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SENATE

{ REPORT
{ 110-475

AMENDING THE SAFE DRINKING WATER ACT TO PRO- VIDE GRANTS TO SMALL PUBLIC DRINKING WATER SYSTEMS

SEPTEMBER 22 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public
Works, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1933]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 1933) to amend the Safe Drinking Water Act to provide grants to small public drinking water systems, having considered the same reports favorably thereon and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

SUMMARY AND NEED FOR LEGISLATION

This Committee, the U.S. Environmental Protection Agency (EPA), state officials, health experts, and water utilities recognize that there are special challenges for many small drinking water systems seeking to provide the highest quality drinking water. EPA defines a small system as one serving fewer than 3,300 people. According to EPA's assessment of drinking water needs in 2003 (published in 2005), 45,000 of the nation's 54,000 community water systems are small systems serving fewer than 3,300 people, with

needs exceeding \$34 billion over the next 20 years.¹ EPA's review concluded:

Small water systems face many unique challenges in providing safe drinking water to consumers. The substantial capital investments required to rehabilitate, upgrade, or install infrastructure, without the economies of scale available to larger systems, represent one challenge. Although the total small system need is modest compared to the need of larger systems, the costs borne on a per-household basis by small systems are significantly higher than those of larger systems.²

As noted by the National Academy of Sciences' National Research Council (NRC) in its 1997 review of small system drinking water challenges, "meeting drinking water standards is most difficult for water systems in small communities. Small communities often cannot afford the equipment and qualified operators necessary to ensure compliance with safe drinking water standards."

Many of the Academies' findings and recommendations continue to be relevant today. The Academy panel noted that increases in both the number of drinking water regulations and the number of small community water systems over the past three decades have made the problem of providing safe drinking water to small communities even more challenging. The panel suggested that "the solution to the problem of providing safe drinking water to small communities has three elements, each equally important: (1) providing affordable water treatment technologies, (2) creating the institutional structure necessary to ensure the financial stability of water systems, and (3) improving programs to train small system operators in all aspects of water system maintenance and management." Thus, the panel highlighted the importance of adequate funding for efforts to assist small system operators with affordable water treatment technologies and to offer technical assistance.

OBJECTIVES AND OVERVIEW OF THE LEGISLATION

The goal of the legislation is to amend the Safe Drinking Water Act to provide grants to small public drinking water systems. It includes a program for Indian tribes, and numerous measures to assist small water systems in complying with national primary drinking water regulations.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the Act may be cited as the "Small Community Drinking Water Funding Act."

Sec. 2. Findings and purpose

This section finds that drinking water standards can place financial burdens on public water systems, especially systems that serve fewer than a few thousand people, and that some small public water systems have experienced water contamination problems that may pose a significant risk to the health of water consumers.

¹ Environmental Protection Agency, "Drinking Water Infrastructure Needs Survey and Assessment; Third Report to Congress," page 7 (2005). In addition, systems serving between 3,301 and 10,000 people also have substantial needs not separately estimated in EPA's report.

² *Ibid* at 11.

It makes numerous other findings respecting the special needs of small water systems, including the need for scientific, technical, and professional resources, and for support for capital investments. This section establishes that the purpose of this Act is to establish a program to provide grants to small public water systems to meet applicable national primary drinking water regulations under the Safe Drinking Water Act (42 U.S.C. 300f et seq.), maintain water costs at a reasonable level for the communities served by small public water systems, and obtain technical assistance to develop the capacity to sustain operations over the long term.

Sec. 3. Small public water system assistance program

This section refines the definitions in the Act including the definition of Indian Tribe in section 1401(14) of the Safe Drinking Water Act to ensure that they are eligible for assistance under the new small public water system assistance program. This section establishes the small public water system assistance program, defining eligible activity, eligible entity, and eligible state. Small system is defined to include public water systems serving up to 10,000 people for the purposes of this Act.

This section allocates funds for grants to small public water systems, and for State and Indian Tribe programs to assist them. It also authorizes \$750 million per year to carry out this program.

LEGISLATIVE HISTORY

Senator Reid introduced S. 1933 on August 1, 2007 with Senators Ensign, Boxer, Baucus, Murray, Clinton, Sanders, and Conrad. Senator Klobuchar later joined as a cosponsor. The bill was referred to the Committee on Environment and Public Works, and was ordered reported favorably out of the Committee without amendment on July 31, 2008.

ROLLCALL VOTES

S. 1933 passed the Committee by voice vote on July 31, 2008, with Senator Inhofe requesting that he be recorded as voting aye.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes evaluation of the regulatory impact of the reported bill.

The bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the Committee finds that S. 1933 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

AUGUST 19, 2008.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1933, the Small Community Drinking Water Funding Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 1933—Small Community Drinking Water Funding Act

Summary: S. 1933 would require the Environmental Protection Agency (EPA) to establish a Small Public Water System Assistance Program. This legislation would authorize the appropriation of \$750 million for each of fiscal years 2009 through 2014 for EPA to administer this new program and to provide grants to small public drinking water systems located in states or areas governed by Indian tribes. Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 1933 would cost \$3.1 billion over the 2009–2013 period and \$1.4 billion after 2013. Enacting S. 1933 would not affect direct spending or revenues.

S. 1933 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1933 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment). For this estimate, CBO assumes that S. 1933 will be enacted near the start of fiscal year 2009 and that the amounts authorized by the bill will be appropriated each year. Estimated outlays are based on historical spending patterns for similar programs.

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	750	750	750	750	750	3,750
Estimated Outlays	300	600	690	735	750	3,075

Intergovernmental and private-sector impact: S. 1933 contains no intergovernmental or private-sector mandates as defined in UMRA, and state, local, and tribal governments would benefit from the funds authorized by this bill. The bill would establish grant programs to support small public water systems. The grant programs would be voluntary, and the associated requirements for participation would not be mandates under UMRA.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Burke Doherty; Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for
Budget Analysis.

ADDITIONAL VIEWS

I have spent much of my political career advocating for rural communities who lack the financial capability to comply with oftentimes expensive drinking water regulations. S. 1933, the Small Community Drinking Water Funding Act, takes a step in the right direction by providing much needed financial assistance to small public water systems struggling to keep up with new regulations and escalating construction costs. However, Congress should go further by requiring the Environmental Protection Agency (EPA) to develop a lower, more reasonable affordability threshold that will lead to new variance technologies, ultimately driving down the disproportionate cost of compliance to rural communities while still adequately protecting human health. For that reason, I filed amendments, but still support the underlying bill.

The purpose of my amendments is to ensure that small towns across the country have safe, reliable and affordable drinking water. I introduced the Small Systems Safe Drinking Water Act that helps communities achieve these ends through several means. First, my legislation provides technical assistance to communities that lack the scientific and technical backgrounds to achieve compliance and operate complicated treatment facilities.

My legislation also requires the Environmental Protection Agency to revise their affordability criteria. According to EPA, families can afford water rates of 2.5 percent of their annual median household income, or \$1,000 per household. For some families, paying \$83 a month for water is not a hardship but for so many more, it is a near impossibility. Therefore, there must be some flexibility in the calculation that incorporates the ability of the truly disadvantaged to pay these costs. Forcing systems to raise rates beyond what their ratepayers can afford may cause far more damage than intentioned. EPA needs to closely examine how it determines affordability and must identify variance technologies to assist the many hardship communities across the country.

Additionally, this bill directs EPA to take additional steps when making this affordability determination. For rules that are governed by the new affordability standard, EPA must identify a variance technology for rules found unaffordable. Without such a technology, the EPA cannot take an enforcement action against a system serving less than 10,000 people.

Most importantly, this bill requires the Federal Government to pay for these unfunded mandates. In 1995, Congress passed the Unfunded Mandates Reform Act to ensure that the Federal Government pays the costs incurred by state and local governments in complying with the certain requirements under Federal statutes and regulations. The current problem is two-fold; our communities operate under too many regulations and not enough money to pay for them. Funding legislation is important but until that money be-

comes available, it is unreasonable to penalize and fine local communities because they cannot afford to pay for regulations the federal government imposed on them.

Drinking water and treatment works are obvious necessities for functioning and healthy communities that can be vulnerable to natural disasters and terrorist attacks. For this reason, I offered an amendment in relation to my Water Security Act of 2007. My amendment creates a partnership with local communities to secure their drinking and wastewater treatment works facilities. The language authorizes grants for communities to conduct vulnerability assessments, implement security measures, develop emergency response plan, and for needed technical assistance. Many communities have finished vulnerability assessments on their drinking water facilities, but lack the resources and technical assistance to go the next step and implement security plans and upgrade security features. It is imperative that Congress not ignore vulnerabilities and needs at community drinking water and treatment works facilities.

JAMES M. INHOFE.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

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TITLE XIV OF THE PUBLIC HEALTH SERVICE ACT (THE SAFE DRINKING WATER ACT)¹

[As Amended Through P.L. 109–58, Enacted August 8, 2005]

TITLE XIV—SAFETY OF PUBLIC WATER SYSTEMS

SHORT TITLE

SEC. 1400. This title may be cited as the “Safe Drinking Water Act”.

PART A—DEFINITIONS

DEFINITIONS

SEC. 1401. For purposes of this title:

(1) The term “primary drinking water regulation” means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods

¹This title, the “Safe Drinking Water Act”, consists of title XIV of the Public Health Service Act (42 U.S.C. 300f-300j-9) as added by Public Law 93–523 (Dec. 16, 1974) and the amendments made by subsequent enactments.

for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems. At any time after promulgation of a regulation referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.

(2) * * *

* * * * *

(14) The term “Indian Tribe” means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area. For purposes of section ~~1452~~1452 and part G, the term includes any Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c))).

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SEC. 1465. (a) SCHOOL DRINKING WATER PROGRAMS.—* * *

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PART G—SMALL PUBLIC WATER SYSTEM ASSISTANCE

SEC. 1471. DEFINITIONS.

In this part:

(1) ELIGIBLE ACTIVITY.—

(A) IN GENERAL.—The term “eligible activity” means an activity concerning a small public water system (including obtaining technical assistance) that is carried out by an eligible entity for a purpose consistent with section 1473(c)(1) or 1474(c)(1), as appropriate.

(B) EXCLUSION.—The term “eligible activity” does not include any activity to increase the population served by a small public water system, except to the extent that the State under section 1473(b)(1) or the Administrator under section 1474(b)(1) determines an activity to be necessary to—

- (i) achieve compliance with a national primary drinking water regulation; and
- (ii) provide a water supply to a population that, as of the date of enactment of this part, is not served by a safe public water system.

(2) ELIGIBLE ENTITY.—The term “eligible entity” means a small public water system that—

(A) is located in a State or an area governed by an Indian Tribe; and

(B)(i) if located in a State, serves a community that, under affordability criteria established by the State under section 1452(d)(3), is determined by the State to be—

- (I) a disadvantaged community; or

(II) a community the State expects to become a disadvantaged community as a result of carrying out an eligible activity; or

(ii) if located in an area governed by an Indian Tribe, serves a community that is determined by the Administrator, under criteria published by the Administrator under section 1452(d)(3) and in consultation with the Secretary, to be—

(I) a disadvantaged community; or

(II) a community the Administrator expects to become a disadvantaged community as a result of carrying out an eligible activity.

(3) **ELIGIBLE STATE.**—The term “eligible State” means a State that has—

(A) adopted, and is implementing, an approved operator certification program under section 1419; and

(B) established affordability criteria under section 1452(d)(3) for use in identifying disadvantaged communities.

(4) **PROGRAM.**—The term “Program” means the Small Public Water System Assistance Program established under section 1472(a).

(5) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services, acting through the Director of the Indian Health Service.

(6) **SMALL PUBLIC WATER SYSTEM.**—The term “small public water system” means a public water system (including a community water system and a noncommunity water system) that serves a population of 10,000 or fewer.

SEC. 1472. SMALL PUBLIC WATER SYSTEM ASSISTANCE PROGRAM.

(a) **ESTABLISHMENT.**—Not later than July 1, 2008, the Administrator shall establish within the Environmental Protection Agency a Small Public Water System Assistance Program.

(b) **DUTIES.**—The head of the Program shall—

(1) in accordance with section 1474, establish and administer a small public water system assistance program for, and provide grants to, eligible entities located in areas governed by Indian Tribes, for use in carrying out eligible activities;

(2) identify, and prepare annual prioritized lists of, activities for eligible entities located in areas governed by Indian Tribes that are eligible for grants under section 1474;

(3) provide funds to States for use in establishing small public water system assistance programs under section 1473 that award grants to eligible entities to carry out eligible activities; and

(4) prepare, and submit to the Administrator, the reports required under subsection (d).

(c) **ALLOCATION OF FUNDS.**—

(1) **STATES.**—

(A) **IN GENERAL.**—Subject to subparagraphs (B) through (D) and paragraph (2)(A), for each fiscal year, the Administrator, through the head of the Program, using the most recent available needs survey conducted by the Administrator under section 1452(h), shall allocate the funds made avail-

able to carry out the Program for the fiscal year among eligible States based on the ratio that—

(i) the financial need associated with treatment projects for small public water systems in the State; bears to

(ii) the total financial need associated with treatment projects for all small public water systems in all States.

(B) *ADDITIONAL REQUIREMENTS.*—Any additional financial needs of small public water systems associated with the cost of treatment projects needed to comply with a national primary drinking water regulation that is promulgated after the most recent needs survey conducted under section 1452(h) shall be factored into the determination of financial need under clauses (i) and (ii) of subparagraph (A) for each fiscal year.

(C) *MINIMUM ALLOCATION.*—An allocation of funds to a State for a fiscal year under subparagraph (A), taking into consideration any additional financial needs described in subparagraph (B), shall be in an amount that is at least 1 percent of the amount of funds available for that fiscal year.

(D) *REDISTRIBUTION IF NONUSE.*—If a State does not qualify for, or fails to request, funds allocated to the State under subparagraph (A) in any fiscal year, the Administrator shall redistribute the funds among the States that—

(i) request funds for that fiscal year; and

(ii) are eligible to receive the funds under subparagraph (A) for that fiscal year.

(2) *INDIAN TRIBES.*—

(A) *IN GENERAL.*—For each fiscal year, in accordance with subparagraph (B), 3 percent of the total amount of funds made available to carry out the Program for the fiscal year shall be allocated by the Administrator to provide grants to eligible entities that are located in areas governed by Indian Tribes through the program established under section 1474(a).

(B) *USE OF FUNDS.*—

(i) *IN GENERAL.*—For each fiscal year, the Administrator shall award, on a competitive basis, not less than 1.5 percent of the funds allocated under subparagraph (A) to nonprofit technical assistance organizations, to be used for the purposes of—

(I) assisting the Administrator in preparing the list required under section 1474(b) (including assisting the Administrator in identifying the highest priority eligible activities for eligible entities located in areas governed by Indian Tribes for which a grant under section 1474 may be used);

(II) assisting eligible entities located in areas governed by Indian Tribes in—

(aa) assessing needs relating to eligible activities; and

(bb) identifying available sources of funding to meet the cost-sharing requirement of section 1474(f)(1); and

(III) assisting eligible entities located in areas governed by Indian Tribes that receive funding under section 1474 in—

(aa) planning, implementing, and maintaining eligible activities that are funded under that section; and

(bb) preparing reports required under section 1474(h).

(ii) CONSULTATION.—Each nonprofit technical assistance organization that receives funds under clause (i) shall consult with the Administrator, through the head of the program, before carrying out any activity for the purposes described in subclauses (II)(aa) and (III)(aa) of that clause.

(iii) NO FUNDS FOR LOBBYING EXPENSES.—None of the funds made available to a nonprofit technical assistance organization under clause (i) shall be used to pay lobbying expenses.

(3) PROGRAM.—For each fiscal year, the Administrator may use not more than 0.1 percent of the funds made available to carry out the Program to pay reasonable costs incurred in the administration of the Program.

(d) REPORTS.—Not later than January 1, 2009, and annually thereafter through January 1, 2014, the Administrator shall—

(1) submit, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report that, for the preceding fiscal year—

(A) lists the eligible activities for eligible entities, as prepared under sections 1473(b)(1) and 1474(b)(1), located in areas governed by Indian Tribes and in each State receiving funds under this part;

(B) identifies the number of grants awarded by each State, and by the Administrator to eligible entities located in areas governed by Indian Tribes, under this part;

(C) identifies each eligible entity that received a grant to carry out an eligible activity;

(D) identifies the amount of each grant provided to an eligible entity to carry out an eligible activity; and

(E) describes each eligible activity funded by such a grant (including the status of the eligible activity); and

(2) make the report under paragraph (1) available to the public.

SEC. 1473. STATE SMALL PUBLIC WATER SYSTEM ASSISTANCE PROGRAMS.

(a) IN GENERAL.—To be eligible to receive funding under this part, a State shall—

(1) be an eligible State;

(2) not later than July 1, 2008 (if funding is sought for fiscal year 2008) or not later than September 30 of any of fiscal years 2008 through 2014 (if funding is sought for the following fiscal

year), establish a small public water system assistance program—

(A) under which the requirements of subsection (b), oversight, and related activities (other than financial administration) with respect to the program are administered—

(i) in the case of a State that is exercising primary enforcement responsibility for public water systems, by the State agency having primary responsibility for administration of the State program under section 1413; and

(ii) in the case of a State that is not exercising primary enforcement authority for public water systems, by a State agency selected by the Governor of the State; and

(B) that meets the requirements of this section; and

(3) for each fiscal year for which funding is sought under this section—

(A) in preparing an intended use plan under section 1452(b), after providing for public review and comment, prepare an annual list of eligible activities for eligible entities in the State in accordance with subsection (b); and

(B) prepare and submit to the Administrator a request for the funding, by such date and in such form as the Administrator shall prescribe.

(b) PROGRAM PRIORITY REQUIREMENT.—

(1) LIST OF ELIGIBLE ACTIVITIES.—A small public water system assistance program established under subsection (a) shall, for each fiscal year for which funding is sought, identify, and, using the priority criteria described in paragraph (2) and considering the additional criteria described in paragraph (3), list in descending order of priority, eligible activities for eligible entities in the State for which funds provided from a grant under this part may be used.

(2) PRIORITY CRITERIA.—In preparing the list under paragraph (1), a small public water system assistance program shall give priority for the use of grants to eligible activities that—

(A) address the most serious risk to human health;

(B) are necessary to ensure compliance with national primary water regulations applicable to eligible entities under section 1412; and

(C) assist systems most in need, as calculated on the basis of median household income, under affordability criteria established by the State under section 1452(d)(3).

(3) ADDITIONAL CRITERIA.—In addition to the priority criteria described in paragraph (2), a small public water system assistance program shall, in preparing a list under paragraph (1), consider giving additional priority to any listed eligible activities that are to be carried out by communities that form management cooperatives (including management cooperatives between systems that do not have connections).

(c) USE OF FUNDS.—Using any funds received by a State under this section for a fiscal year, in accordance with the list prepared under subsection (b), a small public water system assistance program established by the State under subsection (a)—

(1) shall provide to an eligible entity, on a cost-shared basis, a grant to be used for an eligible activity (including source water protection) the purpose of which is compliance with national primary drinking water regulations applicable to the eligible entity under section 1412;

(2) shall—

(A) award, on a competitive basis, not less than 1.5 percent of the funds to nonprofit technical assistance organizations to be used for the purposes of—

(i) assisting the State in preparing the list required under subsection (b) (including assisting the State in identifying the highest priority eligible activities for eligible entities located in the State for which a grant under this section may be used); and

(ii) assisting eligible entities in—

(I) assessing needs relating to eligible activities;

(II) identifying available sources of funding to meet the cost-sharing requirement of subsection (f); and

(III) planning, implementing, and maintaining any eligible activities of the eligible entities that receive funding under this section;

(B) require each nonprofit technical assistance organization that receives funds under subparagraph (A) to consult with the State, through the head of the small public water assistance program, before carrying out any activity for the purposes described in subclauses (I) and (III) of subparagraph (A)(ii); and

(C) require that none of the funds made available to a nonprofit technical assistance organization under subparagraph (A) be used to pay lobbying expenses; and

(3) may use not to exceed 1 percent of the funds allocated to the State to pay reasonable costs incurred in the administration of the small public water system assistance program.

(d) **LIMITATION ON USE OF FUNDS.**—For each fiscal year, not more than 5 percent of the funds received by an eligible entity under this section may be used to obtain technical assistance in planning, implementing, and maintaining eligible activities that are funded under this section.

(e) **LIMITATION ON RECEIPT OF FUNDS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), a grant under this section shall not be provided to an eligible entity that, as determined by the State—

(A) does not have the technical, managerial, and financial capability to ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412; or

(B) is in significant noncompliance with any applicable national primary drinking water regulation.

(2) **EXCEPTION FOR RECEIPT OF GRANT.**—An eligible entity described in paragraph (1) may receive a grant under this section only—

(A) if the State determines that use of the grant will ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412;

(B)(i) to restructure or consolidate the facility to achieve compliance with applicable national primary drinking water regulations; or

(ii) in a case in which restructuring or consolidation of the facility is not practicable, if the State determines that—

(I) the eligible entity has made a good faith effort to achieve compliance with applicable national primary drinking water regulations; and

(II) the eligible entity is adhering to an enforceable schedule for achieving those regulations; and

(C) in a case in which paragraph (1)(A) applies to an eligible entity, and the eligible entity agrees to undertake feasible and appropriate changes in operations (including changes in ownership, management, accounting, rates, maintenance, consolidation, provision of an alternative water supply, or other procedures), if the State determines that the measures are necessary to ensure that the eligible entity has the technical, managerial, and financial capability to comply with applicable national primary drinking water regulations over the long term.

(3) REVIEW.—Before providing assistance under this section to an eligible entity that is in significant noncompliance with any national primary drinking water regulation applicable to the eligible entity under section 1412, the State shall conduct a review to determine whether paragraph (1)(A) applies to the entity.

(f) COST SHARING.—

(1) IN GENERAL.—

(A) LIMIT.—Except as provided in paragraph (2), the share of the total cost of an eligible activity funded by a grant under this section shall not exceed 80 percent.

(B) USE OF OTHER FEDERAL FUNDS.—To pay the portion of an eligible activity that may not be funded by a grant under this section, an eligible entity may use Federal financial assistance other than assistance received under this section.

(2) WAIVER OF COST-SHARING REQUIREMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), a State may waive the requirement of an eligible entity to pay all or a portion of the share of an eligible activity that may not be funded by a grant under this section, based on a determination by the State that the eligible entity is unable to pay any or all of the share.

(B) LIMITATION.—For each fiscal year in which a State receives funding under this section, the total amount of cost-share waivers provided by the State under subparagraph (A) shall not exceed 30 percent of the amount of funding received by the State for the fiscal year under section 1472(c)(1).

(g) UNOBLIGATED FUNDS.—Any funds not obligated by the State for a purpose consistent with subsection (c) within 1 year after the

date of the allocation of the funds by the Administrator under section 1472(c) shall be returned to the Administrator for reallocation under that section.

(h) **REPORTS.**—Not later than November 1 following each fiscal year in which a State receives funding under this section, the State shall—

(1) submit to the Administrator a report that, for the preceding fiscal year—

(A) lists the eligible activities for eligible entities, as prepared under subsection (b);

(B) identifies the number of grants awarded by the State small public water system assistance program to eligible entities;

(C) identifies each eligible entity that received a grant to carry out an eligible activity;

(D) identifies the amount of each grant provided to an eligible entity to carry out an eligible activity; and

(E) describes each eligible activity funded by such grants (including the status of the eligible activity); and

(2) make the report under paragraph (1) available to the public.

SEC. 1474. SMALL PUBLIC WATER SYSTEM ASSISTANCE PROGRAM FOR INDIAN TRIBES.

(a) **ESTABLISHMENT.**—Not later than July 1, 2008, the Administrator shall establish a small public water system assistance program for Indian Tribes, through which eligible entities located in areas governed by the Indian Tribe may receive grants for eligible activities under this part.

(b) **PROGRAM PRIORITY REQUIREMENT.**—

(1) **LIST OF ELIGIBLE ACTIVITIES.**—

(A) **IN GENERAL.**—The Administrator, acting through the head of the small public water system assistance program for Indian Tribes, in consultation with the Secretary, shall, for each fiscal year, identify, and, using the priority criteria described in paragraph (2) and considering the additional criteria described in paragraph (3), list in descending order of priority, eligible activities for eligible entities located in areas governed by Indian Tribes for which funds provided from a grant under this part may be used.

(B) **COORDINATION.**—

(i) **IN GENERAL.**—To the maximum extent practicable, the Administrator shall ensure that the list under subparagraph (A) is coordinated with any needs assessment conducted under section 1452(i)(4).

(ii) **ADDITIONAL CONSIDERATION.**—Any additional financial needs of small public water systems located in areas governed by Indian Tribes that are associated with the cost of complying with a national primary drinking water regulation that is promulgated after the most recent needs survey conducted under section 1452(i)(4) shall be factored into the determination of financial need for, and prioritization of, eligible activities under this section.

(2) *PRIORITY CRITERIA.*—*In preparing the list under paragraph (1), the Administrator shall give priority for the use of grants to eligible activities that—*

(A) *address the most serious risk to human health;*

(B) *are necessary to ensure compliance with national primary water regulations applicable to eligible entities under section 1412; and*

(C) *assist systems most in need, as calculated on the basis of median household income, under affordability criteria published by the Administrator under section 1452(d)(3).*

(3) *ADDITIONAL CRITERIA.*—*In addition to the priority criteria described in paragraph (2), the Administrator shall, in preparing a list under paragraph (1), consider giving additional priority to any listed eligible activities that are to be carried out by communities that form management cooperatives (including management cooperatives between systems that do not have connections).*

(c) *USE OF FUNDS.*—

(1) *IN GENERAL.*—*Using funds allocated under section 1472(c)(2)(A), the small public water system assistance program established under subsection (a) shall provide to an eligible entity located in an area governed by an Indian Tribe, on a cost-shared basis, a grant to be used for an eligible activity (including source water protection) the purpose of which is compliance with national primary drinking water regulations applicable to the eligible entity under section 1412.*

(2) *ALLOCATION OF GRANT FUNDING.*—*For each fiscal year, taking into consideration the funding allocation under section 1472(c)(2)(A) for the fiscal year, the head of the small public water assistance program established under subsection (a), in consultation with the Secretary, shall provide grants under paragraph (1) for the maximum number of eligible activities for which the funding allocation makes assistance available, based on the priority assigned by the Administrator to eligible activities under subsection (b).*

(d) *LIMITATION ON USE OF FUNDS.*—*For each fiscal year, not more than 5 percent of the funds received by an eligible entity under this section may be used to obtain technical assistance in planning, implementing, and maintaining eligible activities that are funded under this section.*

(e) *LIMITATION ON RECEIPT OF FUNDS.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (2), a grant under this section shall not be provided to an eligible entity that, as determined by the Administrator—*

(A) *does not have the technical, managerial, and financial capability to ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412; or*

(B) *is in significant noncompliance with any applicable national primary drinking water regulation.*

(2) *EXCEPTION FOR RECEIPT OF GRANT.*—*An eligible entity described in paragraph (1) may receive a grant under this section only—*

(A) if the Administrator determines that use of the grant will ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412;

(B)(i) to restructure or consolidate the facility to achieve compliance with applicable national primary drinking water regulations; or

(ii) in a case in which restructuring or consolidation of the facility is not practicable, if the Administrator determines that—

(I) the eligible entity has made a good faith effort to achieve compliance with applicable national primary drinking water regulations; and

(II) the eligible entity is adhering to an enforceable schedule for achieving those regulations; and

(C) in a case in which paragraph (1)(A) applies to an eligible entity, and the eligible entity agrees to undertake feasible and appropriate changes in operations (including changes in ownership, management, accounting, rates, maintenance, consolidation, provision of an alternative water supply, or other procedures), if the Administrator determines that the measures are necessary to ensure that the eligible entity has the technical, managerial, and financial capability to comply with applicable national primary drinking water regulations over the long term.

(3) REVIEW.—Before providing assistance under this section to an eligible entity that is in significant noncompliance with any national primary drinking water regulation applicable to the eligible entity under section 1412, the Administrator shall conduct a review to determine whether paragraph (1)(A) applies to the entity.

(f) COST SHARING.—

(1) IN GENERAL.—

(A) LIMIT.—Except as provided in paragraph (2), the share of the total cost of an eligible activity funded by a grant under this section shall not exceed 80 percent.

(B) USE OF OTHER FEDERAL FUNDS.—To pay the portion of an eligible activity that may not be funded by a grant under this section, an eligible entity may use Federal financial assistance other than assistance received under this section.

(2) WAIVER OF COST-SHARING REQUIREMENT.—

(A) IN GENERAL.—The Administrator may waive the requirement of an eligible entity to pay all or a portion of the share of eligible activity that may not be funded by a grant under this section based on a determination by the Administrator that the eligible entity is unable to pay any or all of the share.

(B) LIMITATION.—For each fiscal year, the total amount of cost-share waivers provided by the Administrator under subparagraph (A) shall not exceed 30 percent of the amount of funding allocated to eligible entities located in areas governed by Indian Tribes for the fiscal year under section 1472(c)(2)(A).

(g) *UNOBLIGATED FUNDS.*—Any funds not obligated by the small public water system assistance program established under subsection (a) for a purpose consistent with section 1472(c)(2)(B) and subsection (c) within 1 year after the date of allocation of the funds by the Administrator under section 1472(c)(2)(A) shall be returned to the Administrator for reallocation under that section.

(h) *REPORTS.*—Not later than November 1 following each fiscal year in which an Indian Tribe receives funding under this section, the Indian Tribe shall submit to the Administrator a report that, for the preceding fiscal year—

(1) identifies the number of grants awarded to eligible entities located in areas governed by the Indian Tribe;

(2) identifies each such eligible entity that received a grant to carry out an eligible activity;

(3) identifies the amount of each grant provided to such an eligible entity to carry out an eligible activity; and

(4) describes each eligible activity funded by such grants (including the status of the eligible activity).

SEC. 1475. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this part \$750,000,000 for each of fiscal years 2008 through 2014.

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