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Before the House Resources Committee
Subcommittee on Water and Power

S. 895

Rural Water Supply Act

July 27, 2006

Mr. Chairman, I am Bill Rinne, Acting Commissioner of the Bureau of Reclamation.

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

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

Historical Background

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

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

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

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

"Program" Performance

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

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

not in the best Federal interest.”

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

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

Authority to Develop Eligibility Criteria

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

Establishing a rural water program as proposed in S. 895 will allow for more realistic planning so that rural water projects are not proposed in a vacuum. Instead of following an ad hoc project planning process, projects will be guided through a Reclamation-wide program that follows a consistent set of eligibility criteria. This approach will foster some competition, allow for the development of priorities, and create more realistic expectations about how authorized projects will be developed.

Non-Federal Cost Share Based upon “Capability to Pay”

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

In contrast, capital investment costs associated with traditional Reclamation projects or portions of projects authorized for municipal and industrial (M&I) use must be fully repaid with interest. Further, traditional Reclamation irrigation projects require that repayment of costs be based upon a project sponsor's ability to pay, as determined through the study of both the project sponsor's financial information and the project's economic (cost/benefit) feasibility.

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

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

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

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

Operation and Maintenance Costs

In general, the Administration supports the provisions in S. 895 that require the non-Federal entities (particularly for the

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

Coordination with Other Federal Rural Water Programs

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

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

Concerns and Suggestions

Changes made to the bill during the mark-up in the Senate addressed many of our concerns. Most notably, we are pleased to see language in section 103(a)(3) authorizing Reclamation to exercise oversight over the construction of rural water supply projects. This authority ensures that Reclamation will be able to play a role that is not limited to the completion of appraisal and feasibility studies, but extends to how projects, once authorized, will be planned, designed, constructed and then overseen and managed. This approach will allow for the development of priorities, and could create more realistic expectations about how authorized projects will be developed. It will also facilitate the legislative process for future rural water activities and projects, since the programmatic framework would already be in place rather than having to be spelled out with each subsequent project authorization.

Some of the concerns we noted in our testimony in the Senate are reiterated below for the consideration of the Committee.

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

For feasibility studies, Section 106(g) (3) allows the Secretary to increase the Federal share based upon a demonstration of financial hardship by the non-Federal entities. These relatively small local contributions are an important measure of the communities' commitment in pursuing a first indication of the level of priority that such a project holds for these rural communities. If an exemption is deemed to be necessary, we recommend that such exemptions be limited to Indian tribes or tribal organizations.

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

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

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

The Administration recommends some middle ground between these two approaches. We recommend some accommodation for Tribes that cannot cover 100% of their initial O&M costs in the near term. However, this should be structured to account for the positive economic impacts that the rural water delivery projects will have in these communities. It should also encourage greater tribal self-sufficiency, conservation, and the development of the technical and financial expertise needed to efficiently manage these water systems themselves. In contrast to the current practice of subsidizing all the OM&R costs associated with Indian rural water facilities, we recommend that the Secretary be authorized to seek appropriations to assist Tribes to pay for the difference between the actual OM&R costs and the projected revenues from water sales to project beneficiaries. As project benefits spur economic development, Tribes will have a greater capability to pay for their OM&R costs and the need for this assistance will decline. Such a provision is found in S. 2218, the Administration-

sponsored rural water bill from the 108 th Congress.

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

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

Loan guarantees

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

Conclusion

In addition to the above comments, we have identified a few technical issues that may require clarification.

In conclusion, Mr. Chairman, the Administration views S. 895 as having the potential to be a very positive legislative development for the Department of the Interior and we look forward to working with you toward the goal of establishing a rural water program within the Department of the Interior that can benefit both rural communities and taxpayers-at-large .

I am pleased to answer any questions.