

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 895

To direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States to provide a clean, safe, affordable, and reliable water supply to rural residents.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. DOMENICI (for himself and Mr.
BINGAMAN)

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

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

4 (a) SHORT TITLE.—This Act may be cited as the

5 “Rural Water Supply Act of 2005”.

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

7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—RECLAMATION RURAL WATER SUPPLY ACT OF 2005

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

TITLE II—TWENTY-FIRST CENTURY WATER WORKS ACT

- Sec. 201. Short title.
- Sec. 202. Definitions.
- Sec. 203. Project eligibility.
- Sec. 204. Loan guarantees.
- Sec. 205. Operations, maintenance, and replacement costs.
- Sec. 206. Title to newly constructed facilities.
- Sec. 207. Water rights.
- Sec. 208. Interagency coordination and cooperation.
- Sec. 209. Authorization of appropriations.

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

3 **SEC. 101. SHORT TITLE.**

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

6 **SEC. 102. DEFINITIONS.**

7 In this title:

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

14 (2) **FEDERAL RECLAMATION LAW.**—The term
15 “Federal reclamation law” means the Act of June
16 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 (3) INDIAN.—The term “Indian” means an in-
4 dividual who is a member of an Indian tribe.

5 (4) 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 (5) 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 (6) 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 (7) PROGRAM.—The term “Program” means
16 the rural water supply program established under
17 section 103.

18 (8) RECLAMATION STATES.—The term “Rec-
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 (9) 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 community or group of com-

1 munities, each of which has a population of not
2 more than 50,000 inhabitants, which may in-
3 clude Indian tribes and tribal organizations,
4 dispersed homesites, or rural areas with domes-
5 tic, industrial, municipal, and residential water.

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 1 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, including
20 desalination facilities;

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

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

7 (11) 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 domestic, municipal, and industrial use in small
24 communities and rural areas of the Reclamation
25 States;

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 Rec-
4 lamation States; and

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

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

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

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

20 (2) prioritizing requests for assistance under
21 the Program.

22 (d) FACTORS.—The criteria developed under sub-
23 section (c) shall take into account such factors as wheth-
24 er—

25 (1) a rural water supply project—

1 (A) serves—

2 (i) rural areas and small communities;

3 or

4 (ii) Indian tribes; or

5 (B) promotes and applies a regional or wa-
6 tershed perspective to water resources manage-
7 ment;

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

10 (A) improve the health or aesthetic quality
11 of water;

12 (B) result in continuous, measurable, and
13 significant water quality benefits; or

14 (C) address current or future water supply
15 needs;

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

18 (4) a rural water supply project is cost effec-
19 tive.

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

21 (1) to the extent that connection provides a reli-
22 able water supply, a connection to preexisting infra-
23 structure (including impoundments and conveyance
24 channels) as part of a rural water supply project;
25 and

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

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

9 (a) IN GENERAL.—In consultation with the Secretary
10 of Agriculture, the Administrator of the Environmental
11 Protection Agency, the Director of the Indian Health
12 Service, the Secretary of Housing and Urban Develop-
13 ment, and the Secretary of the Army, the Secretary shall
14 develop an assessment of—

15 (1) the status of all rural water supply projects
16 under the jurisdiction of the Secretary authorized
17 but not completed prior to the date of enactment of
18 this Act, including appropriation amounts, the phase
19 of development, total anticipated costs, and obstacles
20 to completion;

21 (2) the current plan (including projected finan-
22 cial and workforce requirements) for the completion
23 of the projects identified in paragraph (1) within the
24 time frames established under the provisions of law

1 authorizing the projects or the final engineering re-
2 ports for the projects;

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

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

12 (5) the extent of the demand that the Secretary
13 can meet with the Program;

14 (6) how the Program will complement authori-
15 ties already within the jurisdiction of the Secretary
16 and the heads of the agencies with whom the Sec-
17 retary consults; and

18 (7) improvements that can be made to coordi-
19 nate and integrate the authorities of the agencies
20 with programs evaluated under paragraph (4), in-
21 cluding any recommendations to consolidate some or
22 all of the activities of the agencies with respect to
23 rural water supply.

24 (b) CONSULTATION WITH STATES.—Before final-
25 izing the assessment developed under subsection (a), the

1 Secretary shall solicit comments from States with identi-
2 fied rural water needs.

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

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

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

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

17 (A) developed by the non-Federal project
18 entity, with or without support from the Sec-
19 retary; and

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

22 (2) conduct an appraisal investigation; or

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

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

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

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

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

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

20 (1) considers—

21 (A) whether the project meets—

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

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

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

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

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

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

13 (F) whether the project applies a regional
14 or watershed perspective and promotes benefits
15 in the region in which the project is carried out;

16 (G) whether the project—

17 (i)(I) implements an integrated re-
18 sources management approach; or

19 (II) enhances water management
20 flexibility, including providing for—

21 (aa) local control to manage
22 water supplies under varying water
23 supply conditions; and

1 (bb) participation in water bank-
2 ing and markets for domestic and en-
3 vironmental purposes; and

4 (ii) promotes long-term protection of
5 water supplies;

6 (H) preliminary cost estimates for the
7 project; and

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

14 (2) provides recommendations on whether a fea-
15 sibility study should be initiated under section
16 106(a).

17 (d) APPRAISAL CRITERIA.—

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

24 (2) INCLUSIONS.—To minimize the cost of a
25 rural water supply project to a non-Federal project

1 entity, the Secretary shall include in the criteria
2 methods to scale the level of effort needed to com-
3 plete the appraisal investigation relative to the total
4 size and cost of the proposed rural water supply
5 project.

6 (e) REVIEW OF APPRAISAL INVESTIGATION.—

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

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

22 (3) RESPONSIBILITY OF SECRETARY.—If an ap-
23 praisal investigation as first submitted by a non-
24 Federal entity does not provide all necessary infor-
25 mation, as defined by the Secretary, the Secretary

1 shall have no obligation to conduct further analysis
2 until the non-Federal project entity submitting the
3 appraisal study conducts additional investigation and
4 resubmits the appraisal investigation under this sub-
5 section.

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

9 (1) complete the appraisal report required
10 under subsection (e);

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

13 (3) promptly publish in the Federal Register a
14 notice of the availability of the results.

15 (g) COSTS.—

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

20 (2) NON-FEDERAL SHARE.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph (B), if the cost of conducting an
23 appraisal investigation is more than \$200,000,
24 the non-Federal share of the costs in excess of
25 \$200,000 shall be 50 percent.

1 (B) EXCEPTION.—The Secretary may re-
2 duce the non-Federal share required under sub-
3 paragraph (A) if the Secretary determines that
4 there is an overwhelming Federal interest in the
5 appraisal investigation.

6 (C) FORM.—The non-Federal share under
7 subparagraph (A) may be in the form of any in-
8 kind services that the Secretary determines
9 would contribute substantially toward the con-
10 duct and completion of the appraisal investiga-
11 tion.

12 (h) CONSULTATION; IDENTIFICATION OF FUNDING
13 SOURCES.—In conducting an appraisal investigation
14 under subsection (a)(2), the Secretary shall—

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

18 (2) consult with the heads of appropriate Fed-
19 eral agencies to—

20 (A) ensure that the proposed rural water
21 supply project does not duplicate a project car-
22 ried out under the authority of the agency head;
23 and

1 (B) if a duplicate project is being carried
2 out, identify the authority under which the du-
3 plicate project is being carried out; and

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

6 **SEC. 106. FEASIBILITY STUDIES.**

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

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

14 (2) receive and review a feasibility study that
15 is—

16 (A) developed by the non-Federal project
17 entity, with or without support from the Sec-
18 retary; and

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

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

1 (A) the non-Federal entity is qualified to
2 complete the feasibility study in accordance
3 with the criteria promulgated under subsection
4 (d); and

5 (B) using the non-Federal project entity to
6 conduct the feasibility study is a cost-effective
7 alternative for completing the appraisal inves-
8 tigation.

9 (b) REVIEW OF NON-FEDERAL FEASIBILITY STUD-
10 IES.—

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

14 (A) in accordance with the feasibility fac-
15 tors described in subsection (c) and the criteria
16 promulgated under subsection (d), assess the
17 completeness of the feasibility study; and

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

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

1 (c) FEASIBILITY FACTORS.—Feasibility studies au-
2 thORIZED or reviewed under this title shall include an as-
3 sessment of—

4 (1) near- and long-term water demand in the
5 area to be served by the rural water supply project;

6 (2) advancement of public health and safety of
7 any existing rural water supply project and other
8 benefits of the proposed rural water supply project;

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

15 (4) environmental quality and source water pro-
16 tection issues related to the rural water supply
17 project;

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

21 (A) nonstructural approaches to reduce the
22 need for the project; and

23 (B) demonstration technologies;

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

4 (7)(A) the construction costs and projected op-
5 erations, maintenance, and replacement costs of all
6 alternatives; and

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

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

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

19 (10) whether the non-Federal project entity has
20 developed an operations, management, and replace-
21 ment plan to assist the non-Federal project entity in
22 establishing rates and fees for beneficiaries of the
23 rural water supply project that includes a schedule
24 identifying the annual operations, maintenance, and

1 replacement costs that should be allocated to each
2 non-Federal entity participating in the project;

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

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

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

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

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

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

22 (d) FEASIBILITY STUDY CRITERIA.—

23 (1) IN GENERAL.—Not later than 18 months
24 after the date of enactment of this Act, the Sec-
25 retary shall promulgate criteria (including the feasi-

1 bility factors listed under subsection (c)) under
2 which the feasibility studies shall be assessed for
3 completeness and appropriateness.

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

11 (e) FEASIBILITY REPORT.—

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

17 (A) develop a feasibility report that in-
18 cludes—

19 (i) a recommendation of the Secretary
20 on—

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

1 (II) the appropriate non-Federal
2 share of construction costs, which
3 shall 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
9 subsections (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
7 and the Committee on Resources of the House
8 of Representatives;

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

11 (D) publish in the Federal Register a no-
12 tice 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
16 Secretary 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
21 rural 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
12 the non-Federal project entity; and

13 (F) the existing cost of water in the re-
14 gion.

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

22 (A) the costs allocated to the beneficiaries;

23 or

24 (B) an appropriate portion of the costs.

25 (g) COST-SHARING REQUIREMENT.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided in this subsection, the Federal share of the
3 cost of a feasibility study carried out under this sec-
4 tion shall 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 feasi-
12 bility study if the Secretary determines, based on a
13 demonstration of financial hardship, that the non-
14 Federal participant is unable to contribute at least
15 50 percent 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 con-
24 sult and cooperate with appropriate Federal, State, tribal,
25 regional, and local authorities during the conduct of each

1 feasibility assessment and development of the feasibility
2 report 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,
7 as 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-ex-
10 isting components of any water system from Federal to
11 private ownership or from private to Federal ownership.

12 (c) **FEDERAL RECLAMATION LAW.**—Nothing in this
13 title supersedes or amends any Federal law associated
14 with a project, or portion of a project, constructed under
15 Federal 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 effec-
20 tive solution to meeting the water needs of the non-Fed-
21 eral project sponsors.

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

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

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

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

14 (h) 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 (i) 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” 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
10 “non-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 ca-
17 pacity to contract with the United States under
18 Federal reclamation law.

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

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

23 (A) a rural water supply project (as de-
24 fined 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
6 United 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 de-
17 termining the eligibility of a project for financial as-
18 sistance 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
24 of 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
5 the ability of the non-Federal borrower to repay
6 the project financing from user fees or other
7 dedicated revenue sources;

8 (D) demonstration by the non-Federal bor-
9 rower, to the satisfaction of the Secretary, of
10 the ability of the non-Federal borrower to pay
11 all operations, maintenance, and replacement
12 costs 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
16 criteria in subsection (a)(2) that the Secretary determines
17 to be duplicative or rendered unnecessary because of an
18 action 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
4 loan guarantee under section 204.

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

6 (a) AUTHORITY.—Subject to the availability of ap-
7 propriations, the Secretary may make available to lenders
8 for a project meeting the eligibility criteria established in
9 section 203 loan guarantees to supplement private-sector
10 or 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 con-
14 ditions and contain such covenants, representations,
15 warranties, and requirements as the Secretary deter-
16 mines to be appropriate to protect the financial in-
17 terests of the United States.

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

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

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

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

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

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

14 **SEC. 205. DEFAULTS.**

15 (a) PAYMENTS BY SECRETARY.—

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

20 (2) PAYMENT REQUIRED.—By such date as
21 may be specified in the loan guarantee or related
22 agreements, the Secretary shall pay to the holder of
23 the loan guarantee the unpaid interest on, and un-
24 paid principal of, the obligation with respect to
25 which the borrower has defaulted, unless the Sec-

1 retary finds that there was not default by the bor-
2 rower in the payment of interest or principal or that
3 the default has been remedied.

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

9 (b) SUBROGATION.—

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

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

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

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

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

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

16 (B) it is in the public interest to permit the
17 non-Federal borrower to continue to pursue the pur-
18 poses of the project; and

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

23 (2) the amount of the payment that the Sec-
24 retary is authorized to pay shall be no greater than
25 the amount of principal and interest that the non-

1 Federal borrower is obligated to pay under the
2 agreement being guaranteed; and

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

6 (d) ACTION BY ATTORNEY GENERAL.—

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

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

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

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

18 **SEC. 206. OPERATIONS, MAINTENANCE, AND REPLACE-**
19 **MENT COSTS.**

20 (a) IN GENERAL.—The non-Federal share of oper-
21 ations, maintenance, and replacement costs for a project
22 receiving Federal assistance under this title shall be 100
23 percent.

24 (b) PLAN.—On request of the non-Federal borrower,
25 the Secretary may assist in the development of an oper-

1 ation, maintenance, and replacement plan to provide the
2 necessary framework to assist the non-Federal borrower
3 in establishing rates and fees for project beneficiaries.

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

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

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

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

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

16 (3) works constructed to rehabilitate existing
17 reclamation projects.

18 **SEC. 208. WATER RIGHTS.**

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

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

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

3 (a) CONSULTATION.—The Secretary shall consult
4 with the Secretary of Agriculture before promulgating cri-
5 teria 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
20 General of the United States, or their duly authorized rep-
21 resentatives, shall have access, for the purpose of audit,
22 to the records and other pertinent documents.

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

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

1 **SEC. 212. 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.