

# RECLAMATION

*Managing Water in the West*

## **Assessment of Reclamation's Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Communities in the Western United States**



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# Introduction

Section 104 of Public Law 109-451, the Rural Water Supply Act of 2006 (Act) requires that the Secretary of the Interior, in consultation with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Director of the Indian Health Service, the Secretary of Housing and Urban Development and the Secretary of the Army, to develop a comprehensive assessment of the status for the Bureau of Reclamation's (Reclamation) rural water projects and Reclamation's plans for completing the design and construction of rural water supply projects that were individually authorized prior to enactment of P.L. 109-451. The Assessment must also report on how the Rural Water Supply Program (Program), authorized by Title I of this Act will be carried out and coordinated with other Federal Programs that support the development and management of water supplies in rural communities in the 17 western States in order to maximize efficiency of the various programs and to leverage Federal and non-Federal funding to meet the shared goals of the programs.

In carrying out this Assessment, the Secretary designated Reclamation, which is the agency within the Department of the Interior with the primary responsibility for implementing the Rural Water Supply Program authorized by this Act, to complete this effort. In doing so, Reclamation has coordinated with the other agencies and divisions within the other Federal agencies identified in the Act. These include the Rural Utility Service (U.S. Department of Agriculture), the Office of Water (Environmental Protection Agency), the Indian Health Service (Department of Health and Human Services), the Department of Housing and Urban Development, and the U.S. Army Corps of Engineers (Department of Defense).

On June 15, 2012, Reclamation published an announcement in the Federal Register, that it would be seeking the review and comments from interested entities and the public of the draft Rural Water Assessment Report for 60 days. Subsequently, on July 9, 2012, Reclamation posted the draft Assessment Report on its Website (<http://www.usbr.gov/ruralwater/>). By the end of the public comment period, Reclamation had received sixteen letters or emails with comments, suggestions and proposed modifications to the report and to the prioritization criteria that were included. These comments came from consultants, rural water project sponsors, water districts, Indian Tribes, other individuals and entities interested in the Rural Water Supply Program established by P.L. 109-451 and from Congressional representatives. When the public comment period ended on September 10, 2012, Reclamation carefully reviewed the comments and made modifications to the Assessment Report and the prioritization criteria used for allocating limited Federal funding received by Reclamation for construction of the Congressional authorized rural water supply projects referenced in the Report and

included in more detail in Appendix A. Prior to and since the end of the public comment period, Reclamation consulted with Indian Tribes and met with non-tribal project sponsors to discuss any and all aspects of the proposed criteria. The meetings and the comments were very helpful as Reclamation revised the Assessment Report and the proposed allocation criteria. They provided valuable insights into the needs, expectations and activities, as well as on the economic, social, cultural, historical and environmental conditions facing rural communities in the western United States.

## **Background**

Reclamation has, over its more than 100 years in existence, designed and constructed some of the largest and most important water supply projects in the western United States including Hoover Dam, Grand Coulee Dam, and the Central Valley Project. Because of that expertise, rural communities have often sought Reclamation's assistance in addressing their need for potable water supplies. Prior to 1980, Reclamation's participation was generally limited to providing technical assistance in the scoping and development of water projects intended to solely provide potable water supplies for rural communities. However, Congress specifically authorized Reclamation's involvement in certain projects to deliver potable water supplies to rural communities -- generally not in the initial project scoping, but in the implementation and construction of a project.

Since about 1980, Congress has specifically authorized Reclamation to undertake the design and construction of specific projects intended to deliver potable water supplies to specific rural communities located in the 17 western States -- primarily in North Dakota, South Dakota, Montana and New Mexico. In addition, Congress specifically authorized Reclamation's involvement in the Lewis and Clark Rural Water Supply Project located in the Reclamation State of South Dakota, but also in the non-Reclamation states of Iowa and Minnesota.

In some cases, the projects authorized did not go through the level of analysis and review that is consistent with Reclamation's other projects and did not meet the economic, environmental and design standards that are required to determine the feasibility of other Federal water resources development projects. As a result, with the specific authority to design and construct a project in place, Reclamation was required to both complete the analysis that was necessary, and adhere to the project configuration and designs that were specified by the authorizing statutes.

Because Reclamation did not have a rural water program at that time, its efforts lacked a coordinated approach. Furthermore, while Reclamation carried out the projects and activities that were specifically authorized in an effective manner, concerns existed that it lacked the controls necessary to ensure that projects that are developed for its involvement were cost effective and represented a thorough

examination of the options that could efficiently address the water supply needs in a cost effective manner.

In 2004, the Administration submitted a legislative proposal to establish a formal rural water supply program within the Bureau of Reclamation. In late 2006, Congress enacted, and the President signed, the Rural Water Supply Act of 2006 (Act), which became P.L. 109-451. Title I of this Act specifically authorized the Secretary of Interior to establish and carry out a rural water supply program in the 17 western States to:

- (a) Investigate and identify opportunities to ensure safe and adequate rural water supply projects for domestic, municipal and industrial use in small communities and rural areas of the Reclamation States;
- (b) Plan the design and construction of rural water supply projects through the conduct of appraisal investigations and feasibility studies; and
- (c) Oversee, as appropriate, the construction of rural water supply projects that are recommended for construction by Reclamation in a feasibility report developed under the Rural Water Supply Program and subsequently authorized by Congress.

The Act further stipulates that Reclamation establish programmatic eligibility and prioritization criteria which requires adherence to the rulemaking processes and compliance with Administrative Procedures Act.

On November 17, 2008, the Department of the Interior published those programmatic eligibility and prioritization criteria, as an interim final rule (RIN 1006-AA54) in the Federal Register. Subsequently, Reclamation developed directives and standards (D&S) to guide Reclamation as it continues to carry out the Program.

In 2010 and 2011, Reclamation provided approximately \$5 million in grants for seventeen new appraisal studies and five new feasibility studies. Program funding received in 2012 was used to provide the Federal funding needed to continue work on the previously awarded feasibility studies. However, because of the significant backlog of authorized, but uncompleted rural water projects and the very tight budget climate, Reclamation has not requested funding for additional appraisal investigations or feasibility studies for new rural water projects since 2013. Since that time, several appraisal investigations and feasibility studies have been completed primarily due to contributions from non-Federal partners. As of July 2014, ten appraisal investigation have been completed, including four independently funded studies submitted by non-Federal sponsors.

# Status of Rural Water Projects

Section 104(a)(1) of the Act requires the Secretary to report on the status of rural water supply projects not completed prior to enactment of the Act.

Between 1980 and 2007 (when P.L. 109-451 was enacted), Congress directed Reclamation to undertake 11 specific rural water supply projects. Of those eleven, six have now been completed:

- 1) Web Project in South Dakota (authorized in 1980, completed in 1995)
- 2) Mid Dakota Project in South Dakota (authorized in 1992, completed in 2006)
- 3) Fort Peck County in Montana (authorized in 1996, completed in 2003)
- 4) Fall River in South Dakota<sup>1</sup> (authorized in 1998, completed in 2010).
- 5) Perkins County Rural Water Supply Project in South Dakota (authorized in 1999, completed in 2011)
- 6) Mni Wiconi Rural Water Supply Project in South Dakota (authorized in 1988, Federal portion completed in 2014)

In addition to the 11 projects authorized between 1980 and 2007, the Eastern New Mexico Rural Water Supply Project was authorized by P.L. 111-11 in 2009. Although the project is outside of the required scope of this Report, data on costs are included in this Assessment and the project is included in development of the “Plan” and strategy developed pursuant to Section 104(a)(2) of P.L. 109-451.

The remaining six rural water supply projects currently under construction are located in the Reclamation States of North Dakota, South Dakota, New Mexico, Montana, and the non-Reclamation states of Minnesota and Iowa (Lewis and Clark Project). These require the analysis, design and construction of features and facilities to deliver and treat water for use generally in rural communities in these states. These remaining projects are in various stages of completion as identified in Table I on the following page.

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<sup>1</sup> P.L. 105-352 authorized the Secretary of Agriculture to provide Federal grant assistance to construct the Fall River Project and in so doing authorized the Secretary of the Interior, through the Bureau of Reclamation to provide construction oversight. As such, funding for this project was provided through the USDA’s Rural Development program and not through appropriations authorized pursuant to P.L. 105-352.

**Table I: Bureau of Reclamation Active Rural Water Projects**

Project	Auth & Date	Authorized Federal Cost-Share	Authorized Federal Ceiling as of 10/1/14 <sup>2</sup>	Total Federal Costs as of 9/30/13 <sup>3</sup>	Federal Ceiling Remaining	Total non-Federal Costs as of 9/30/13	Non-Federal Costs Remaining
Garrison Diversion Unit MR&I	PL 89-109 8/05/65	Tribal Component = 100% Federal./					
Statewide MR&I		Non-tribal = 75% Federal & 25% non-Federal	\$495,615,000	\$319,440,000	\$176,175,000	\$136,257,000	\$0
Tribal Component			\$361,064,000	\$178,340,000	\$182,724,000	\$0	\$0
Lewis and Clark RWS	PL 106-246 7/13/00	80%	\$417,962,000	\$211,463,012	\$206,498,988	\$106,057,000	\$0
Fort Peck Reservation – Dry Prairie	PL 106-382 10/27/00	Tribal Component = 100% Federal./ Non-tribal = 76% Federal & 24% non-Federal	\$301,037,000	\$126,856,732	\$174,180,268	\$16,068,413	\$12,285,587
North Central/Rocky Boys	PL 107-331 12/13/02	Tribal Component = 100% Federal./ Non-tribal = 80% Federal & 20% non-Federal	\$327,586,000	\$65,523,449	\$262,062,551	\$9,632,138	\$34,608,138
Jicarilla Apache RWS	PL 107-331 12/13/02	N/A <sup>4</sup>	\$68,297,000	\$4,288,000	\$64,009,000	\$7,800,000 <sup>5</sup>	\$0
Eastern New Mexico	P.L. 111-11 2009	75%	\$392,533,178	\$3,444,468	\$389,088,710	\$28,018,487	\$102,825,487
	Totals		\$2,364,094,178	\$909,355,661	\$1,454,738,517	\$303,833,038	\$149,719,212

<sup>2</sup> Source of financial information: FY 2015 Budget Request. Ceiling reflects Federal amounts for construction costs only.

<sup>3</sup> Includes funds made available through the American Recovery and Reinvestment Act (ARRA).

<sup>4</sup> Title III of PL 107-331, December 13, 2002, did not authorize a specific cost-share percentage, but instead authorized construction of the system at a Federal cost of \$45 million in January 2002 dollars.

<sup>5</sup> Amount does not include an additional \$20 million in reimbursement requested by the Jicarilla Apache Nation.

# Current Plan for the Completion of Rural Water Supply Projects

Section 104(a)(2) of the Act requires that Reclamation provide, as part of its assessment, the “*current plan (including financial and workforce requirements) for the completion of the projects identified in paragraph (1) within the time frames established under the provisions of law authorizing the projects or the final engineering report for the projects.*”

Since each of the projects identified in Table I were authorized separately, Reclamation has been working diligently to move ahead with each within the context of all priorities for the agency. Because Reclamation had not been involved in the project scoping, analysis and development processes, varying levels of project scoping and pre-construction activities were required even after the projects were authorized. In some cases, project feasibility reports needed to be completed, which included not only engineering analysis, but also assessments of the environmental, social and economic implications for each of the proposed projects. Furthermore, comprehensive project designs had to be completed prior to the initiation of actual construction.

Each of the Acts of Congress authorizing Reclamation’s involvement in these rural water supply projects requires that the cost ceilings included in the legislation be indexed to adjust for inflation that includes the rising cost of materials and labor, which was estimated to be 4% annually. The result of this requirement is that the overall cost of rural water projects that are currently under construction has risen and continues to rise, and the total funding required to complete these projects is now \$2.4 billion, which is substantially higher than the original authorizations, which totaled \$2.0 billion.

Consistent with the requirements of Section 104(a)(2), assuming an unconstrained level of Federal funding that approximately reflects the estimates provided in the original final engineering reports for each of the authorized projects (about \$162 million annually) and non-Federal party funding contributions no more than the minimum required by the authorization Acts, Reclamation estimates that all remaining projects could be completed by 2035 at a total Federal investment of about \$3.3 billion.

At an annual funding level of approximately \$50 million for construction, without additional non-Federal funding above the minimum requirements, some progress would be made towards project completion, but some of the currently authorized projects would be completed much later, perhaps not until well after 2065 despite

close to \$4.0 billion being invested by that time. It is estimated that as of 2065, an outstanding balance of approximately \$1.8 billion would still remain to complete construction of currently authorized projects.

This analysis underscores that in times of constrained Federal budgets, non-Federal funding in excess of the minimum contributions required by the Acts of Congress authorizing the projects may be required to expedite project completion and reduce the effects of indexing over the construction period.

Across the country, State, local, and Tribal governments are taking a greater leadership role in water resources investments, including financing projects the Federal government would have in the past. Constrained Federal budgets do not preclude the ability of non-Federal parties to move forward with important investments in water resources infrastructure.

## **Rural Water Strategy**

In order to meet the critical water supply needs of rural communities and Indian tribes in the most timely and cost effective manner possible, while recognizing competing priorities and obligations we face, Reclamation has developed a comprehensive strategy for effectively using available resources towards the construction of the rural water projects authorized for its involvement. The strategy focuses on maximizing the impact of its limited available funding by establishing clear programmatic goals and a set of transparent prioritization criteria both of which will be consistently applied each year. This approach is intended to continue to make meaningful progress in the construction of rural water projects.

## **Programmatic Goals**

The primary objective of the Rural Water Supply Program is to meet the critical water supply needs of rural communities and Indian tribes in the 17 western States. Reclamation has established two specific goals that are the underpinning of its rural water strategy to meet this objective:

**Goal #1): Complete high priority rural water projects that meet the most urgent water supply needs in the shortest amount of time and within fiscal and budgetary constraints.**

Reclamation is committed to making progress towards completing each of the projects authorized for construction. In many cases, water supply projects will foster significant public health improvements and will stimulate vital economic development opportunities. Reclamation further recognizes that delays in completion will escalate the short and long term costs associated with

construction of high priority projects, as well as operations and maintenance of the facilities to be constructed.

**Goal #2): Give priority to rural water projects that address Indian and tribal water supply needs.**

Due to the extreme adverse conditions that many Indian and tribal communities face, in addition to the unique and special relationship that exists between Federally recognized Tribes and the Federal Government – particularly the Secretary of the Interior, Reclamation will give priority to completing those projects that are authorized to be built for their benefit.

## **Prioritization Criteria**

Within the context of the above goals, Reclamation recognizes that current and projected appropriations may not be sufficient to fully address all of the needs and capabilities to meet the goals for every project. Consequently, as has been the case in the past, Reclamation must prioritize the allocation of its available funding – both on an annual and on a long term basis. In response, Reclamation has developed a set of objective prioritization criteria to guide its decision making process in order to maximize the agency’s ability to meet its programmatic goals, to maximize water deliveries to rural communities in as short a period as possible, and to reflect the diverse needs and circumstances facing each individual project. The criteria also reflect the goals and priorities identified in the statutes that authorized each individual rural water project as well as the goals of the Reclamation Rural Water Supply Act (P.L. 109-451).

Since FY 2009, Reclamation has prioritized rural water construction projects with criteria that gives priority in terms of the allocation of Federal funding to the projects that both serve tribal communities and are closest to completion (also referred to as highest percent complete), and consistent with each project’s construction capability. However, through the development of this plan, Reclamation has expanded its methodology to take additional factors into consideration. This will more broadly reflect the diversity of needs and attributes of projects that are authorized, and it is expected to enable higher priority projects and phases to be completed in the most timely and cost effective manner possible.

In developing the prioritization factors for this funding strategy, Reclamation established four criteria for identifying, screening and selecting which prioritization factors are most appropriate. Reclamation used the following criteria in its analysis and selection process:

- 1) Does the factor or criterion reflect and further the goals and objectives of the Rural Water projects as originally authorized by Congress as well as the goals and objectives identified in the Rural Water Supply Act?

- 2) Is the data required for the calculation of that proposed factor or criterion readily available and consistent for all projects under consideration?
- 3) Is the cost of collecting the data relatively low?
- 4) In the evaluation and selection process, is the data used and the weights clear and transparent?

After reviewing and analyzing potential factors using the above criteria, Reclamation identified 12 rating factors grouped into six broader prioritization criteria that most effectively reflects the Program's goals and are representative of the programmatic needs and priorities. As has been done with the funding opportunity announcements (FOA) associated with the Rural Water Supply Program study selection program, each criterion was weighted to reflect the relative priority or importance of that particular factor. During the public review period, Reclamation received a number of comments from project sponsors and other entities with important insights about such areas as data availability, data accuracy, equity and historical context. In response, Reclamation conducted a comprehensive analysis of the criteria in light of the comments, modified the individual factors that comprise the criteria, and adjusted the relative weightings. (See Appendix A).

## **Rural Water Construction Prioritization Criteria**

The revised prioritization criteria identified below will help meet the rural water program's goals, effectively use available resources and will enable Reclamation and our rural water partners to maximize the economic and public health benefits that these rural water projects will provide. Only rural water projects that are authorized for construction will be considered for funding. For those authorized projects, Reclamation will apply the following prioritization criteria along with weights to capture the relative priority of each project.

- 1) **Is there an urgent and compelling need for potable water supplies?** A principal tenet of Reclamation's Rural Water Supply Program is to help rural communities to meet their water supply needs. In particular, this factor is intended to give priority to those communities that lack basic water supplies and face serious public health and safety issues due to unsafe water supplies.
- 2) **How close is the project to being completed and what is the financial commitment of the project sponsors to making that happen?** To ensure that investments maximize water deliveries and reduce the ultimate project costs, Reclamation will give priority through this factor to those projects that are closest to being completed. This factor also acknowledges the financial commitment and contribution of the non-Federal project sponsors to project construction.

- 3) **What is the financial need of the communities and what is the relative economic effect of the project?** To maximize the economic impacts that are created through this Federal investment, this factor measures and acknowledges the financial need of the benefiting communities and the economic impact that will be created by the project – both during construction and once it is completed.
- 4) **Does the project fulfill Reclamation’s authorized niche for taking a regional and watershed approach to rural water projects?** As stated in the Rural Water Supply Act, Reclamation’s expertise and niche lies in the planning, design and construction of rural water projects that take advantage of partnerships and economies of scale in a regional or watershed approach. This factor acknowledges the relative fulfillment of that niche.
- 5) **Does the project minimize water and energy consumption, encourage the development of renewable energy resources such as wind, solar, hydropower, etc., to meet local needs and further other Federal priorities?** This factor acknowledges the commitment that some rural communities are making to reduce their water and energy consumption and to using renewable sources of electricity. It also recognizes the benefits that may be realized from the project that are associated with meeting other Federal priorities. In many cases, these benefits are difficult to quantify or assess using readily available statistical measures. Examples include support for national security facilities, recovery from natural disasters that threaten water quality or severely damage critical water delivery infrastructure, and protection of critical ground water sources from depletion.
- 6) **Does the project serve the needs of tribal communities and tribal members?** Because of the special trust relationship between the Secretary of the Interior and Native Americans communities across the West and because of the oftentimes severe economic, public health and safety conditions on reservations, this factor gives special consideration to projects that serve those communities.

While we cannot predict the amount of future funding requested through budget submittals or provided by future Congressional appropriations, Reclamation’s application of this strategy will meet our collective goal of completing as many high priority projects in the shortest period of time and in the most cost effective and efficient manner. It will, in an objective manner, enable Reclamation to effectively use available resources and enable Reclamation and our rural water partners to maximize the economic and public health benefits that these rural water projects provide. (See Appendix A for a more details discussion of the factors and weights)

# Programmatic Demand

Section 4(a)(3) of P.L. 109-451 requires that the Secretary of the Interior assess the demand for new rural water supply projects. Reclamation struggled to collect data on the needs and demands in the 17 western States. Unfortunately, since there is not a single or simple source of this information, Reclamation worked closely with various entities who are actively involved in water supply and management efforts to assess this demand. Reclamation worked closely with the Indian Health Service, through its Sanitation Deficiency System (SDS) database to identify needs for potable water supply systems in Indian country in the western United States. This system closely tracks potable water supply needs and projects in Indian Country.

To identify potable water supply demands in non-Indian rural areas of the West, Reclamation worked closely with the Western States Water Council to evaluate existing available data. Unfortunately, the collective quality of available data was insufficient for making budgetary or policy decisions about the specific demand for the Program. Despite that, Reclamation did determine that collectively the data can provide a broad perspective of the approximate range of unmet demands. As such, based on this data, Reclamation estimates a range of identified demand for potable water supply systems in rural areas of the 17 western States to be from \$5 billion to \$9 billion for non-Indian demands and approximately \$1.5 billion for specific Indian water supply projects in the 17 western States.

In addition to these estimated ranges, another illustration of programmatic demand is that in FY 2010 and 2011, Reclamation advertised the availability of planning funds for new projects through the Reclamation Rural Water Supply Program (Program) and received numerous applications for Program funds. While this is only two years' worth of applications and funding, it does reflect the actual demand for the Program.

In FY 2010, Reclamation received 23 applications – seeking approximately \$5.5 million in Federal funds. Reclamation awarded \$2.5 million. In addition, in FY 2010, Reclamation received three appraisal investigations for review that were completed by non-Federal entities without Federal funds, which is allowed under the Program. Subsequently, in response to the FY 2011 FOA, Reclamation received 45 applications seeking \$7.5 million in Federal funds. Reclamation awarded \$2.3 million. However, because of the significant backlog of existing authorized rural water projects, the high priority for completing those projects and the very tight budget climate, Reclamation has not requested funds for grants to undertake additional appraisal investigations or feasibility studies for new rural water projects.

## Extent of Demand That Can Be Met By The Program

Section 4(a)(5) of P.L. 109-451 requires that the Secretary of the Interior, as part of this assessment, evaluate the extent of demand for potable rural water supplies that the Secretary can meet with the Program.

It is clear from the discussion in the previous section about the demand that there is significant identified demand in the Western United States for projects to address current and future water needs. While Reclamation has significant expertise and technical capability, given the current and projected long term constraints on Federal appropriations, Reclamation and project sponsors need to look creatively at alternative means for financing the planning, design, and construction of future rural water projects.

## Federal Programs That Support Rural Water Supply Development

Section 4(a)(4) of P.L. 109-451 requires the Secretary of the Interior to describe the rural water programs within other agencies and “the extent to which those programs provide support for rural water supply projects and water treatment programs in Reclamation States, including an assessment of the requirements, funding levels and conditions of eligibility.”

In addition to the Reclamation Rural Water Supply Program, there are a number of Federal programs that provide assistance and support for drinking water and waste water infrastructure to rural communities in the Western United States. In June 2014, the Congressional Research Service, in their report entitled *Federally Supported Water Supply and Wastewater Treatment Programs*, identified 10 programs located in the Departments of the Interior (Reclamation), Agriculture (Rural Utilities Services), Housing and Urban Development (HUD), Commerce (Economic Development Administration), the Army Corps of Engineers, and the Environmental Protection Agency (EPA).<sup>6</sup> In November 2001, the General Accounting Office (now the Government Accountability Office) reported that four agencies – EPA, USDA, HUD and Commerce account for 98% of the total Federal funding for drinking water and wastewater capital improvements.<sup>7</sup>

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<sup>6</sup> Congressional Research Service, *Federally Supported Water Supply and Wastewater Treatment Programs*. June, 2014. (hereafter referred to as “CRS Water Report”).

<sup>7</sup> U.S. General Accounting Office (Now Government Accountability Office), *Water Infrastructure: Information on Federal and State Financial Assistance*, November 2001, GAO-02-134, p.2. Hereafter referred to as GAO Water Infrastructure.

Each of the individual programs referenced above have unique authorities with specific eligibility criteria and must meet specifically authorized needs and niches as defined by their Congressional mandates. Some of the programs are authorized to specifically address the water supply needs of specific populations such as the Indian Health Services' (IHS) Sanitation Facilities Construction Program which works to provide access to safe drinking water and basic sanitation for Native American communities. Others, such as the Rural Water and Waste Water Program operated by the USDA's Rural Utility Service, are somewhat broader in scope -- addressing water supply needs but to a broader population of both tribal and non-tribal rural communities. Broader still, there are other programs that are designed to address water supply and water quality needs, but do not necessarily distinguish or give priority to rural areas, such as the Drinking Water State Revolving Fund operated by the EPA. Still other programs have an even broader scope and mission to address general infrastructure needs to facilitate economic development. Such programs include the Community Development Block Grant Program at HUD and the Public Works Program of the Economic Development Administration.

Programmatic eligibility criteria can vary because of project types allowed, funding limitations, geographic area, population thresholds, and economic factors. For example, Reclamation has historically provided funding for water supply projects but not wastewater treatment projects. Other agencies can fund both water supply and treatment projects. Reclamation provides funding for projects located in the 17 western States whereas other agencies are able to provide funding throughout the United States, the District of Columbia, Puerto Rico and the territories of Guam, the Virgin Islands, American Samoa and the Commonwealth of the Northern Marianas. Some agencies restrict funding to specific population demographics. For example, there are programs specific to communities that are located along the US/Mexico border, Indian tribes, and as specific as Indian tribes along the US/Mexico border. Population size is also used to qualify projects as well. Projects funded by the USDA's Rural Utility Service are limited to cities and towns with a population of 10,000 or less or to unincorporated areas, regardless of the population. In contrast, P.L. 109-451 defines rural areas as a community, or group of communities, each of which has a population of not more than 50,000.

## **USDA – Rural Development – Water and Waste Disposal Program**

Through the Water and Waste Disposal (WWD) Program, rural communities obtain the technical assistance and financing necessary to develop drinking water and waste disposal systems. Safe drinking water and sanitary waste disposal systems are vital not only to public health, but also to the economic vitality of rural areas. Rural Development is a leader in helping rural America improve the quality of life and increase the economic opportunities for rural people.

The WWD Program is administered through a national office staff in Washington, DC, and a network of field offices. The network of 47 Rural Development State offices, supported by area and local offices, delivers the WWD Program in the States and U.S. territories. The WWD Program staff works closely with program participants, their project engineers, and State regulatory agencies to ensure that projects are reasonable, affordable, and based on commonly accepted engineering practices. They also help communities explore project funding options and technical assistance through the WWD Program.

Eligible applicants are public entities, such as municipalities, counties, special-purpose districts, tribes, and corporations operated on a not-for-profit basis. Eligible projects are to develop drinking water and waste disposal systems, including solid waste disposal, and storm drainage. The most common objectives for the systems are to restore deteriorating water supplies or to improve, enlarge, or modify inadequate water or waste facilities. Funds are directed to rural areas where the cities and towns have a population of 10,000 or less and applicants must be unable to obtain sufficient credit from commercial sources at reasonable rates and terms.

Grants are made in combination with direct loans or with funding from other sources. Grants may be up to 75 percent of eligible project costs but are limited to the amount necessary to enable the residents to be charged reasonable user rates. In addition, the median household income (MHI) of the service area must be below the State non-metropolitan median household income (SNMHI) level to receive any grant, and generally below the National poverty level or 80 percent of the SNMHI figure to be eligible for the maximum grant level. The project must also alleviate a health, sanitary or security issue to qualify for 75 percent grant; otherwise it is limited to 45 percent of the eligible project cost.

In recent years, Congressional set asides have been provided to assist three groups of rural Americans who have great needs in improving their access to clean water. They are Native Americans, Colonias, and Native Alaskans. These set asides total nearly \$65 million per year.

The Native American and Colonias set asides are administered under 7 CFR 1777. The Native American program is designed to provide grant funding for water and waste disposal facilities and services to low income tribal communities. An eligible applicant must provide service to a Native American population with a per capita income below \$15,110 and an unemployment rate exceeding 5.5 percent. There are 335 Federally- recognized tribes in 33 of the lower 48 States. The Native American funding is commonly combined with regular WWD funding which allows investment in Native American projects to exceed the dedicated programmatic funds. Priority for funding Native American and Colonia set asides is given to applications that serve populations below 5,500, have a MHI that is

below 60 percent of the SNMHI, and has other financing for at least 5 percent of the project cost.

The Colonias program is designed to provide grant funding to areas designated as a Colonia by the State or county where they are located. Colonias generally have issues such as lack of a potable water supply, lack of adequate sewage systems, lack of decent, safe and sanitary housing, inadequate roads, and drainage and was recognized as a Colonia before October 1, 1989. Colonias are found in Arizona, California, New Mexico, and Texas and are generally within 150 miles of the United States and Mexico border. The Colonia funding is commonly combined with regular WWD funding which allows investments in Colonias projects to exceed the dedicated programmatic funds.

The Native Alaskan funding is administered under 7 CFR 1780, 1780.49. The program is designed to provide 75 percent grant funding to rural Alaskan Villages which are trying to address a dire sanitation condition. Applicants must be a rural or Native Alaskan Village, have an MHI not exceeding 110 percent of the SNMHI and must obtain 25 percent of the project costs from State or local contributions. The program is coordinated with the State of Alaska and Federal partners including Village Safe Water, Indian Health Services, Alaska Native Tribal Health Consortium, the EPA and Rural Utilities Business Advisors. The State of Alaska provides the remaining 25 percent matching funds.

The Rural Utilities Programs are a key part of USDA Rural Development's mission to support increasing economic opportunity and improve the quality of life of rural residents. Rural Development provides investment and technical assistance to finance and foster growth in homeownership, business development, and critical community and technology infrastructure.

## **Environmental Protection Agency (EPA) – State Revolving Loan Programs**

Many public water systems find it difficult to obtain affordable financing for infrastructure improvements which would enable water supply systems to comply with national primary drinking water standards and protect public health. Recognizing this fact, Congress established the Drinking Water State Revolving Fund (DWSRF) as part of the 1996 Safe Drinking Water Act (SDWA) Amendments. The goal of this program is to provide States with a financing mechanism to help provide safe drinking water to the public. States use Federal capitalization grant money awarded to them to set up an infrastructure funding account from which assistance is made available to public water systems. Loans made under the program can have interest rates between 0 percent and market rate and repayment terms of up to 20 years. Loan repayments to the State will provide a continuing source of infrastructure financing. The program also places an

emphasis on small and disadvantaged communities and on programs that emphasize pollution prevention as a tool for ensuring safe drinking water.

In fiscal year 2014 the DWSRF received \$907 million.<sup>8</sup> The amount of funding a State is eligible to receive is based on the total eligible need determined for each State by EPA's Drinking Water Infrastructure Needs Survey which they update every four years.

***Eligible Systems and Projects*** - Both publicly and privately owned community water systems and nonprofit non-community water systems are eligible for funding under the DWSRF program. Eligible projects include installation and replacement of failing treatment facilities, eligible storage facilities, and transmission and distribution systems. Projects designed to consolidate water supplies may also be eligible.

***Determining Funding Priority*** - States develop a priority system for funding projects based on three criteria from the Act. States rank the projects and then offer loans based upon their ranking order. Priority is given to those eligible projects that: (1) address the most serious risk to human health; (2) are necessary to ensure compliance with the requirements of the Safe Drinking Water Act; and, (3) assist systems most in need, on a per household basis, according to State-determined affordability criteria.

***Small Communities*** - The needs facing small communities are considerable. However, many public water systems serving these communities, particularly those with populations fewer than 10,000, often find it difficult to obtain favorable interest rates when applying for loans to make infrastructure improvements. The SDWA Amendments target these small communities for special consideration by the DWSRF program. States must provide a minimum of 15% of the available funds for loans to these small communities.

***Disadvantaged Communities*** - For many communities, even the lower interest rate loans available through the DWSRF may be too high to make loans affordable. In such cases, States have the option of providing up to 30% of the grant awarded to the State in order to provide additional assistance to these communities that are defined as disadvantaged. This assistance can also take the form of lower interest rates, principal forgiveness, or negative interest rate loans. States may also extend repayment terms of loans for disadvantaged communities to up to 30 years.

***Preventing Future Threats to Drinking Water*** – In addition to addressing current drinking water problems, States have the flexibility to set aside a portion of their capitalization grant in order to develop programs that encourage a strong emphasis on preventing contamination problems through source water protection

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<sup>8</sup> CRS Water Report. p. 26.

and to encourage better system operations through enhanced water systems management.

***Set-Asides for Other Program Management Purposes*** - States have the flexibility to take set-asides for several different activities that can help develop their drinking water programs. A State can use up to 10% of its capitalization grant (with a 1:1 dollar State match) to support its State drinking water program, or to develop and implement capacity development, source water protection, and operator certification programs. Up to 2% of the grant may be set aside to provide technical assistance to systems serving communities with populations fewer than 10,000, and up to 4% of capitalization grants may be set aside for costs associated with administering the DWSRF program. Up to 15% of capitalization grants (limited to 10% of the grant for any one activity) is available for local assistance and other eligible activities as described in the law. Activities are aimed at source water protection (including loans for land acquisition and conservation easements), capacity development and wellhead protection.

## **Department of Health and Human Service – Indian Health Service**

The Indian Health Services (IHS), through P.L. 86-121 (42 U.S.C 2004a), works to provide access to safe drinking water and basic sanitation through the Sanitation Facilities Construction Program to Indians and tribal communities. Under this program, the IHS is authorized to construct, extend or otherwise provide and maintain essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities and lands.

The IHS can acquire lands, rights or interests therein, to make such arrangements and agreements with appropriate public authorities and nonprofit organizations or agencies and with the Indians to be served. It can transfer any facilities provided under this section, to any State, Territory, subdivision or public authority, or to any Indian tribe, group, band, community or, in the case of domestic appurtenances and fixtures, to any one or more of the occupants of the Indian home served.

All Federally recognized Tribes are eligible for funding under the program. IHS identifies sanitation deficiencies and develops projects to address those deficiencies. Water, wastewater and solid waste projects are eligible for funding through this program. In FY 2014, total funding for the program was \$79.4 million.

P.L. 94-437 (Indian Health Care Improvement Act) Section 302 (25 U.S.C 1632) requires the IHS to develop and implement a 10 year plan to provide safe water

supply and sanitation, sewage and solid waste disposal facilities to new, existing or existing Indian homes and communities.

Under this program, the IHS provides financial assistance to Indian tribes and communities in an amount equal to the Federal share of the costs of operating, managing and maintaining the facilities provided.

This Act further requires the IHS to complete a report to address the following:

- (A) the current Indian sanitation facility priority system for the Service;
- (B) the methodology for determining sanitation deficiencies;
- (C) the level of sanitation deficiency for each sanitation facilities project of each Indian tribe or community;
- (D) the amount of funds necessary to raise all Indian tribes and communities to a level I sanitation deficiency; and
- (E) the amount of funds necessary to raise all Indian tribes and communities to zero sanitation deficiency.

The IHS maintains a priority list of sanitation deficiencies identified in cooperation with Tribes which is updated annually.

## **U.S. Army Corps of Engineers**

The U.S. Army Corps of Engineers (Corps) does not have a specific rural water supply program. Historically, the Corps' primary national missions areas are flood damage reduction, waterway navigation and aquatic ecosystem restoration. The Corps does, however, participate and cooperate with states and local interests in developing municipal and industrial water supplies in connection with Corps reservoir projects pursuant to the Water Supply Act of 1958 (Title III, Public Law 85-500), as amended. The only direct connection in this program with respect to rural water supply delivery is that in four of its Oklahoma projects, there are 16 repayment agreements totaling approximately 23,000 acre-feet of storage space for use by rural water districts. In addition, while not a program specifically designed for rural areas, such areas can be helped through the Planning Assistance to States Program (section 22 of Public Law 1974, as amended). This law authorizes assistance to States as well as recognized Native American Indian Nations in preparing plans for the development, utilization, and conservation of water and related land resources of drainage basins, watersheds or ecosystems located within the boundaries of the State or Indian lands. The Corps can also assist Indian Tribes through its Tribal Partnership Program (section 203 of the Water Resources Development Act (WRDA) of 2000, Public Law 106-541, as amended). This is authority granted to the Secretary of the Army to consult and coordinate with the Secretary of the Interior and covers just about any water related issue located primarily within Indian country.

Beginning in 1992, Congress began authorizing numerous individual provisions for Corps to provide design and construction assistance for designated areas of the United States for water related environmental infrastructure and resource protection and development projects. These authorities include projects for wastewater treatment and related facilities, water supply and related facilities, environmental restoration, and surface water resource protection and development. While at least one of these authorities (section 595 of WRDA 1999, Public Law 106-53, as amended) does provide an authority specifically for rural areas, in general they are not identified as such, although rural areas can be geographically covered by these authorities. For the nation as a whole, the Corps has received 34 separate authorizations for environmental infrastructure programs covering 430 projects. The largest, section 219 of WRDA 1992, Public Law 102-580, as amended, includes a total of 310 projects. The total amount authorized to be appropriated for these programs is \$5.2 billion, of which Congress has provided roughly \$2 billion since 1992.<sup>9</sup> It has been determined that these environmental infrastructure programs duplicate long-standing programs established for other agencies to provide Federal assistance for rural water supply and wastewater treatment projects. As these environmental programs divert funds from the primary mission areas of the Corps, the Administration does not budget for these programs as part of the Army Civil Works budget.

## **Department of Housing and Urban Development (HUD)**

**Community Development Block Grant (CDBG):** Title I of the Housing and Community Development Act of 1974 (42 U.S. C. 5301 et seq.) authorized the CDBG program to administer assistance to localities for a broad range of activities intended to “develop viable communities by providing decent housing, a suitable living environment and expanding economic opportunities, principally for low and moderate income people.” Use of CDBG funds for water and waste water needs compete with many other activities for this assistance including historic preservation, energy conservation, housing rehabilitation, lead based paint abatement, neighborhood revitalization projects, recreational facilities, home ownership assistance and others. Eligible grant recipients for the CDBG program include States, local governments, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa and the Commonwealth of the Northern Marianas.

After subtracting specified amounts for special purpose activities, 70% of CDBG funds are allocated by formula to approximately 1,175 entitlement communities, defined as central cities of metropolitan areas with populations of 50,000 or more and statutorily defined urban counties (referred to as the entitlement program). These funds are not available for projects in rural areas. The remaining 30% of CDBG funds are allocated by formula to States for distribution to non-entitlement communities, smaller communities (referred to as the State program) for use in

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<sup>9</sup> CRS Water Report. Page 14.

areas that are not part of a metropolitan city or urban county. These funds may be available for rural water projects. Each year, the entitlement communities and states receive a basic grant allocation. Each State and locality develops a consolidated plan for the establishment of their local and State priorities and then specifies how they will measure their performance. In the CDBG program for smaller communities, grants are distributed out of State allocations to local governments which implement approved activities. States may retain a percentage of funds to cover the cost of administering the program and providing technical assistance to local governments and nonprofit organizations. Special funding is set aside for the Indian CDBG program. These funds are distributed through an annual competition to eligible Federally recognized Indian Tribes and Alaska Native Villages to address community development needs.

According to HUD data, water and sewer improvement projects accounted for 9 – 10% of all CDBG funds disbursed nationally. For FY 2014, Congress provided \$3.03 billion for CDBG funds, of which approximately \$907 million was available for smaller communities under the State non-entitlement Program.<sup>10</sup>

## **Department of Commerce – Economic Development Administration (EDA)**

**The Public Works Program** of the Economic Development Administration provides grants for community water and sewer projects to promote long-term economic development and to assist in the construction of public works and development facilities needed to initiate and support the creation or retention of permanent jobs in the private sector in areas experiencing substantial economic distress.

Under this program, public works grants are made to eligible applicants to revitalize, expand, and upgrade their physical infrastructure. These investments are intended to enable communities to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term jobs in the private sector through improvements needed for establishing or expanding industrial or commercial enterprises in distressed regions.

Economic development grants may be used for a wide range of purposes, but frequently have a sewer or water supply component associated with them. However, because EDA grants must directly encourage employment generation, they are not generally available for rural residential sewer and water supply development. Types of projects that are funded include industrial parks, expansion of port and harbor facilities, redevelopment of brownfields, and water and wastewater facilities primarily serving industry and commerce. Federal law requires that units of government retain ownership of EDA-funded projects.

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<sup>10</sup> CRS Water Report. P. 27.

Grants may be made to States, cities, counties, an institution of higher education or a consortium of such institutions, and other political subdivisions, Indian Tribes, the Federated States of Micronesia, the Marshall Islands, Commonwealths and Territories of the United States, and private or public not-for-profit organizations acting in cooperation with officials of a political subdivision of a State or Indian Tribe. Qualified projects must fill a pressing need of the area and: (1) be intended to improve the opportunities for the successful establishment of businesses, (2) assist in the creation of additional long-term employment, and (3) benefit long-term unemployed or underemployed persons and low-income families. Projects must also fulfill a pressing need and be consistent with the comprehensive economic development plan for the area, and have an adequate share of local funds. In addition, eligible projects must be located in areas that meet at least one of the following criteria: low per-capita income, unemployment above the national average, or an actual or anticipated abrupt rise in unemployment.

EDA provides grants directly to approved applicants. In general, grants may not exceed 50% of project costs, although severely depressed areas may receive supplementary grants, bringing the total Federal share up to 80% of costs. Projects located within designated Economic Development Districts may receive an additional 10% bonus grant for public works projects, and certain Indian tribes may receive 100% grants. On average, EDA grants fund 50% of project costs. Credit may be given toward the non-Federal share for in-kind contributions, including contributions of space, equipment, and services. No minimum or maximum project amount is specified in law.

For FY 2014, Congress provided appropriations totaling \$96 million for EDA's Public Works and Economic Development grant program.<sup>11</sup> According to GAO, from FY1991 through FY2000, EDA provided \$1.1 billion in grants to local communities for drinking water and wastewater projects.<sup>12</sup>

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<sup>11</sup> CRS Water Report. P. 30.

<sup>12</sup> GAO Water Infrastructure, pp. 13 – 14.

The following table provides a summary of the programs and activities described above.

## Federal Rural Water Programs

<b>Program</b>	<b>Objective</b>	<b>Type of Assistance</b>	<b>Eligibility Criteria</b>
<b>USDA Rural Utilities Service</b>			
Water & Waste Disposal Systems for Rural Communities	Construct & Improve Water and Waste Disposal Facilities.	Grants and Loans	Communities, & Tribes with population less than 10,000.
Technical Assistance & Training Grants	Assist entities to identify solutions to water & waste water problems.	Project Grants	Private non-profit organizations with expertise in water & wastewater who then help rural entities.
Emergency Community Water Assistance Grants	Correct water quality & quantity problems (meet Safe Drinking Water Act).	Project Grants	Communities have experience significant declines in quantity & quality of water.
Rural Development Grants	Facilitate development of small businesses to boost the local economy.	Grants	Emerging businesses with fewer than 50 employees, & less than \$1m in gross revenues in communities that are not within boundaries of city with population of 50,000 or more.
Water & Waste Disposal Loans & Grants	Financial Assistance for building water and waste disposal facilities in low income rural areas.	Project Grants & Direct Loans	Projects must provide water/waste disposal to residents of counties where the per capita income does not exceed 70% of the national average.
<b>USDA – Rural House and Community Development Service</b>			
Rural Housing Site Loan	Financial Assistance to provide affordable housing for low income individuals in rural areas.	Loans	Sites must be in sparsely populated areas – towns of 10,000 or less.
Very Low-Income House Repair Loans and Grants	Allow low/very low income homeowners to make repairs including water and waste disposal systems.	Project Grants and Loans	Homeowners whose income may not exceed very low income limits of approx. \$8,500 - \$23,000 and whose home needs repairs.
<b>Department of Housing &amp; Urban Development (HUD)</b>			
Community Development Block Grants/Entitlement Program	Develop viable communities – including water & wastewater.	Project grants	Low and moderate income needs in local “entitlement” communities (excluding large cities).
CDBG-States Program	Develop viable communities – including water & wastewater.	Formula Grants	States to distribute to low & moderate income communities.
Indian CDBG Program	Develop viable Indian communities – including water & wastewater.	Project Grants	Indian Tribes – targeting low & moderate income families.
<b>Environmental Protection Agency (EPA)</b>			
Capitalization Grants for State Revolving Loan Programs	Construction funds for municipal wastewater treatment facilities.	Grants to States based upon formula	Distributed to communities by States as loans.
<b>Economic Development Administration</b>			
Grants for Public Works & Economic Development	Construct Public Works Facilities.	Project Grants	To create long term economic development opportunities in areas experiencing severe economic distress.

<b>Department of Health &amp; Human Services (HHS) -- Indian Health Services (IHS)</b>			
Sanitation Facilities Construction Program	Provide water supply & sewage treatment facilities.	Grants	Indian Tribes
<b>U.S. Army Corps of Engineers</b>			
Water & Wastewater Treatment	Assist in design & construction of water & wastewater facilities	Cost Shared	As authorized by Congress, or under the Planning Assistance to States Program, or to entities that request services on a reimbursable basis.
<b>U.S. Department of the Interior – Bureau of Indian Affairs</b>			
Rural Water Projects – As Authorized by Congress	Construct & maintain rural water systems on Indian Reservations.	Appropriated Funds	As Authorized by Congress.
<b>U.S. Department of the Interior – Bureau of Reclamation</b>			
Rural Water Projects – As Authorized by Congress	Construct & maintain rural water systems on Indian Reservations.	0 – 25% cost + OM&R for Tribal systems	As authorized by Congress.
Rural Water Supply Program	Plan the design and construction of rural water supply projects, through the conduct of appraisal investigations and feasibility studies in Reclamation States.	<ol style="list-style-type: none"> <li>(1) Grant/Cooperative Agreements to complete studies;</li> <li>(2) Review of completed studies</li> <li>(3) Technical assistance to complete appraisal and feasibility studies</li> </ol>	Indian and non-Indian rural communities in the 17 western States. Planning should be carried out on a regional or watershed basis.

## Programmatic Overlap and Coordination

Sections 104 (a)(6) and (7) of P.L. 109-451 requires that the Secretary report on how Reclamation’s Rural Water Supply Program will complement authorities and programs that are described above. It also requires the Secretary to evaluate what steps can be taken to improve the coordination and integration of the respective rural water authorities and activities of these various Federal agencies and programs to maximize efficiency and programmatic benefits.

As authorized and designed, the Reclamation Rural Water Supply Program is intended to complement, rather than duplicate, the efforts of the programs and activities previously identified. Reclamation is uniquely positioned to work with rural communities to investigate and work to address their water supply needs. Most of the programs identified above have a nationwide scope and are directed at a very specific audience. The Rural Water Supply Act focuses Reclamation’s program not only on the 17 western States, but also in utilizing a regional or watershed based approach, in order to take advantage of economies of scale and broadly address water supply needs while taking into account the interconnectedness of water and land resources.

The Program is also intended to take advantage of the full spectrum of technical disciplines in activities and decision-making. Because of Reclamation's experience with both the design and construction of large water resources development projects and the rural water projects that have been authorized for its involvement since 1980, Reclamation has developed the technical expertise in the design and construction of water projects on a regional basis that can serve more than one community.

In addition, since the eligibility requirement for the Rural Water Supply Act associated with population is less than or equal to 50,000 inhabitants and can cover a broad geographic region, as opposed to the population eligibility requirement of many other Federal programs which is less than or equal to 10,000 inhabitants in a town, Reclamation can develop a rural water project for some rural areas that have larger populations and focus on a regional or watershed basis rather than on a city or town basis.

The programmatic eligibility and prioritization criteria provided in the interim Final Rule (*RIN 1006-AA54*), that was published in the Federal Register on November 17, 2008 are intended to guide Reclamation to focus on the regional and watershed-based niche that the Act identifies. Furthermore, one of the Program's specific eligibility criteria is whether the proposed community that is applying for assistance under the Reclamation Rural Water Supply Program is eligible to get their complete water supply needs met through one of the other Federal programs identified above. If they can, then that proposal is determined to be ineligible. This specific criterion is intended to minimize programmatic duplication and overlap.

Another of the requirements in both the selection and the study process that is the centerpiece of Reclamation's Rural Water Supply Program, is that Reclamation will coordinate with other Federal agencies to both minimize the overlap between its efforts and those of other agencies and to leverage the budgetary and financial resources of other agencies involved in the similar geographic area. For example, where Reclamation may receive a request to undertake a feasibility study in a particular and broad geographic area, the Rural Utility Service (RUS) may already be involved in the development of a potable water distribution system in one of the communities in that area. If so, Reclamation would work with RUS to take advantage of their work, while focusing Reclamation's resources on a broader regional focus, while including that RUS work or local system in the analysis. This will leverage other Federal and State efforts and hasten completion of the analysis required under Reclamation's program. This coordination could help the rural community to meet its ultimate needs in a more timely manner.

In recent years, as Reclamation has been overseeing the design and construction of rural water projects in several States in the West, Reclamation has been part of an informal coordination effort at the field level with the Rural Utility Service, IHS, the relevant State agencies, and others as appropriate to coordinate the

related activities of each agency to ensure that the funding and technical expertise of each are being fully leveraged to move the project development and construction process along toward successful completion to meet the water supply needs in a timely fashion. So, on a monthly or quarterly basis, representatives of these Federal agencies including Reclamation as well as the related State agencies meet to discuss and coordinate funding and construction activities. This has been tremendously successful, not only in terms of maximizing resources, but also in terms of minimizing overlap and maintaining close communications at the field level.

Until recently, this coordination has been carried out strictly on an informal basis and at the field or project level. Many of the other Federal agencies identified above that have rural water programs have a more formal process to ensure this type of coordination and cooperation at a programmatic basis, rather than just at a project or field level. Prior to passage of the Reclamation Rural Water Supply Act, Reclamation was not part of this process and did not regularly participate in such corporate level coordination efforts. That was, in large part, due to the fact that Reclamation did not have a formally authorized rural water supply program. Since passage of the Act, Reclamation has been working with the other Federal agencies to find ways to more formally coordinate our rural water activities with those at USDA, EPA, HUD, IHS, the Corps of Engineers and others. Several of the entities that provided feedback on this section recommended that there needs to be significantly more coordination between the agencies that support the development of rural water supplies in the west than has been the case in the past and that was suggested in the draft Assessment Report. It was also strongly suggested that this integration occur at the *“project level in order to be truly successful”*<sup>13</sup>. Reclamation will continue to focus its efforts to coordinate with other Federal, State and local partners at the Project level, but are working with others to foster and support that at the agency-level as well.

One example of that greater corporate level coordination has been the establishment of the Tribal Infrastructure Task Force. In 2007, the Departments of Agriculture (USDA), Health and Human Services (HHS), Housing and Urban Development (HUD), Interior (DOI) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) to *“Better coordinate the Federal Government efforts in providing infrastructure and promoting sustainable practices to support the provision of safe drinking water and basic sanitation in American Indian and Alaska Native communities.”* In 2013, that MOU was revised and renewed (see Appendix B for copy of the MOU). Since its signature, this Tribal Infrastructure Task Force has been working to better coordinate the activities of the agencies to leverage Federal funds and resources to Indian Country. For example, at the national level, the members of the Task Force are jointly developing training tools to share with and deliver to Tribal communities who are building or getting ready to manage potable water infrastructure on a variety of water management topics such as

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<sup>13</sup> Letter from Cyril Scott, President, Rosebud Sioux Tribe, September 7, 2012)

asset management, effective utility management, operations and maintenance of water treatment, sanitation and delivery facilities.

In addition to these programmatic coordination efforts, many of these agencies have general bilateral or multi-lateral agency-level MOAs and MOUs with each other to enable agency coordination and to facilitate the sharing of technical and financial resources (such as between Reclamation and the Corps, Rural Development and EPA and so forth). Reclamation and its partners are taking advantage of the bi-lateral agreements to engage in coordinating activities on a national level and continue to coordinate on an informal basis at the field level. (See Appendix B for examples of these bi-lateral agreements)

# Appendix A

## **Bureau of Reclamation Prioritization Criteria for Funding Rural Water Construction**

The Bureau of Reclamation uses the following prioritization criteria in a two-step process for requesting rural water project construction appropriations. Reclamation evaluates and ranks projects using the criteria, then allocates requested funds to reflect project priorities and the ability of sponsors to complete phases that will deliver water and other project benefits. Projects that rank higher in the first step will be given higher priority consideration for funding. Reclamation developed the criteria and the supporting rating factors described in this appendix based on an assessment of the critical elements of rural water projects that would best inform ranking decisions among competing projects.

**BACKGROUND:** The rural water projects currently under construction, comprised of five projects in the Great Plains Region and two projects in the Upper Colorado Region, were individually authorized by Congress prior to the implementation of the Rural Water Supply Program (RWSP), which was authorized by the Rural Water Supply Act of 2006 (Public Law 109-451, Title I). The criteria will enable Reclamation to evaluate all authorized rural water construction projects on a consistent basis without imposing any new requirements on the existing authorized projects.

Reclamation used an interim version of the revised criteria presented here to evaluate and prioritize projects in order to allocate additional fiscal year (FY) 2012 funding appropriated by Congress in the Consolidated Appropriations Act of 2012 (Public Law 112-74). The interim criteria were also used to formulate the President's FY 2013 and FY 2014 budget requests for rural water construction. In July, 2012, pursuant to a June 2012 Federal Register notice, Reclamation posted the interim criteria, as part of the Assessment for a 60-day public review.

The twelve rating factors and the weighting thereof reflect the input Reclamation received through the public review process completed in 2012. However, Reclamation adjusted the rating factors used to rank projects receiving FY2014 Federal funds to reflect the direction provided by Congress in the Explanatory Report associated with the Consolidated Appropriations Act of 2014 (P.L. 113-76). Specifically, Factor 2 was not used to allocate FY 2014 appropriations.

**STEP 1 – PRIORITIZATION OF PROJECTS:** Reclamation uses a relative ranking system to prioritize projects. Primarily using publicly available data accessed from sources such as the Census Bureau and Reclamation's budget documents, projects are comparatively evaluated and ranked on 12 factors grouped into 6 broad criteria. Rather than evaluating projects against a fixed scale, Reclamation scores each project in direct proportion to its performance on the individual factors relative to the other projects. Scores on the individual factors are added to determine funding priority. The maximum total score for any

project is 100 points and a project’s overall score determines its funding priority, which is then carried forward to the second step of allocating funds.

Example

For the purposes of this example, Factor 5 (Poverty Rate) is worth up to 5 points and four projects are being evaluated. Areas with higher poverty rates receiver higher priority consideration. The poverty rates in the example project areas are as follows:

Project A	12%
Project B	9%
Project C	21%
Project D	18%

*Calculations:* The poverty rate for Project C is 21%, therefore the project scores 5 points.

$$\frac{21\%}{21\%} * 5 \text{ points} = 5 \text{ points}$$

The poverty rate for Project B is 9%, therefore the project scores 2 points.

$$\frac{9\%}{21\%} * 5 \text{ points} = 2 \text{ points}$$

*Results:*

Project A	12%	Scores 3 points
Project B	9%	Scores 2 points
Project C	21%	Scores 5 points
Project D	18%	Scores 4 points

**STEP 2 – ALLOCATION OF FUNDS:** Reclamation considers each project’s funding priority, project phasing, and stakeholder work priorities to make the final allocation of funds. To the extent possible, all authorized projects receive some funding, but higher-ranking projects will be allocated more funds than the lower-ranking projects.

Funding priorities are determined through the process described in Step 1. It is important to note, however, that the scores calculated in the prioritization phase are not used to determine a proportional distribution of funds. Although higher ranked projects receive higher priority consideration for funding, a project’s score does not directly establish the apportionment of funding made in the allocation step.

Based on input from project partners, Reclamation staff will develop project phasing plans identifying the incremental segments of work that can be completed

within the fiscal year and the cost to complete each phase. Staff will then recommend to the Commissioner an allocation of funds that emphasizes delivering water and other project benefits through the completion of phases in the funding year. The Commissioner, in consultation with the Regional Directors, will decide the final allocation.

## Evaluation Criteria and Data Sources

### Financial Resources Committed

20%

The measures for this criterion approximate project completion by comparing the cumulative amounts of Federal and non-Federal costs incurred relative to the Federal and non-Federal shares of the total authorized project cost. Costs are defined below.

- Factor 1 (Weight: 15%): Scores on Factor 1 will be based on data on the Federal and non-Federal costs incurred previously that is presented in the President's Budget Request for rural water construction. Reclamation updates these cost calculations annually. To maintain transparency, the Federal and non-Federal contributions toward project costs will be presented separately in prioritization documents and combined only for the purpose of calculating points and ranking the projects.

$$= \frac{\text{Federal contributions} + \text{non-Federal contributions}}{\text{authorized project cost (Federal+non-Federal)}}$$

- *Costs:* For the purpose of evaluating these factors, Reclamation defines "cost" as the price or cash value of the resources used to produce a program, project, or activity. However, Reclamation does not consider required operation and maintenance costs in this calculation. Costs include outlays of cash and other "costs" of doing business, other than operations and maintenance, such as:
  1. Amounts paid to vendors and contractors, including engineers, architects, and other outside consultants and service providers;
  2. Handling, storage, and transportation of materiel to the point of initial use;
  3. Acquisition and preparation costs for buildings and other facilities;
  4. Appropriate share of equipment and facility costs, if used in construction work;
  5. Inspection, supervision, and administration of construction contracts and construction work;
  6. Depreciation to reflect the estimated cost of equipment used in a specific year;
  7. Legal and recording fees;
  8. Damage claims; and
  9. Material amounts of interest costs paid.
- Factor 2\* (Weight: 5%): The revised criteria includes a measure of non-Federal contributions that exceed the required cost share amount and reduce

Reclamation's overall cost share. The project with the highest non-Federal contribution as a percentage of the total project cost will receive the maximum number of points for the new Factor 2. The additional non-Federal contributions would also count toward the non-Federal contributions included in Factor 1.

$$= \frac{\text{non-Federal contributions exceeding minimum cost-share}}{\text{authorized project cost (Federal+non-Federal)}}$$

\* NOTE: Reclamation adjusted the rating factors used to rank projects in FY 2014, as directed by Congress in the Explanatory Report associated with the Consolidated Appropriations Act of 2014 (P.L. 113-76). Factor 2 was not used to allocate FY 2014 appropriations.

Connection to a regulated public water supply usually assures delivery of good quality water, so a count of households not currently connected to a public water supply will be used to gauge the lack of reliable water delivery. However, recognizing that such a connection does not guarantee delivery of good quality water and that critical backlogs in maintenance and rehabilitation of infrastructure threaten the quality and reliability of water delivered, Reclamation will also consider the per-capita number of primary water quality violations reported to the Environmental Protection Agency (EPA).

- Factor 3 (Weight: 15%): The total service area population currently not served by regulated systems
  - Estimated service area population will be based on U.S. Census Bureau data. The population not served by a regulated system will be based on information found on the EPA Safe Drinking Water Information System (SDWIS) website. The SDWIS website provides the number of people served by three types of public water systems. Population not served will be calculated by subtracting the sum of the populations served by *community water systems only* from the total population served by the project. The calculation assumes a without-project condition. Therefore, although the EPA database will include phases of a rural water project as they are completed, the number of people served by the project will not be included in the total population served.
  - For service areas that cover portions of one or more counties, sub-county population data is often available from the Census Bureau. For prioritization purposes, however, if an accurate count is not available, the population will be estimated as a fraction of the total county population equivalent to the portion of the land area served by the project.
- Factor 4 (Weight: 10%): Number of health-based violations per 1,000 people, as reported by community water systems within the service area.
  - The count of violations will be based on data maintained on the EPA SDWIS website and will include only primary water quality violations reported for community water systems.

Reclamation will prioritize assistance to communities with demonstrated financial need, as measured by poverty rate and unemployment rate, and to projects with the greatest regional economic impacts.

Median Household Income (MHI) is widely used throughout the Federal government and is directly related to household expenditures, such as water, but does not account for household size. Some rural communities will have households with more people living in them due to high unemployment, lack of adequate housing, and other reasons. Reclamation chose to use poverty rate as an alternative measure because it incorporates both MHI and household size.

- Factor 5 (Weight: 5%): Poverty rate
- Factor 6 (Weight: 5%): Unemployment rate
  - The most recent estimates of the poverty and unemployment rates from U.S. Census Bureau data will be used to calculate and compare population-weighted averages for Factors 5 and 6.
- Factor 7 (Weight: 10%): Regional economic impacts (Note: This factor was not used to prioritize projects for FY 2012 or FY 2013.)
  - Reclamation will use an economic assessment model<sup>14</sup> to compare economic impacts of projects in terms of the multiplier value of output generated.
  - Statewide statistics will be used when available for the breakdown between materials, subcontractors, other labor, equipment, and fuel.
  - General statistics for the US will be used for the breakdown between materials, subcontractors, other labor, equipment, and fuel when Statewide statistics are not available or not reported.

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<sup>14</sup> IMPLAN by MIG, Inc.

Reclamation added measures of regional and watershed nature to prioritize projects that best fit Reclamation's large project expertise. The criterion combines the geographic size of the service area with population data in order to adequately compare the overall comprehensiveness of each project. In addition, the level of partnership and community involvement will be measured by the percentage of eligible community water systems participating in the regional project.

- Factor 8 (Weight: 5%): Service area in square miles, weighted by the proportion of the regional population served by the project

$$= \frac{\text{service Area (sq.mi.)} \times \text{current population to be served by project}}{\text{current total population}}$$

- Project documentation will be used to determine service area measured in square miles and the number of people to be served by the project. Estimated service area population will be based on U.S. Census Bureau data.

- Factor 9 (Weight: 5%): Proportion of communities in the service area participating or partnering on project

$$= \frac{\text{number of participating community water systems}}{\text{total number of community water systems}}$$

- This measure will be based on a count of the community water systems in the region, both to determine the number of systems that are participating and the number of systems that could participate but are not, regardless of reason.

Reclamation determined that two readily available measures could be used to reasonably assess water and energy efficiencies: treatment plant capacity and the energy required to develop and treat water supplies. Technical literature indicates that for most rural water systems, conservation is a significant factor in increasing energy efficiency (less water = less energy). Lower demands for treated water should therefore reduce the size and energy requirements of project treatment facilities. Prioritizing lower treatment plant capacities with respect to energy consumed will encourage water conservation and increased energy efficiencies.

Factor 10 enables a comparison of the amounts of energy used by project to treat and deliver water on an equivalent unit basis. This measure accounts for efficiencies already built into the system and avoids penalizing projects serving geographically dispersed (i.e., more rural) areas. The factor also promotes a stronger linkage between water and energy efficiencies. This approach focuses the analysis on water supply development. This minimizes variations associated with terrain and distribution (i.e., pipeline length) and focuses on the primary loads/capacities that are universal to most systems.

- Factor 10 (Weight: 5%): System treatment capacity per unit of energy demand (million gallons per 1,000 kilowatts):

$$= \frac{\textit{Treatment plant capacity (MGD)}}{\textit{Energy required for water supply development (1,000 kW)}}$$

- Factor 11 (Weight: 10%): Renewable energy and other Federal priorities. An evaluation of variables not currently accounted for within the scope of previously established factors to include but not limited to:
  - Incorporation of new project components to increase the proportion of renewable energy used;
  - Projects that advance sustainable energy initiatives;
  - Projects that supply national security facilities;
  - Projects that secure finite groundwater resources threatened by depletion; and
  - Recovery from natural disasters that threaten water quality or severely damage critical water delivery infrastructure.

Project sponsors will be provided an opportunity to submit information to Reclamation they believe should be considered.

(Note: This factor was not used to prioritize projects for FY 2012 or FY 2013).

Serves Native American Tribes 10%

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This measure will prioritize projects that serve populations living on American Indian reservations.

- Factor 12 (Weight: 10%): All projects that serve on-reservation populations will score 10 points on this factor. Projects that do not serve an on-reservation population will score zero points.

**Data Source Links:**

[U.S. Census Bureau](#)

EPA [Safe Drinking Water Information System](#) (SDWIS)

Bureau of Reclamation [FY 2013 Budget Justifications](#)

Bureau of Reclamation [prior year budget documents](#)

# Appendix B

**MEMORANDUM OF AGREEMENT BETWEEN  
THE  
U.S. ARMY CORPS OF ENGINEERS  
AND THE  
BUREAU OF RECLAMATION**

**ARTICLE I - PURPOSE AND AUTHORITY**

This two-way Memorandum of Agreement (MOA) is entered into by and between the U.S. Army Corps of Engineers (Corps) and the Bureau of Reclamation (Reclamation) (collectively "parties") for the purpose of establishing a framework governing the respective responsibilities for the provision of goods and services as described in Article II below. This MOA and any Support Agreement pursuant to this MOA is entered into pursuant to the Economy Act (31 U.S.C. § 1535), and the Partnership Agreement between the Bureau of Reclamation and the U.S. Department of the Army Office of the Assistant Secretary of the Army (Civil Works) signed February 11, 2005.

**ARTICLE II - SCOPE**

a. Goods and services that the Corps may provide under this MOA include planning, design, construction, flood damage reduction, environmental restoration, recreation, research and development, emergency management, hazardous or toxic materials removal, engineering or technical assistance, training and professional development, and such other related goods or services as may be agreed upon in the future.

b. Goods and services which Reclamation may provide under this MOA include water supply management, dam safety, hydropower, technical engineering, construction, fish and wildlife, ecosystem restoration, recreation, emergency management, training and professional development, and such other related goods or services as may be agreed upon in the future.

c. Nothing in this MOA shall be construed to require either party to use the other party or to require either party to provide any goods or services to the other party, except as may be set forth in Support Agreements (SAs).

### ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Corps and Reclamation, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on SAs.

### ARTICLE IV - SUPPORT AGREEMENTS

a. In response to requests from one party (the "Ordering Agency") for the other party's (the "Servicing Agency") goods and services, the parties will develop mutually agreed upon written SAs that detail the specific tasks to be completed. Those SAs must be on either Engineer Form 4914-R, Interagency/Support Agreement, or a similar document containing the same information as Department of Defense Form 1144, Support Agreement. SAs must include:

- a detailed scope of work statement;
- schedules;
- funding arrangements, including, for SAs in excess of \$1 million, the amount of any advance payment;
- the amount of funds required and available to accomplish the scope of work;
- the Ordering Agency's funds cite and the date upon which the cited funds expire for obligation purposes;
- identification of individual project managers;
- identification of contracts to be used (if known);
- types and frequencies of reports;
- identification of which party is to be responsible for government-furnished equipment; contract administration; records maintenance; rights to data, software, and intellectual property; and contract audits;
- procedures for amending or modifying the SA;
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods or services;
- Ordering and Servicing Agency's respective line of accounting to include; the appropriation department code, the appropriation fiscal year, the appropriation symbol and the appropriation limitation associated with this order; and
- an Economy Act determination for each action supported by a Determinations and Findings as outlined in FAR 17.503.

b. Goods or services shall be provided under this MOA only after an appropriate SA has been signed by a representative of each party authorized to execute that SA. In the case of conflict between this MOA and an SA, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

a. Responsibilities of the Servicing Agency under each SA

(1) The Servicing Agency shall provide the Ordering Agency with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs and implementing arrangements.

(2) The Servicing Agency shall ensure that only authorized Servicing Agency representatives sign SAs.

(3) The Servicing Agency shall use its best efforts to provide goods or services either by contract or in-house effort.

(4) The Servicing Agency shall provide detailed periodic progress, financial, and other reports as outlined in the SA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

(5) The Servicing Agency shall inform the Ordering Agency of all contracts entered into under each SA.

b. Responsibilities of the Ordering Agency under each SA

(1) The Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under this MOA and certifies at the time of signature of a SA, the availability of funds necessary to accomplish that SA.

(2) The Ordering Agency shall ensure that only authorized Ordering Agency representatives sign SAs.

(3) The Ordering Agency shall develop draft SAs to include scope of work statements.

(4) The Ordering Agency shall obtain for the Servicing Agency all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from State and local agencies, as necessary during the execution of each SA.

## ARTICLE VI - FUNDING

a. The Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under this MOA. For SAs with work estimated to exceed a total of \$250,000 for contracts and in-house services or a total of \$50,000 in contracts alone, the Servicing Agency shall bill the Ordering Agency in advance and the Ordering Agency shall provide the necessary funds in advance. For SAs with work valued at less than these amounts, the Ordering Agency may reimburse the Servicing Agency for the goods or services. For these lesser requirements, the Servicing Agency shall use the Intragovernment Payment and Collection system (IPAC) to bill the Ordering Agency monthly for costs incurred, using Standard Form ("SF") 1081, Voucher and Schedule of Withdrawal and Credits, and the Ordering Agency shall reimburse the Servicing Agency within 30 days of receipt of an SF 1081. Each billing shall include sufficient detail to support the costs (such as labor, materials or contracted work) incurred to date.

b. If the Servicing Agency forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify the Ordering Agency of the amount of additional funds necessary to complete the work under that SA supported by justification for cost overrun. The Ordering Agency shall either provide the additional funds to the Servicing Agency, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA.

c. Within 90 days of completing the work under a SA, the Servicing Agency shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the Servicing Agency shall return to the Ordering Agency any funds advanced in excess of the actual costs as then known, or the Ordering Agency shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the Ordering Agency's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

## ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the Corps shall be governed by Corps policies and procedures and all contract work undertaken by Reclamation shall be governed by Reclamation policies and procedures.

## ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

### a. Corps of Engineers Contracting

(1) All claims and disputes by contractors arising under or relating to contracts awarded by the Corps shall be resolved in accordance with Federal law and the terms of the individual contract. The Corps shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

(2) The Corps shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The Corps shall notify Reclamation of any such litigation and afford Reclamation an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

### b. Bureau of Reclamation Contracting

(1) All claims and disputes by contractors arising under or relating to contracts awarded by Reclamation shall be resolved in accordance with Federal law and the terms of the individual contract. Reclamation shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Interior Board of Contract Appeals (IBCA) or its successor board is designated as the appropriate board of contract appeals. In lieu of appealing to the IBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

(2) Reclamation shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. Reclamation shall notify the Corps of any such litigation and afford the Corps an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

## ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, Reclamation and the Corps shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

## ARTICLE X - RESPONSIBILITY FOR COSTS

a. If liability of any kind is imposed on the United States relating to the Servicing Agency's provision of goods or services under this MOA, the Servicing Agency will accept accountability for its actions, but the Ordering Agency shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming, or other means. Should the Ordering Agency have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, it remains responsible for seeking additional funds from Congress for such purpose, although nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

b. Notwithstanding the above, this MOA does not confer any liability upon the Ordering Agency for claims payable by the Servicing Agency under the Federal Torts Claims Act. Nothing in this Agreement is intended or will be construed to create any rights or remedies for any third party, and no third party is intended to be a beneficiary of this Agreement.

## ARTICLE XI - PUBLIC INFORMATION

a. Justification and explanation of Reclamation programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of Reclamation. The Corps may provide, upon request, any assistance necessary to support Reclamation's justification or explanations. In general, Reclamation is responsible for all public information. The Corps may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. Reclamation or the Corps shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this MOA.

b. Justification and explanation of the Corps programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the Corps. Reclamation may provide, upon request, any assistance necessary to support the Corps justification or explanations. In general, the Corps is responsible for all public information. Reclamation may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The Corps or Reclamation shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this MOA.

## ARTICLE XII - MISCELLANEOUS

### a. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between Reclamation and the Corps.

### b. Survival

The provisions of this MOA that require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

### c. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

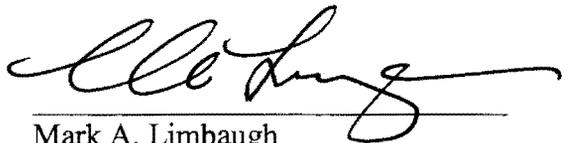
## ARTICLE XIII - AMENDMENT, MODIFICATION, AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, in all circumstances the Ordering Agency shall continue to be responsible for all costs incurred by the Servicing Agency under this MOA, and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by the Department of the Interior, the Department of the Army, the Bureau of Reclamation, and the U.S. Army Corps of Engineers.

Department of the Interior



Mark A. Limbaugh  
Assistant Secretary for Water and Science

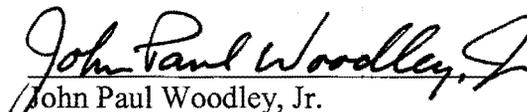
22 Aug 06  
Date



William E. Rinne  
Acting Commissioner  
Bureau of Reclamation

8-22-06  
Date

Department of the Army



John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

22 Aug 06  
Date



Don T. Riley  
Major General, U.S. Army  
Director of Civil Works

22 Aug 2006  
Date

**MEMORANDUM OF UNDERSTANDING**  
**among the**  
**DEPARTMENT OF AGRICULTURE,**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES,**  
**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,**  
**DEPARTMENT OF THE INTERIOR,**  
**and the**  
**ENVIRONMENTAL PROTECTION AGENCY**  
**to better coordinate the**  
**FEDERAL GOVERNMENT EFFORTS IN PROVIDING INFRASTRUCTURE AND**  
**PROMOTING SUSTAINABLE PRACTICES TO SUPPORT THE PROVISION OF SAFE**  
**DRINKING WATER AND BASIC SANITATION IN AMERICAN INDIAN AND ALASKA**  
**NATIVE COMMUNITIES**

**WHEREAS**, the Department of Agriculture (USDA), Department of Health and Human Services (DHHS), Department of Housing and Urban Development (HUD), Department of the Interior (DOI) and the Environmental Protection Agency (EPA), referred to collectively as the "parties," to this MOU share a common goal to assist tribes in improving quality of life by providing infrastructure and promoting sustainable practices to support the provision of safe drinking water and basic sanitation for tribal communities, and

**WHEREAS**, this common goal can be more readily achieved with an efficient and integrated utilization of available programs and expertise, and

**WHEREAS**, this Memorandum of Understanding (MOU) replaces the two previous MOUs listed below that expired June 2012:

- MOU among the USDA, DHHS, HUD, DOI and EPA to better coordinate the Federal Government Efforts in the Delivery of Infrastructure Services and Financial Assistance in Indian Country in Support of Tribal Communities
- MOU among the USDA, DHHS, HUD, DOI and EPA for Cooperation in the Development of a Federal Strategy to Meet the Commitments Made by the U.S. Under the United Nations Millennium Development Goals for Improved Access to Safe Drinking Water and Basic Sanitation in Indian Country Including Use of a Cooperative System to Share Data and Information

**WHEREAS**, all the parties will cooperate for this effort under their authorities listed in Section II through their headquarters and regional/area/state offices, and

**WHEREAS**, this new MOU will maintain a framework for all parties to enhance interagency coordination and to cultivate greater cooperation in carrying out their authorized federal government responsibilities, and

**WHEREAS**, the parties continue to commit to the principles of working together with tribal governments on a government-to-government basis, mindful of the federal trust responsibility to federally recognized tribes, and the desire to promote self-governance, and

**WHEREAS**, the parties believe an essential element of any success in federal infrastructure endeavors in Indian country is tribal consultation to the extent permitted or required by law when promulgating rules, developing programs, or taking actions that have substantial direct effects on one or more Indian tribes, and

**WHEREAS**, all parties will continue to coordinate, with a full understanding of each party's existing water and waste disposal infrastructure and technical assistance programs in Indian country (including solid waste management programs), to provide improved access to safe drinking water and basic sanitation, and

**WHEREAS**, the parties will continue to make available technical assistance and operator training opportunities to the tribes to assist tribes in providing or sustaining improved access to safe drinking water and basic sanitation to their people, and

**NOW, THEREFORE**, the parties enter into this Memorandum of Understanding for the following purposes.

**I. Purposes:**

- A. To maintain the structures and procedures necessary to have a common understanding of the programs and policies of each party as they pertain to funding for infrastructure construction, solid waste management efforts and technical assistance to tribes.
- B. To work together to improve the capacity of American Indian and Alaska Native communities to operate, manage, and maintain sustainable infrastructure.
- C. To enhance the efficient leveraging of funds, on federal, tribal, state, and local levels.
- D. To work collectively and collaboratively with tribes to promote an understanding of federal programs that contributes to tribal water and waste disposal infrastructure.
- E. To identify and address programs, initiatives, and other issues that will improve planning, construction, operation, and maintenance of sustainable infrastructure.
- F. To continue the structures and procedures necessary to allow and facilitate the exchange of data and information in the most appropriate manner.

**II. Authorities**

A. Authorities of Specific Parties

**Department of Agriculture — Rural Development** is authorized through the Water and Environmental Programs to provide financial and technical assistance for the development and operation of safe and affordable drinking water and waste disposal systems. Loans and grants are made to public bodies, and not-for-profit corporations including cooperatives and Indian tribes in rural areas and towns of under 10,000 people for new construction, replacement, expansion or other improvements to drinking water and waste facilities. The programs are administered at the local level by USDA-RD State Offices and Area Offices.

- Consolidated Farm and Rural Development Act, as amended; (7 U.S.C. 1921, *et seq.*)

**Department of Housing and Urban Development — Public and Indian Housing (PIH)** is authorized, under the Native American Housing Assistance and Self-Determination Act (NAHASDA) and the Indian Community Development Block Grant Program, to provide financial and technical assistance for the development and management of low-income housing and community development projects in American Indian and Alaska Native communities. The role of HUD's Office

of Native American Programs (ONAP) within PIH is to ensure safe, decent and affordable housing is available to Native American families, to facilitate the development of viable communities, to create economic opportunities for Indian housing residents, and to ensure fiscal integrity in the operation of the programs. HUD provides Federal assistance in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribe or its tribally designated housing entity (TDHE).

- Native American Housing Assistance and Self-Determination Act of 1996, as amended (25 U.S.C. 4101 *et seq.*)
- Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*)

**Department of Health and Human Services — Indian Health Service** is authorized to provide a comprehensive primary and preventative health services delivery system for American Indians and Alaska Natives. The Office of Environmental Health and Engineering is the environmental health/engineering component of IHS, and it assists tribal communities in the development/construction of health care facilities and sanitation facilities infrastructure (water, wastewater, solid waste, and technical assistance on operation and maintenance). IHS has the primary responsibility and authority to provide American Indian and Alaska Native homes and communities with the necessary sanitation facilities, health care and associated facilities, and related services.

- Snyder Act, 25 U.S.C. 13
- "Transfer Act", 42 U.S.C. 2001 *et seq.*
- Public Law 86-121, 42 U.S.C. 2004a (Section 7 of the Transfer Act)
- Indian Self-Determination and Educational Assistance Act, Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*)
- Indian Health Care Improvement Act, Public Law 94-437, as amended (25 U.S.C. 1601 *et seq.*)
- Indian Lands Open Dump Cleanup Act of 1994, Public Law 103-399, (25 U.S.C. 3901 *et seq.*)

**Environmental Protection Agency** is authorized to make grants to American Indians and Alaska Natives that address the most significant public health threats associated with drinking water and wastewater systems that serve tribes. The grants may be used for the planning, design, and construction of public water systems and wastewater treatment systems to serve tribes. EPA has authority to assist tribes by providing technical assistance to managers and operators of public water systems and conducting sanitary surveys of public water systems. EPA is authorized to make grants to federally recognized tribes and tribal consortia for developing and implementing solid waste programs. EPA cooperates with IHS in their responsibility to study and inventory open dumps. EPA's primary solid waste focus is to assist the tribes with development of integrated waste management plans to address open dumps, rank the relative risk of open dumpsites and prioritize them for closure.

- Safe Drinking Water Act of 1974, (42 U.S.C. 300f *et seq.*), specifically Sections 1443(a) and 1452(i)
- Clean Water Act of 1977, (33 U.S.C. 1251 *et seq.*), specifically Section 518
- Resource Conservation and Recovery Act of 1976, (42 U.S.C. 321 *et seq.*), specifically Section 8001
- Indian General Assistance Program Act of 1992, Public Law 102-497, (42 U.S.C. 4368b)

- Indian Lands Open Dump Cleanup Act of 1994, Public Law 103-399, (25 U.S.C. 3901 *et seq.*)

**Department of the Interior — Bureau of Indian Affairs** is authorized, pursuant to 25 CFR parts 162, 169, and 170, to assist in the preparation of appropriate lease documents for housing sites and required easements; to review, approve and record all required trust or restricted fee land lease and easement documents; to develop access roads to housing sites in accordance with tribal road priorities; to provide maintenance services for those roads and streets accepted into the BIA road systems; and to assist with other support, when available, that may be necessary for the timely development of housing.

**Department of the Interior — Bureau of Reclamation** is authorized pursuant to the Reclamation Act of 1902, as amended and supplemented, and other applicable federal law, to construct, operate, and maintain water resources projects in the 17 Western States, and as applicable, the State of Hawaii.

#### B. General Authorities

Data and Information — The Information Technology Management Reform Act (Clinger-Cohen Act) and the Office of Management and Budget Circular A-16 (revised November 2010) mandate that all federal agencies, including the partners, develop common data standards and protocols for the efficient sharing of information.

#### C. Effect of MOU on Authorities of Parties

Nothing in this MOU alters the statutory authorities or any other authorities of the parties. This MOU is intended to facilitate cooperative efforts for the mutual provision of services, support, and technical assistance by the parties in the conduct of their official business.

### III. Responsibilities

- Each party commits at the highest appropriate level to implement agreed upon activities, to the extent practicable and permitted by its authorities, to help successfully meet the purposes of this MOU.
- Each agency will comply with its own tribal consultation policy for impacted federal program changes that may result from MOU related discussions and decisions.
- Each party, to the extent legally appropriate and practicably feasible, will provide the other signatories with access to relevant data related to the identified programmatic activities to help successfully meet the purposes of this MOU.
- The parties will convene on a regular basis to discuss issues within the scope of and related to the purposes of this MOU.

### IV. Rights in Data

Data that is provided to the coordinating Agency/Department in furtherance of the activities under this MOU will be exchanged to the extent consistent with each party's authority without use and disclosure restrictions unless the parties decide to impose restrictions on specifically designated data or information.

**V. Responsible Officers**

- A. The following are the responsible officers, at the time of this signing, for each party to this MOU:

Department of Agriculture:

Assistant Administrator for Water and Environmental Programs

Rural Utilities Service

Department of Health and Human Services:

Director, Division of Sanitation Facilities Construction

Indian Health Service

Department of Housing and Urban Development:

Deputy Assistant Secretary

Office of Native American Programs

Department of Interior:

Director Bureau of Indian Affairs

Environmental Protection Agency:

Deputy Assistant Administrator

Office of Water

- B. The Environmental Protection Agency will coordinate with the other signatory agencies on regular meetings intended to scope out future activities pursuant to this MOU.

**VI. Limitations**

- A. All commitments made pursuant to this MOU are subject to the availability of appropriated funds and each party's budget authorities and priorities. Nothing in this MOU, in and of itself, requires the parties to commit, obligate, or expend their appropriations.
- B. Any endeavor involving the transfer of funds between the parties to this MOU will be executed in separate agreements between or among the participating parties.
- C. This MOU does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity against any of the parties, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the named parties.

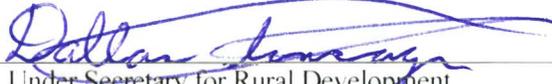
**VII. Duration**

This MOU becomes effective on the date of final signature and will remain in effect for an 8-year term from the effective date. Any party upon 90-day notice to the other parties may suggest amending this MOU. The MOU, however, can only be amended through a written agreement signed by all parties.

**IX. Termination**

Any party upon 90-day written notice to the other parties may terminate this agreement, at any time and for any reason it deems substantial.

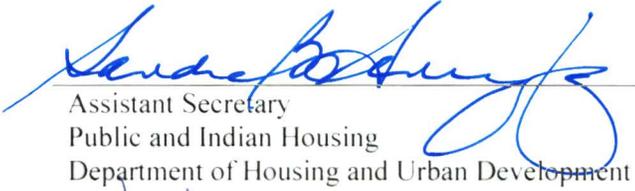
This Memorandum of Understanding is signed FOR:

  
Under Secretary for Rural Development  
United States Department of Agriculture

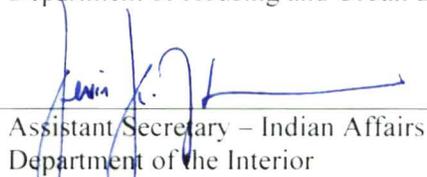
2/25/13  
Date

  
Director, Indian Health Service  
Department of Health and Human Services

3/12/2013  
Date

  
Assistant Secretary  
Public and Indian Housing  
Department of Housing and Urban Development

12/28/2012  
Date

  
Assistant Secretary – Indian Affairs  
Department of the Interior

3/28/13  
Date

  
Acting Assistant Administrator for Water  
U.S. Environmental Protection Agency

2/13/2013  
Date