

109TH CONGRESS  
1ST SESSION

# 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.

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## IN THE SENATE OF THE UNITED STATES

APRIL 25, 2005

Mr. DOMENICI (for himself, Mr. BINGAMAN, Ms. MURKOWSKI, Mr. BENNETT, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

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.

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

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

6       (b) TABLE OF CONTENTS.—The table of contents of  
7       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.

# 1   **TITLE I—RECLAMATION RURAL** 2   **WATER SUPPLY ACT OF 2005**

## 3   **SEC. 101. SHORT TITLE.**

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

## 6   **SEC. 102. DEFINITIONS.**

7       In this title:

8           (1) **FEDERAL RECLAMATION LAW.**—The term  
 9       “Federal reclamation law” means the Act of June  
 10      17, 1902 (32 Stat. 388, chapter 1093), and Acts  
 11      supplemental to and amendatory of that Act (43  
 12      U.S.C. 371 et seq.).

13          (2) **INDIAN.**—The term “Indian” means an in-  
 14      dividual who is a member of an Indian tribe.

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

5           (4) NON-FEDERAL PROJECT ENTITY.—The  
 6           term “non-Federal project entity” means a State,  
 7           regional, or local authority, Indian tribe or tribal or-  
 8           ganization, or other qualifying entity, such as a  
 9           water conservation district, water conservancy dis-  
 10          trict, or rural water district or association.

11          (5) OPERATIONS, MAINTENANCE, AND RE-  
 12          PLACEMENT COSTS.—

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

20                (B) INCLUSIONS.—The term “operations,  
 21                maintenance, and replacement costs” in-  
 22                cludes—

23                    (i) repairs of a routine nature that  
 24                    maintain a rural water supply project in a  
 25                    well kept condition;

1 (ii) replacement of worn-out project  
2 elements; and

3 (iii) rehabilitation activities necessary  
4 to bring a deteriorated project back to the  
5 original condition of the project.

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

9 (6) PROGRAM.—The term “program” means  
10 the rural water supply program established under  
11 section 103.

12 (7) RECLAMATION STATES.—The term “rec-  
13 lamation States” means the States and areas re-  
14 ferred to in the first section of the Act of June 17,  
15 1902 (43 U.S.C. 391).

16 (8) RURAL WATER SUPPLY PROJECT.—

17 (A) IN GENERAL.—The term “rural water  
18 supply project” means a project that is de-  
19 signed to serve a group of communities, which  
20 may include Indian tribes and tribal organiza-  
21 tions, dispersed homesites, or rural areas with  
22 domestic, industrial, municipal, and residential  
23 water, each of which has a population of not  
24 more than 50,000 inhabitants.

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

3 (i) incidental noncommercial livestock  
4 watering and noncommercial irrigation of  
5 vegetation and small gardens of less than  
6 1 acre; and

7 (ii) a project to improve rural water  
8 infrastructure, including—

9 (I) pumps, pipes, wells, and other  
10 diversions;

11 (II) storage tanks and small im-  
12 poundments;

13 (III) water treatment facilities  
14 for potable water supplies;

15 (IV) equipment and management  
16 tools for water conservation, ground-  
17 water recovery, and water recycling;  
18 and

19 (V) appurtenances.

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

22 (i) commercial irrigation; or

23 (ii) major impoundment structures.

24 (9) SECRETARY.—The term “Secretary” means  
25 the Secretary of the Interior.

1           (10) TRIBAL ORGANIZATION.—The term “tribal  
2       organization” means—

3                   (A) the recognized governing body of an  
4       Indian tribe; and

5                   (B) any legally established organization of  
6       Indians that is controlled, sanctioned, or char-  
7       tered by the governing body or democratically  
8       elected by the adult members of the Indian  
9       community to be served by the organization.

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

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

15                   (1) investigate and identify opportunities to en-  
16       sure safe and adequate rural water supply projects  
17       for municipal and industrial use in small commu-  
18       nities and rural areas of the reclamation States; and

19                   (2) plan the design and construction, through  
20       the conduct of appraisal investigations and feasi-  
21       bility studies, of rural water supply projects in rec-  
22       lamation States.

23       (b) NON-FEDERAL PROJECT ENTITY.—Any activity  
24 carried out under this title shall be carried out in coopera-

1 tion with a qualifying non-Federal project entity, con-  
2 sistent with this title.

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

7 (1) determining the eligibility of a rural com-  
8 munity for assistance under the program; and

9 (2) prioritizing requests for assistance under  
10 the program.

11 (d) FACTORS.—The criteria developed under sub-  
12 section (c) shall take into account such factors as wheth-  
13 er—

14 (1) a rural water supply project—

15 (A) serves—

16 (i) rural areas and small communities;

17 or

18 (ii) Indian tribes; or

19 (B) promotes and applies a regional or wa-  
20 tershed perspective to water resources manage-  
21 ment;

22 (2) there is an urgent and compelling need for  
23 a rural water supply project that would—

24 (A) improve the health or aesthetic quality  
25 of water;

1 (B) result in continuous, measurable, and  
 2 significant water quality benefits; or

3 (C) address current or future water supply  
 4 needs;

5 (3) a rural water supply project helps meet ap-  
 6 plicable requirements established by law; and

7 (4) a rural water supply project is cost effec-  
 8 tive.

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

10 (1) to the extent that connection provides a reli-  
 11 able water supply, a connection to preexisting infra-  
 12 structure (including dams and conveyance channels)  
 13 as part of a rural water supply project; and

14 (2) notwithstanding the limitation in section  
 15 102(8), a town or community with a population in  
 16 excess of 50,000 inhabitants in an area served by a  
 17 rural water supply project if, at the discretion of the  
 18 Secretary, the town or community is considered to  
 19 be a critical partner in the rural supply project.

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

21 (a) IN GENERAL.—In consultation with the Secretary  
 22 of Agriculture, the Administrator of the Environmental  
 23 Protection Agency, and the Director of the Indian Health  
 24 Service, the Secretary shall develop an assessment of—

1           (1) the status of all rural water supply projects  
2           under the jurisdiction of the Secretary authorized  
3           but not completed prior to the date of enactment of  
4           this Act, including appropriation amounts, the phase  
5           of development, total anticipated costs, and obstacles  
6           to completion;

7           (2) the current plan (including projected finan-  
8           cial and workforce requirements) for the completion  
9           of the rural water supply projects within the time  
10          frames established under the provisions of law au-  
11          thorizing the projects or the final engineering re-  
12          ports for the projects;

13          (3) the demand for rural water supply projects;

14          (4) programs within other agencies that can,  
15          and a description of the extent to which the pro-  
16          grams, provide support for rural water supply  
17          projects and water treatment programs in reclama-  
18          tion States, including an assessment of the require-  
19          ments, funding levels, and conditions for eligibility  
20          for the programs assessed; and

21          (5) the extent of the unmet needs that the Sec-  
22          retary can meet with the program that complements  
23          activities undertaken under the authorities already  
24          within the jurisdiction of the Secretary and the

1 heads of the agencies with whom the Secretary  
2 consults.

3 (b) REPORT.—Not later than 2 years after the date  
4 of enactment of this Act, the Secretary shall submit to  
5 the Committee on Energy and Natural Resources of the  
6 Senate and the Committee on Resources of the House of  
7 Representatives a detailed report on the assessment con-  
8 ducted under subsection (a).

9 **SEC. 105. APPRAISAL INVESTIGATIONS.**

10 (a) IN GENERAL.—On request of a non-Federal  
11 project entity with respect to a proposed rural water sup-  
12 ply project that meets the eligibility criteria published  
13 under section 103(c) and subject to the availability of ap-  
14 propriations, the Secretary may—

15 (1) receive and review an appraisal investiga-  
16 tion that is—

17 (A) developed by the non-Federal project  
18 entity independent of support from the Sec-  
19 retary; and

20 (B) submitted to the Secretary by the non-  
21 Federal project entity;

22 (2) conduct an appraisal investigation; or

23 (3) provide a grant to, or enter into a coopera-  
24 tive agreement with, the non-Federal project entity

1 to conduct an appraisal investigation, if the Sec-  
2 retary determines that—

3 (A) the non-Federal project entity is quali-  
4 fied to complete the appraisal investigation in  
5 accordance with the criteria published under  
6 section 103(c); and

7 (B) using the non-Federal project entity to  
8 conduct the appraisal investigation is the lowest  
9 cost alternative for completing the appraisal in-  
10 vestigation.

11 (b) DEADLINE.—An appraisal investigation con-  
12 ducted under subsection (a) shall be scheduled for comple-  
13 tion not later than 2 years after the date on which the  
14 appraisal investigation is initiated.

15 (c) APPRAISAL REPORT.—As soon as practicable  
16 after an appraisal investigation is submitted to the Sec-  
17 retary under subsection (a)(1) or completed under para-  
18 graph (2) or (3) of subsection (a), the Secretary shall pre-  
19 pare an appraisal report that—

20 (1) considers—

21 (A) whether the project meets—

22 (i) the appraisal criteria developed  
23 under subsection (d); and

24 (ii) the eligibility criteria developed  
25 under section 103(c);

1           (B) whether viable water supplies and  
2           water rights exist to supply the project, includ-  
3           ing all practicable water sources such as lower  
4           quality waters, nonpotable waters, and water  
5           reuse-based water supplies;

6           (C) whether the project has a positive ef-  
7           fect on public health and safety;

8           (D) whether the project will meet water de-  
9           mand, including projected future needs;

10          (E) the extent to which the project pro-  
11          vides environmental benefits, including source  
12          water protection;

13          (F) the ability of the project to supply  
14          water consistent with Indian trust responsibil-  
15          ities, as appropriate;

16          (G) whether the project applies a regional  
17          or watershed perspective and promotes benefits  
18          in the region in which the project is carried out;

19          (H) whether the project—

20               (i)(I) implements an integrated re-  
21               sources management approach; or

22               (II) enhances water management  
23               flexibility, including providing for—

1 (aa) local control to manage  
 2 water supplies under varying water  
 3 supply conditions; and

4 (bb) participation in water bank-  
 5 ing and markets for domestic and en-  
 6 vironmental purposes; and

7 (ii) promotes long-term protection of  
 8 water supplies;

9 (I) preliminary cost estimates for the  
 10 project; and

11 (J) whether the non-Federal project entity  
 12 has the capability to pay 100 percent of the  
 13 costs associated with the operations, mainte-  
 14 nance, and replacement of the facilities con-  
 15 structed or developed as part of the rural water  
 16 supply project; and

17 (2) provides recommendations on whether a fea-  
 18 sibility study should be initiated under section  
 19 106(a).

20 (d) APPRAISAL CRITERIA.—

21 (1) IN GENERAL.—Not later than 1 year after  
 22 the date of enactment of this Act, the Secretary  
 23 shall promulgate criteria (including appraisal factors  
 24 listed under subsection (c)) against which the ap-

1        appraisal investigations shall be assessed for complete-  
2        ness and appropriateness for a feasibility study.

3            (2) INCLUSIONS.—To minimize the cost of a  
4        rural water supply project to a non-Federal project  
5        entity, the Secretary shall include in the criteria  
6        methods to scale the level of effort needed to com-  
7        plete the appraisal investigation relative to the total  
8        size and cost of the proposed rural water supply  
9        project.

10        (e) REVIEW OF APPRAISAL INVESTIGATION.—Not  
11        later than 180 days after the date of submission of an  
12        appraisal investigation under subsection (a)(1) or the com-  
13        pletion of an appraisal investigation under paragraph (2)  
14        or (3) of subsection (a), the Secretary shall—

15            (1) with respect to an appraisal investigation  
16        conducted by a non-Federal project entity under  
17        subsection (a)(1), provide to the non-Federal entity  
18        an evaluation of whether the appraisal investigation  
19        satisfies the criteria promulgated under subsection  
20        (d);

21            (2) make available to the public, on request, the  
22        results of each appraisal investigation conducted  
23        under this title; and

24            (3) promptly publish in the Federal Register a  
25        notice of the availability of the results.

1 (f) COSTS.—

2 (1) FEDERAL SHARE.—The Federal share of an  
3 appraisal investigation conducted under subsection  
4 (a) shall be 100 percent of the total cost of the ap-  
5 praisal investigation, up to \$200,000.

6 (2) NON-FEDERAL SHARE.—

7 (A) IN GENERAL.—Except as provided in  
8 subparagraph (B), if the cost of conducting an  
9 appraisal investigation is more than \$200,000,  
10 the non-Federal share of the costs in excess of  
11 \$200,000 shall be 50 percent.

12 (B) EXCEPTION.—The Secretary may re-  
13 duce the non-Federal share required under sub-  
14 paragraph (A) if the Secretary determines that  
15 there is an overwhelming Federal interest in the  
16 appraisal investigation.

17 (g) CONSULTATION; IDENTIFICATION OF FUNDING  
18 SOURCES.—In conducting an appraisal investigation  
19 under subsection (a)(2), the Secretary shall—

20 (1) consult and cooperate with the non-Federal  
21 project entity and appropriate State, tribal, regional,  
22 and local authorities;

23 (2) consult with the heads of appropriate Fed-  
24 eral agencies to—

1 (A) ensure that the proposed rural water  
 2 supply project does not duplicate a project car-  
 3 ried out under the authority of the agency head;  
 4 and

5 (B) if a duplicate project is being carried  
 6 out, identify the authority under which the du-  
 7 plicate project is being carried out; and

8 (3) identify what funding sources are available  
 9 for the proposed rural water supply project.

10 **SEC. 106. FEASIBILITY STUDIES.**

11 (a) IN GENERAL.—On completion of an appraisal re-  
 12 port under section 105(c) that recommends undertaking  
 13 a feasibility study and subject to the availability of appro-  
 14 priations, the Secretary shall—

15 (1) in cooperation with a non-Federal project  
 16 entity, carry out a study to determine the feasibility  
 17 of the proposed rural water supply project;

18 (2) receive and review a feasibility study that  
 19 is—

20 (A) developed by the non-Federal project  
 21 entity independent of support from the Sec-  
 22 retary; and

23 (B) submitted to the Secretary by the non-  
 24 Federal project entity; or

1           (3) provide a grant to, or enter into a coopera-  
 2           tive agreement with, a non-Federal project entity to  
 3           conduct a feasibility study, for submission to the  
 4           Secretary, if the Secretary determines that—

5                   (A) the non-Federal entity is qualified to  
 6                   complete the feasibility study in accordance  
 7                   with the criteria promulgated under subsection  
 8                   (d); and

9                   (B) using the non-Federal project entity to  
 10                  conduct the feasibility study is the lowest cost  
 11                  alternative for completing the appraisal inves-  
 12                  tigation.

13           (b) REVIEW OF NON-FEDERAL FEASIBILITY STUD-  
 14           IES.—

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

18                           (A) in accordance with the feasibility fac-  
 19                           tors described in subsection (c) and the criteria  
 20                           promulgated under subsection (d), assess the  
 21                           completeness of the feasibility study; and

22                           (B) if the Secretary determines that a fea-  
 23                           sibility study is not complete, notify the non-  
 24                           Federal entity of the determination.

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

5           (c) FEASIBILITY FACTORS.—Feasibility studies au-  
6           thorized or reviewed under this title shall include an as-  
7           sessment of—

8           (1) near- and long-term water demand in the  
9           region to be served by the rural water supply  
10          project;

11          (2) advancement of public health and safety of  
12          any existing rural water supply project and other  
13          benefits of the proposed rural water supply project;

14          (3) alternative new water supplies in the study  
15          area, including any opportunities to treat and use  
16          low-quality water, nonpotable water, water reuse-  
17          based supplies, and brackish and saline waters  
18          through innovative and economically viable treat-  
19          ment technologies;

20          (4) environmental quality and source water pro-  
21          tection issues related to the rural water supply  
22          project;

23          (5) innovative opportunities for water conserva-  
24          tion in the study area to reduce water use and water  
25          system costs, including—

1 (A) nonstructural approaches to reduce the  
2 need for the project; and

3 (B) demonstration technologies;

4 (6) the extent to which the project and alter-  
5 natives take advantage of economic incentives and  
6 the use of market-based mechanisms;

7 (7)(A) the construction costs and projected op-  
8 erations, maintenance, and replacement costs of all  
9 alternatives; and

10 (B) the economic feasibility and lowest cost  
11 method of obtaining the desired results of each alter-  
12 native, taking into account the Federal cost-share;

13 (8) the availability of guaranteed loans for a  
14 proposed rural water supply project;

15 (9) the financial capability of the non-Federal  
16 project entity to pay the non-Federal project entity's  
17 proportionate share of the design and construction  
18 costs and 100 percent of operations, maintenance,  
19 and replacement costs, including the allocation of  
20 costs to each non-Federal project entity in the case  
21 of multiple entities;

22 (10) whether the non-Federal project entity has  
23 developed an operations, management, and replace-  
24 ment plan to assist the non-Federal project entity in

1 establishing rates and fees for beneficiaries of the  
2 rural water supply project;

3 (11)(A) the non-Federal project entity adminis-  
4 trative organization that would implement construc-  
5 tion, operations, maintenance, and replacement ac-  
6 tivities; and

7 (B) the fiscal, administrative, and operational  
8 controls to be implemented to manage the project;

9 (12) the extent to which the project addresses  
10 Indian trust responsibilities, as appropriate;

11 (13) the extent to which assistance for rural  
12 water supply is available under other Federal au-  
13 thorities;

14 (14) the engineering, environmental, and eco-  
15 nomic activities to be undertaken to carry out the  
16 study;

17 (15) the extent to which the project involves  
18 partnerships with other State, local, or tribal govern-  
19 ments or Federal entities; and

20 (16) in the case of a project intended for Indian  
21 tribes and tribal organizations, the extent to which  
22 the project addresses the goal of economic self-suffi-  
23 ciency.

24 (d) FEASIBILITY STUDY CRITERIA.—

1           (1) IN GENERAL.—Not later than 18 months  
 2       after the date of enactment of this Act, the Sec-  
 3       retary shall promulgate criteria (including the feasi-  
 4       bility factors listed under subsection (c)) under  
 5       which the feasibility studies shall be assessed for  
 6       completeness and appropriateness.

7           (2) INCLUSIONS.—The Secretary shall include  
 8       in the criteria promulgated under paragraph (1)  
 9       methods to scale the level of effort needed to com-  
 10      plete the feasibility assessment relative to the total  
 11      size and cost of the proposed rural water supply  
 12      project and reduce total costs to non-Federal enti-  
 13      ties.

14       (e) FEASIBILITY REPORT.—

15           (1) IN GENERAL.—After completion of appro-  
 16      priate feasibility studies for rural water supply  
 17      projects that address the factors described in sub-  
 18      section (c) and the criteria promulgated under sub-  
 19      section (d), the Secretary shall—

20                   (A) develop a feasibility report that in-  
 21      cludes—

22                           (i) a recommendation of the Secretary  
 23                           on—

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

3  
4 (II) the appropriate non-Federal  
5 share of construction costs, which  
6 shall be—

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

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

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

15  
16 (I) what amount of grants, loan  
17 guarantees, or combination of grants  
18 and loan guarantees should be used to  
19 provide the Federal cost share;

20 (II) a schedule that identifies the  
21 annual operations, maintenance, and  
22 replacement costs that should be allocated to each non-Federal entity participating in the rural water supply  
23 project; and  
24  
25

1 (III) an assessment of the finan-  
2 cial capability of each non-Federal en-  
3 tity participating in the rural water  
4 supply project to pay the allocated an-  
5 nual operation, maintenance, and re-  
6 placement costs for the rural water  
7 supply project;

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

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

14 (D) publish in the Federal Register a no-  
15 tice of the availability of the results.

16 (f) CAPABILITY-TO-PAY.—

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

20 (A) consider the financial capability of any  
21 non-Federal project entities participating in the  
22 rural water supply project to pay the capital  
23 construction costs of the rural water supply  
24 project; and

1 (B) recommend an appropriate Federal  
2 share and non-Federal share of the capital con-  
3 struction costs, as determined by the Secretary.

4 (2) FACTORS.—In determining the financial ca-  
5 pability of non-Federal project entities to pay for a  
6 rural water supply project under paragraph (1), the  
7 Secretary shall evaluate factors for the project area,  
8 relative to the State and county average, including—

9 (A) per capita income;

10 (B) median household income;

11 (C) the poverty rate;

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

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

16 (F) the existing cost of water in the re-  
17 gion.

18 (3) INDIAN TRIBES.—In determining the capa-  
19 bility-to-pay of Indian tribe project beneficiaries, the  
20 Secretary may consider deferring the collection of all  
21 or part of the non-Federal construction costs appor-  
22 tioned to Indian tribe project beneficiaries unless or  
23 until the Secretary determines that the Indian tribe  
24 project beneficiaries should pay—

1 (A) the costs allocated to the beneficiaries;

2 or

3 (B) an appropriate portion of the costs.

4 (g) COST-SHARING REQUIREMENT.—

5 (1) IN GENERAL.—Except as otherwise pro-  
6 vided in this subsection, the Federal share of the  
7 cost of a feasibility study carried out under this sec-  
8 tion shall not exceed 50 percent of the study costs.

9 (2) FORM.—The non-Federal share under para-  
10 graph (1) may be in the form of any in-kind services  
11 that the Secretary determines would contribute sub-  
12 stantially toward the conduct and completion of the  
13 study.

14 (3) FINANCIAL HARDSHIP.—The Secretary may  
15 increase the Federal share of the costs of a feasi-  
16 bility study if the Secretary determines, based on a  
17 demonstration of financial hardship, that the non-  
18 Federal participant is unable to contribute at least  
19 50 percent of the costs of the study.

20 (4) LARGER COMMUNITIES.—In conducting a  
21 feasibility study of a rural water supply system that  
22 includes a community with a population in excess of  
23 50,000 inhabitants, the Secretary may require the  
24 community to pay a greater percentage of the non-

1 Federal share than that required for communities  
2 with less than 50,000 inhabitants.

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

9 **SEC. 107. MISCELLANEOUS.**

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

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

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

22 (d) INTERAGENCY COORDINATION.—The Secretary  
23 shall coordinate the program carried out under this title  
24 with existing Federal and State rural water and waste-  
25 water programs to facilitate the most efficient and effec-

1 tive solution to meeting the water needs of the non-Fed-  
2 eral project sponsors.

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

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

13 (g) EFFECT ON STATE WATER LAW.—

14 (1) IN GENERAL.—Nothing in this title pre-  
15 empts or affects State water law or an interstate  
16 compact governing water.

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

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

1 **SEC. 108. AUTHORIZATION OF APPROPRIATIONS.**

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

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

10 (c) LIMITATION.—No amounts made available under  
 11 this section shall be used to pay construction costs associ-  
 12 ated with any rural water supply project.

13 **TITLE II—TWENTY-FIRST**  
 14 **CENTURY WATER WORKS ACT**

15 **SEC. 201. SHORT TITLE.**

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

18 **SEC. 202. DEFINITIONS.**

19 In this title:

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

24 (2) LENDER.—The term “lender” means any  
 25 non-Federal qualified institutional buyer (as defined  
 26 in section 230.144A(a) of title 17, Code of Federal

1 Regulation (or any successor regulation), known as  
 2 Rule 144A(a) of the Securities and Exchange Com-  
 3 mission and issued under the Securities Act of 1933  
 4 (15 U.S.C. 77a et seq.)).

5 (3) LOAN GUARANTEE.—The term “loan guar-  
 6 antee” means any guarantee, insurance, or other  
 7 pledge by the Secretary to pay all or part of the  
 8 principal of, and interest on, a loan or other debt ob-  
 9 ligation of a non-Federal borrower to a lender.

10 (4) NON-FEDERAL BORROWER.—The term  
 11 “non-Federal borrower” means—

12 (A) a State (including a department, agen-  
 13 cy, or political subdivision of a State); or

14 (B) a conservancy district, irrigation dis-  
 15 trict, canal company, water users’ association,  
 16 Indian tribe, an agency created by interstate  
 17 compact, or any other entity that has the ca-  
 18 pacity to contract with the United States under  
 19 Federal reclamation law.

20 (5) PROJECT.—The term “project” means—

21 (A) a rural water supply project (as de-  
 22 fined in section 102(8)); or

23 (B) an extraordinary operation and main-  
 24 tenance activity for, or the rehabilitation of, a  
 25 facility—

1 (i) that is authorized by Federal rec-  
 2 lamation law and constructed by the  
 3 United States under such law; or

4 (ii) in connection with which there is  
 5 a repayment or water service contract exe-  
 6 cuted by the United States under Federal  
 7 reclamation law.

8 (6) SECRETARY.—The term “Secretary” means  
 9 the Secretary of the Interior.

10 **SEC. 203. PROJECT ELIGIBILITY.**

11 (a) ELIGIBILITY CRITERIA.—

12 (1) IN GENERAL.—The Secretary shall develop  
 13 and publish in the Federal Register criteria for de-  
 14 termining the eligibility of a project for financial as-  
 15 sistance under section 204.

16 (2) INCLUSIONS.—Eligibility criteria shall in-  
 17 clude—

18 (A) submission of an application by the  
 19 lender to the Secretary;

20 (B) demonstration of the creditworthiness  
 21 of the project, including a determination by the  
 22 Secretary that any financing for the project has  
 23 appropriate security features to ensure repay-  
 24 ment;

1 (C) demonstration by the non-Federal bor-  
2 rower, to the satisfaction of the Secretary, of  
3 the ability of the non-Federal borrower to repay  
4 the project financing from user fees or other  
5 dedicated revenue sources;

6 (D) demonstration by the non-Federal bor-  
7 rower, to the satisfaction of the Secretary, of  
8 the ability of the non-Federal borrower to pay  
9 all operations, maintenance, and replacement  
10 costs of the project facilities; and

11 (E) such other criteria as the Secretary de-  
12 termines to be appropriate.

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

17 (c) PROJECTS PREVIOUSLY AUTHORIZED.—A project  
18 that was authorized for construction under Federal rec-  
19 lamation laws prior to the date of enactment of this Act  
20 shall be eligible for assistance under this title, subject to  
21 the criteria established by the Secretary under subsection  
22 (a).

23 (d) CRITERIA FOR RURAL WATER SUPPLY  
24 PROJECTS.—A rural water supply project that is deter-

1 mined to be feasible under section 106 is eligible for a  
2 loan guarantee under section 204.

3 **SEC. 204. LOAN GUARANTEES.**

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

9 (b) **TERMS AND LIMITATIONS.**—

10 (1) **IN GENERAL.**—Loan guarantees under this  
11 section for a project shall be on such terms and con-  
12 ditions and contain such covenants, representations,  
13 warranties, and requirements as the Secretary deter-  
14 mines to be appropriate to protect the financial in-  
15 terests of the United States.

16 (2) **MAXIMUM AMOUNT.**—The amount of a loan  
17 guarantee shall not exceed 90 percent of the reason-  
18 ably anticipated eligible project costs.

19 (3) **INTEREST RATE.**—The interest rate on a  
20 loan guarantee shall be negotiated between the non-  
21 Federal borrower and the lender with the consent of  
22 the Secretary.

23 (4) **AMORTIZATION.**—A loan guarantee under  
24 this section shall provide for complete amortization

1 of the loan guarantee within not more than 40  
2 years.

3 (5) NON-SUBORDINATION.—In case of bank-  
4 ruptcy, insolvency, or liquidation of the non-Federal  
5 borrower, a loan guarantee shall not be subordinated  
6 to the claims of any holder of project obligations.

7 (c) PREPAYMENT AND REFINANCING.—Any prepay-  
8 ment or refinancing terms on a loan guarantee shall be  
9 negotiated between the non-Federal borrower and the  
10 lender with the consent of the Secretary.

11 **SEC. 205. OPERATIONS, MAINTENANCE, AND REPLACE-**  
12 **MENT COSTS.**

13 (a) IN GENERAL.—The non-Federal share of oper-  
14 ations, maintenance, and replacement costs for a project  
15 receiving Federal assistance under this title shall be 100  
16 percent.

17 (b) PLAN.—On request of the non-Federal borrower,  
18 the Secretary may assist in the development of an oper-  
19 ation, maintenance, and replacement plan to provide the  
20 necessary framework to assist the non-Federal borrower  
21 in establishing rates and fees for project beneficiaries.

22 **SEC. 206. TITLE TO NEWLY CONSTRUCTED FACILITIES.**

23 (a) NEW PROJECTS AND FACILITIES.—All new  
24 projects or facilities constructed in accordance with this  
25 title shall remain under the jurisdiction and control of the

1 non-Federal borrower subject to the terms of the repay-  
2 ment agreement.

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

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

7 (2) works supplemental to existing reclamation  
8 projects; or

9 (3) works constructed to rehabilitate existing  
10 reclamation projects.

11 **SEC. 207. WATER RIGHTS.**

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

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

19 **SEC. 208. INTERAGENCY COORDINATION AND COOPERA-**  
20 **TION.**

21 The Secretary and the Secretary of Agriculture shall  
22 enter into a memorandum of agreement providing for De-  
23 partment of Agriculture financial appraisal functions and  
24 loan guarantee administration for activities carried out  
25 under this title.

1 **SEC. 209. AUTHORIZATION OF APPROPRIATIONS.**

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

