

109TH CONGRESS
1ST SESSION

S. 895

AN ACT

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”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 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. Defaults.
 Sec. 206. Operations, maintenance, and replacement costs.
 Sec. 207. Title to newly constructed facilities.
 Sec. 208. Water rights.
 Sec. 209. Interagency coordination and cooperation.
 Sec. 210. Records; audits.
 Sec. 211. Full faith and credit.
 Sec. 212. Authorization of appropriations.

3 **TITLE I—RECLAMATION RURAL**
 4 **WATER SUPPLY ACT OF 2005**

5 **SEC. 101. SHORT TITLE.**

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

8 **SEC. 102. DEFINITIONS.**

9 In this title:

10 (1) CONSTRUCTION.—The term “construction”
 11 means the installation of new infrastructure and the
 12 upgrading of existing facilities in locations in which
 13 the infrastructure or facilities are associated with

1 the new infrastructure of a rural water project rec-
2 ommended by the Secretary pursuant to this title.

3 (2) FEDERAL RECLAMATION LAW.—The term
4 “Federal reclamation law” means the Act of June
5 17, 1902 (32 Stat. 388, chapter 1093), and Acts
6 supplemental to and amendatory of that Act (43
7 U.S.C. 371 et seq.).

8 (3) INDIAN.—The term “Indian” means an in-
9 dividual who is a member of an Indian tribe.

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

14 (5) NON-FEDERAL PROJECT ENTITY.—The
15 term “non-Federal project entity” means a State,
16 regional, or local authority, Indian tribe or tribal or-
17 ganization, or other qualifying entity, such as a
18 water conservation district, water conservancy dis-
19 trict, or rural water district or association.

20 (6) OPERATIONS, MAINTENANCE, AND RE-
21 PLACEMENT COSTS.—

22 (A) IN GENERAL.—The term “operations,
23 maintenance, and replacement costs” means all
24 costs for the operation of a rural water supply
25 project that are necessary for the safe, efficient,

1 and continued functioning of the project to
2 produce the benefits described in a feasibility
3 study.

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

7 (i) repairs of a routine nature that
8 maintain a rural water supply project in a
9 well kept condition;

10 (ii) replacement of worn-out project
11 elements; and

12 (iii) rehabilitation activities necessary
13 to bring a deteriorated project back to the
14 original condition of the project.

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

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

21 (8) RECLAMATION STATES.—The term “Rec-
22 lamation States” means the States and areas re-
23 ferred to in the first section of the Act of June 17,
24 1902 (43 U.S.C. 391).

25 (9) RURAL WATER SUPPLY PROJECT.—

1 (A) IN GENERAL.—The term “rural water
2 supply project” means a project that is de-
3 signed to serve a community or group of com-
4 munities, each of which has a population of not
5 more than 50,000 inhabitants, which may in-
6 clude Indian tribes and tribal organizations,
7 dispersed homesites, or rural areas with domes-
8 tic, industrial, municipal, and residential water.

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

11 (i) incidental noncommercial livestock
12 watering and noncommercial irrigation of
13 vegetation and small gardens of less than
14 1 acre; and

15 (ii) a project to improve rural water
16 infrastructure, including—

17 (I) pumps, pipes, wells, and other
18 diversions;

19 (II) storage tanks and small im-
20 poundments;

21 (III) water treatment facilities
22 for potable water supplies, including
23 desalination facilities;

24 (IV) equipment and management
25 tools for water conservation, ground-

1 water recovery, and water recycling;
2 and

3 (V) appurtenances.

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

6 (i) commercial irrigation; or

7 (ii) major impoundment structures.

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

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

12 (A) the recognized governing body of an
13 Indian tribe; and

14 (B) any legally established organization of
15 Indians that is controlled, sanctioned, or char-
16 tered by the governing body or democratically
17 elected by the adult members of the Indian
18 community to be served by the organization.

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

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

24 (1) investigate and identify opportunities to en-
25 sure safe and adequate rural water supply projects

1 for domestic, municipal, and industrial use in small
2 communities and rural areas of the Reclamation
3 States;

4 (2) plan the design and construction, through
5 the conduct of appraisal investigations and feasi-
6 bility studies, of rural water supply projects in Rec-
7 lamation States; and

8 (3) oversee, as appropriate, the construction of
9 rural water supply projects in Reclamation States
10 that are recommended by the Secretary in a feasi-
11 bility report developed pursuant to section 106 and
12 subsequently authorized by Congress.

13 (b) NON-FEDERAL PROJECT ENTITY.—Any activity
14 carried out under this title shall be carried out in coopera-
15 tion with a qualifying non-Federal project entity, con-
16 sistent with this title.

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

21 (1) determining the eligibility of a rural com-
22 munity for assistance under the Program; and

23 (2) prioritizing requests for assistance under
24 the Program.

1 (d) FACTORS.—The criteria developed under sub-
2 section (c) shall take into account such factors as
3 whether—

4 (1) a rural water supply project—

5 (A) serves—

6 (i) rural areas and small communities;

7 or

8 (ii) Indian tribes; or

9 (B) promotes and applies a regional or wa-
10 tershed perspective to water resources manage-
11 ment;

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

14 (A) improve the health or aesthetic quality
15 of water;

16 (B) result in continuous, measurable, and
17 significant water quality benefits; or

18 (C) address current or future water supply
19 needs;

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

22 (4) a rural water supply project is cost effec-
23 tive.

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

1 (1) to the extent that connection provides a reli-
2 able water supply, a connection to preexisting infra-
3 structure (including impoundments and conveyance
4 channels) as part of a rural water supply project;
5 and

6 (2) notwithstanding the limitation on popu-
7 lation under section 102(9)(A), a town or commu-
8 nity with a population in excess of 50,000 inhab-
9 itants in an area served by a rural water supply
10 project if, at the discretion of the Secretary, the
11 town or community is considered to be a critical
12 partner in the rural supply project.

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

14 (a) IN GENERAL.—In consultation with the Secretary
15 of Agriculture, the Administrator of the Environmental
16 Protection Agency, the Director of the Indian Health
17 Service, the Secretary of Housing and Urban Develop-
18 ment, and the Secretary of the Army, the Secretary shall
19 develop an assessment of—

20 (1) the status of all rural water supply projects
21 under the jurisdiction of the Secretary authorized
22 but not completed prior to the date of enactment of
23 this Act, including appropriation amounts, the phase
24 of development, total anticipated costs, and obstacles
25 to completion;

1 (2) the current plan (including projected finan-
2 cial and workforce requirements) for the completion
3 of the projects identified in paragraph (1) within the
4 time frames established under the provisions of law
5 authorizing the projects or the final engineering re-
6 ports for the projects;

7 (3) the demand for new rural water supply
8 projects;

9 (4) rural water programs within other agencies
10 and a description of the extent to which those pro-
11 grams provide support for rural water supply
12 projects and water treatment programs in Reclama-
13 tion States, including an assessment of the require-
14 ments, funding levels, and conditions of eligibility for
15 the programs assessed;

16 (5) the extent of the demand that the Secretary
17 can meet with the Program;

18 (6) how the Program will complement authori-
19 ties already within the jurisdiction of the Secretary
20 and the heads of the agencies with whom the Sec-
21 retary consults; and

22 (7) improvements that can be made to coordi-
23 nate and integrate the authorities of the agencies
24 with programs evaluated under paragraph (4), in-
25 cluding any recommendations to consolidate some or

1 all of the activities of the agencies with respect to
2 rural water supply.

3 (b) CONSULTATION WITH STATES.—Before final-
4 izing the assessment developed under subsection (a), the
5 Secretary shall solicit comments from States with identi-
6 fied rural water needs.

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

13 **SEC. 105. APPRAISAL INVESTIGATIONS.**

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

19 (1) receive and review an appraisal investiga-
20 tion that is—

21 (A) developed by the non-Federal project
22 entity, with or without support from the Sec-
23 retary; and

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

1 (2) conduct an appraisal investigation; or

2 (3) provide a grant to, or enter into a coopera-
3 tive agreement with, the non-Federal project entity
4 to conduct an appraisal investigation, if the Sec-
5 retary determines that—

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

10 (B) using the non-Federal project entity to
11 conduct the appraisal investigation is a cost-ef-
12 fective alternative for completing the appraisal
13 investigation.

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

18 (c) APPRAISAL REPORT.—In accordance with sub-
19 section (f), after an appraisal investigation is submitted
20 to the Secretary under subsection (a)(1) or completed
21 under paragraph (2) or (3) of subsection (a), the Sec-
22 retary shall prepare an appraisal report that—

23 (1) considers—

24 (A) whether the project meets—

1 (i) the appraisal criteria developed
2 under subsection (d); and

3 (ii) the eligibility criteria developed
4 under section 103(c);

5 (B) whether viable water supplies and
6 water rights exist to supply the project, includ-
7 ing all practicable water sources such as lower
8 quality waters, nonpotable waters, and water
9 reuse-based water supplies;

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

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

14 (E) the extent to which the project pro-
15 vides environmental benefits, including source
16 water protection;

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

20 (G) whether the project—

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

23 (II) enhances water management
24 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 (H) preliminary cost estimates for the
10 project; and

11 (I) 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 praisal 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.—

11 (1) IN GENERAL.—Not later than 90 days after
12 the date of submission of an appraisal investigation
13 under paragraph (1) or (3) of subsection (a), the
14 Secretary shall provide to the non-Federal entity
15 that conducted the investigation a determination of
16 whether the investigation has included the informa-
17 tion necessary to determine whether the proposed
18 rural water supply project satisfies the criteria pro-
19 mulgated under subsection (d).

20 (2) NO SATISFACTION OF CRITERIA.—If the
21 Secretary determines that the appraisal investigation
22 submitted by a non-Federal entity does not satisfy
23 the criteria promulgated under subsection (d), the
24 Secretary shall inform the non-Federal entity of the
25 reasons why the appraisal investigation is deficient.

1 (3) RESPONSIBILITY OF SECRETARY.—If an ap-
2 praisal investigation as first submitted by a non-
3 Federal entity does not provide all necessary infor-
4 mation, as defined by the Secretary, the Secretary
5 shall have no obligation to conduct further analysis
6 until the non-Federal project entity submitting the
7 appraisal study conducts additional investigation and
8 resubmits the appraisal investigation under this sub-
9 section.

10 (f) APPRAISAL REPORT.—Once the Secretary has de-
11 termined that an investigation provides the information
12 necessary under subsection (e), the Secretary shall—

13 (1) complete the appraisal report required
14 under subsection (e);

15 (2) make available to the public, on request, the
16 appraisal report prepared under this title; and

17 (3) promptly publish in the Federal Register a
18 notice of the availability of the results.

19 (g) COSTS.—

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

24 (2) NON-FEDERAL SHARE.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), if the cost of conducting an
3 appraisal investigation is more than \$200,000,
4 the non-Federal share of the costs in excess of
5 \$200,000 shall be 50 percent.

6 (B) EXCEPTION.—The Secretary may re-
7 duce the non-Federal share required under sub-
8 paragraph (A) if the Secretary determines that
9 there is an overwhelming Federal interest in the
10 appraisal investigation.

11 (C) FORM.—The non-Federal share under
12 subparagraph (A) may be in the form of any in-
13 kind services that the Secretary determines
14 would contribute substantially toward the con-
15 duct and completion of the appraisal investiga-
16 tion.

17 (h) 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, with or without 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 a cost-effective
 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 area to be served by the rural water supply project;

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

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

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

22 (5) innovative opportunities for water conserva-
23 tion in the study area to reduce water use and water
24 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
25 establishing rates and fees for beneficiaries of the

1 rural water supply project that includes a schedule
2 identifying the annual operations, maintenance, and
3 replacement costs that should be allocated to each
4 non-Federal entity participating in the project;

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

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

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

14 (13) the engineering, environmental, and eco-
15 nomic activities to be undertaken to carry out the
16 proposed rural water supply project;

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

20 (15) 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
21 includes—

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
15 construction—

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 allo-
23 cated to each non-Federal entity par-
24 ticipating in the rural water supply
25 project; and

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 25 percent or
23 more of the capital construction costs of the
24 rural water supply 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 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 non-Federal project entity to pay more than 50 per-
25 cent of the costs of the study.

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

7 **SEC. 107. MISCELLANEOUS.**

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

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

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

20 (d) INTERAGENCY COORDINATION.—The Secretary
21 shall coordinate the Program carried out under this title
22 with existing Federal and State rural water and waste-
23 water programs to facilitate the most efficient and effec-
24 tive solution to meeting the water needs of the non-Fed-
25 eral project sponsors.

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

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

11 (g) EXPEDITED PROCEDURES.—If the Secretary de-
12 termines that a community to be served by a proposed
13 rural water supply project has urgent and compelling
14 water needs, the Secretary shall, to the maximum extent
15 practicable, expedite appraisal investigations and reports
16 conducted under section 105 and feasibility studies and
17 reports conducted under section 106.

18 (h) EFFECT ON STATE WATER LAW.—

19 (1) IN GENERAL.—Nothing in this title pre-
20 empts or affects State water law or an interstate
21 compact governing water.

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

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

6 **SEC. 108. AUTHORIZATION OF APPROPRIATIONS.**

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

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

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

18 **TITLE II—TWENTY-FIRST**
 19 **CENTURY WATER WORKS ACT**

20 **SEC. 201. SHORT TITLE.**

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

23 **SEC. 202. DEFINITIONS.**

24 In this title:

1 (1) 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 (2) LENDER.—The term “lender” means any
6 non-Federal qualified institutional buyer (as defined
7 in section 230.144A(a) of title 17, Code of Federal
8 Regulation (or any successor regulation), known as
9 Rule 144A(a) of the Securities and Exchange Com-
10 mission and issued under the Securities Act of 1933
11 (15 U.S.C. 77a et seq.)).

12 (3) LOAN GUARANTEE.—The term “loan guar-
13 antee” has the meaning given the term “loan guar-
14 antee” in section 502 of the Federal Credit Reform
15 Act of 1990 (2 U.S.C. 661a).

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

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

20 (B) a conservancy district, irrigation dis-
21 trict, canal company, water users’ association,
22 Indian tribe, an agency created by interstate
23 compact, or any other entity that has the ca-
24 pacity to contract with the United States under
25 Federal reclamation law.

1 (5) OBLIGATION.—The term “obligation”
2 means a loan or other debt obligation that is guar-
3 anteed under this section.

4 (6) PROJECT.—The term “project” means—

5 (A) a rural water supply project (as de-
6 fined in section 102(9)); or

7 (B) an extraordinary operation and main-
8 tenance activity for, or the rehabilitation of, a
9 facility—

10 (i) that is authorized by Federal rec-
11 lamation law and constructed by the
12 United States under such law; or

13 (ii) in connection with which there is
14 a repayment or water service contract exe-
15 cuted by the United States under Federal
16 reclamation law.

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

19 **SEC. 203. PROJECT ELIGIBILITY.**

20 (a) ELIGIBILITY CRITERIA.—

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

1 (2) INCLUSIONS.—Eligibility criteria shall
2 include—

3 (A) submission of an application by the
4 lender to the Secretary;

5 (B) demonstration of the creditworthiness
6 of the project, including a determination by the
7 Secretary that any financing for the project has
8 appropriate security features to ensure repay-
9 ment;

10 (C) demonstration by the non-Federal bor-
11 rower, to the satisfaction of the Secretary, of
12 the ability of the non-Federal borrower to repay
13 the project financing from user fees or other
14 dedicated revenue sources;

15 (D) demonstration by the non-Federal bor-
16 rower, to the satisfaction of the Secretary, of
17 the ability of the non-Federal borrower to pay
18 all operations, maintenance, and replacement
19 costs of the project facilities; and

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

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

1 (c) PROJECTS PREVIOUSLY AUTHORIZED.—A project
2 that was authorized for construction under Federal rec-
3 lamation laws prior to the date of enactment of this Act
4 shall be eligible for assistance under this title, subject to
5 the criteria established by the Secretary under subsection
6 (a).

7 (d) CRITERIA FOR RURAL WATER SUPPLY
8 PROJECTS.—A rural water supply project that is deter-
9 mined to be feasible under section 106 is eligible for a
10 loan guarantee under section 204.

11 **SEC. 204. LOAN GUARANTEES.**

12 (a) AUTHORITY.—Subject to the availability of ap-
13 propriations, the Secretary may make available to lenders
14 for a project meeting the eligibility criteria established in
15 section 203 loan guarantees to supplement private-sector
16 or lender financing for the project.

17 (b) TERMS AND LIMITATIONS.—

18 (1) IN GENERAL.—Loan guarantees under this
19 section for a project shall be on such terms and con-
20 ditions and contain such covenants, representations,
21 warranties, and requirements as the Secretary deter-
22 mines to be appropriate to protect the financial in-
23 terests of the United States.

24 (2) AMOUNT.—Loan guarantees by the Sec-
25 retary shall not exceed an amount equal to 90 per-

1 cent of the cost of the project that is the subject of
2 the loan guarantee, as estimated at the time at
3 which the loan guarantee is issued.

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

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

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

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

20 **SEC. 205. DEFAULTS.**

21 (a) PAYMENTS BY SECRETARY.—

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

1 (2) PAYMENT REQUIRED.—By such date as
2 may be specified in the loan guarantee or related
3 agreements, the Secretary shall pay to the holder of
4 the loan guarantee the unpaid interest on, and un-
5 paid principal of, the obligation with respect to
6 which the borrower has defaulted, unless the Sec-
7 retary finds that there was not default by the bor-
8 rower in the payment of interest or principal or that
9 the default has been remedied.

10 (3) FORBEARANCE.—Nothing in this subsection
11 precludes any forbearance by the holder of the obli-
12 gation for the benefit of the non-Federal borrower
13 that may be agreed on by the parties to the obliga-
14 tion and approved by the Secretary.

15 (b) SUBROGATION.—

16 (1) IN GENERAL.—If the Secretary makes a
17 payment under subsection (a), the Secretary shall be
18 subrogated to the rights of the recipient of the pay-
19 ment as specified in the loan guarantee or related
20 agreements, including, as appropriate, the authority
21 (notwithstanding any other provision of law) to—

22 (A) complete, maintain, operate, lease, or
23 otherwise dispose of any property acquired pur-
24 suant to the loan guarantee or related agree-
25 ments; or

1 (B) permit the non-Federal borrower, pur-
2 suant to an agreement with the Secretary, to
3 continue to pursue the purposes of the project
4 if the Secretary determines the purposes to be
5 in the public interest.

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

11 (c) PAYMENT OF PRINCIPAL AND INTEREST BY SEC-
12 RETARY.—With respect to any obligation guaranteed
13 under this section, the Secretary may enter into a contract
14 to pay, and pay, holders of the obligation, for and on be-
15 half of the non-Federal borrower, from funds appropriated
16 for that purpose, the principal and interest payments that
17 become due and payable on the unpaid balance of the obli-
18 gation if the Secretary finds that—

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

21 (B) it is in the public interest to permit the
22 non-Federal borrower to continue to pursue the pur-
23 poses of the project; and

24 (C) the probable net benefit to the Federal Gov-
25 ernment in paying the principal and interest will be

1 greater than that which would result in the event of
2 a default;

3 (2) the amount of the payment that the Sec-
4 retary is authorized to pay shall be no greater than
5 the amount of principal and interest that the non-
6 Federal borrower is obligated to pay under the
7 agreement being guaranteed; and

8 (3) the borrower agrees to reimburse the Sec-
9 retary for the payment (including interest) on terms
10 and conditions that are satisfactory to the Secretary.

11 (d) ACTION BY ATTORNEY GENERAL.—

12 (1) NOTIFICATION.—If the non-Federal bor-
13 rower defaults on an obligation, the Secretary shall
14 notify the Attorney General of the default.

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

18 (A) such assets of the defaulting non-Fed-
19 eral borrower as are associated with the obliga-
20 tion; or

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

1 **SEC. 206. OPERATIONS, MAINTENANCE, AND REPLACE-**
2 **MENT COSTS.**

3 (a) IN GENERAL.—The non-Federal share of oper-
4 ations, maintenance, and replacement costs for a project
5 receiving Federal assistance under this title shall be 100
6 percent.

7 (b) PLAN.—On request of the non-Federal borrower,
8 the Secretary may assist in the development of an oper-
9 ation, maintenance, and replacement plan to provide the
10 necessary framework to assist the non-Federal borrower
11 in establishing rates and fees for project beneficiaries.

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

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

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

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

22 (2) works supplemental to existing reclamation
23 projects; or

24 (3) works constructed to rehabilitate existing
25 reclamation projects.

1 **SEC. 208. WATER RIGHTS.**

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

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

9 **SEC. 209. INTERAGENCY COORDINATION AND COOPERA-**
10 **TION.**

11 (a) CONSULTATION.—The Secretary shall consult
12 with the Secretary of Agriculture before promulgating cri-
13 teria with respect to financial appraisal functions and loan
14 guarantee administration for activities carried out under
15 this title.

16 (b) MEMORANDUM OF AGREEMENT.—The Secretary
17 and the Secretary of Agriculture may enter into a memo-
18 randum of agreement providing for Department of Agri-
19 culture financial appraisal functions and loan guarantee
20 administration for activities carried out under this title.

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

22 (a) IN GENERAL.—A recipient of a loan guarantee
23 shall keep such records and other pertinent documents as
24 the Secretary shall prescribe by regulation, including such
25 records as the Secretary may require to facilitate an effec-
26 tive audit.

1 (b) ACCESS.—The Secretary and the Comptroller
2 General of the United States, or their duly authorized rep-
3 resentatives, shall have access, for the purpose of audit,
4 to the records and other pertinent documents.

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

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

9 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

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

Passed the Senate November 16, 2005.

Attest:

Secretary.

109TH CONGRESS
1ST SESSION

S. 895

AN ACT

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.