislation, some of them are inadequate for sound decision-making or may not reflect an exploration of all the options. In these cases plans must be redeveloped once the project is authorized and funded. Project reformulation is complicated by the fact that the original project concept mandated in authorizing legislation cannot be changed without further legislation, even if it turns out to be a suboptimal option.

The rural water program proposed in S. 895 will allow communities to approach Reclamation for guidance early in the process and, more importantly, will allow Reclamation to participate in the early project scoping, appraisal and feasibility study processes for rural water projects in the Western United States. For example, most projects developed to date have consisted of pumping water and then transporting it through long pipelines at great expense. One option that has not been explored yet, but which could be more economical to build and to maintain, would be to develop small localized desalination plants to treat brackish groundwater, thereby avoiding the cost of building and maintaining long pipelines. Under S. 895, Reclamation and the local communities can explore this option.

A positive innovation in S. 895 that had not appeared in any of the rural water bills considered in the previous Congress allows local communities to complete their own appraisal and feasibility studies—either at their own expense or through a grant from or cooperative agreement with Reclamation—as long as those studies meet a set of minimum criteria to be developed by Reclamation. Not only could this reduce the cost of these studies, but it should also increase the sense of ownership of the study and of its recommendations by the non-Federal project entity.

## OPERATION AND MAINTENANCE COSTS

In general, the Administration supports the provisions in S. 895 that require the non-Federal entities (particularly for the non-Indian project beneficiaries) to demonstrate their capability to pay 100 percent of the operations, maintenance and replacement (OM&R) costs associated with the projects proposed to be built for their benefit. A specific concern with how this issue relates to certain Tribal and Indian projects will be addressed later in my statement.

## COORDINATION WITH OTHER FEDERAL RURAL WATER PROGRAMS

Section 107(d) requires the Secretary to coordinate the rural water program established by the Act with existing Federal and state programs to facilitate the most efficient and effective solutions to meeting the water needs of the project sponsors.

This will help the rural water supply programs in the various Federal and state agencies to derive maximum value for the dollar from the limited Federal and state resources identified for this purpose.

## CONCERNS AND SUGGESTIONS

The Administration views S. 895 as having the potential to be one of the most positive legislative developments for the Department of the Interior in some time. Nevertheless, we have a few concerns that we will work with the Committee to address as this bill goes forward.

**Create a Programmatic Framework:** The Administration recommends that S. 895 establish an overall programmatic framework for all aspects of the rural water program—not just limited to completion of the appraisal and feasibility studies, but as a framework for how projects, once authorized, would be planned, designed, constructed and then overseen and managed. This approach will allow for the development of priorities, and could create more realistic expectations when a project is authorized for construction that it will actually be developed. It would also facilitate the legislative process for future rural water activities and projects, since the programmatic framework would already be in place rather than having to be spelled out with each subsequent project authorization.

**Economic Factors for Eligibility Criteria and Evaluation:** As introduced, S. 895 spells out a number of specific factors that must be included in the eligibility criteria and in the factors for consideration for the appraisal and feasibility studies. While we support including these factors, we also suggest that the bill include criteria for analysis and reporting of economic and financial benefits and impacts necessary to justify the Federal investment.

For feasibility studies, Section 106(g)(3) allows the Secretary to increase the Federal share based upon a demonstration of financial hardship by the non-Federal enti-

ties. These relatively small local contributions are an important measure of the communities' commitment in pursuing a first indication of the level of priority that such a project holds for these rural communities. If an exemption is deemed to be necessary, we recommend that such exemptions be limited to Indian tribes or tribal organizations.

**Construction Cost Share:** As introduced, Section 106(e)(1)(A)(i)(II)(aa) requires that the Feasibility Report include non-Federal cost share of construction costs of no less than 25%. The Administration recommends that the non-Federal share of construction costs be increased to no less than 35%, which is similar to the  $\frac{1}{3}$  local cost-share that is central to the landmark CALFED legislation passed by the 108th Congress.

**Operations and Maintenance Costs for Native American Projects:** S. 895, as introduced, requires that all O&M costs be the sole responsibility of the non-Federal project entities. This may be beyond the capability of some Tribes.

In stark contrast, however, the authorizing legislation for the Mni Wiconi Project and the Garrison Project each directed the Secretary to operate and maintain project facilities constructed to serve the Indian reservations. As construction of these Indian rural water projects is completed, the associated O&M costs consume an increasing percentage of Reclamation's budget with no prospect of declining. These ongoing obligations will have increasingly significant budget impacts without any consideration for the improvements to the tribes' financial situation or to their improved capability to pay for these O&M costs due to the improved water supply systems.

The Administration recommends some middle ground between these two approaches. We recommend some accommodation for Tribes that cannot cover 100% of their initial O&M costs in the near term. However, this should be structured to account for the positive economic impacts that the rural water delivery projects will have in these communities. It should also encourage greater tribal self-sufficiency, conservation, and the development of the technical and financial expertise needed to efficiently manage these water systems themselves. In contrast to the current practice of subsidizing all the OM&R costs associated with Indian rural water facilities, we recommend that the Secretary be authorized to seek appropriations to assist Tribes to pay for the difference between the actual OM&R costs and the projected revenues from water sales to project beneficiaries. As project benefits spur economic development, Tribes will have a greater capability to pay for their OM&R costs and the need for this assistance will decline.

Such a provision is found in S. 2218, the Administration-sponsored rural water bill from the 108th Congress.

**Application of the Indian Self Determination and Education Assistance Act (P.L. 93-638):** Another area that S. 895 does not address is the application of the Indian Self Determination and Education Assistance Act (P.L. 93-

638), commonly referred to as 638. As introduced, S. 895 would not impact the application of provisions of P.L. 93-638 such that tribes would have priority in construction activities impacting or benefiting Tribal entities. The Administration strongly concurs. However, we recommend that S. 895 specifically provide that the amounts appropriated and made available to Indian project beneficiaries under a self determination contract or a self governance compact and all project revenues (including interest earned and all collected fees) should be: (1) reported to the Secretary by the Tribes, (2) expended only for the purposes for which they were originally appropriated; and (3) used by the Secretary to determine the amount of funds otherwise obligated to the contract or agreement in subsequent years.

These provisions will improve the financial management of these projects; will guarantee that the appropriated funds and their associated revenues will directly benefit the rural water projects and will potentially reduce the need for some appropriated funds since some project construction costs could be addressed through interest and associated revenues.

Indian Trust Responsibilities: As introduced, section 105(c)(1)(F) and section 106(c)(12) speak to "Indian trust responsibilities." We believe these provisions may be read to create a trust responsibility for rural water systems that has not previously existed. We think these provisions should be removed.

#### LOAN GUARANTEES

Title II of the legislation presents a potentially valuable innovation, not only for the rural water program, but for other Reclamation customers. However, it would be an entirely new tool for the Bureau, with far-reaching programmatic, staffing, and budgetary impacts that are not yet fully understood. The Administration is interested in further exploring a loan guarantee program for Reclamation, but will reserve judgment on the merits of this proposal until we can complete our ongoing process of developing and vetting the idea, so that we can clearly say whether this is the best policy mechanism to address the particular challenges faced by water users, and what it will cost the taxpayer.

In addition to the above comments, we have identified a few technical issues that may require clarification. We are confident that Committee staff will be able to determine quickly whether to incorporate them or not.

In conclusion, Mr. Chairman, we are honored to work with you and Senator Bingaman to advance legislation to establish a rural water program within the Department of the Interior that can benefit both rural communities and taxpayers-at-large.

I am pleased to answer any questions.



CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 895, as ordered reported.

