
THE RURAL WATER SUPPLY ACT OF 2005

HEARING
BEFORE THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED NINTH CONGRESS
FIRST SESSION
ON
S. 895
THE RURAL WATER SUPPLY ACT OF 2005

MAY 11, 2005



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CONTENTS

STATEMENTS

	Page
Bingaman, Hon. Jeff, U.S. Senator from New Mexico	3
Craig, Hon. Larry E., U.S. Senator from Idaho	6
Domenici, Hon. Pete V., U.S. Senator from New Mexico	1
Dunlap, Jim, on behalf of the National Rural Water Association, Upper La Plata Water Users Association, and the National Rural Water Association ..	19
Frazier, Harold, Chairman, Cheyenne River Sioux Tribe	35
Johnson, Hon. Tim, U.S. Senator from South Dakota	4
Keys, John W., III, Commissioner, Bureau of Reclamation	6
Lansford, David, Mayor of Clovis, NM, Chairman, Eastern New Mexico Rural Water Authority	25
Murkowski, Hon. Lisa, U.S. Senator from Alaska	5
Smith, Duane A., Executive Director, Oklahoma Water Resources Board, Vice-Chair, Western States Water Council	29
Smith, Hon. Gordon, U.S. Senator from Oregon	2
Thomas, Hon. Craig, U.S. Senator from Wyoming	2

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U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Pete V. Domenici, chairman, presiding.

OPENING STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. We are going to try to expedite this hearing this morning. Senator Bingaman, and other Senators are here. Thanks for attending.

Today we are going to have a hearing on S. 895, the Rural Water Supply Act. Last year there were three water bills pending before this committee. I am very grateful that Senator Bingaman, Commissioner Keys and others on this committee agreed to work together with me and my staff to resolve some differences in the three bills, and so I understand that what we have before us is the culmination of that work.

I understand the administration may have additional comments on the legislation, and I look forward to that.

The current data indicates that millions of Americans still live without safe drinking water, and I know that does not sound right, but we understand it is true. This problem is especially prevalent in rural America, which in many cases is unable to afford the capital outlays required for new water infrastructure or upgrades which have deteriorated over time.

The USDA has estimated that over one million people have no water piped into their homes and more than 2.4 million have critical drinking water needs. That is not astronomical, but in our country, it would seem that we ought to find some way to help with that.

The New Mexico Finance Authority has provided us with a list of over a hundred rural communities in New Mexico that do not have sufficient water supply and water treatment facilities. This is a level of privation that would appear to me to be unacceptable in a country with our kind of wealth.

While Congress has authorized various programs to address the problem over the last 30 years, there is a significant funding gap between rural water infrastructure needs and available Federal funds. According to 1999 EPA survey, capital improvement needs for public water systems, the total funding needs for small systems

serving populations of 50,000 or less, could be as much as \$74 billion over 25 years. It would seem to me that that is a burden that is not going to be able to be met at the local level, although we understand rural America is undergoing some very big changes, and, of course, we do not know what those are exactly.

The bill we are going to consider today would help rural communities provide for their water and infrastructure needs. It establishes a Federal loan guarantee program, loans at the Bureau of Reclamation that they would allow the rural communities to access for required construction.

That one is a difficult one to get our arms around, but we surely have to look at it. It also expedites the appraisal and feasibility studies which allow these communities to assess how to best address their water supply.

Now we have only you, Commissioner, and Jim Dunlap, board member of National Rural Water in New Mexico; Mayor David Lansford, chairman of Eastern New Mexico; Duane Smith, vice-chairman of Western States Water; and Harold Frazier, chairman of the Cheyenne River Sioux Tribe.

[The prepared statements of Senators Smith and Thomas follow:]

PREPARED STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Chairman Domenici, I appreciate your ongoing leadership in addressing the growing water supply needs of the western United States. The bill we have before us today, S. 895, would establish a rural water supply program within the Bureau of Reclamation.

I support your efforts to bring structure and to establish criteria for the Bureau of Reclamation's involvement in rural and tribal domestic water supply systems. In recent years, the Congress has authorized Reclamation's involvement in these programs on a case-by-case basis.

The needs of rural communities and tribes are certainly great, and I believe there is a federal role for assisting these communities in meeting the increasingly stringent requirements of federal statutes such as the Clean Water Act and the Safe Drinking Water Act.

Many smaller communities have aging or inadequate water supply and wastewater treatment facilities. The needed upgrades and new infrastructure are often beyond the economic capabilities of these communities. I know that in Oregon alone, our small and mid-sized cities are facing hundreds of millions, if not billions, of dollars in water infrastructure needs.

I am concerned, however, that this bill, as currently drafted, will result in long lead times and significant up-front costs for the non-federal entities that choose to participate. There is a requirement to do both an appraisal investigation, for which two years is provided, and a subsequent feasibility study, for which there is no timeline established. Both of these processes must address numerous criteria established by the bill. This is all before construction must be congressionally authorized.

I am also concerned about the Bureau of Reclamation's direct and indirect overhead costs, which are significantly higher than the overhead costs of private engineering firms. I believe these costs must be capped or administratively lowered so that rural communities don't have to pay these higher costs.

We must also examine other federal programs, particularly the USDA's Rural Utilities Service, to determine whether changes to the eligibility criteria would be of more benefit to rural communities.

Mr. Chairman, I want to work with you as this bill moves forward to ensure that rural communities can have access to cost-effective, streamlined federal programs to meet their water supply needs. I look forward to hearing from the witnesses here today.

PREPARED STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Access to safe and clean drinking water is important to every city and town across America. A town's water supply often limits its economic growth and viability as

much as any other factor. Many small towns face the constant challenge of providing water that is not only safe and clean, but affordable.

Because of limited financial resources, small and rural communities struggle to provide safe and affordable public drinking water and wastewater service. Construction of the necessary infrastructure is expensive, even for relatively small water systems. In addition, the technical expertise and resources needed to design and operate the systems are often in short supply in small communities.

Complying with Environmental Protection Agency (EPA) water regulations and other federal restrictions provide additional burdens for many small communities. While laws and regulations mandate that a community's water system must meet certain standards, the funding to help meet federally mandated standards is often missing or limited. Several federal programs spread over a number of agencies provide funding and technical expertise to small and rural communities, but funding has historically been inadequate and needs often go unmet. While I am a strong believer in limited government spending, if federal regulations mandate changes to local communities' water systems, the federal government should help fund the changes.

Many cities and towns in Wyoming cannot address their water and sewer system needs without federal assistance. Every year I hear from small Wyoming communities having to build or upgrade their water system infrastructure in order to replace old or inadequate systems to comply with EPA water regulations. Even small water systems can cost hundreds of thousands of dollars to design and build. Assisting our rural communities in this effort remains an important challenge, and one we cannot ignore.

The legislation being considered today would create a rural water program within the U.S. Bureau of Reclamation. The Bureau of Reclamation is, in many ways, well suited for this role. I look forward to hearing the testimony today and discussing this legislation further.

The CHAIRMAN. Senator Bingaman, would you like to make some opening remarks?

**STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR
FROM NEW MEXICO**

Senator BINGAMAN. Mr. Chairman, thanks for having the hearing. I do think it is a very important issue. You correctly pointed out that in the last Congress we each had bills, and I congratulate you on bringing us together on a single piece of legislation this year. I thank John Keys, our commissioner, for his willingness to work with your staff and with my staff to resolve many of the issues that were inherent in the bill, and I think we made real good progress.

As you point out, the needs in rural America are enormous. In our State, the estimate I have seen is 35 percent of our State lives in a rural community, a rural part of the State. We have a lot of needs, and unfortunately, I think the approach has been too ad hoc up until now.

Of course the administration has not been willing to support the level of funding that we have been authorizing in this committee repeatedly, and the budget proposal we have this year proposes cuts in Reclamation's budget again. So I think this legislation will do a lot to try to stabilize that situation, signal the priority that we attach—the Congress and the President attach to this issue of providing adequate potable water to all the rural communities in our country.

And I join with you in welcoming, particularly, Jim Dunlap from New Mexico and Mayor Lansford from Clovis for being here as witnesses as well. Thank you.

The CHAIRMAN. Thank you, Senator. Any other Senators who desire to comment?

Sure, Senator Johnson, proceed.

**STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR
FROM SOUTH DAKOTA**

Senator JOHNSON. Well, thank you, Mr. Chairman, for conducting this particular hearing. This hearing involves S. 895, the Rural Water Supply Act of 2005. And I want to acknowledge that with us here today testifying in the second panel is Mr. Harold Frazier, who is the chairman of the Cheyenne River Sioux Tribe in the State of South Dakota. I extend my appreciation to the chairman for traveling here to Washington, DC, to testify before the committee.

Mr. Chairman, as you fully appreciate, the 14,000 residents that reside in the Cheyenne River Sioux Indian Reservation, as well as in the neighboring communities, face what is a dire and urgent need to improve the water delivery infrastructure at Eagle Butte, South Dakota.

Drought conditions have lowered the level of the Missouri River, leaving the water intake for the existing antiquated water system for the Cheyenne River Sioux Tribe almost out of the water. The Corps of Engineers has agreed that they will give us a temporary new water intake further out into the river. That will take at least 6 months to complete, and in the meantime, the overall water structure is woefully inadequate to provide sufficient water for the growing population of that area for a new medical clinic and for new housing that is intended to be built in that area.

So this is an example of the kind of water crises that we have in too many places around the United States, where there is no program in place, frankly, that would allow for the significant upgrade that is needed, given the lack of financial resources and tax base and revenues of the tribe—or the BIA for that matter—in this particular case.

So what we intend to do through the Rural Water Supply Act of 2005 is to create a more formal structure involving the Bureau of Reclamation to establish a program to design rural water supply projects for communities with populations of less than 50,000.

Currently no such program exists within the Bureau. Congress then could authorize rural water projects to a 75 percent Federal share of construction costs.

So what we have done in the past, Mr. Chairman, again, as you know, and with the bipartisan support of membership of this committee, is that we have authorized large Bureau of Reclamation drinking water projects in my State of South Dakota and other places. Three of the bigger water projects would be Mni Wiconi, the Mid-Dakota and the Lewis and Clark Water Projects which are all under construction.

But as you know, these all have been rather ad hoc efforts. We really have not had a systematic mechanism for determining the merits, relative merits, of projects or to do things in a more systematic manner. And I am hopeful that this legislation, along with other legislation that members of this committee have, including your own, will be a focus of trying to arrive at a consensus about how best to deal with these issues.

Up to now, it has been sort of a—just a race to the finish line to see who can come up with a project and then get it authorized and funded. But we are overwhelming the funding capability of the Bureau of Reclamation, and in some ways changing the function of that particular agency.

I think we need to have some orderly, more thoughtful, more deliberative process that will take care of the urgent needs such as we face with the Cheyenne River Sioux Tribe and yet make sure that things are done in a systematic matter.

So I thank you for this hearing. I thank Mr. Keys for being here. I know that we have been dreaming up new functions for the Bureau faster than sometimes the Bureau can deal with it. But that is only a reflection of the dire need that is out there for drinking water in so many areas of America. So thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator. Anybody else?
Senator Murkowski.

**STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR
FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. I, too, want to extend my appreciation and thanks to you and to Senator Bingaman, and to your staffs for working on this legislation, this consolidated bill that will address the critical public water needs in the West.

While Alaska is not directly affected by this legislation, I think we have our share of, call them horror stories if you will, when it comes to how we deal with providing safe water into our communities and essentially developing 21st century water and sanitation facilities.

Since Statehood, we have put approximately \$1.4 billion into water and sewer projects in rural Alaska, and we still have about 6,000 households in rural Alaska where we do not have drinking water, safe drinking water.

And what this means to us is that my constituents have to haul water buckets to the village watering house. This can lead to, as you are probably very aware, those issues that bring about disease, hepatitis, viral infections, as we have just a very unsanitary situation in way too many communities still at this point.

We probably still have about another \$650 million to go to complete our water projects in the many, many villages across the State and that is why we continue to seek Federal aid for our safe water projects. But we recognize that the need in the lower 48 is no less acute.

The Environmental Protection Agency estimates that the communities under 10,000 still need to spend about \$16 billion to meet the minimum clean water acts. And the price tag keeps rising, recognizing that as water systems need to expand, it is not going to get any better unless we are willing to put funding where it needs to go.

This bill recognizes the comprehensive nature of that next step that has to happen by allowing the Bureau to help plan, design and construct the rural water projects and by creating the loan guarantee fund to help the local communities get the financing. We are

taking the steps that I think are going to be necessary to speed up that process to provide and meet the safe water needs in the West.

So, again, Mr. Chairman, I appreciate what you have done in presenting this to the committee and look forward to working with you on this issue as we meet the country's water needs. So thank you.

The CHAIRMAN. Thank you very much, Senator.
Senator Craig.

**STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR
FROM IDAHO**

Senator CRAIG. Mr. Chairman, I agree with all that has been said. It is rare that I can do that in this committee, but obviously the combining of the two pieces of legislation, the consolidation is critical. We know the need that is out there. It is great to see John Keys before us again. I look forward to your testimony. Thank you.

The CHAIRMAN. Thank you very much, Senator. Anything else? Let us proceed.

Mr. Commissioner, we welcome you.

**STATEMENT OF JOHN W. KEYS, III, COMMISSIONER,
BUREAU OF RECLAMATION**

Mr. KEYS. Mr. Chairman, Senator Bingaman, it is always a pleasure to appear before you and your committee, but today is special. Under your bipartisan leadership, I think we are about to see history improve today because of the coming together on this bill.

Which is more unthinkable, that more than two million people in the United States lack adequate drinking water in their homes or that the Bureau of Reclamation, which was actually constituted to serve water needs in the very States in which many of these people live, has no coherent program to get a handle on those needs?

Your bill, S. 895, will fill that gap. It would authorize Reclamation to develop criteria and guidelines for rural water projects, giving rural communities and taxpayers a consistent and fair process for evaluating water supply needs and prospects.

During the last Congress, three different water bills were introduced. You each had your own and the administration sent you its version. Today there is just one water bill before Congress and that reflects the positive bipartisan spirit of consultation and collaboration as we have brainstormed solutions and shrunk the issues. We hope and expect this process will yield enactment of a well-crafted rural water program.

Just for a second, let me review the history to see why this is so important. Since the 1980's, Congress has authorized 13 separate rural water projects for Reclamation with a total authorization price of \$2.3 billion.

Congress authorized these projects without the benefits of rigorous economic analysis and objective design review that a rural water program at Reclamation could offer. Why? Because no such program existed. Was the least cost alternative chosen? Once constructed, could the project deliver national economic benefits to outweigh its cost? Within Reclamation, these questions were never asked, much less answered, before we took them on. Recently the

Environmental Protection Agency estimated the systems serving populations of 3,300 or less could cost as much as \$31 billion.

The Departments of Agriculture, Commerce, Human Resources, and the Environmental Protection Agency all have rural water programs with specific eligibility criteria related to the missions of those agencies. In contrast, Reclamation has no program, therefore no eligibility criteria, no mechanism for qualitative or quantitative analysis. This came to light in 2002.

The President's budget and performance integration initiative examined Reclamation's rural water activities under the program assessment rating tools. The assessment said we need stronger controls for project development, and lack of agency involvement during project development may result in a project that is not in the best Federal interest. The PART exercise told us that we needed legislation, and that is when we started working with your offices. The bill before us today suggests you agree, and we are grateful for that.

Now, let me turn to several specific elements of S. 895 that the administration strongly supports. The first, 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 cost. The administration strongly supports this approach. It will establish a fair matrix to identify the appropriate level of non-Federal contribution.

S. 895 would allow communities to approach Reclamation for guidance early in the process and include Reclamation in early project scoping, appraisal and feasibility study processes. For example, projects to date have piped and pumped water at great expense. One option not yet tried is small localized desalination plants to treat brackish groundwater, avoiding the cost of pumps and miles of pipeline. Under S. 895, Reclamation and the communities could explore this option early in the process.

No. 3, a clever innovation in S. 895 that had not appeared in any earlier bills would allow local communities to complete their own appraisal and feasibility studies either at their own expense or with Reclamation help as long as those studies meet our minimum criteria, and we will work with you on what those criteria should be. This could reduce costs and increase project sponsor sense of ownership in the project. The administration supports the requirement that non-Federal entities demonstrate capability to pay operations, maintenance and replacement costs.

No. 4, section 107 requires the Secretary to coordinate the Reclamation Rural Water Program with other agencies. This would help all rural water supply programs to derive maximum value for their dollar.

Mr. Chairman, title II of S. 895 would establish a loan guarantee program for the Bureau of Reclamation. We like the loan guarantee idea. It shows great promise for helping water users deal with maintenance or rehabilitation of aging infrastructure and potentially supplementing their participation in rural water supply programs, helping with other water supply problems and needs.

At this time, we are still studying several aspects of this proposal. We will certainly work with you and your committee and your staffs to perfect this needed tool.

Now let me turn to just a couple of areas of concern. We suggest that S. 895 establish an overall programmatic framework for all aspects of the appraisal and feasibility studies, but as a framework for how projects, once authorized, would be planned, designed, constructed and managed after they were done. This would sort priorities and create more realistic expectations once projects are built.

Second, S. 895 spells out eligibility criteria for the appraisal and feasibility studies. We support these. We suggest adding criteria for economic and financial benefits and impacts.

Mr. Chairman, we are honored to work with you and Senator Bingaman and your colleagues to advance this legislation to establish a rural water program within the Department of the Interior that could benefit rural communities and taxpayers at large. I would certainly try to answer any questions you might have.

[The prepared statement of Mr. Keys follows:]

PREPARED STATEMENT OF JOHN W. KEYS, III, COMMISSIONER,
BUREAU OF RECLAMATION

Mr. Chairman, I am John W. Keys, III, 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.

During the last Congress, three distinct bills were introduced for the purpose of creating a coherent rural water program within the Department: S. 1732, Senator Domenici's bill, S. 1085, Senator Bingaman's bill, and S. 2218, the bill which Senator Domenici introduced by request of the Administration.

The fact that there is but a single rural water bill before the Committee in this Congress reflects the positive spirit of consultation and collaboration among this Committee's bipartisan leadership and the Department as we have brainstormed solutions and narrowed issues that require more work. It is a pleasure to be a part of this process which we hope very much will culminate in enactment of a rural water program that meets the fair expectations of rural communities and U.S. taxpayers.

Before addressing the specific provisions of S. 895, I think it is important to place our shared desire 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 its sponsors’ agreement that this is necessary.

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, but instead are guided through the program’s planning process to use a consistent set of eligibility criteria. This approach will foster some competition, allow for the development of priorities, and create more realistic expectations when a project is authorized for construction that it will actually 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 au-

thorized 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

The Administration views S. 895 as having the potential to be one of the most positive legislative developments for the Department of the Interior in some time. Nevertheless, we have a few concerns that we will work with the Committee to address as this bill goes forward.

Create a Programmatic Framework: The Administration recommends that S. 895 establish an overall programmatic framework for all aspects of the rural water program—not just limited to completion of the appraisal and feasibility studies, but as a framework for how projects, once authorized, would be planned, designed, constructed and then overseen and managed. This approach will allow for the development of priorities, and could create more realistic expectations when a project is authorized for construction that it will actually be developed. It would 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.

Economic Factors for Eligibility Criteria and Evaluation: As introduced, 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: As introduced, 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 108th Congress.

Operations and Maintenance Costs for Native American Projects: S. 895, as introduced, 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 108th 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. As introduced, 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.

Indian Trust Responsibilities: As introduced, section 105(c)(1)(F) and section 106(c)(12) speak to "Indian trust responsibilities." We believe these provisions may be read to create a trust responsibility for rural water systems that has not previously existed. We think these provisions should be removed.

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.

In addition to the above comments, we have identified a few technical issues that may require clarification. We are confident that Committee staff will be able to determine quickly whether to incorporate them or not.

In conclusion, Mr. Chairman, we are honored to work with you and Senator Bingaman to advance legislation to establish 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.

The CHAIRMAN. Thank you very much. I would now ask Senator Bingaman if he has questions. And the rest of you, if you would prepare, I will yield to you in due course.

Senator Bingaman.

Senator BINGAMAN. Well, thank you very much, Mr. Chairman. Let me just ask a little bit, if you could elaborate on this idea you have in your testimony that the Secretary should be authorized to seek appropriations to pay down the annual OM&R costs of rural water projects for Indian tribes.

Given the enormous backlog we have in the construction end, I guess I am wondering how realistic it is to think that Reclamation can also take on the operation and maintenance responsibility in these things. Obviously we would like to be able to help in all ways we can, but I am just trying to be—trying to understand what we can do that is realistic. Maybe you could elaborate on your thoughts.

Mr. KEYS. Mr. Chairman, Mr. Bingaman, several of the authorized projects that we are working with now authorize those projects to receive operation, maintenance and replacement funds to run the projects after they are built. That is a serious drain on our budget and on the Federal treasury.

The idea that we have is that tribes or other smaller communities would first see how much revenue they could generate from the delivery of water, and then if they could not quite make it, the Secretary would be authorized to either furnish or try to find another way to help them with operation OM&R costs.

I do not think that any of us would like to see a program where we pay it all for every one of them. It would be such a drain that none of our budgets could stand it.

This is a way that we could see just how much they could return. We could actually do some cost—some studies ahead of time to see how much they could generate and how much it would take before the project is authorized. If it takes too much, maybe we need to look at a different way to do it.

Senator BINGAMAN. Let me also ask you about these localized desalination facilities that you think might be an option that people should look at, rather than building more pipelines to bring water from a long distance.

There is some work going on in our State on developing that, and the Bureau of Reclamation has this new research center going in, in Alamogordo, to look into desalination. How realistic—how soon is this technology available? Is it available now?

We met with the Minister of Energy from Qatar yesterday and he is saying 99 percent of their water that they use in that country is from desalination. I am just wondering, are we way behind the curve as far as actually using technology that is already developed, or do we need to make advancements in the technology in order for this to make sense?

Mr. KEYS. Mr. Chairman, Mr. Bingaman, the answer is yes and yes. Yes, there is technology available now that we could do that. Yes, we are still advancing that technology.

One of the things that Reclamation is working on at Tularosa with the partners there, one of our reasons for being there is to look at this small plant capability to try to be sure that it is applicable to brackish groundwater and it will do what we think it will do.

The water source there at Tularosa is brackish groundwater. Underlying most of the project areas in South Dakota, in that whole band of the Midwest, where there are a lot of demands for rural water, are brackish groundwater deposits.

We have, on a trailer, a small mobile plant that we have been testing, using it at different small towns for 3 or 6 months, to demonstrate that, yes, it will work there.

Now the technology that we are using is reverse osmosis. It still depends on membranes and that technology. We are hoping that research will give us a breakthrough so that we are not so dependent on membrane technology. It has not yet come.

If we can find some better way to do it, that is what we are trying to do. But there is technology now that would let us go in and put a small plant on a brackish groundwater deposit and help a small town. In a lot of cases, we think that would be much cheaper than the big pumping plant on the river with up to several hundred miles of pipeline to get the water to the communities.

Senator BINGAMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Let me go down our list here.

Senator Thomas.

Senator THOMAS. Thank you, Mr. Chairman. Thank you, Mr. Keys, for being here. This is certainly an issue that is very important to my State, for these small communities of 50,000. We have two above 50,000. All the rest of our State is in that category.

Is this a little bit aside from the major mission of the Bureau of Reclamation?

Mr. KEYS. Mr. Chairman, Mr. Thomas, we think that it is part of our mission. It is just that with the way projects were being authorized, it was stretching our ability to use the moneys we had for our traditional projects.

The threats to our ability to operate and maintain the water supply facilities across the West because of budgetary reasons are large. We are trying to find a systematic way to deal with these without having different projects be authorized that would take a big hunk if we did not.

Senator THOMAS. Well, I am enthusiastic about it, but I think one of the challenges we obviously see is being able to maintain, to store and develop more water as demands increase and not be so much in the distribution. At least it seems that way to me, and I am all for it, but I do not want to see you all changing.

We have a really—I worked quite a bit this year with the rural water people in Wyoming and they are a pretty impressive group. They have gotten organized. What other agencies are involved in rural water?

Mr. KEYS. Mr. Chairman, Mr. Thomas, the Department of Agriculture, Department of HHS, the EPA all have programs. There is an area that is not covered by those programs. It is the area where it takes a large investment of money to deliver small amounts of water to either a single community or a number of communities.

Every time a community comes to talk with us about rural water systems, we ask them first, have you been to see these other agencies, because in a lot of cases, their application would fall within that jurisdiction.

But when it gets into the larger project, where you have long distances to go or they have not been able to consider some of the desalination efforts, there is no program out there that would serve them.

This—I do not want to call it a niche, because that indicates that it is a small amount. In our area there are a large number of communities out there. But there are that number that are not served by any of the existing programs.

Senator THOMAS. I see. Well, as I said, I am very much interested in rural water. I just do not want to see us put some things on there that change the mission and the responsibility of the Bureau which I see as a little broader responsibility than that. I mean we are working with you all the time, trying to divide water up among States, trying to store water, all those things, and if this is going to take away from what traditionally has been your system, I would be somewhat concerned.

So what I am—I want to follow up on it and stay with it, because I am looking for ways. But I have to tell you, I am impressed with what the rural people are doing now, and they can do it pretty well, apparently, without you.

Mr. KEYS. Mr. Thomas, they do a very good job, and we work closely with the agencies trying to meet some of the needs out there. I think this bill gives us the opportunity to limit the portions of our budget that we would be obligated to put into rural water.

In other words, we could develop a portion of our budget, put a number on it, 50 or 100 or 70 or whatever, million dollars, and in sight of that, we would see the competition between the communities for that money, rather than now it being an open-ended proposition where we do not have control over how much it might be.

Senator THOMAS. Well, Mr. Chairman, I certainly do not mean to be negative about this. Something needs to be there. But at the same time, we have to try and measure what is the role of the Federal agency. We hear quite a bit about that, as you know, and properly, and also spending. We have to watch that one as well. So all these things have to be balanced, and so I appreciate your comments.

The CHAIRMAN. Senator Johnson.

Senator JOHNSON. I do not have any questions.

The CHAIRMAN. Senator Craig.

Senator CRAIG. Thank you, John. I have no questions either. I am excited about the opportunity to get this program consolidated in a way that is—well, I think Senator Johnson put it pretty well. We are all racing to the Appropriations Committee to see who can get on first, first, and that is not working very well. It is very spo-

radic. It may even be a misallocation of resource, because of the analysis that oftentimes fails to happen in advanced or alternative approaches, as you have suggested, and as this bill would propose.

I think framework, process, analysis, even allowing communities to go forward on their own to do their research and analysis out in the private sector to bring it to the public sector for confirmation into one of the programs is an extremely important approach, and it will help us all here a great deal, and I think all States will benefit from it. Thank you.

The CHAIRMAN. Senator Salazar.

Senator SALAZAR. Thank you, Mr. Chairman and ranking member. Let me first say that I applaud this effort, one, for its bipartisanship and, two, for its need, and I would be proud to be added as a co-sponsor of this legislation.

Let me just ask one question, Commissioner Keys, and that is, it seems like there are a lot of programs out there that are focused on helping with rural water supply, I think, and this committee—at least most of us who are here from the Reclamation States—understand the importance of water supply out to rural communities. My question is whether or not there is a way of consolidating the efforts that are underway by many agencies that are already out there doing something. I think I read somewhere that there were some 17 programs that were focused on creating water supply for rural communities, and this is now an additional program which I applaud and I support this effort very much.

I am wondering whether there would be a way of bringing in the efforts that we currently have in the Environmental Protection Agency, that we have in the Department of Commerce, that we have under the U.S. Department of Agriculture, so the rural area, whether it is in Wyoming or New Mexico or my State of Colorado, that there be a coherent program that somebody on the ground can say, you know, when I look to the Federal Government for assistance, I know that there is this one office of rural water supply that we can go to and that we can figure out to access those resources.

Mr. KEYS. Mr. Chairman, Mr. Salazar, I think there is a possibility of doing that. It is not there right now, and that is why we need this bill. Certainly it gives us the opportunity to cooperate with the other agencies so that if there is an existing program, we do not duplicate it.

Now that being said, last year when we first started working the issue, we were working with the Office of Management and Budget, and they, at that time, looked into how many different agencies have programs and whether they could all be consolidated into one.

That effort is still underway, but it—I do not know that it is going anywhere right now. Certainly we would be willing to work with you folks if you wanted to try to do something with that. But I think our first one is to look at the program, coordinate with those other agencies, and then, if there is an effort to put them together, we would certainly work with you to do that.

Senator SALAZAR. I would think perhaps as this legislation goes forward, Mr. Chairman and Senator Bingaman, that that may be one thing that we can look at—whether or not there is an integration component of this legislation that we might want to consider as an amendment. Because it seems to me that if you are in any

one of these communities and you are looking for assistance on how to develop a rural water supply, it would be good to go to one place that has the lead responsibility for making this rural water supply happen.

I frankly would be comfortable if it was the Bureau of Reclamation, because I think they know water perhaps better than some of these other agencies. But there might be some other clarification that we could make on that point.

Thank you very much and, again, congratulations. I think it is a great idea.

The CHAIRMAN. Well, Senator, let me say just a little while ago you saw me bend over here and talk to Senator Bingaman. We got our staffer here talking to us, and I asked the very same question, but not here, and I was given an answer, and the bill does just what you ask, so we do not have to amend it.

If you will look at section 104, Commissioner, it calls for water program assessment, and it has an entire provision which says that while the final conclusion is after they do certain things with all of the different agencies, they are supposed to report back to us and the comparable committee in the House no later than 2 years after the date, and in that they will give us a detailed assessment, conducted under subsection (a) above.

And that section above talks about just what you have suggested—review appraisal investigations, that are, A, developed by the non-Federal project entity, independent of support from the Secretary, submitted to the Secretary, conduct an appraisal investigation or provide the grant to, et cetera.

But anyway the section says the coordination will be done. They will look at it and do the assessments and report back to our committee on what they have found with reference to it and what recommendations there are for better coordination. You understand that, Commissioner?

Mr. KEYS. Yes, I do.

The CHAIRMAN. So that would have been the answer to the Senator's observation 5 minutes ago when he made it; is that correct?

Mr. KEYS. That is correct.

The CHAIRMAN. Now on that score, I think that is one of the most important ultimate things, because all of us have constituents coming in, either here or our State offices, talking about we are applying for help in water and we are using the Department of Agriculture, and they have two different grants, and we are using the Environmental Protection Agency.

And then we are asked to intervene, and we do not have any idea how this fits into anything else. We do not know if they are using guidelines that are developed of the type you are going to develop here. So it seems to me that that is very important.

But I might ask you, do you think because we tell you you should do it? Do you think that since these other programs are under other secretaries, that you will be able to assimilate the facts? Do you think they will give them to you? Will you be able to put them together, or do we need more in this bill to make sure that will happen?

Mr. KEYS. Mr. Chairman, I think the bill is adequate to do that. We have had excellent cooperation from the other agencies in try-

ing to find support from them for cities that need water. I do not see any problem with us talking with them about a better way to do it.

The CHAIRMAN. And one last question. This applies to a project in our State. There is a very longstanding water pipeline project that we call the Ute Water Project—you are probably aware of it—which will transfer water from a lake, after a very long period of time, to about five or six communities, and they have been working on it for an awful long time.

And I understand that when they are getting near the end that the Bureau of Reclamation is looking at the project and saying they have to do some things differently than they have already done. Is that correct, mayor? Am I stating it kind of right? You will be testifying in a minute.

Mr. LANSFORD. Yes, sir. I will speak to that, but that is correct. We kind of feel like it is somewhat of a moving target where the rules may be changed throughout the course of the project development.

The CHAIRMAN. Now what I am concerned about is how do we fix that up? I mean, I hate to see that happen. They have been working for a long time. They will come into our office pretty soon. They think they will be finished. They will be looking for a very large funding source over many years, and we do not want them to have to start over or be told it is not adequate. What are we going to do about that?

Mr. KEYS. Mr. Chairman, passage of this bill does not affect those projects that are already authorized. We are authorized to do this study.

I would tell you that we had some real concerns about some parts of the designs for eastern New Mexico, that they were not at the proper level that would warrant legislation to build it. And rather than us make a decision, we looked at a peer group. We went to an outside review to say what do you think about this, rather than us just making the decision ourselves.

They came back with seven different recommendations to get that study where it needed to be that would support legislation. I sat down yesterday with these folks from eastern New Mexico and went through those. I think there is a plan for meeting those requirements for answering those seven areas of deficiency and that we can get on with it.

The CHAIRMAN. Now I raised it because I do not think that is singularly our problem. I think that exists in various places, and I hope that this legislation for future projects will have some effect on it. Is that correct?

Mr. KEYS. Mr. Chairman, absolutely. It will lay out the criteria ahead of time so that they know what is necessary to meet the requirements for construction and authorization for construction.

The CHAIRMAN. Okay. Thank you very much. Senator Smith, you arrived since we started. Do you have any questions or observations?

Senator SMITH. I do. Mr. Chairman, thank you for this hearing. And if I may include an opening statement in the record, I would appreciate that.

The CHAIRMAN. It is submitted. It is accepted.

Senator SMITH. Mr. Keys, I don't know whether you hear a lot of "thank yous" as you go around, but I want to note publicly all of your terrific efforts in the Clement Basin and in other very contentious water basins in Oregon. I think you bring to your position a very constructive, if not a healing, sort of presence in trying to resolve these very, very contentious issues and I want you to know I appreciate it.

I like much in this bill, but I do want to note a concern I have, particularly in rural places, about the up-front costs and timelines that I think are provided for in the bill, particularly for these non-Federal entities if they choose to participate.

As I understand the legislation, there is a requirement to do both an appraisal investigation, which has a 2-year timeline, then a subsequent feasibility study that has no timeline, followed by congressional authorization, which who knows how long that time will take. So I am worried about the cost in all of this. Do you have a sense of timelines and costs that would be associated with this effort?

Mr. KEYS. Mr. Chairman, Mr. Smith, the times in there are maximum times because larger, longer, more expansive systems sometimes take a lot of time to put together.

A smaller town could take an appraisal study, do it in a matter of months, I mean 3 or 4 months, and then go straight to feasibility without having to go the 2 year and so forth.

We were trying to cover all of the possibilities there for larger systems and smaller systems. So I would read those as up to rather than it being that structured timeframe.

Senator SMITH. Is there a way to—obviously it is a language, a drafting issue, but maybe there is some more artful language we could use to reflect that, because that allays a lot of my concerns.

Mr. KEYS. Mr. Chairman, Mr. Smith, we would be more than happy to work with you. What you just raised is another reason that we worked with the folks to put the provision in there that the local folks can take the money and do the feasibility and appraisal studies themselves. In other words, it is really up to them to get them done as quickly, meeting the criteria that we put together with the committee.

Senator SMITH. I think that is a very important improvement, because I would hate to see a lot of little communities just simply be unable to participate because the cost and time required are simply prohibitive to them. So if we can reflect that somehow in the legislation, that would be great. Thank you very much.

The CHAIRMAN. I think that is a very good, constructive observation, and let us work on it. Maybe we can indicate that this is outside and some kind of expectation or criteria for how long it should take for lesser ones. We might be able to do that.

Senator SMITH. Thank you, Mr. Chairman.

The CHAIRMAN. Anything else? I thank you very much, Commissioner.

Mr. KEYS. Thank you, sir.

The CHAIRMAN. You have helped us very much. And thanks to your staff for helping put this bill together. You are excused.

The second panel: Mr. Jim Dunlap, welcome—we see you often—a board member of the National Rural Water Association from

Farmington, New Mexico; Harold Frazier, previously introduced by Senator Johnson, and he is chairman of the Cheyenne River Sioux Tribe from Eagle Butte, South Dakota; Duane Smith, vice-chairman of the Western States Council, Oklahoma City; and Mr. David Lansford, from Eastern Rural Water Association, Clovis, New Mexico.

We are going to proceed in the order that I announced you. If you have prepared statements, they will be made a part of the record, and I will make them a part of the record now. We hope that you would not read them if they are longer than 5 minutes, that you would summarize them.

We will proceed now, without any intervening questions, right through the witnesses, unless a Senator urgently wants to stop and ask somebody, in which event we will do that.

Mr. Dunlap.

STATEMENT OF TIM DUNLAP, ON BEHALF OF THE NATIONAL RURAL WATER ASSOCIATION, UPPER LA PLATA WATER USERS ASSOCIATION, AND THE NATIONAL RURAL WATER ASSOCIATION

Mr. DUNLAP. Thank you, Mr. Chairman, members of the committee. My name is Jim Dunlap. I am president of the Upper La Plata Water Users Association in San Juan County, New Mexico. I am a rancher, farm equipment business owner and also chairman of the Interstate Streams Commission for the State of New Mexico.

All of these organizations and every State rural water association join me in thanking you and this committee for your support. Rural and small communities appreciate your assistance to improve and protect our drinking water and for the opportunity to testify before your committee on S. 895.

Before discussing the details of the bill, let me say how happy I am to have New Mexico's two Senators, with separate party affiliations, holding the chair and the ranking position of this committee, working to better rural America's drinking water and looking at the Bureau to also do so. I may be out of my league on how to express my appreciation to both of you simultaneously, but it is an understatement to say all of rural New Mexico and all rural Americans are very appreciative of your efforts.

One main point that rural America would like to leave with the committee regarding S. 895 is expanding the Bureau's mission to develop rural water supplies is the right step toward the solution to the water problem facing the rural West.

To broaden the scope of the Bureau to drinking water is a bold and dramatic new initiative for Western America, and one that is sincerely supported and welcomed by rural communities and families.

Currently there is no governmental instrument assessing the long-term needs in planning a Western States rural water supplies. We need the comprehensive and locally-supported planning effort that is proposed in S. 895.

Mr. Chairman, let me give you a brief example of what is commonplace in the West. I have provided a series of pictures, which I believe illustrate that point. I am currently working to develop a means to regionalize the growing area around the city of Durango,

Colorado, and two large unincorporated areas, one in Colorado, adjacent to one in New Mexico.

Some residents of both of these rural areas are either hauling water or have an extremely limited supply. That is right, they fill up their trucks to haul water to their house to drink and use for other household needs.

Due to the complexity and variety of the problems in each of these communities, the only real solution is a regional cooperative effort.

In this example, it is critical to note that the two unused municipal industrial water rights, held by the conservancy districts, could be used by other communities if there was a large distribution system to move the drinking water. This is just the type of situation that could be solved by your legislation.

In closing, I would like to acknowledge that small and rural communities sincerely appreciate the thought that went into the bill. If this legislation is enacted, the Bureau will come to be known as a solution to immediate and long-term Western rural water challenges.

We will see dramatic public health improvements, farm families receiving clean water for the first time, entire regions that have been out of compliance with drinking water regulations for years developing solutions, and Western water arguments being settled with communities moving forward.

Mr. Chairman and members of the committee, I would also like to congratulate Commissioner Keys and his staff for working with you. I believe that Commissioner Keys has a unique understanding of rural water needs and I would offer National Rural Water's assistance in developing the procedures that are used to work this bill through and the procedures to be used in the future.

I want to thank you for the chance to be here today. I would stand for any questions at the appropriate time.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Dunlap follows:]

PREPARED STATEMENT OF JIM DUNLAP, ON BEHALF OF THE NATIONAL RURAL WATER ASSOCIATION, UPPER LA PLATA WATER USERS ASSOCIATION, AND THE NATIONAL RURAL WATER ASSOCIATION

Mr. Chairman, Members of the committee, my name is Jim Dunlap, I am President of the Upper La Plata Water District in New Mexico. I am a rancher, farm equipment business owner and I am currently the Chairman of the Interstate Stream Commission for the state of New Mexico. All of these organizations and every state rural water association join me in thanking you and this Committee for your support for rural and small communities in our efforts to improve and protect our drinking water—and for the opportunity to testify before the Committee on your bill; S. 895.

Before discussing the details of the bill, let me say how happy I am to have New Mexico's two Senators, with separate party affiliations, holding the chair and ranking positions on this Committee—working to better rural America's water and looking at the Bureau as an agency to do it. I may be out of my league on how to express my appreciation to both of you simultaneously, but it is an understatement to say all of rural New Mexico and all of rural Americans are very appreciative for your efforts. In addition to being very supportive of the legislation, I am also relieved that Senators Domenici and Bingaman worked out their differences in their bills from last year—before having me here on the record to testify.

The fact is that many western rural areas have never had adequate water supplies and have a need for a reliable water supply to attract and maintain rural economic and public health. The nexus of three realities is resulting in a problem that merits additional federal water development assistance. These realities include: the

fact that many U.S. rural households don't have decent, if any water service. Second, that unfunded mandates disproportionately impact rural households and these mandates are increasing. And the third reality is quantity—the fact that many rural areas in the west never had adequate water supplies. Expanding the Bureau's mission to develop rural water supplies is the right step toward a solution to the water problems facing the rural west. To broaden the scope of the Bureau to drinking water is a bold and dramatic new initiative for western American—and one that is sincerely supported and welcomed by rural communities and families. Here to fore, the Bureau of Reclamation has made water development, and the corollary human progress, of western American one of the unique enterprises of modern civilization; reordering the understating of society's interaction with its natural environmental.

Senators Domenici and Bingaman are now compelled to evolve the Bureau into meeting the west's future rural water supply needs. Currently there is no governmental instrument assessing the long-term needs and planning of western states rural water supply. This is happening at the same time development is advancing in many western states. If we want to “do it right,” be the most effective, far-sighted, and limit and unintended consequences—we need the comprehensive, long-term and locally supported planning effort that is proposed in S. 895. Such a new direction for the Bureau will result in improvements for western rural water supplies in the coming decades that will compare to the Bureau's historical advances in water development for energy, agriculture and commercial development.

Mr. Chairman let me give you a brief example of what is commonplace in the west. I am currently working to develop a means to regionalize the growing city of Durango, Colorado and 2 large unincorporated areas, one in Colorado and one adjacent to it in New Mexico. Residents of both of these rural areas (one up on Red Mesa) are either hauling water or have an extremely limited supply. That's right they fill up their trucks to drive water to their houses to drink and use for cooking. Due to the complexity and variety of the problems in each of these communities—the only real solution is a regional cooperative effort. In this example, it is critical to note that the unused municipal and industrial water rights held by the Conservancy District could be used by the other communities if there was a large distribution system to move the drinking water. This is just the type of situation that could be solved by your legislation.

One of the main concerns in our testimony last year was to include an independent process of submitting projects to the Bureau to serve as an incentive to timely analysis and completion of projects. I would like to thank the authors to including such a provision in the bill. My written testimony includes a few suggestions for enhancing the legislation including technical assistance, independent engineering, annexation protection, etc. However they are minor and should prove to be non-controversial. I will only briefly mention them here to put them into the record—not diverting attention away from our overwhelming support and appreciation of this legislation.

I would like to acknowledge that small and rural communities sincerely appreciate the thought that went into the bill. If this legislation is enacted, the Bureau will come to be known as a solution to immediate and long-term western rural water challenges. We will see dramatic public health improvements; farm families receiving clean water for the first time, entire regions that have been out of compliance for years developing solutions, and intractable western water arguments being settled with communities moving forward. We encourage the committee and the Congress to make the Bureau a permanent and recognized solution to some of the county's most challenging water issues.

Mr. Chairman, I strongly support the objective of having the Bureau fund more rural water development. The key points I want to make today with regard S. 895 are:

- There is a great need for public health, economic viability, and compliance for additional financial resources for rural water development.
- In certain circumstances, it is more cost-effective to develop large region water supplies as opposed to multiple local supplies.
- The Bureau of Reclamation should get into rural water development as they have a unique mission not accomplished by other federal agencies (namely the U.S. Department of Agriculture and the U.S. Environmental Protection Agency).
- The unique situation of rural communities should make them the priority for federal assistance for drinking water.
- We support the bill's provision for a local or independent process that could determine cost, feasibility, coordination and planning in the legislation.
- Due to the unique federal mission proposed in the bill, any new water initiative within the Bureau of Reclamation should include significant annual appropria-

tions—comparable to EPA’s approximately \$800 million state revolving fund and USDA’s approximately \$700 million loan and grant effort.

- The west has changed since the passage of the original authorizing statutes for the Bureau of Reclamation. Currently we are faced with new challenges including the growing need for municipal and industrial (M&I) water. We may need to modify the mission of the Bureau and its ability to assist in providing M&I water.

There is a great need for public health, economic viability, and compliance for additional financial resources for rural water development

The nexus of federal unfunded mandates, the fact that many rural areas have never had adequate water supplies, the shortage of local water supplies in the west, and need for a reliable water supply to attract and maintain any rural economic health reflects a great need for additional rural water development.

According to the USDA at least 2.2 million rural Americans live with critical quality and accessibility problems with their drinking water, including an estimated 730,000 people who have no running water in their homes (USDA study available on the internet at www.ruralwater.org/water2000.pdf). About five million more rural residents are affected by less critical, but still significant, water problems, as defined by the federal Safe Drinking Water Act. These problems include undersized or poorly protected water sources, a lack of adequate storage facilities, and antiquated distribution systems. Today, many rural families are still hauling water to their homes and farms. In La Plata County, Colorado—an area near my home that we are trying to organize into a rural water district, lack of water is forcing hundreds of families to haul water for their home use and their livestock. Their wells and springs are drying up due to the drought. The results of the U.S. Department of Agriculture’s (USDA) six-month assessment of the nation’s most critical safe drinking water investment needs show that as many as eight million people have critical or serious drinking water quality problems. According to the 1990 Census, there are about 1.1 million people without indoor plumbing (RUS).

Rural Americans have been living with inadequate water conditions that large communities could never imagine. For example: the Village of Hatch, New Mexico is located on the west side of the Rio Grande River in Doña Ana County. The County, in southern New Mexico borders both the State of Texas and the Republic of Mexico. Hatch is in northern Doña Ana County approximately 40 miles north of Las Cruces, the county seat and a community of over 130,000. The large metropolitan area of El Paso, TX—Juarez, Mexico lies 80 miles to the south.

Hatch is an incorporated community with a population of 1136 per the 1990 census. However, the current estimated 1997 Village population is 1550. Due to the seasonal nature of agriculture, the main economic base, the population fluctuates as migrant laborers move in and out. The Village operates a community water system serving the Village and outlying rural areas including approximately 799 residents residing in the two “Colonias” known as Rodey and Placitas. The total population served by the water system is estimated at 2500. Over 75% of the population consists of minorities, primarily Hispanics. Projected population in the service area by the year 2010 is 3570. There is one health clinic, funded by the former Farmers Home Administration, two grocery stores, seven restaurants, a post office, two bank branch offices, two convenience stores, one motel, one public laundry, and several other retail and service-related businesses. Average income is extremely low as the 1990 census shows a Median Household Income (MHI) of \$12,975 well below the National Poverty Line of \$16,050. The New Mexico Statewide Non-Metropolitan MHI is \$21,656.

Rural Utilities Service (RUS) recently funded a water system improvements project to add additional storage capacity and run transmission lines directly from the storage tanks site to Placitas and Rodey. Before this project, water ran from the tanks to Hatch’s distribution system, and then back uphill to the two Colonias. During summer peak usage, the Colonias experienced zero water pressure. The RUS project corrected this situation. Hatch, along with the Colonias, received the direct benefit of the additional storage.

Small communities are often in the greatest need, lacking the technical resources to comply with federal mandates because of their limited economies of scale and lack of technical expertise. Of the approximately 54,000 community water systems in the country, more than 50,000 serve populations under 10,000. Due to a lack of economies of scale, small-town consumers often pay high water and sewer rates. Water bills of more than \$50 per month are not uncommon in rural areas. At the same time, the rural areas have a greater percentage of poverty and lower median household income. This results in a very high compliance cost per household in rural systems coupled with an increased inability to pay.

Drinking water regulatory requirements affecting small drinking water systems have steadily increased since enactment of the Safe Drinking Water Act (SDWA) in 1974. Not only has the number of regulated contaminants increased, but regulations have also increased in complexity. Small communities are facing a compounding effect from each new regulation implemented by EPA. That is, compliance with one particular regulation may be much more difficult as a result of one or more prior regulations, or one or more future regulations. Currently, National Primary Drinking Water Regulations are set for 92 contaminants. These include turbidity, 8 microbial or indicator organisms, 4 radionuclides, 19 inorganic contaminants, and 60 organic contaminants. Maximum contaminant levels have been set for 83 contaminants and 9 contaminants have treatment technique requirements. EPA is currently in the process of developing new regulations as required by the SDWA including Long-Term 1 Enhanced Surface Water Treatment Rule, Long-Term 2, Ground Water Rule, Arsenic, Radon, Stage 2 Disinfection Byproducts, and Candidate Contaminant List. The EPA list of communities that are likely to be out of compliance with the arsenic rule can be found on the internet at: www.ruralwater.org/arsenicus.xls.

In certain circumstances, it is more cost-effective to develop large region water supplies as opposed to multiple local supplies

The reason—that over 9 out of every 10 U.S. water supplies serve populations under 10,000 people—it has historically been more economical to build smaller utilities than expand larger ones. The cost of running main lines a few miles can be cost prohibitive. However, in certain circumstances, it is more cost effective (especially over the long-term) to build larger or region water supplies. The factors that are used in making these complex discussions include future regulations which may require centralized treatment, the need to share one supply that may be far from many of the communities, the need for a distribution system to share water rights, projected growth, economic planning, etc.

For example, the regional Rocky Boys rural water supply, authorized by Congress for Bureau construction will allow many smaller communities to comply with the EPA's Surface Water Treatment Rule which they can't afford on their own, it will ensure long-term supply to numerous communities that currently lack quality supplies, it will provide an economy of scale for future regulations like disinfection by-products, and it will ensure the necessary infrastructure for those local economies.

Another example is the Navajo-Gallup pipeline project in New Mexico. This is a project to supply much needed drinking water to the Navajo Reservation, parts of the Jicarilla Apache Indian Reservation and to the city of Gallup. This will involve 41 Chapters in New Mexico and two Chapters in Arizona (a Chapter is similar to county government). It will involve a population of some 98,000 people utilizing 38,000 acre-feet of surface water and 4,000 acre-feet of groundwater. The project will start from Fannington, NM with a 48-inch pipeline and extend to the community called Yah Ta Hey, which is adjacent to the City of Gallup. This pipeline will be approximately 520,000 feet with laterals to Window Rock, Arizona and Crownpoint, New Mexico, with lateral extensions of 388,000 feet. There will be a separate lateral extending from Cutter Dam to Pueblo Contado and Ojo Encino. This lateral will be approximately 400,000 feet in length.

The Bureau of Reclamation should get into rural water development as they have a unique mission not accomplished by other federal agencies (namely the U.S. Department of Agriculture and the U.S. Environmental Protection Agency)

In the New Mexico-Colorado example provided in the previous section, there is no federal or state agency with the mission of looking at this type of project. We are organizing the parties as an ad hoc project and using local funds to do the planning. This project includes two states, multiple communities, conservancy districts, and unincorporated areas. Such a project does not fall within the USDA's rural water program guidelines for area and density of users. The list of communities funded last year by USDA is available on the internet at www.ruralwater.org/report2003. This program is truly the most successful rural public health and economic development program in the country. It was the reason piped water came to my community in 1966. It needs to be continued and funding needs to be increased, however, it has its own mission and it currently cannot meet the demands of the communities that fit into its guidelines. I believe S. 895 creates a new federal agency mission to assess and fund the type of project needed in New Mexico-Colorado and the rest of the western states. If projects would better fit in the USDA program or the EPA program then they should be referred to those agencies. However, it is clear to us working in the western states that there currently is no program to meet many of these pressing water problems.

The unique situation of rural communities should make them the priority for federal assistance for drinking water

Many water organizations have been petitioning Congress for additional water infrastructure funding through increased authorizations and appropriations in EPA and the Bureau. However, rural communities face greater economic and often greater public health need than most of these organizations. No large community consumer pays \$100.00 a month for drinking water service. However, in the western states, this is not uncommon in rural districts. Also, compliance costs are typically much higher in smaller utilities. For example, Desert Sands water district in Anthony, New Mexico formed a water association more than two decades ago that finally provided clear water. However, to comply with the new arsenic rule, their estimates show customers' monthly water bills would at least triple under the new standard. The average bill last July was \$32.18 per household. An Associated Press article (www.ruralwater.org/desertsands.htm) showed that one of the district's wells contained arsenic at 10.4 ppb and that "many Desert Sands customers are factory or farm workers who live in wind-beaten mobile homes or modest frame houses on small, sandy, treeless lots separated by rickety metal fences. The sand that blows across the flat desert is deep enough in some of the area's unpaved roads for cars to get stuck." Affording a rate increase of three fold will be dramatic to say the least.

We the bill recognizes this unique situation of rural America and the cost of providing safe water service. We are grateful for this recognition and the bill's attempt to ameliorate this situation.

Please retain the bill's local or independent process that could determine cost, feasibility, coordination and planning in the legislation

S. 895 provides for a new authorization for the Bureau to study opportunities to construct rural water projects and report back to Congress on feasible projects for funding—through the Congressional appropriations process. We think this is the proper way to try to identify feasible projects. Also, we support the authorization of a new process that would act as an incentive for the Bureau to develop cost-effective projects in a timely manner. This option for local advocacy would serve as an incentive for the Bureau to work cooperatively with the locals. If the local organizations and the Bureau had different options on which projects were feasible and how they should be designed, Congress could be provided both options—and the Bureau would be able to comment on any local plan/study submitted to Congress. This would also serve as an incentive to move projects through the process in a timely manner.

Any new initiative within the Bureau of Reclamation should include significant annual appropriations

Thank you Senator Domenici and Senator Bingaman for introducing this bill. Rural America is grateful. I appreciate the details and thought that went into S. 895 that seeks to find the best ways to divide up the intergovernmental responsibilities to plan, design, build, and fund public drinking water supplies under the federal umbrella. I have over 30 years of experience dealing with the various levels of government and the various federal funding agencies. I have learned that it can be a long, complicated and bureaucratic process. We support the effort to craft legislation that will allow the Bureau to fund the water supplies that evolve from the studies and assessments. The main ingredient in a successful Bureau of Reclamation drinking water initiative will be a commitment from the federal government to a significant amount of annual appropriations. When communities see funding available to solve their compliance, supply, and rural public health needs—they will put it to sound use immediately. The agency will come to be known as a solution to immediate and long-term water challenges. We will see dramatic public health improvements; farm families receiving clean water for the first time, entire regions that have been out of compliance for years developing solutions, and intractable western water arguments being settled with communities moving forward. This has happened under the Bureau's direction in ad hoc manners in some western states. We encourage the committee to change this and make the Bureau a permanent and recognized solution to some of the county's most challenging water issues by establishing an authorization for annual funding comparable to the USDA and EPA.

Background on State Rural Water Associations

Each state rural water association membership is comprised of small non-profit water systems and small towns. All members have water supply operations as their primary daily activity. Membership averages about 400-500 communities per state, with systems from all geographic areas of each state. These are active members—

who continuously participate in the training and technical assistance program in an effort to improve their drinking water. This program actively assists all small water systems whether they are members of the state association or not. With a significant turnover in water operators and board members—and the ever-increasing regulatory burden—the need for training and technical assistance remains constant. The problem with delivering safe drinking water is that improving drinking water in small communities is more of a RESOURCE problem than a REGULATORY problem. Every community wants to provide safe water and meet all drinking water standards. After all, local water systems are operated by people whose families drink the water every day, who are locally elected by their community, and who know, first-hand, how much their community can afford. Without the support of local people, regulations alone won't protect drinking water. Many small communities rely on volunteers or part-time administrators to operate their local water supplies.

In my personal experience, two teachers, four farmers, one banker, and a group of kids from the Future Farmers of America acted locally to bring the first piped drinking water to my part of San Juan County in 1966. I was one of the two teachers. The community had been relying on groundwater from individual shallow wells contaminated with minerals, oil, and methane gas for their farms and some household uses. Safe water used for drinking needed to be hauled in from town. We organized the 175 families in the area to incorporate a small rural water system and accept responsibility for repaying a 420 thousand-dollar start up loan from the U.S. Department of Agriculture's Farmers' Home Administration. At that time we did not have enough people to meet the threshold for population density to repay a loan, so a few of us accepted more than one water meter on our property. It was all the community could do to make the payments on the loans and the operations and maintenance of the systems was taken care of by community volunteers. Today, we have over 2,500 families on the system that has allowed for economic development in the area with over 100 new taxable businesses.

The CHAIRMAN. Jim, thank you very much for that important testimony, and I am sure that we will enlist the efforts of the National Rural Water Association.

We can just proceed up the table or however—mayor, please.

STATEMENT OF DAVID LANSFORD, MAYOR, CLOVIS, NEW MEXICO, AND CHAIRMAN, EASTERN NEW MEXICO RURAL WATER AUTHORITY

Mr. LANSFORD. Thank you, Mr. Chairman, Senator Bingaman, I am joined today by Mayor Ortega from the city of Portales, New Mexico, as well as Scott Burhines, our program manager of the Eastern New Mexico Rural Water Authority, and we definitely want to thank the committee and especially those who took the leadership role in establishing the initiative to put this bill together.

Before I begin to talk about some of the pros and cons of this legislation, I want to make a general comment. I would like to talk about the essence and the significance of this legislation.

I believe that this bill is pioneering legislation because it lays the ground work and provides a mechanism for rural economic sustainability and expansion in the Western States.

Rural communities are eager for growth and are the destination for many in our country who are seeking less congestion, less crime, and a more traditional lifestyle. Some sociologists see a third migratory shift in America. Couple this migration with a natural increase in population and we have an enormous opportunity and responsibility all in one.

This legislation shows great leadership on the part of the U.S. Senate and in years to come will be recognized as the key legislation which allowed for economic growth, better quality of life, and

the tool that eased the burden on government services in the population-dense cities of our country. I am more than convinced that millions will benefit both directly and indirectly from this legislation.

We have taken the opportunity to review S. 895, particularly as it relates to our ongoing efforts in New Mexico, and offer the following comments.

As you know, we are working diligently toward the development of a rural regional water supply project for 12 communities and 3 counties in eastern New Mexico and have been doing so for over 6 years.

In many respects, our project closely fits the model envisioned by this legislation. We recognize the need for a rural water program and strongly support its implementation.

Projects like this involve many players. We are fortunate to have a partner in the Bureau of Reclamation and the New Mexico Interstate Stream Commission and the New Mexico Water Trust Board as our State partners. Ours is a unique initiative in New Mexico, and we are all learning the ropes in developing processes together. Consequently, the past few years have been something of a moving target.

The current initiative in eastern New Mexico began over 6 years ago as a collaboration of nine communities and three counties, Reclamation and the State of New Mexico, but our project was first conceived over 40 years ago.

Positive aspects of this legislation: first of all, the legislation establishes a framework and a time schedule within which the Federal and non-Federal partners have better defined roles, eligibility criteria and direction on which to base project development decisions.

The bill requires that eligible projects assess both Federal and non-Federal resources for capital project costs. It also provides for the appropriate level of non-Federal cost-share to be based on an assessment of capability and willingness to pay.

In our case, working closely with the 12 member agencies, the New Mexico Water Trust Board and the New Mexico legislature, we are leveraging local, State and Federal dollars to implement the project.

Some concerns we have with the legislation: the legislation includes a factor that requires the project be cost effective and show positive benefit/cost ratio. These terms need additional definition and relevance. For example, our project may not be—well, may not present well, in a benefit/cost analysis without incorporating the detailed apples-to-apples comparison of the no-project alternative.

What is the long-term economic impact on the region if nothing is done to develop a sustainable water supply and the deteriorating groundwater conditions persist? This no-project option is a much more difficult and subjective analysis, short of years of technical assessment.

We encourage that S. 895 may include flexibility in assessing the non-Federal costs based on analysis of capability to pay, rather than application of a blanket, fixed Federal share approach. Much discussion has taken place regarding the member agencies' ability and willingness to pay for our project. Can we afford the cost?

The more pressing question is not can we afford to do this project, but can we afford not to. We applaud you for taking this initiative to put in place a rural water program that will clarify the Federal and non-Federal roles and requirements and formally establish a process that will minimize the moving target syndrome that we have experienced.

Though we are considerably well-advanced in our implementation plan, we do not desire to back up several steps, and potentially several years, or to lose the momentum we currently have.

We feel that this act will undoubtedly benefit many other projects similar to ours that will come before you in the future.

Thank you again for this time this morning, and we will be glad to answer any questions.

[The prepared statement of Mr. Lansford follows:]

PREPARED STATEMENT OF DAVID LANSFORD, MAYOR, CLOVIS, NM, AND CHAIRMAN,
EASTERN NEW MEXICO RURAL WATER AUTHORITY

Thank you for the opportunity to appear before you today to comment on Senate Bill 895, the "Rural Water Supply Act of 2005".

My name is David Lansford. I am the Mayor of Clovis, New Mexico, and serve as the Chairman of the Eastern NM Rural Water Authority. With me this morning is Orlando Ortega, Mayor of the City of Portales, NM, and Vice Chairman of the Water Authority.

We consider it an honor to be afforded the opportunity to participate in this dialogue.

Before I continue on with my prepared statement, I would like to make a general comment regarding the essence and the significance of the legislation. I believe that this bill is pioneering legislation because it lays the groundwork and provides a mechanism for rural economic sustainability and expansion in the western United States. Rural communities are eager for growth and are the destination for many in our country who are seeking less congestion, less crime and a more traditional lifestyle.

Some sociologists see a third migratory shift in America. Couple this migration with the natural increase in population and we have an enormous opportunity and responsibility all in one. This legislation shows great leadership on the part of the U.S. Senate and in years to come will be recognized as the key legislation which allowed for economic growth, better quality of life and the tool that eased the burden on government services in the population dense cities of our country. I'm more than convinced that countless millions will benefit both directly and indirectly from this historic legislation.

We have taken the opportunity to review S. 895, particularly as it relates to our ongoing efforts in New Mexico, and offer the following comments:

As you know, we are working diligently towards the development of a rural regional water supply project for twelve communities and counties in eastern NM, and have been doing so for over six years. In many respects, our project closely fits the model envisioned by this legislation. We recognize the need for a rural water program and strongly support its implementation.

Projects like this involve many players. We are fortunate to have a federal partner in the Bureau of Reclamation, and the NM Interstate Stream Commission and NM Water Trust Board as our state partners. Ours is a unique initiative in NM and we are all learning the ropes and developing processes together. Consequently, the past few years have been something of a moving target for us.

The current initiative for the Eastern NM Rural Water System began over six years ago as a collaboration of the 12 community and county members, Reclamation, and the State of New Mexico, but our project was first conceived over 40 years ago.

POSITIVE ASPECTS OF THE LEGISLATION . . .

The legislation recognizes that a national interest exists for a water supply program in the Reclamation States to provide clean, safe, affordable and reliable water supplies to rural areas, on a regional basis. In particular, these are instances where limited viable options exist for sustainable water supply and where the available source of supply is geographically remote from the rural consumers.

The legislation establishes a framework and a time schedule within which the federal and non-federal partners have better-defined roles, eligibility criteria and direction on which to base project development decisions.

The legislation promotes and provides for a regional perspective to water resources management that could include elements not traditionally considered. For example, in our case, source water protection of both quality and quantity is critical. Authorizing legislation introduced by Senator Bingaman last year, for our project, included a wastewater collection and treatment component to assist the region in significantly reducing the potential for septic tank leakage into the reservoir which serves as our surface water source.

This bill requires that eligible projects assess both federal and non-federal resources for capital project costs. It also provides for the appropriate level of non-federal cost share be based on an assessment of capability to pay by the non-federal entities. In our case, working closely with the 12 member agencies, the NM Water Trust Board and the NM Legislature, we are leveraging local, state and federal dollars to implement the project.

The Loan Guarantee provisions of Title II—the Twenty First Century Water Works Act provide a powerful tool to assist non-Federal entities with private sector loans or financing, particularly those that otherwise may have limited financing options.

The draft Act includes a provision to *scale the level of effort* needed to complete appraisal investigations and feasibility studies relative to the scope of the project to minimize the costs to the non-Federal entities.

CONCERNS THAT WE HAVE WITH THE LEGISLATION . . .

The legislation includes a factor that requires the projects be “*cost effective*” and show a positive benefit/cost ratio. These terms needs additional definition or relevance. For example, our project may not present well in a benefit/cost analysis without incorporating the detailed “apples to apples” comparison of the “no project” alternative—what is the long-term economic impact on the region if nothing is done to develop a sustainable water supply and the deteriorating groundwater conditions persist. This “no project” option is a much more difficult and subjective analysis short of years of technical assessment.

The bill requires a minimum of a 25% non-federal cost share for capital costs if the Secretary deems the project eligible for authorization, not withstanding the rural regions’ *capability to pay*.

Sec. 105 Subsection (a), Part (3)(B), on Pg. 11, provides for the Secretary to enter into a cooperative agreement with a non-federal entity to conduct appraisal investigations and feasibility studies, if the Secretary determines that “using the non-Federal project entity to conduct the work is the *lowest cost alternative* for completing the work”.

In our case, finance consultants working on our project since 1999 note that financing through tax exempt bonds or the NM Finance Authority may be more advantageous than *loan guaranteed private sector financing* and is typically 1 to 1½% lower than that obtained through private transactions.

We have found that in many instances there are local resources, experience and knowledge that may be more “cost effective” and “timely” while not necessarily the lowest cost. Our project has experienced a series of studies over 40+ years that have not necessarily advanced the project.

It seems though, that as we progress and get closer to possible authorization, we run up against new questions and obstacles that impede our progress. We are very cognizant that *time is of the essence* for us. Not only are our groundwater supplies running out, but our water purchase agreement with the State of New Mexico is time sensitive, and construction costs are escalating annually. We understand that steel prices alone increased approximately 40% last year due to global demand factors.

We are encouraged that S. 895 may include flexibility in assessing the non-federal costs, based on analysis of capability to pay, rather than application of a “blanket” fixed federal share approach. Much discussion has taken place regarding the member agencies ability and willingness to pay for our project. Can we afford the cost? The more pressing question is not can we afford to do this project but rather can we afford to not do the project.

We applaud you for taking this initiative to put in place a rural water program that will clarify the federal and non-federal roles and requirements, and formally establish a process that will minimize the “moving target” syndrome that we have experienced. Though we are considerably well advanced in our implementation plan and do not desire to back up several steps, and potentially several years, or to lose

the momentum we currently have, we feel that this Act will undoubtedly benefit many other projects similar to ours that will come before you in the future.

Thank you again for your time this morning, and we'll be glad to answer any of your questions.

The CHAIRMAN. Thank you, mayor.
Mr. Smith.

**STATEMENT OF DUANE A. SMITH, EXECUTIVE DIRECTOR,
OKLAHOMA WATER RESOURCES BOARD, AND VICE-CHAIR,
WESTERN STATES WATER COUNCIL**

Mr. SMITH. Good morning, Mr. Chairman, members of the committee. My name is Duane Smith. I am the executive director of the Oklahoma Water Resources Board. I am testifying as vice-chairman of the Western States Water Council, representing the Council. I have been authorized to provide this testimony on behalf of the Western Governors' Association, to which the Council is closely affiliated.

The Council is an organization of representatives appointed by the Governors of 18 States. The Council is an advisory body made up of experts in water law and policy, water rights administration, water conservation, water quality and water supply.

On July 16, 2004, the Western States Water Council sent comments on three bills that were the subject before this committee, and we certainly strongly support the Federal legislation.

And I will say that in S. 895, most of our comments have satisfactorily been addressed and we do support that legislation.

I would also like to say, Mr. Chairman, if I may, that we also strongly support enactment of S. 802, the National Drought Preparedness Act of 2005, which would establish a National Drought Council, develop a drought preparedness policy, improve the national integrated drought information system, and establish a drought assistance fund. The bill would provide small, rural communities additional technical and financial assistance.

S. 895 responds favorably to many of our comments. The loan guarantee authority would be an important financing tool to add to what the States have already done.

The needs assessment should be undertaken in cooperation with the States, integrated in the current programs. Many of the States have needs assessments of various programs that are currently going on.

I believe that what rural Oklahoma cities and rural water districts need are assessments of what is currently on the ground. Are we meeting our current infrastructure needs? If we are, fine. Most of them are not.

If we are not, then what are the alternatives to go forward? We need to analyze those from a financial, technical, and environmental aspect.

The main financing infrastructure for our rural communities is the Safe Drinking Water Act. And through the Environmental Protection Agency's Clean Water Act funding, that is really primarily the way that small, rural communities in Oklahoma and throughout the west obtain their financing.

We know that there are strings attached to that money and oftentimes that that program is very expensive to meet the requirements of.

In the House Appropriation Interior Subcommittee on May 4, for the fiscal year 2006 budget, it had \$850 million into the drinking water revolving fund. We know that the Environmental Protection Agency has estimated that for 20 years the small communities' need is over \$74 billion. So we know that that gap is only widening. But we do not think that S. 895 should take any money out of the current programs that are used to finance our rural communities.

Any program must be implemented in cooperation with State and local groups. And I think that one of the main things that the Western States would like to say that we appreciate in the bill is the recognition of the Federal Government that the States have the water rights. And, of course, that is something that to the States is very important.

We have done \$1.4 billion of financing in the last 20 years for water and waste water infrastructure needs. We believe that the Environmental Protection Agency's estimates of the \$75 billion in rural needs in the next 20 years is grossly underestimated.

We see \$4 billion of need in Oklahoma alone in the next 20 years just to bring our water and waste water infrastructure up to current standing. Forty percent of Alaska's rural households lack drinking water and waste disposal. California's fast-growing rural areas rely on limited groundwater supply. In Colorado, nitrates, total dissolved solids, natural arsenic, heavy metals, radon, salt and uranium are problems. Drought and conjunctive use challenges afflict rural users in Idaho. Rural communities in Montana face conflicts between consumptive uses and in-stream environmental needs due to drought and low flows.

And, of course, New Mexico, which is here today, particularly in rural areas and Indian reservations, suffer due to limited surface and groundwater supplies, environmental demands, and particularly the money to build infrastructures to tap distant supplies.

North Dakota finds it increasingly difficult to comply with drinking water standards for fluorides, nitrates, lead and copper given limited State resources. Oregon struggles with growing rural water demands and aging infrastructure. South Dakota, with minerals in its groundwater, makes it undesirable for drinking and household uses, necessitating development of the Missouri River supplies. Washington State has 20,000 small systems with less than 15 taps. And, of course, rural Wyoming communities are frustrated by expensive Federal monetary demands.

Mr. Chairman, thank you for the opportunity to testify. We look forward to working with the committee to make this a great bill. [The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF DUANE A. SMITH, EXECUTIVE DIRECTOR, OKLAHOMA WATER RESOURCES BOARD, VICE-CHAIR, WESTERN STATES WATER COUNCIL

Dear Mr. Chairman and Members of the Committee, my name is Duane Smith and I am the Executive Director of the Oklahoma Water Resources Board. I am also testifying as Vice-Chairman of the Western States Water Council, representing the Council. I have also been authorized to provide this testimony on behalf of the Western Governors' Association, with which the Council is closely affiliated. The Council

is an organization of representatives appointed by the Governors of eighteen states. The Council is an advisory body made up of experts in water law and policy, water rights administration, water conservation, water quality and water supply. Rural water issues are important to our members and states, and we applaud you, Mr. Chairman and those that have cosponsored this bill, as a means to address some of the most pressing needs of water users in the West. Much of the West is characterized by its aridity, and the current drought highlights the fact that water availability continues to define and circumscribe our economic and environmental well being and quality of life. This is particularly true in many small rural communities.

In a letter last year dated July 16, 2004, we commented on S. 2218, S. 1732 and S. 1085, introduced respectively by Chairman Domenici and Senator Bingaman. We strongly support federal legislation to provide technical and financial assistance for small rural communities. We appreciate your efforts in this regard, and hope to see appropriate legislation enacted to create a systematic, integrated approach to investigating, authorizing and constructing projects to meet rural western water demands in close cooperation with State, local and regional entities, as well as tribes. We hope we can work together to ease the burden and improve the lot of many of our rural citizens struggling to ensure that their water supplies meet minimal standards for public health and safety, and are sufficient to carry them through shortages, such as the current drought.

May I add here, Mr. Chairman, that we also strongly support enactment of S. 802, the National Drought Preparedness Act of 2005 which would establish a National Drought Council, develop a drought preparedness policy, improve the National Integrated Drought Information System (NIDIS) and establish a Drought Assistance Fund. The bill would provide small rural communities additional technical and financial assistance.

Many of the issues we raised in our July 16 letter have been addressed in S. 895, but we would offer a few additional suggestions. There is one overriding issue that the Congress must still address, and that is the chronic lack of adequate funding for past and present programs designed to achieve a reasonable degree of security for our water supplies, as it relates to quantity and quality, particularly in the West.

EPA's 1999 Drinking Water Infrastructure Needs Survey estimated the total national need for a 20-year period to be \$150.9 billion, including \$74.5 billion for systems serving less than 50,000 people and another \$2.2 billion for American Indian and Alaska Native Village Water Systems. EPA's September 2002 Gap Analysis and Needs Survey estimated the 20-year funding gap for Drinking Water (capital and operation and maintenance), given current spending levels, to be \$263 billion. The Safe Drinking Water Act Amendments of 1996 authorized Drinking Water SRF appropriations of \$9.6 billion, but actual appropriations through Fiscal Year 2001 totaled \$4.4 billion. The House Appropriations Interior Subcommittee approved \$850 million for FY2006, on May 4, which is \$7 million more than actually appropriated for FY2005. The Drinking Water SRF is a principal source of federal assistance for many rural communities.

Existing authorities and past appropriations are not sufficient to meet the needs of the West and small rural communities, which are facing serious obstacles in securing the resources necessary to ensure an adequate and reliable water supply for their future. S. 895 could become an important addition to the "tool box" available to rural water users, but the bill provides no new authority, assistance or funding for the construction of projects. Any future construction assistance would require authorization and the appropriation of funds or application of the new federal loan guarantees. The authority to provide federal loan guarantees is an important new tool. However, S. 895 cannot replace adequate appropriations for the current SRF programs, which the Congress and the Administration must continue to support.

Nor will S. 895 make up for the Congress' diversion of Reclamation Fund revenues for other unrelated government purposes. New authority and significant new funding is essential to meeting future western rural water needs. The Council suggested recently during the Committee's Water Conference last month that it is past time to consider seriously the use of the unobligated amounts in the Reclamation Fund to support western water supply needs, which would include those of small rural communities.

That said, there is much to recommend S. 895. The draft bill would provide for a general assessment of rural water supply needs, existing programs and any gaps. This assessment would be undertaken in cooperation with various federal agencies. It should be noted that there are many existing state programs and information compiled by the states that should not be overlooked as part of any assessment. Examples from several states are included herein. The bill provides for project appraisal investigations, feasibility reports and recommendations for construction au-

thority (but no construction authority). It also requires the Secretary to identify what funding sources are available for a proposed project, and the availability of loan guarantees (authorized under Title II). The Secretary is also to recommend what grants, loan guarantees or combination of both should be used to provide the federal share of project costs.

Various considerations are listed for appraisal and/or feasibility reports, including whether water rights exist to supply the project. The availability of water rights and conservation measures are considerations specifically listed. States must have a say in determining the availability of water rights to support project development and actual water delivery, as well as appropriate water conservation measures. The states are primarily responsible for water allocation, and the Council appreciates the inclusion of language explicitly stating that nothing in the bill is intended to nor shall be construed to affect any state granted water rights. The bill states: "Nothing in this title preempts or affects State water law or an interstate compact governing water." Further, "The Secretary shall comply with State water laws in carrying out this title." The same language is included in Title II.

Numerous other considerations are listed. The states should have a key role in the development and establishment of guidelines and criteria for determining program eligibility and in selecting project priorities. There is no apparent provision for establishing priorities among eligible projects in the bill. Each state has a formula for establishing priorities for allocating SRF money.

It is important to note that rehabilitation and replacement of existing sub-standard rural water supply systems must be an important part of the program. Some areas depend on water systems that fail to meet Safe Drinking Water Act standards. The bill directs the Secretary to recommend whether a project should be authorized (with a minimum 25% non-federal cost share). It also provides for federal loan guarantees or insurance for up to 90% of project costs. Project operation, maintenance and replacement costs are to be 100% non-federally financed. The Secretary is to assess the financial capability of each non-federal entity to pay for its share of various study and construction costs as part of the feasibility report—including whether the non-federal entity has an O&M and replacement plan and necessary rates and fees. Upgrading and replacing antiquated and inadequate systems may require finding new water supplies, which could entail acquiring adequate water rights and building the necessary infrastructure. But the bill does not authorize construction of any project. Further, the bill specifically excludes construction of "major impoundment structures" or projects for "commercial" irrigation or livestock watering, although it addresses opportunities to use low-quality water supplies. There is no discussion of the use of funds to acquire water rights.

The Council believes any program must be implemented in cooperation with other federal and non-federal programs, including coordinating actions with state and local watershed groups. The needs and resources assessment is to be undertaken in consultation with other federal agencies, but states and other entities are not mentioned. Appraisal investigations are to be undertaken in consultation and cooperation with appropriate state, tribal, regional and local authorities. A project feasibility report is to include the extent to which it involves partnerships with other state, local, tribal and federal government entities (which are also to be consulted during the conduct and development of reports).

Cost sharing and repayment requirements and "capability-to-pay" measures should recognize the potential hardship some rural communities face, and the Secretary should have the flexibility to make appropriate adjustments. In this regard, the bill is to be commended in providing that the Secretary, in evaluating a proposed project, "shall" consider an entity's financial capability to pay the capital construction costs and recommend an "appropriate" federal cost share, taking into account a number of listed factors. In cases of financial hardship, the Secretary may also adjust the federal cost share for feasibility studies.

It is also important that non-Federal entities retain title to projects. Importantly, the bill states: "Nothing . . . authorizes the transfer of pre-existing facilities or . . . components of any water system from Federal to private ownership or from private to Federal ownership." Title to ownership of new facilities is to be held by the non-federal entity.

In determining and allocating project costs among beneficiaries, which federal costs are or are not reimbursable should be clearly defined. Federal oversight or overhead costs, which are beyond the control of non-Federal project sponsors, should be non-reimbursable. The bill provides that the first \$200,000 of the appraisal investigations would be paid by the federal government, with any additional costs shared on a 50%-50% basis. Further, the Secretary should be allowed to accept appropriate non-Federal in-kind contributions as part of cost-sharing requirements. The bill pro-

vides that the Secretary may accept in-kind services determined to contribute substantially toward the conduct and completion of feasibility studies.

The balance of this statement underscores the need to address rural water supply needs, and highlights state programs striving to address these needs.

According to EPA's 1999 Needs Assessment, approximately 45,000 of the Nation's 55,000 community water systems serve fewer than 3,300 people. Regardless of their size and configuration, small water systems face many unique challenges in providing safe drinking water to consumers. The substantial capital investments required to rehabilitate, upgrade, or install infrastructure represent one such challenge. The per-household costs borne by small systems are significantly higher than those of larger systems. The per-household costs for infrastructure improvements is almost 4-fold higher for small systems than for large systems. Small systems lack the economies of scale that allow larger systems to spread the costs of capital improvements among their many consumers.

In 1996 and 1997, the Council compiled information on states' views regarding their water problems for the Western Water Policy Review Advisory Commission—created by this Committee. One of the questions addressed the problems of rural communities related to water supply, potable water treatment and wastewater treatment. The results were published in a report, *Water in the West Today: A States' Perspective* (February 1997), together with appendices detailing individual state responses. I would like to summarize some of the findings related to a few states, including my state of Oklahoma.

There are a number of state and federal programs that provide some type of technical and/or financial assistance to rural communities in Oklahoma. The primary source of state financing for water and wastewater programs is the Statewide Water Development Revolving Fund (SWDRF). The state legislature created the SWDRF in 1979 and the state reaffirmed that action by a popular vote in 1984. The corpus of the SWDRF provides a reserve for bonds issued by the Oklahoma Water Resources Board (OWRB), on behalf of small borrowers, at lower interest rates than they could otherwise obtain. Interest earned on the SWDRF provides money for emergency grants. OWRB also administers the Statewide Rural Energy and Water Conservation Program, which is designed to identify and eliminate energy and water losses from rural systems. The Oklahoma Rural Water Association coordinates leak detection audits, which has found water losses of up to 51%, and helped finance remedial measures. The Oklahoma Department of Commerce may also provide grants to communities under 50,000 people. However, these are very small programs compared to the state and federally capitalized Clean Water and Safe Drinking Water revolving funds, which continue to be the largest source of money for meeting rural water needs in Oklahoma.

In Alaska, reportedly some 40% of rural households lacked safe drinking water and indoor bathrooms. Water is hauled by hand from a central community spigot, tapping shallow groundwater, or walk to and from a nearby river or stream. Some use an outhouse as a restroom, or many people use a bucket as a toilet and human waste is disposed of directly on the ground outside homes or in unlined sewage pits, allowing wastes to leach into groundwater and surface streams—causing public health and safety problems—and contributing to an alarming rate of waterborne disease such as meningitis and Hepatitis A, which is considered endemic in several rural regions. The state of Alaska provides grants and technical assistance, as well as managerial training to try to help rural communities and utilities meet their public health needs.

Most of California's small rural communities rely on groundwater, and their existing supplies are often limited by the local hydrogeology—such as low-yield wells tapping fractured rock aquifers or small coastal aquifers affected by seawater intrusion. They are also threatened by increasing population pressures. Many of California's fastest growing counties are located along the Sierra Nevada foothills, and rely on limited water supplies. Further, the scattered pattern of development also limits their ability to join regional consolidated water and wastewater systems. The state has historically provided financial assistance in the form of various loans and grants, backed by the sale of general obligation bonds—without significant federal assistance. In its 2000 Critical Water Shortage Contingency Plan, the Governor's Advisory Drought Planning Panel singled out the unreliability of small, rural water systems as an issue requiring special attention, noting that “small water users bore the brunt of the actual public health and safety impacts—lack of water for basic domestic, sanitation, and firefighting purposes—felt during recent droughts”.

Water quantity and water quality problems afflict several rural areas in Colorado. Drought has accentuated supply problems that are growing with rural populations. Nitrates and dissolved solids affect surface and groundwaters, which are also impacted by naturally occurring uranium, radon, arsenic, salinity and heavy metals.

The Safe Drinking Water Act (SDWA) and its testing and treatment requirements are too costly for many rural communities. Further, they face an additional financial burden related to replacing aging infrastructure and filtration systems. Many will not be able to make the improvements needed without assistance. The state provides technical assistance and provides some loans, grants or a combination of both.

In Idaho, the drought has highlighted the interconnected nature of the state's surface and groundwater resources, particularly across the Eastern Snake Plain Aquifer. Groundwater pumping is having a serious impact on surface flows, and the state is struggling to balance the impact on rural water supplies and rural economies. Many supply problems also involve water quality and treatment requirements. Many rural communities lack the financial resources and technical expertise to address their problems in an acceptable fashion. There are a number of state programs that provide some planning and financial assistance, including loans and grants.

Montana faces many challenges in meeting competing demands for consumptive uses and instream flows, particularly during drought, when surface waters are low. Rural communities with inadequate infrastructure face poor water quality in some areas, and expensive changes to bring their drinking water systems up to SDWA compliance standards. The costs often exceed the water users' ability to pay.

For many rural communities in New Mexico, limited groundwater and surface water resources are or will become a problem. Often the infrastructure necessary to tap distant water supplies is too costly for rural communities. Two examples are the Eastern New Mexico Pipeline serving communities from Ute Lake, and the proposed Navajo-Gallup pipeline, included in the recent Navajo Water Settlement, to serve both Indian and non-Indian communities. The state provides some assistance in the form of grants for improving water supply or wastewater treatment facilities, and the state legislature has on occasion directly appropriated money for communities to improve their systems and/or buy water rights. New Mexico has also received federal assistance from a variety of sources in an attempt to meet its rural water needs, including the needs of a number of Indian tribes and pueblos. The Bureau of Reclamation has helped in assessing the needs of rural water users in eastern, southwest and northwest New Mexico and is working with state and local water agencies to develop plans to bring renewable surface water supplies to rural areas, including the large Navajo reservation. The state and federal government are also working together to clean up Superfund sites that threaten wells in a rural area south of Albuquerque.

Rural communities in North Dakota find it increasingly difficult to comply with Environmental Protection Agency (EPA) drinking water standards for fluoride, nitrates, lead and copper. Many communities have had to change their treatment processes in order to comply with the Surface Water Treatment Rule and requirements for groundwater sources that require they be evaluated to determine if the groundwater is directly influenced by surface water. State resources are limited, and are not sufficient to undertake the projects required to provide adequate and safe drinking water for North Dakota's rural communities. The Congress recognized this, and its prior promises in authorizing the Garrison Project, when it created a program to provide municipal and industrial water (in lieu of irrigation) for North Dakota and authorized the Southwest Pipeline Project and Northwest Area Water Supply Project to bring Missouri River water to scores of rural communities.

In Oregon there are some 800 small community water systems that serve less than 3,300 people, and most of these are in rural areas. The Oregon Water Resources Department offers limited technical assistance to these communities, which face the dual challenge of growing demands due to an increasing population, while their aging infrastructure can no longer be maintained in a manner to ensure water is delivered efficiently. Further, rural communities face significant expenses for monitoring and treatment of their water supplies.

South Dakota has found that the quality of groundwater in rural areas typically meets state and federal drinking water requirements, but its high mineral content often makes it undesirable for drinking and other household uses. With the exception of the Missouri River, finding adequate quantities of both surface and groundwater can be a struggle in many parts of the state. Most rural communities have limited financial resources or lack the expertise necessary to maintain and improve their infrastructure adequately. South Dakota provides some help through the state's dedicated water funding program which awards state grants and loans to small communities. However, the state relies heavily on federal grants such as EPA's Drinking Water Revolving Fund grants to capitalize the state's Drinking Water State Revolving Fund (SRF) Program. The federal SRF programs are the primary source of funding for many small communities' water and wastewater needs.

The Utah Board of Water Resources administers three small revolving loan programs that provide low cost financing for water development and water treatment

facilities and technical assistance, including special studies and investigations. Project sponsors are required to develop and implement a water management and conservation plan. The Utah Department of Environmental Quality's Division of Drinking Water also provides some technical and financial assistance to rural communities through its State Drinking Water Program, including limited money for infrastructure repairs and upgrades. The Rural Water Association of Utah also provides training and other managerial assistance to small water systems. Often, in rural areas, the operator of the water system may also have to operate the wastewater system and maintain the cemetery, etc. Since 1972, EPA's Construction Grants Program and subsequently the Clean Water and Safe Drinking Water SRFs have been invaluable in assisting small rural communities meet minimum public health and safety requirements.

Washington State has nearly 20,000 small water systems and the vast majority serve fewer than 15 hookups and generally lack the professional expertise and financial resources to adequately monitor water quality and maintain their systems in compliance with state and federal requirements. The state has taken some important steps to require operator certification, deny proliferation of small systems where an existing system is viable, and clarify receivership for failing systems. Still major challenges remain, not the least of which is the current drought that is straining surface and groundwater supplies.

Expensive water supply and treatment facilities are often beyond the reach of many of Wyoming's small rural communities. Fortunately, there are many high quality supplies available to small towns. Unfortunately, federal regulations sometimes force treatment requirements upon communities in a one-size-fits-all fashion. Many rural communities also lack the resources to employ a full-time system operator, water testing laboratories can be far away and monitoring can be expensive. Towns are sometimes frustrated when they are required to test for contaminants that are unlikely to be found in their area. Water and wastewater assistance is available from the Water Development Commission, the Farm Loan Board and Wyoming Association of Rural Water Systems. These provide technical and some financial assistance, including well-head protection advice on recognizing activities that could potentially put their water supplies at risk. The Department of Environmental Quality administers the federal SRF grants to help communities build and upgrade treatment facilities.

I appreciate the opportunity to testify on behalf of the Western Governors' Association and the Western States Water Council and we hope to be able to work with the Committee as it strives to find ways to assist rural areas meet their growing water demands.

The CHAIRMAN. Thank you very much. Very informative and we are glad we have had cooperation with you all. Some things you suggest we have to do.

Mr. Frazier.

**STATEMENT OF HAROLD FRAZIER, CHAIRMAN,
CHEYENNE RIVER SIOUX TRIBE**

Mr. FRAZIER. Thank you. Chairman Domenici and all the members of Energy and Natural Resources Committee, thank you for allowing me to testify today. My name is Harold Frazier, and I am chairman of the Cheyenne River Sioux Tribe.

Before discussing a few important details about this legislation, I would like to tell you about the water situation on my reservation as it relates to S. 895.

The Cheyenne River Sioux Reservation is located in north central South Dakota. It encompasses 2.8 million acres of land. Our tribal membership number is 14,668 members. Lake Oahe, one of the largest reservoirs on the Missouri River forms the eastern boundary of our reservation.

At one point in history, the Great Sioux Nation consisted of hundreds of millions of acres of land. Through various Federal actions over a period of 150 years, the Sioux People were forced to give up

millions of acres as various smaller Sioux reservations were established.

It is important to know that the Sioux treaties of 1851 and 1868 both recognize the importance of the Missouri River to our people. And even though our land base was west of the Missouri, these treaties established that the eastern boundary would be the east bank of the Missouri River.

In 1944, Congress passed the Pick-Sloan Act. This resulted in the flooding of 104,000 acres of land at Cheyenne River and the displacement of the largest settlement of people on the Missouri River at the Cheyenne River Reservation.

The decision to build the Oahe Dam resulted in the loss of 90 percent of our timber and over 75 percent of our wildlife habitat. The tribe was not even informed of this project until 1947, 3 years after Congress authorized this project and in spite of the fact that we have federally reserved water rights for our homelands.

During the development of the Lake Oahe project, the U.S. Government spent millions of dollars so our families would receive clean water. When the Lake Oahe project was completed, there were families who received the clean water but not the Indian families residing on the Cheyenne River Sioux Reservation.

Our lands were taken. They were flooded. The water supply for our people was not built. Neither the Bureau of Reclamation nor the Corps of Engineers ever built a water supply system at Cheyenne River despite repeated requests to Congress and these agencies.

The tribe and surrounding communities cobbled together funds from HUD, IHS, BIA and FMHA to build a small water system, one that is now obsolete and falling apart.

The water intake in the Cheyenne River arm of the Oahe Reservoir that serves Dewey and Ziebach Counties on our reservation, as well as parts of northeastern Meade County off our reservation, may very well run out of water this summer. This is due to the drought and scheduled draw-down to the Missouri River for downstate barge traffic.

Projected water levels show that our pipe may become dysfunctional this August. At that point, 14,000 people, Indian and non-Indian alike, in an area the size of Connecticut, will be without water. All businesses will close, as well as our schools, our clinics and the only hospital for a hundred miles. Sixteen tribal communities and four towns will be without water.

The existing water supply system cannot meet critical needs of our reservation. Even with the intake fully under water, we have serious problems with the lack of water quantity.

Last year, we ran out of water in fighting a house fire. Four Indian children died in that fire. Last time we ran out of water, we had to pump water out of a sewage lagoon to fight a prairie fire that was threatening the town of Eagle Butte.

We presently suffer from severe housing shortages and we have overcrowding, where as many as 20 people live under the same roof. Senators, we cannot build another house because we have no water available to send to a new house. The only way we can get water to a new house would be if we decommission an existing one.

Banner Engineering firm from Brookings has completed a technical engineering study for us. It indicated that we need a water treatment plant and distribution system capable of processing 13.5 million gallons of water a day. Our present water treatment plant has a maximum capacity of 1.2 million gallons a day.

Additionally our intake is in the Cheyenne River arm of the Oahe Reservoir, and the Cheyenne River has at least two serious problems. The first is that it is being silted at a very rapid pace. We lowered our intake once in 1989. We cannot lower it anymore due to its location. Second, the Cheyenne has the deadly remnants of millions of tons of mine tailings in it, including heavy metals, arsenic and mercury.

On our reservation, since 1996, according to Indian Health Service data, we have had 18 cases of brain cancers, including glioblastoma. Eleven of those 18 are now dead. The national incidence of brain cancers range from 3½ to 6 per 100,000, according to the National Cancer Institute. There have also been seven cases of scleroderma, including four deaths on our reservation since 1996, whereas the incidence of those cases in the U.S. population is 1 in 100,000.

Mr. Chairman, when you introduced this bill, your introductory remarks in the Congressional Record indicated that the deteriorating water infrastructure combined with the inability to raise the capital necessary to build a new water system was leading to substantial want and leaving a number of western communities in a dire situation.

The Cheyenne River Sioux Tribe is probably the poster child for the situation that you describe, but a far more severe scenario than anything most Americans can envision.

We view S. 895 as a wake-up call to the Nation. We also view it as an important step toward honoring—

The CHAIRMAN. Could you talk just a little louder.

Mr. FRAZIER. We also view it as an important step toward honoring our treaties with the U.S. Government. This bill essentially does four things. It creates an authorization for a rural water program at the Bureau of Reclamation. It expedites appraisal and feasibility studies that have traditionally been lengthy. Prerequisites to the Bureau of Reclamation have all been in rural water projects. It allows the Bureau to set private studies that communities have undertaken on their own or fund such studies. And it creates a loan guarantee program for the construction.

Ziebach County, wholly enclosed in our reservation, is the poorest county in South Dakota and the fifth poorest county in the entire United States. The unemployment rate at Cheyenne River is 78 percent, with 96 percent of working families living below national poverty level, according to the BIA 2000 report.

Taking into consideration our depressed social and economic conditions, we are concerned if we would even qualify for loans even with a Federal loan guarantee program. We ask you to work with my tribe and others in the Dakotas to examine alternatives, including direct assistance, perhaps amending the bill to allow for the repayment of such loans by the Bureau of Reclamation in case of an Indian tribe meeting certain criteria, or alternatively authoring Bu-

reau of Reclamation grants to transfer the construction of such water projects.

While we understand that this may be outside the jurisdiction of the Energy Committee, we think the bill should be amended to include a role for the Army Corps of Engineers. The total need in the West for rural water projects is simply too large for the Bureau of Reclamation to handle this problem on its own. This is going to take a multi-agency approach, and we believe the Corps has the significant expertise in this area to be most helpful to Indian reservations.

The CHAIRMAN. Mr. Chairman, would you try and summarize your statement?

Mr. FRAZIER. Okay.

The CHAIRMAN. Please. You are running over time and the Senators are having to leave.

Mr. FRAZIER. Okay.

The CHAIRMAN. So it is not going to do any good.

Mr. FRAZIER. Okay. I will close right now, because I will submit written testimony, but thank you for the opportunity to be here today. And I just want to close by saying in our language *mni wiconi*, which means water is life. And it is important, because the lives of our people are at stake as well as our future generations, so thank you.

[The prepared statement of Mr. Frazier follows:]

PREPARED STATEMENT OF HAROLD FRAZIER, CHAIRMAN,
CHEYENNE RIVER SIOUX TRIBE

Chairman Domenici, Senator Bingaman and honorable members of the Energy and Natural Resources Committee. My name is Harold Frazier, and I am the Chairman of the Cheyenne River Sioux Tribe located in South Dakota. I want to extend my sincere appreciation to Senators Domenici and Bingaman for taking the lead and introducing this extremely important bill and I wish to thank Senators Bennett, Murkowski and our own Tim Johnson for co-sponsoring the Rural Water Supply Act of 2005. It is certainly legislation that is needed in the western United States.

Before discussing details, I want to tell you about my homeland as it relates to S. 895. Through federal actions over a period of about 150 years millions of acres were taken from the Sioux Nation by the United States, often without compensation of any kind. Many people are aware of that aspect of U.S. history. What many are not familiar with is the astonishing degree of land that was subsequently taken from us WITHIN the boundaries of our reservations via the Indian Allotment Act of the late 1800s and the forced fee patenting of our lands. It is a history that should be shocking to members of this Committee but unfortunately it does not stop even there.

In 1944 Congress passed the Pick Sloan Act to build dams on the Missouri River including the Oahe Dam. This Project resulted in the flooding of 104,000 acres of land at Cheyenne River and the dislocation of the largest settlement of people on the Missouri. In the flooding, Cheyenne River lost 90 percent of its timber and over 75 percent of its wildlife habitat. The entire Cheyenne River Agency was moved to Eagle Butte, over 40 miles from the Missouri River, instead of our preferred location at Swiftbird right next to the River. The Tribe was not even informed of the Oahe project until 1947—three years after Congress authorized it. The Project was called a “balanced project” by the Corps and Congress, because, in exchange for the flooding of the best farmlands, irrigation projects would be built to make the arid plains farmable. Not one irrigation project was ever built by the Corps of Engineers on Indian lands at Cheyenne River. The economic loss of the best 104,000 acres of Cheyenne River lands is still being felt today.

That it is even possible for 104,000 acres of the Cheyenne River Sioux Reservation to have been flooded by Lake Oahe and that my people TODAY do not have enough water to drink, much less thrive, is to me one of the darkest chapters in the history of the United States. That the United States government spent hundreds of billions of dollars in the “greening of the West” through BOR and Corps Projects but man-

aged to bypass Indian country is nothing short of disgraceful. Our lands were taken and they were flooded. But water supply for our people was not built so that the people whose lands were flooded could benefit like our non-Indian neighbors from clean water. Neither the BOR nor the Corps of Engineers ever built a water supply system at Cheyenne River, despite repeated requests to Congress and these agencies. The Tribe and surrounding communities cobbled together funds from HUD, IHS, BIA, and FMHA to build a small water system which is now breaking down and wholly inadequate.

The water intake in the Cheyenne River Arm of the Oahe Reservoir that serves Dewey and Ziebach Counties on our reservation, as well parts of northeastern Meade County off our reservation, may very well stop working this August. This is due to the drought and scheduled draw downs of the Missouri River for down state barge traffic. At that point, 14,000 people—Indian and non-Indian alike—in an area the size of Connecticut, will be without water. All businesses will be affected, as will our schools, our health clinics and the only hospital within 100 miles. 16 communities will be without water!

Today, as I sit here, even with the intake under water, we have serious problems with a lack of water quantity and quality. Last year, we ran out of water in fighting a house fire. Four children died in that fire. Last year, we ran out of water and had to pump water out of a sewage lagoon to fight a prairie fire that threatened Eagle Butte—the headquarters of the Tribe. With the severe drought continuing, this fire protection problem will worsen this year.

We have a severe housing shortage and overcrowded homes where as many as 20 people live under the same roof. The shortage is not due solely to a lack of money to construct homes; we actually have funds from HUD and are ready to construct new homes. Senators, we can't build another home because we have no water available to send to a new home. The only way we can get water to a new home is to take an existing home off the water system.

The Banner Engineering firm of Brookings, South Dakota has completed a technical engineering study that indicates that we need a water system capable of processing 13.5 million gallons of water a day. Our present water treatment plant has a maximum capacity of 1.2 million gallons a day.

As if this isn't serious enough, our water intake is in the Cheyenne River Arm of the Oahe Reservoir and the Cheyenne River has at least two serious problems. The first is that it is silting in fast. We can't lower the intake any more. Secondly, the Cheyenne River has millions of tons of mine tailings in it including heavy metals, arsenic and mercury. On our reservation, we have had 18 cases of brain cancers since 1996 in a service population of 11,583. Eleven of those 18 are now dead. The national incidence of brain cancers ranges from 3.5 to 6 per 100,000 according to the National Cancer Institute. There have also been 7 cases of Scleroderma including four deaths on the reservation since 1996 whereas the incidence of those cases in the U.S. population is 1 in 100,000. There are high rates of other auto-immune diseases as well.

Right now, there are over 30 tribal members from Cheyenne River in active military service, and many more veterans of foreign wars at home. Some served in Iraq and Afghanistan and participated in rebuilding vital infrastructure in those nations. Yet, they are coming home, after proudly serving this Nation, to a lack of that same infrastructure they built for other nations. Something is very wrong with that picture.

We have an emergency Mr. Chairman and we hope that when you are wearing your other hat, as Chairman of the Appropriations Subcommittee on Energy and Water, that you will direct the Corps of Engineers to use any and all funds they have available to assist us in securing good quality water.

Senator Domenici, when you introduced this bill, your introductory remarks in the Congressional Record indicated that the deteriorating water infrastructure combined with the inability to raise the capital necessary to build new water systems was leading to "substantial want" and leaving a number of western communities in a "dire situation." It pains me to say that the Cheyenne River Sioux Tribe is probably the poster child for the situation you describe—a situation worse than anything most Americans could envision.

We view S. 895 as a wake up call to the nation and we also view it as a very good start. This bill essentially does three or four things. First it creates an important authorization for a rural water program at BOR. It expedites authorizations and non-reimbursable appropriations for appraisals and feasibility studies. It also allows the BOR to accept private studies that communities have undertaken on their own (or funds such studies) and it creates a federal loan guarantee program for the construction of rural water systems. Ziebach County, wholly enclosed in the Reservation, is the fifth poorest county in the entire United States. The unemploy-

ment rate at Cheyenne River is 78% with 96% of families working living below the national poverty level according to BIA 2000 Reports. We are therefore somewhat concerned as to how we or the other impoverished Sioux Tribes—including those desperately in need of rural water systems—could qualify for loans even with low interest federal loan guarantees authorized in this bill. We ask the Committee to consider working with my Tribe and others and with the Senate Indian Affairs Committee to consider amendments that might authorize BOR programs to provide direct assistance to tribes in need or water systems. We will check with other tribes in the Dakotas and solicit their input and endeavor to get back to you on this question within the next two weeks.

Additionally, and while we understand that this may be outside the jurisdiction of the Energy Committee, we think the bill should be amended to include a role for the Army Corps of Engineers. We have just begun working with the Corps on the crisis surrounding our water intake and have found them to be extremely professional and very helpful. The total need in the west for rural water projects is simply too large for the Bureau of Reclamation to handle this problem on its own. This is going to take a multi-agency approach and we believe the Corps has significant expertise in this area and could be most helpful to Indian reservations. I don't mean to be cynical, but since the Corps did such an effective job flooding lands on a number of reservations, the least they could do now would be to help tribes put all that water to good use and restore the Pick Sloan Project to the balanced project it was intended to be! Again I would think in the case of impoverished Indian reservations, the Corps and the BOR should be authorized and funded to directly do the work. Many Indian Tribes may not be able to participate in this program if they have to repay millions of dollars in loans even at low interest rates.

There are some provisions in S. 895 that require the Secretary to consider how a project may affect Indian trust responsibilities but we think it needs to go further and ensure that Indian treaty rights are protected and fulfilled. The language in the bill discusses Indian trust responsibility as if it is merely one factor for the Secretary to take into account and that consideration of it is discretionary. The trust responsibility of the United States to protect tribal water rights and tribal lands is not discretionary and should not be lumped together with other sections as merely one of many factors to weigh.

Other sections of the bill reference the fact that nothing in the bill is intended to preempt or affect State water rights and stipulate that State water law must be complied with in carrying out the bill. That does not protect our water rights which are not founded in state water law. In fact, it may be harmful to tribal water rights as this language grants primacy to state water law and rights. We have federally reserved rights recognized through federal court cases, treaties, statutes and executive orders. A similar savings clause should be added to the bill, as Congress has done in many other statutes, ensuring that nothing in the bill will diminish, divest, alter, or be contrary to any Indian reserved water rights, treaties or statutory obligations.

Again Senators, thank you for the opportunity to talk with you today and to offer our support for expanding access to vital water resources in the West. We appreciated the numerous provisions in the legislation where the sponsors have clearly endeavored to include Indian reservations in the scope of the bill.

The Lakota people say "Mni Wiconi" which means "Water is Life." We must have water to complete a new hospital and nursing home already ready to construct that will bring good health care to our people for the first time in the history of our Nation and over 200 new jobs with them. We must have access to water for our planned economic development projects and new businesses that cannot open their doors without water. We must have water if we are to become economically self-sufficient. And soon, we must have water just to drink for survival. We hope that you are successful in your efforts to secure access to the water that is needed to allow the people of Cheyenne River, and all communities and peoples of the West to live.

The CHAIRMAN. We will take your suggestions into consideration, except you must know we cannot put the Corps in this. We have to do it another way. We have to call them into consult. But we cannot merge the two or put them in this bill. It is not possible. But we know your concern.

Mr. FRAZIER. Okay. Thank you.

The CHAIRMAN. Mayor Lansford, let me just ask—the Reclamation requirements for feasibility and appraisal studies are a moving

target. Recently your association was informed that its study will require additional data and analysis.

Do you believe that having set criteria for feasibility and appraisal level criteria will do away with the moving target that you refer to in your testimony and do you believe that S. 895, requiring that Reclamation assess studies undertaken independently by communities and inform them of what they are lacking, would expedite the rural water planning efforts?

Mr. LANSFORD. Mr. Chairman, yes is the answer to your question. And we feel like this moving target is something that has been a point of frustration for us. As we have gotten closer to authorization, it seems like we have had to be responsible for answering questions that perhaps we should have answered many years ago but did not feel like it was necessary, for example, alternative water supplies, have you really studied your groundwater, are you looking at brackish water, prove the need for the project.

When you look at eastern New Mexico right now and you hear the tales of like, for example, the city of Portales having to spend \$33 million over the next 20 years just to drill four or five times as many wells as they currently have to meet current need, you can probably at least double that in Curry County, which is where Clovis is, and you can see pretty much on a practical basis that our groundwater supplies are running out.

So to go to the two or three studies on groundwater analysis, it seems like a huge step backward for us. So by this bill establishing the criteria and the rules up-front, if we would have known that 4 or 5 years ago, we would not be as frustrated as we are today, seeking authorization.

The CHAIRMAN. Do you want to comment, Mr. Dunlap?

Mr. DUNLAP. Yes, Mr. Chairman. And while you look at the Ute project in eastern New Mexico, the water rights are available for those communities out of our Ute Lake system and it would be unwise, I think, to further deplete the groundwater storage or groundwater that we have in that area when that water is available to those communities and it is a sure and certain supply of water where the groundwater is depleting itself. I agree with the mayor.

The CHAIRMAN. Thank you very much.

Senator Bingaman.

Senator BINGAMAN. Thank you, Mr. Chairman. Let me sort of ask the same question that you just asked and probably evoke the same kind of answer. But Commissioner Keys did talk about the need for communities to explore all available options in assessing these rural water projects.

I would just ask Mayor Lansford if you feel comfortable that the authority has done that in this case and has really made objective assessment of what your options are and which one is the best?

Mr. LANSFORD. Mr. Chairman and Senator Bingaman, thank you for that question. I believe that we have reviewed all of the available options for the water authority. Brackish water is one that we certainly have not spent any money on, but what we are hearing from our technical source is that the cost to do that is astronomical.

When you look down at Alamogordo, for example, they have spent tremendous amounts of money to get a small amount of water. And as Commissioner Dunlap just pointed out, our commu-

nities have been reserving water at Ute Reservoir for years. It is a sustainable water supply. It is a healthy resource, and it is clearly the most obvious solution for eastern New Mexico without exploring these other options.

Obviously we can drill more wells. But that has a cost to it as well, and it is not sustainable. It is depleting rapidly and really only provides a short-term solution for our needs.

And even if we did do brackish water, that still again is a limited supply. The surface water is obviously the best long-term supply for our area.

Senator BINGAMAN [presiding]. Mr. Dunlap, did you have a comment on that?

Mr. DUNLAP. Yes, Mr. Chairman. That is one reason National Rural Water put an item into one of the previous draft bills. It would assist a community in their technical evaluation of the various alternatives.

Most of these small rural water districts are certainly not as fortunate. And I should not say this this way maybe, but Portales has the ability to hire engineers and planners where most of the rural water districts do not.

And if you do not have a means for that local community to assist in the assessment of what is available in their community, then they cannot meet this criteria, and that is one reason that we had had a component in here for National Rural Water in their local and their State associations to provide technical assistance to those local communities to do that.

Senator BINGAMAN. Well, very good. I am sure there are other things we could inquire about, but Senator Domenici asked me to go ahead and close the hearing, and so I thank you all very much for testifying. I think it has been a useful hearing, and we hope we can pass this legislation and get it signed. Thank you very much.

Mr. DUNLAP. Thank you.

[Whereupon, at 11:29 a.m., the hearing was adjourned]