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109TH CONGRESS
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[Report No. 109-148]

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.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2005

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

OCTOBER 19, 2005

Reported by Mr. DOMENICI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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,*

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

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

4 (b) **TABLE OF CONTENTS.**—The table of contents of
5 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.

6 **TITLE I—RECLAMATION RURAL**
7 **WATER SUPPLY ACT OF 2005**

8 **SEC. 101. SHORT TITLE.**

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

11 **SEC. 102. DEFINITIONS.**

12 In this title:

13 (1) **FEDERAL RECLAMATION LAW.**—The term
14 “Federal reclamation law” means the Act of June
15 17, 1902 (32 Stat. 388, chapter 1093), and Acts

1 supplemental to and amendatory of that Act (43
2 U.S.C. 371 et seq.).

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

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

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

15 (5) OPERATIONS, MAINTENANCE, AND RE-
16 PLACEMENT COSTS.—

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

1 (B) INCLUSIONS.—The term “operations,
2 maintenance, and replacement costs” in-
3 cludes—

4 (i) repairs of a routine nature that
5 maintain a rural water supply project in a
6 well kept condition;

7 (ii) replacement of worn-out project
8 elements; and

9 (iii) rehabilitation activities necessary
10 to bring a deteriorated project back to the
11 original condition of the project.

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

15 (6) PROGRAM.—The term “program” means
16 the rural water supply program established under
17 section 103.

18 (7) RECLAMATION STATES.—The term “ree-
19 lamation States” means the States and areas re-
20 ferred to in the first section of the Act of June 17,
21 1902 (43 U.S.C. 391).

22 (8) RURAL WATER SUPPLY PROJECT.—

23 (A) IN GENERAL.—The term “rural water
24 supply project” means a project that is de-
25 signed to serve a group of communities, which

1 may include Indian tribes and tribal organiza-
2 tions, dispersed homesites, or rural areas with
3 domestic, industrial, municipal, and residential
4 water, each of which has a population of not
5 more than 50,000 inhabitants.

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

8 (i) incidental noncommercial livestock
9 watering and noncommercial irrigation of
10 vegetation and small gardens of less than
11 $\frac{1}{2}$ acre; and

12 (ii) a project to improve rural water
13 infrastructure, including—

14 (I) pumps, pipes, wells, and other
15 diversions;

16 (II) storage tanks and small im-
17 poundments;

18 (III) water treatment facilities
19 for potable water supplies;

20 (IV) equipment and management
21 tools for water conservation, ground-
22 water recovery, and water recycling;
23 and

24 (V) appurtenances.

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

3 (i) commercial irrigation; or

4 (ii) major impoundment structures.

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

7 (10) ~~TRIBAL ORGANIZATION.~~—The term “tribal
8 organization” means—

9 (A) the recognized governing body of an
10 Indian tribe; and

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

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

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

21 (1) investigate and identify opportunities to en-
22 sure safe and adequate rural water supply projects
23 for municipal and industrial use in small commu-
24 nities and rural areas of the reclamation States; and

1 (2) plan the design and construction, through
 2 the conduct of appraisal investigations and feasi-
 3 bility studies, of rural water supply projects in ree-
 4 lamation States.

5 (b) ~~NON-FEDERAL PROJECT ENTITY.~~—Any activity
 6 carried out under this title shall be carried out in coopera-
 7 tion with a qualifying non-Federal project entity, con-
 8 sistent with this title.

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

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

15 (2) prioritizing requests for assistance under
 16 the program.

17 (d) ~~FACTORS.~~—The criteria developed under sub-
 18 section (c) shall take into account such factors as wheth-
 19 er—

20 (1) a rural water supply project—

21 (A) serves—

22 (i) rural areas and small communities;

23 or

24 (ii) Indian tribes; or

1 ~~(B)~~ promotes and applies a regional or wa-
2 tershed perspective to water resources manage-
3 ment;

4 ~~(2)~~ there is an urgent and compelling need for
5 a rural water supply project that would—

6 ~~(A)~~ improve the health or aesthetic quality
7 of water;

8 ~~(B)~~ result in continuous, measurable, and
9 significant water quality benefits; or

10 ~~(C)~~ address current or future water supply
11 needs;

12 ~~(3)~~ a rural water supply project helps meet ap-
13 plicable requirements established by law; and

14 ~~(4)~~ a rural water supply project is cost effec-
15 tive.

16 ~~(e)~~ INCLUSIONS.—The Secretary may include—

17 ~~(1)~~ to the extent that connection provides a reli-
18 able water supply; a connection to preexisting infra-
19 structure (including dams and conveyance channels)
20 as part of a rural water supply project; and

21 ~~(2)~~ notwithstanding the limitation in section
22 102(8), a town or community with a population in
23 excess of 50,000 inhabitants in an area served by a
24 rural water supply project if, at the discretion of the

1 Secretary, the town or community is considered to
2 be a critical partner in the rural supply project.

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

4 (a) IN GENERAL.—In consultation with the Secretary
5 of Agriculture, the Administrator of the Environmental
6 Protection Agency, and the Director of the Indian Health
7 Service, the Secretary shall develop an assessment of—

8 (1) the status of all rural water supply projects
9 under the jurisdiction of the Secretary authorized
10 but not completed prior to the date of enactment of
11 this Act, including appropriation amounts, the phase
12 of development, total anticipated costs, and obstacles
13 to completion;

14 (2) the current plan (including projected finan-
15 cial and workforce requirements) for the completion
16 of the rural water supply projects within the time
17 frames established under the provisions of law au-
18 thORIZING the projects or the final engineering re-
19 ports for the projects;

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

21 (4) programs within other agencies that can,
22 and a description of the extent to which the pro-
23 grams, provide support for rural water supply
24 projects and water treatment programs in reclama-
25 tion States, including an assessment of the require-

1 ments, funding levels, and conditions for eligibility
2 for the programs assessed; and

3 (5) the extent of the unmet needs that the Sec-
4 retary can meet with the program that complements
5 activities undertaken under the authorities already
6 within the jurisdiction of the Secretary and the
7 heads of the agencies with whom the Secretary
8 consults.

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

15 **SEC. 105. APPRAISAL INVESTIGATIONS.**

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

21 (1) receive and review an appraisal investiga-
22 tion that is—

23 (A) developed by the non-Federal project
24 entity independent of support from the Sec-
25 retary; and

1 ~~(B)~~ submitted to the Secretary by the non-
 2 Federal project entity;
 3 ~~(2)~~ conduct an appraisal investigation; or
 4 ~~(3)~~ provide a grant to, or enter into a coopera-
 5 tive agreement with, the non-Federal project entity
 6 to conduct an appraisal investigation, if the Sec-
 7 retary determines that—

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

12 ~~(B)~~ using the non-Federal project entity to
 13 conduct the appraisal investigation is the lowest
 14 cost alternative for completing the appraisal in-
 15 vestigation.

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

20 ~~(c)~~ APPRAISAL REPORT.—As soon as practicable
 21 after an appraisal investigation is submitted to the Sec-
 22 retary under subsection ~~(a)~~(1) or completed under para-
 23 graph ~~(2)~~ or ~~(3)~~ of subsection ~~(a)~~, the Secretary shall pre-
 24 pare an appraisal report that—

25 ~~(1)~~ considers—

- 1 (A) whether the project meets—
- 2 (i) the appraisal criteria developed
- 3 under subsection (d); and
- 4 (ii) the eligibility criteria developed
- 5 under section 103(e);
- 6 (B) whether viable water supplies and
- 7 water rights exist to supply the project, includ-
- 8 ing all practicable water sources such as lower
- 9 quality waters, nonpotable waters, and water
- 10 reuse-based water supplies;
- 11 (C) whether the project has a positive ef-
- 12 fect on public health and safety;
- 13 (D) whether the project will meet water de-
- 14 mand, including projected future needs;
- 15 (E) the extent to which the project pro-
- 16 vides environmental benefits, including source
- 17 water protection;
- 18 (F) the ability of the project to supply
- 19 water consistent with Indian trust responsibil-
- 20 ities, as appropriate;
- 21 (G) whether the project applies a regional
- 22 or watershed perspective and promotes benefits
- 23 in the region in which the project is carried out;
- 24 (H) whether the project—

1 (i)(I) implements an integrated re-
2 sources management approach; or

3 (II) enhances water management
4 flexibility, including providing for—

5 (aa) local control to manage
6 water supplies under varying water
7 supply conditions; and

8 (bb) participation in water bank-
9 ing and markets for domestic and en-
10 vironmental purposes; and

11 (ii) promotes long-term protection of
12 water supplies;

13 (I) preliminary cost estimates for the
14 project; and

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

21 (2) provides recommendations on whether a fea-
22 sibility study should be initiated under section
23 106(a).

24 (d) APPRAISAL CRITERIA.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of enactment of this Act, the Secretary
3 shall promulgate criteria (including appraisal factors
4 listed under subsection (c)) against which the ap-
5 praisal investigations shall be assessed for complete-
6 ness and appropriateness for a feasibility study.

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

14 (c) REVIEW OF APPRAISAL INVESTIGATION.—Not
15 later than 180 days after the date of submission of an
16 appraisal investigation under subsection (a)(1) or the com-
17 pletion of an appraisal investigation under paragraph (2)
18 or (3) of subsection (a), the Secretary shall—

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

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

4 (3) promptly publish in the Federal Register a
5 notice of the availability of the results.

6 (f) COSTS.—

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

11 (2) NON-FEDERAL SHARE.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), if the cost of conducting an
14 appraisal investigation is more than \$200,000,
15 the non-Federal share of the costs in excess of
16 \$200,000 shall be 50 percent.

17 (B) EXCEPTION.—The Secretary may re-
18 duce the non-Federal share required under sub-
19 paragraph (A) if the Secretary determines that
20 there is an overwhelming Federal interest in the
21 appraisal investigation.

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

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

4 (2) consult with the heads of appropriate Fed-
5 eral agencies to—

6 (A) ensure that the proposed rural water
7 supply project does not duplicate a project car-
8 ried out under the authority of the agency head;
9 and

10 (B) if a duplicate project is being carried
11 out, identify the authority under which the du-
12 plicate project is being carried out; and

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

15 **SEC. 106. FEASIBILITY STUDIES.**

16 (a) IN GENERAL.—On completion of an appraisal re-
17 port under section 105(e) that recommends undertaking
18 a feasibility study and subject to the availability of appro-
19 priations, the Secretary shall—

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

23 (2) receive and review a feasibility study that
24 is—

1 (A) developed by the non-Federal project
2 entity independent of support from the Sec-
3 retary; and

4 (B) submitted to the Secretary by the non-
5 Federal project entity; or

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

10 (A) the non-Federal entity is qualified to
11 complete the feasibility study in accordance
12 with the criteria promulgated under subsection
13 (d); and

14 (B) using the non-Federal project entity to
15 conduct the feasibility study is the lowest cost
16 alternative for completing the appraisal inves-
17 tigation.

18 (b) REVIEW OF NON-FEDERAL FEASIBILITY STUD-
19 IES.—

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

23 (A) in accordance with the feasibility fac-
24 tors described in subsection (c) and the criteria

1 promulgated under subsection (d), assess the
2 completeness of the feasibility study; and

3 ~~(B)~~ if the Secretary determines that a fea-
4 sibility study is not complete, notify the non-
5 Federal entity of the determination.

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

10 ~~(c)~~ FEASIBILITY FACTORS.—Feasibility studies au-
11 thorized or reviewed under this title shall include an as-
12 sessment of—

13 ~~(1)~~ near- and long-term water demand in the
14 region to be served by the rural water supply
15 project;

16 ~~(2)~~ advancement of public health and safety of
17 any existing rural water supply project and other
18 benefits of the proposed rural water supply project;

19 ~~(3)~~ alternative new water supplies in the study
20 area, including any opportunities to treat and use
21 low-quality water, nonpotable water, water reuse-
22 based supplies, and brackish and saline waters
23 through innovative and economically viable treat-
24 ment technologies;

1 (4) environmental quality and source water pro-
2 tection issues related to the rural water supply
3 project;

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

7 (A) nonstructural approaches to reduce the
8 need for the project; and

9 (B) demonstration technologies;

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

13 (7)(A) the construction costs and projected op-
14 erations, maintenance, and replacement costs of all
15 alternatives; and

16 (B) the economic feasibility and lowest cost
17 method of obtaining the desired results of each alter-
18 native; taking into account the Federal cost-share;

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

21 (9) the financial capability of the non-Federal
22 project entity to pay the non-Federal project entity's
23 proportionate share of the design and construction
24 costs and 100 percent of operations, maintenance,
25 and replacement costs, including the allocation of

1 costs to each non-Federal project entity in the case
2 of multiple entities;

3 (10) whether the non-Federal project entity has
4 developed an operations, management, and replace-
5 ment plan to assist the non-Federal project entity in
6 establishing rates and fees for beneficiaries of the
7 rural water supply project;

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

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

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

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

19 (14) the engineering, environmental, and eco-
20 nomic activities to be undertaken to carry out the
21 study;

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

1 (16) in the case of a project intended for Indian
2 tribes and tribal organizations, the extent to which
3 the project addresses the goal of economic self-suffi-
4 ciency.

5 (d) FEASIBILITY STUDY CRITERIA.—

6 (1) IN GENERAL.—Not later than 18 months
7 after the date of enactment of this Act, the Sec-
8 retary shall promulgate criteria (including the feasi-
9 bility factors listed under subsection (e)) under
10 which the feasibility studies shall be assessed for
11 completeness and appropriateness.

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

19 (e) FEASIBILITY REPORT.—

20 (1) IN GENERAL.—After completion of appro-
21 priate feasibility studies for rural water supply
22 projects that address the factors described in sub-
23 section (e) and the criteria promulgated under sub-
24 section (d), the Secretary shall—

1 (A) develop a feasibility report that in-
2 eludes—

3 (i) a recommendation of the Secretary
4 on—

5 (I) whether the rural water sup-
6 ply project should be authorized for
7 construction; and

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

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

13 (bb) determined based on an
14 analysis of the capability-to-pay
15 information considered under
16 subsections (e)(9) and (f); and

17 (ii) if the Secretary recommends that
18 the project should be authorized for con-
19 struction—

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

24 (II) a schedule that identifies the
25 annual operations, maintenance, and

1 replacement costs that should be allo-
2 cated to each non-Federal entity par-
3 ticipating in the rural water supply
4 project; and

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

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

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

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

20 (f) ~~CAPABILITY-TO-PAY.—~~

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

24 (A) consider the financial capability of any
25 non-Federal project entities participating in the

1 rural water supply project to pay the capital
 2 construction costs of the rural water supply
 3 project; and

4 (B) recommend an appropriate Federal
 5 share and non-Federal share of the capital con-
 6 struction costs, as determined by the Secretary.

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

12 (A) per capita income;

13 (B) median household income;

14 (C) the poverty rate;

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

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

19 (F) the existing cost of water in the re-
 20 gion.

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

1 until the Secretary determines that the Indian tribe
2 project beneficiaries should pay—

3 (A) the costs allocated to the beneficiaries;

4 or

5 (B) an appropriate portion of the costs.

6 (g) COST-SHARING REQUIREMENT.—

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

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

16 (3) FINANCIAL HARDSHIP.—The Secretary may
17 increase the Federal share of the costs of a feasi-
18 bility study if the Secretary determines, based on a
19 demonstration of financial hardship, that the non-
20 Federal participant is unable to contribute at least
21 50 percent of the costs of the study.

22 (4) LARGER COMMUNITIES.—In conducting a
23 feasibility study of a rural water supply system that
24 includes a community with a population in excess of
25 50,000 inhabitants, the Secretary may require the

1 community to pay a greater percentage of the non-
2 Federal share than that required for communities
3 with less than 50,000 inhabitants.

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

10 **SEC. 107. MISCELLANEOUS.**

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

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

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

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

1 water programs to facilitate the most efficient and effec-
2 tive solution to meeting the water needs of the non-Fed-
3 eral project sponsors.

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

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

14 (g) EFFECT ON STATE WATER LAW.—

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

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

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

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

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

8 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
9 *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.

10 **TITLE I—RECLAMATION RURAL**
11 **WATER SUPPLY ACT OF 2005**

12 **SEC. 101. SHORT TITLE.**

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

1 **SEC. 102. DEFINITIONS.**

2 *In this title:*

3 (1) *CONSTRUCTION.*—*The term “construction”*
4 *means the installation of new infrastructure and the*
5 *upgrading of existing facilities in locations in which*
6 *the infrastructure or facilities are associated with the*
7 *new infrastructure of a rural water project rec-*
8 *ommended by the Secretary pursuant to this title.*

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

14 (3) *INDIAN.*—*The term “Indian” means an indi-*
15 *vidual who is a member of an Indian tribe.*

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

20 (5) *NON-FEDERAL PROJECT ENTITY.*—*The term*
21 *“non-Federal project entity” means a State, regional,*
22 *or local authority, Indian tribe or tribal organiza-*
23 *tion, or other qualifying entity, such as a water con-*
24 *servation district, water conservancy district, or rural*
25 *water district or association.*

1 (6) *OPERATIONS, MAINTENANCE, AND REPLACE-*
2 *MENT COSTS.—*

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

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

12 (i) *repairs of a routine nature that*
13 *maintain a rural water supply project in a*
14 *well kept condition;*

15 (ii) *replacement of worn-out project*
16 *elements; and*

17 (iii) *rehabilitation activities necessary*
18 *to bring a deteriorated project back to the*
19 *original condition of the project.*

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

23 (7) *PROGRAM.—The term “Program” means the*
24 *rural water supply program established under section*
25 *103.*

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

5 (9) *RURAL WATER SUPPLY PROJECT*.—

6 (A) *IN GENERAL*.—*The term “rural water*
 7 *supply project” means a project that is designed*
 8 *to serve a community or group of communities,*
 9 *each of which has a population of not more than*
 10 *50,000 inhabitants, which may include Indian*
 11 *tribes and tribal organizations, dispersed home-*
 12 *sites, or rural areas with domestic, industrial,*
 13 *municipal, and residential water.*

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

16 (i) *incidental noncommercial livestock*
 17 *watering and noncommercial irrigation of*
 18 *vegetation and small gardens of less than 1*
 19 *acre; and*

20 (ii) *a project to improve rural water*
 21 *infrastructure, including—*

22 (I) *pumps, pipes, wells, and other*
 23 *diversions;*

24 (II) *storage tanks and small im-*
 25 *poundments;*

1 (III) *water treatment facilities for*
 2 *potable water supplies, including de-*
 3 *salination facilities;*

4 (IV) *equipment and management*
 5 *tools for water conservation, ground-*
 6 *water recovery, and water recycling;*
 7 *and*

8 (V) *appurtenances.*

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

11 (i) *commercial irrigation; or*

12 (ii) *major impoundment structures.*

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

15 (11) *TRIBAL ORGANIZATION.—The term “tribal*
 16 *organization” means—*

17 (A) *the recognized governing body of an In-*
 18 *dian tribe; and*

19 (B) *any legally established organization of*
 20 *Indians that is controlled, sanctioned, or char-*
 21 *tered by the governing body or democratically*
 22 *elected by the adult members of the Indian com-*
 23 *munity to be served by the organization.*

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

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

6 (1) *investigate and identify opportunities to en-*
7 *sure safe and adequate rural water supply projects for*
8 *domestic, municipal, and industrial use in small*
9 *communities and rural areas of the Reclamation*
10 *States;*

11 (2) *plan the design and construction, through the*
12 *conduct of appraisal investigations and feasibility*
13 *studies, of rural water supply projects in Reclamation*
14 *States; and*

15 (3) *oversee, as appropriate, the construction of*
16 *rural water supply projects in Reclamation States*
17 *that are recommended by the Secretary in a feasi-*
18 *bility report developed pursuant to section 106 and*
19 *subsequently authorized by Congress.*

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

24 (c) *ELIGIBILITY CRITERIA.*—*Not later than 1 year*
25 *after the date of enactment of this Act, the Secretary shall,*

1 *consistent with this title, develop and publish in the Federal*
2 *Register criteria for—*

3 *(1) determining the eligibility of a rural commu-*
4 *nity for assistance under the Program; and*

5 *(2) prioritizing requests for assistance under the*
6 *Program.*

7 *(d) FACTORS.—The criteria developed under sub-*
8 *section (c) shall take into account such factors as whether—*

9 *(1) a rural water supply project—*

10 *(A) serves—*

11 *(i) rural areas and small communities;*

12 *or*

13 *(ii) Indian tribes; or*

14 *(B) promotes and applies a regional or wa-*
15 *tershed perspective to water resources manage-*
16 *ment;*

17 *(2) there is an urgent and compelling need for*
18 *a rural water supply project that would—*

19 *(A) improve the health or aesthetic quality*
20 *of water;*

21 *(B) result in continuous, measurable, and*
22 *significant water quality benefits; or*

23 *(C) address current or future water supply*
24 *needs;*

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

3 (4) a rural water supply project is cost effective.

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

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

9 (2) notwithstanding the limitation on population
10 under section 102(9)(A), a town or community with
11 a population in excess of 50,000 inhabitants in an
12 area served by a rural water supply project if, at the
13 discretion of the Secretary, the town or community is
14 considered to be a critical partner in the rural supply
15 project.

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

17 (a) *IN GENERAL*.—In consultation with the Secretary
18 of Agriculture, the Administrator of the Environmental
19 Protection Agency, the Director of the Indian Health Serv-
20 ice, the Secretary of Housing and Urban Development, and
21 the Secretary of the Army, the Secretary shall develop an
22 assessment of—

23 (1) the status of all rural water supply projects
24 under the jurisdiction of the Secretary authorized but
25 not completed prior to the date of enactment of this

1 *Act, including appropriation amounts, the phase of*
2 *development, total anticipated costs, and obstacles to*
3 *completion;*

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

10 *(3) the demand for new rural water supply*
11 *projects;*

12 *(4) rural water programs within other agencies*
13 *and a description of the extent to which those pro-*
14 *grams provide support for rural water supply projects*
15 *and water treatment programs in Reclamation*
16 *States, including an assessment of the requirements,*
17 *funding levels, and conditions of eligibility for the*
18 *programs assessed;*

19 *(5) the extent of the demand that the Secretary*
20 *can meet with the Program;*

21 *(6) how the Program will complement authori-*
22 *ties already within the jurisdiction of the Secretary*
23 *and the heads of the agencies with whom the Sec-*
24 *retary consults; and*

1 (7) *improvements that can be made to coordinate*
2 *and integrate the authorities of the agencies with pro-*
3 *grams evaluated under paragraph (4), including any*
4 *recommendations to consolidate some or all of the ac-*
5 *tivities of the agencies with respect to rural water*
6 *supply.*

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

11 (c) *REPORT.*—*Not later than 2 years after the date of*
12 *enactment of this Act, the Secretary shall submit to the*
13 *Committee on Energy and Natural Resources of the Senate*
14 *and the Committee on Resources of the House of Representa-*
15 *tives a detailed report on the assessment conducted under*
16 *subsection (a).*

17 **SEC. 105. APPRAISAL INVESTIGATIONS.**

18 (a) *IN GENERAL.*—*On request of a non-Federal project*
19 *entity with respect to a proposed rural water supply project*
20 *that meets the eligibility criteria published under section*
21 *103(c) and subject to the availability of appropriations, the*
22 *Secretary may—*

23 (1) *receive and review an appraisal investiga-*
24 *tion that is—*

1 (A) developed by the non-Federal project en-
2 tity, with or without support from the Secretary;
3 and

4 (B) submitted to the Secretary by the non-
5 Federal project entity;

6 (2) conduct an appraisal investigation; or

7 (3) provide a grant to, or enter into a coopera-
8 tive agreement with, the non-Federal project entity to
9 conduct an appraisal investigation, if the Secretary
10 determines that—

11 (A) the non-Federal project entity is quali-
12 fied to complete the appraisal investigation in
13 accordance with the criteria published under sec-
14 tion 103(c); and

15 (B) using the non-Federal project entity to
16 conduct the appraisal investigation is a cost-ef-
17 fective alternative for completing the appraisal
18 investigation.

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

23 (c) *APPRAISAL REPORT.*—In accordance with sub-
24 section (f), after an appraisal investigation is submitted to
25 the Secretary under subsection (a)(1) or completed under

1 *paragraph (2) or (3) of subsection (a), the Secretary shall*
2 *prepare an appraisal report that—*

3 *(1) considers—*

4 *(A) whether the project meets—*

5 *(i) the appraisal criteria developed*
6 *under subsection (d); and*

7 *(ii) the eligibility criteria developed*
8 *under section 103(c);*

9 *(B) whether viable water supplies and*
10 *water rights exist to supply the project, includ-*
11 *ing all practicable water sources such as lower*
12 *quality waters, nonpotable waters, and water*
13 *reuse-based water supplies;*

14 *(C) whether the project has a positive effect*
15 *on public health and safety;*

16 *(D) whether the project will meet water de-*
17 *mand, including projected future needs;*

18 *(E) the extent to which the project provides*
19 *environmental benefits, including source water*
20 *protection;*

21 *(F) whether the project applies a regional or*
22 *watershed perspective and promotes benefits in*
23 *the region in which the project is carried out;*

24 *(G) whether the project—*

1 (i)(I) implements an integrated re-
2 sources management approach; or

3 (II) enhances water management flexi-
4 bility, including providing for—

5 (aa) local control to manage
6 water supplies under varying water
7 supply conditions; and

8 (bb) participation in water bank-
9 ing and markets for domestic and envi-
10 ronmental purposes; and

11 (ii) promotes long-term protection of
12 water supplies;

13 (H) preliminary cost estimates for the
14 project; and

15 (I) whether the non-Federal project entity
16 has the capability to pay 100 percent of the costs
17 associated with the operations, maintenance, and
18 replacement of the facilities constructed or devel-
19 oped as part of the rural water supply project;
20 and

21 (2) provides recommendations on whether a fea-
22 sibility study should be initiated under section
23 106(a).

24 (d) APPRAISAL CRITERIA.—

1 (1) *IN GENERAL.*—Not later than 1 year after
2 the date of enactment of this Act, the Secretary shall
3 promulgate criteria (including appraisal factors list-
4 ed under subsection (c)) against which the appraisal
5 investigations shall be assessed for completeness and
6 appropriateness for a feasibility study.

7 (2) *INCLUSIONS.*—To minimize the cost of a
8 rural water supply project to a non-Federal project
9 entity, the Secretary shall include in the criteria
10 methods to scale the level of effort needed to complete
11 the appraisal investigation relative to the total size
12 and cost of the proposed rural water supply project.

13 (e) *REVIEW OF APPRAISAL INVESTIGATION.*—

14 (1) *IN GENERAL.*—Not later than 90 days after
15 the date of submission of an appraisal investigation
16 under paragraph (1) or (3) of subsection (a), the Sec-
17 retary shall provide to the non-Federal entity that
18 conducted the investigation a determination of wheth-
19 er the investigation has included the information nec-
20 essary to determine whether the proposed rural water
21 supply project satisfies the criteria promulgated
22 under subsection (d).

23 (2) *NO SATISFACTION OF CRITERIA.*—If the Sec-
24 retary determines that the appraisal investigation
25 submitted by a non-Federal entity does not satisfy the

1 *criteria promulgated under subsection (d), the Sec-*
2 *retary shall inform the non-Federal entity of the rea-*
3 *sons why the appraisal investigation is deficient.*

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

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

15 (1) *complete the appraisal report required under*
16 *subsection (c);*

17 (2) *make available to the public, on request, the*
18 *appraisal report prepared under this title; and*

19 (3) *promptly publish in the Federal Register a*
20 *notice of the availability of the results.*

21 (g) *COSTS.*—

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

1 (2) *NON-FEDERAL SHARE.*—

2 (A) *IN GENERAL.*—*Except as provided in*
3 *subparagraph (B), if the cost of conducting an*
4 *appraisal investigation is more than \$200,000,*
5 *the non-Federal share of the costs in excess of*
6 *\$200,000 shall be 50 percent.*

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

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

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

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

24 (2) *consult with the heads of appropriate Federal*
25 *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 a
13 feasibility study and subject to the availability of appro-
14 priations, the Secretary shall—

15 (1) in cooperation with a non-Federal project en-
16 tity, carry out a study to determine the feasibility of
17 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 en-
21 tity, with or without support from the Secretary;
22 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 Sec-*
 4 *retary, if the Secretary determines that—*

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

9 (B) *using the non-Federal project entity to*
 10 *conduct the feasibility study is a cost-effective al-*
 11 *ternative for completing the appraisal investiga-*
 12 *tion.*

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 feasi-*
 23 *bility study is not complete, notify the non-Fed-*
 24 *eral entity of the determination.*

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

5 (c) *FEASIBILITY FACTORS.*—*Feasibility studies au-*
6 *thorized or reviewed under this title shall include an assess-*
7 *ment 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 treatment*
18 *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 the*
6 *use of market-based mechanisms;*

7 (7)(A) *the construction costs and projected oper-*
8 *ations, maintenance, and replacement costs of all al-*
9 *ternatives; 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, and*
19 *replacement costs, including the allocation of costs to*
20 *each non-Federal project entity in the case of multiple*
21 *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 *nomi activities to be undertaken to carry out the*
16 *proposed rural water supply project;*

17 *(14) the extent to which the project involves part-*
18 *nerships with other State, local, or tribal governments*
19 *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 Secretary
3 shall promulgate criteria (including the feasibility
4 factors listed under subsection (c)) under which the
5 feasibility studies shall be assessed for completeness
6 and appropriateness.

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

13 (e) *FEASIBILITY REPORT.*—

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

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

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

23 (I) whether the rural water sup-
24 ply project should be authorized for
25 construction; and

1 (ii) the appropriate non-Federal
2 share of construction costs, which shall
3 be—

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

6 (bb) determined based on an
7 analysis of the capability-to-pay
8 information considered under sub-
9 sections (c)(9) and (f); and

10 (ii) if the Secretary recommends that
11 the project should be authorized for con-
12 struction—

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

17 (II) a schedule that identifies the
18 annual operations, maintenance, and
19 replacement costs that should be allo-
20 cated to each non-Federal entity par-
21 ticipating in the rural water supply
22 project; and

23 (III) an assessment of the finan-
24 cial capability of each non-Federal en-
25 tity participating in the rural water

1 *supply project to pay the allocated an-*
2 *nual operation, maintenance, and re-*
3 *placement costs for the rural water*
4 *supply project;*

5 *(B) submit the report to the Committee on*
6 *Energy and Natural Resources of the Senate and*
7 *the Committee on Resources of the House of Rep-*
8 *resentatives;*

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

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

13 *(f) CAPABILITY-TO-PAY.—*

14 *(1) IN GENERAL.—In evaluating a proposed*
15 *rural water supply project under this section, the Sec-*
16 *retary shall—*

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

22 *(B) recommend an appropriate Federal*
23 *share and non-Federal share of the capital con-*
24 *struction costs, as determined by the Secretary.*

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

6 (A) *per capita income;*

7 (B) *median household income;*

8 (C) *the poverty rate;*

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

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

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

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

21 (A) *the costs allocated to the beneficiaries;*

22 *or*

23 (B) *an appropriate portion of the costs.*

24 (g) *COST-SHARING REQUIREMENT.*—

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

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

10 (3) *FINANCIAL HARDSHIP.*—*The Secretary may*
11 *increase the Federal share of the costs of a feasibility*
12 *study if the Secretary determines, based on a dem-*
13 *onstration of financial hardship, that the non-Federal*
14 *participant is unable to contribute at least 50 percent*
15 *of the costs of the study.*

16 (4) *LARGER COMMUNITIES.*—*In conducting a*
17 *feasibility study of a rural water supply system that*
18 *includes a community with a population in excess of*
19 *50,000 inhabitants, the Secretary may require the*
20 *non-Federal project entity to pay more than 50 per-*
21 *cent of the costs of the study.*

22 (h) *CONSULTATION AND COOPERATION.*—*In addition*
23 *to the non-Federal project entity, the Secretary shall consult*
24 *and cooperate with appropriate Federal, State, tribal, re-*
25 *gional, and local authorities during the conduct of each fea-*

1 *sibility assessment and development of the feasibility report*
2 *conducted under this title.*

3 **SEC. 107. MISCELLANEOUS.**

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

8 (b) *TRANSFER OF PROJECTS.*—*Nothing in this title*
9 *authorizes the transfer of pre-existing facilities or pre-exist-*
10 *ing components of any water system from Federal to pri-*
11 *vate ownership or from private to Federal ownership.*

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

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

22 (e) *MULTIPLE INDIAN TRIBES.*—*In any case in which*
23 *a contract is entered into with, or a grant is made, to an*
24 *organization to perform services benefitting more than 1 In-*
25 *dian tribe under this title, the approval of each such Indian*

1 *tribe shall be a prerequisite to entering into the contract*
2 *or making the grant.*

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

6 (g) *EXPEDITED PROCEDURES.*—*If the Secretary deter-*
7 *mines that a community to be served by a proposed rural*
8 *water supply project has urgent and compelling water*
9 *needs, the Secretary shall, to the maximum extent prac-*
10 *ticable, expedite appraisal investigations and reports con-*
11 *ducted under section 105 and feasibility studies and reports*
12 *conducted under section 106.*

13 (h) *EFFECT ON STATE WATER LAW.*—

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

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

20 (i) *NO ADDITIONAL REQUIREMENTS.*—*Nothing in this*
21 *title requires a feasibility study for, or imposes any other*
22 *additional requirements with respect to, rural water supply*
23 *projects or programs that are authorized before the date of*
24 *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 until*
 5 *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 section*
 9 *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” has*
 21 *the meaning given the term in section 4 of the Indian*
 22 *Self-Determination and Education Assistance Act (25*
 23 *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” has the meaning given the term “loan guar-*
7 *antee” in section 502 of the Federal Credit Reform*
8 *Act of 1990 (2 U.S.C. 661a).*

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

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

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

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

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

23 (A) *a rural water supply project (as defined*
24 *in section 102(9)); or*

1 (B) an extraordinary operation and main-
2 tenance activity for, or the rehabilitation of, a
3 facility—

4 (i) that is authorized by Federal rec-
5 lamation law and constructed by the United
6 States under such law; or

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

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

13 **SEC. 203. PROJECT ELIGIBILITY.**

14 (a) *ELIGIBILITY CRITERIA*.—

15 (1) *IN GENERAL*.—The Secretary shall develop
16 and publish in the Federal Register criteria for deter-
17 mining the eligibility of a project for financial assist-
18 ance under section 204.

19 (2) *INCLUSIONS*.—Eligibility criteria shall in-
20 clude—

21 (A) submission of an application by the
22 lender to the Secretary;

23 (B) demonstration of the creditworthiness of
24 the project, including a determination by the
25 Secretary that any financing for the project has

1 *appropriate security features to ensure repay-*
2 *ment;*

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

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

13 *(E) such other criteria as the Secretary de-*
14 *termines to be appropriate.*

15 **(b) WAIVER.**—*The Secretary may waive any of the cri-*
16 *teria in subsection (a)(2) that the Secretary determines to*
17 *be duplicative or rendered unnecessary because of an action*
18 *already taken by the United States.*

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

1 (d) *CRITERIA FOR RURAL WATER SUPPLY*
2 *PROJECTS.*—*A rural water supply project that is deter-*
3 *mined to be feasible under section 106 is eligible for a loan*
4 *guarantee under section 204.*

5 **SEC. 204. LOAN GUARANTEES.**

6 (a) *AUTHORITY.*—*Subject to the availability of appro-*
7 *priations, the Secretary may make available to lenders for*
8 *a project meeting the eligibility criteria established in sec-*
9 *tion 203 loan guarantees to supplement private-sector or*
10 *lender financing for the project.*

11 (b) *TERMS AND LIMITATIONS.*—

12 (1) *IN GENERAL.*—*Loan guarantees under this*
13 *section for a project shall be on such terms and condi-*
14 *tions and contain such covenants, representations,*
15 *warranties, and requirements as the Secretary deter-*
16 *mines to be appropriate to protect the financial inter-*
17 *ests of the United States.*

18 (2) *AMOUNT.*—*Loan guarantees by the Secretary*
19 *shall not exceed an amount equal to 90 percent of the*
20 *cost of the project that is the subject of the loan guar-*
21 *antee, as estimated at the time at which the loan*
22 *guarantee is issued.*

23 (3) *INTEREST RATE.*—*An obligation shall bear*
24 *interest at a rate that does not exceed a level that the*
25 *Secretary determines to be appropriate, taking into*

1 *account the prevailing rate of interest in the private*
2 *sector for similar loans and risks.*

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

6 (5) *NONSUBORDINATION.*—*An obligation shall be*
7 *subject to the condition that the obligation is not sub-*
8 *ordinate to other financing.*

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

13 **SEC. 205. DEFAULTS.**

14 (a) *PAYMENTS BY SECRETARY.*—

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

19 (2) *PAYMENT REQUIRED.*—*By such date as may*
20 *be specified in the loan guarantee or related agree-*
21 *ments, the Secretary shall pay to the holder of the*
22 *loan guarantee the unpaid interest on, and unpaid*
23 *principal of, the obligation with respect to which the*
24 *borrower has defaulted, unless the Secretary finds that*
25 *there was not default by the borrower in the payment*

1 of interest or principal or that the default has been
2 remedied.

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

8 (b) *SUBROGATION.*—

9 (1) *IN GENERAL.*—If the Secretary makes a pay-
10 ment under subsection (a), the Secretary shall be sub-
11 rogated to the rights of the recipient of the payment
12 as specified in the loan guarantee or related agree-
13 ments, including, as appropriate, the authority
14 (notwithstanding any other provision of law) to—

15 (A) complete, maintain, operate, lease, or
16 otherwise dispose of any property acquired pur-
17 suant to the loan guarantee or related agree-
18 ments; or

19 (B) permit the non-Federal borrower, pur-
20 suant to an agreement with the Secretary, to
21 continue to pursue the purposes of the project if
22 the Secretary determines the purposes to be in
23 the public interest.

24 (2) *SUPERIORITY OF RIGHTS.*—The rights of the
25 Secretary, with respect to any property acquired pur-

1 *suant to a loan guarantee or related agreement, shall*
2 *be superior to the rights of any other person with re-*
3 *spect to the property.*

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

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

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

17 *(C) the probable net benefit to the Federal Gov-*
18 *ernment in paying the principal and interest will be*
19 *greater than that which would result in the event of*
20 *a default;*

21 *(2) the amount of the payment that the Sec-*
22 *retary is authorized to pay shall be no greater than*
23 *the amount of principal and interest that the non-*
24 *Federal borrower is obligated to pay under the agree-*
25 *ment being guaranteed; and*

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

4 (d) *ACTION BY ATTORNEY GENERAL.—*

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

8 (2) *RECOVERY.—On notification, the Attorney*
 9 *General shall take such action as is appropriate to re-*
 10 *cover the unpaid principal and interest due from—*

11 (A) *such assets of the defaulting non-Fed-*
 12 *eral borrower as are associated with the obliga-*
 13 *tion; or*

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

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

18 (a) *IN GENERAL.—The non-Federal share of oper-*
 19 *ations, maintenance, and replacement costs for a project re-*
 20 *ceiving Federal assistance under this title shall be 100 per-*
 21 *cent.*

22 (b) *PLAN.—On request of the non-Federal borrower,*
 23 *the Secretary may assist in the development of an oper-*
 24 *ation, maintenance, and replacement plan to provide the*

1 *necessary framework to assist the non-Federal borrower in*
2 *establishing rates and fees for project beneficiaries.*

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

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

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

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

13 (2) *works supplemental to existing reclamation*
14 *projects; or*

15 (3) *works constructed to rehabilitate existing rec-*
16 *lamation projects.*

17 **SEC. 208. WATER RIGHTS.**

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

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

1 **SEC. 209. INTERAGENCY COORDINATION AND COOPERA-**
2 **TION.**

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

8 (b) *MEMORANDUM OF AGREEMENT.*—*The Secretary*
9 *and the Secretary of Agriculture may enter into a memo-*
10 *randum of agreement providing for Department of Agri-*
11 *culture financial appraisal functions and loan guarantee*
12 *administration for activities carried out under this title.*

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

14 (a) *IN GENERAL.*—*A recipient of a loan guarantee*
15 *shall keep such records and other pertinent documents as*
16 *the Secretary shall prescribe by regulation, including such*
17 *records as the Secretary may require to facilitate an effec-*
18 *tive audit.*

19 (b) *ACCESS.*—*The Secretary and the Comptroller Gen-*
20 *eral of the United States, or their duly authorized represent-*
21 *atives, shall have access, for the purpose of audit, to the*
22 *records and other pertinent documents.*

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

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

1 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

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

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109TH CONGRESS
1ST Session

S. 895

[Report No. 109-148]

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.

OCTOBER 19, 2005

Reported with an amendment