

Bureau of Reclamation, Interior

§ 404.2

- 404.38 Are there different requirements for determining the appropriate non-Federal share of construction costs to be paid by Indian tribes?
- 404.39 What factors will Reclamation consider in evaluating my capability to pay 25 percent or more of the construction costs?
- 404.40 What is the non-Federal share of operation, maintenance, and replacement costs?
- 404.57 Does this rule have any effect on state water law?
- 404.58 Do rural water projects authorized before the enactment of the Rural Water Supply Act of 2006 have to comply with the requirements in this rule?
- 404.59 If the Secretary recommends a project for construction, is that a promise of Federal funding?
- 404.60 Does this rule contain an information collection that requires approval by the Office of Management and Budget (OMB)?

Subpart C—Appraisal Investigations

- 404.41 How will an appraisal investigation be conducted under this program?
- 404.42 How much time is provided to complete an appraisal investigation?
- 404.43 What process will Reclamation follow to determine if an appraisal investigation is ready for review?
- 404.44 What criteria will Reclamation apply to determine whether it is appropriate to recommend that a feasibility study be conducted?
- 404.45 What will be included in the appraisal report prepared by Reclamation?
- 404.46 Who will the appraisal report be provided to?

Subpart D—Feasibility Studies

- 404.47 How will a feasibility study be conducted under this program?
- 404.48 What process will Reclamation follow to determine if a feasibility study is ready for review?
- 404.49 What criteria will Reclamation use to determine whether to recommend that a proposed rural water supply project be authorized for construction?
- 404.50 What information will be included in the feasibility report prepared by Reclamation?
- 404.51 Are proposed projects under the Rural Water Supply Program reviewed by the Administration?
- 404.52 Who will the feasibility report be provided to?

Subpart E—Miscellaneous

- 404.53 Does this rule provide authority for the transfer of pre-existing facilities from Federal to private ownership, or from private to Federal ownership?
- 404.54 Who will hold title to a rural water project that is constructed following the completion of an appraisal investigation or feasibility study under this program?
- 404.55 Who is responsible for the operation, maintenance, and replacement costs?
- 404.56 If a financial assistance agreement is entered into for a rural water supply project that benefits more than one Indian tribe, is the approval of each Indian tribe required?

AUTHORITY: Public Law 109-451 (43 U.S.C. 2401 *et seq.*)

SOURCE: 73 FR 67782, Nov. 17, 2008, unless otherwise noted.

Subpart A—Overview

§ 404.1 What is the purpose of this part?

The purpose of this part is to explain how the Reclamation Rural Water Supply Program is implemented. This part describes:

- (a) The purpose and priorities of the program;
- (b) How to apply for assistance under the program;
- (c) How Reclamation will evaluate requests for assistance;
- (d) How Reclamation will evaluate an appraisal investigation; and
- (e) How Reclamation will evaluate a feasibility study.

§ 404.2 What terms are used in this part?

The following terms are used in this part:

Appraisal investigation means an analysis of domestic, municipal, and industrial water supply problems, needs, and opportunities in the planning area, primarily using existing data. An appraisal investigation includes a preliminary assessment of alternatives to address the identified water supply problems and needs. The purpose of an appraisal investigation is to determine if there is at least one viable alternative that warrants a more detailed investigation through a feasibility study.

Appraisal report means the document, prepared by Reclamation, setting forth the findings and conclusions reached by Reclamation in its evaluation of a completed appraisal investigation. The

§ 404.2

43 CFR, Subtitle B, Ch. I (10–1–14 Edition)

purpose of the appraisal report is for Reclamation to provide a recommendation on whether a feasibility study should be initiated.

Assistance means the transfer of a thing of value to a non-Federal project sponsor to carry out a public purpose of support or stimulation authorized by law. For purposes of this rule, assistance consists of funds provided by Reclamation through an assistance agreement (grant or cooperative agreement) and technical assistance performed by Reclamation, for the purpose of conducting an appraisal investigation or a feasibility study.

Commissioner means the Commissioner of the Bureau of Reclamation.

Feasibility report means the document, prepared by Reclamation, setting forth the findings and conclusions of a completed feasibility study. The purpose of the feasibility report is to provide an Administration recommendation to Congress regarding whether the proposed rural water supply project should be authorized for construction.

Feasibility study means a detailed investigation requiring the acquisition of primary data, and an analysis of a reasonable range of alternatives, including a preferred alternative, to meet identified water supply problems, needs, and opportunities in the planning area. A feasibility study also includes an analysis of the technical and economic feasibility of the proposed project, the impact of the proposed project on the environment in compliance with the National Environmental Policy Act and other applicable environmental laws, and the financial capability of the non-Federal project sponsor to pay the non-Federal costs associated with constructing, operating, and maintaining the rural water supply project. The completed feasibility study will form the basis for the recommendation to Congress in the feasibility report regarding whether the proposed rural water supply project should be authorized for construction.

Incidental noncommercial livestock watering means the supply of water to pasture taps for the purpose of watering livestock, and other livestock watering uses that are incidental to the purpose of the project.

Indian means a person who is a member of an Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Noncommercial irrigation of vegetation means the supply of water to irrigate lawns, trees, small gardens, and similar vegetation of less than 1 acre.

Non-Federal project sponsor means a non-Federal project entity or entities meeting the eligibility criteria in §404.6. A non-Federal project sponsor is also referred to as project sponsor, project sponsors, I, me, my, you, or your in this part.

Program means the Reclamation Rural Water Supply Program that is described in §404.3.

Reclamation means the Bureau of Reclamation, U.S. Department of the Interior.

Reclamation states means the states and areas referred to in 43 U.S.C. 391, as amended.

Regional or watershed perspective means an approach to rural water supply planning directed at meeting the needs of geographically dispersed localities across a region or a watershed that will take advantage of economies of scale and foster opportunities for partnerships. This approach also takes into account the interconnectedness of water and land resources, encourages the active participation of all interested groups, and uses the full spectrum of technical disciplines in activities and decision-making.

Rural Water Supply Project, or project, means:

(a) A project that is designed to serve a community or groups of communities, each of which has a current population of not more than 50,000 inhabitants, which may include Indian tribes and tribal organizations, dispersed home sites, or rural areas with domestic, municipal, and industrial water, including incidental noncommercial

Bureau of Reclamation, Interior

§ 404.4

livestock watering and noncommercial irrigation of vegetation.

(b) A rural water supply project may include the following, or any combination of the following:

(1) The construction or installation of new rural water supply infrastructure and facilities;

(2) The improvement or upgrade of existing rural water supply infrastructure and facilities;

(3) The extension of existing rural water supply infrastructure and facilities to reach an increased service area; and

(4) The inter-connection of existing rural water supply infrastructure and facilities currently serving individual communities, dispersed homesites, rural areas, or tribes.

Secretary means the Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation.

Tribal organization means:

(a) The recognized governing body of an Indian tribe; and

(b) Any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body, or democratically elected by the adult members of the Indian community to be served by the organization.

§ 404.3 What is the Reclamation Rural Water Supply Program?

This program addresses domestic, municipal, and industrial water supply needs in rural areas of the Reclamation States. Reclamation's experience, technical expertise, and financial resources assist rural communities to identify their water supply problems and needs, and evaluate options for addressing those needs. Using a regional or watershed perspective, Reclamation assists in planning projects that maximize regional and national benefits. Through this program, Reclamation works in cooperation with non-Federal project sponsors in Reclamation States on a cost-share basis to:

(a) Investigate and identify opportunities to ensure safe and adequate rural water supplies for domestic, municipal, and industrial use in rural areas and small communities, including Indian tribes;

(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 the Secretary recommends to Congress, which are subsequently authorized and funded for construction by Congress.

§ 404.4 What are the goals of the program?

The goals of the program are to:

(a) Assess and address urgent and compelling rural water supply needs that are not currently met by other programs;

(b) Promote and apply a regional or watershed perspective to water resources management in planning rural water supply projects;

(c) Develop solutions to address rural water supply needs that are cost-effective, and that generate national net economic benefits as required under the "Economic Principles and Guidelines for Water and Related Land Resources" (Principles and Guidelines). The Principles and Guidelines, published in 1983 by the Water Resources Council pursuant to the Water Resources Planning Act of 1965 (Pub. L. 89-80) as amended, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The Principles and Guidelines are intended to ensure proper and consistent planning by Federal agencies in the formulation and evaluation of water and related land resources implementation studies. To enforce any edition other than that specified in this section, the material must be available to the public and approved by the Director of the Federal Register. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, a copy of this publication may be obtained and inspected at: Bureau of Reclamation, Denver Federal Center, Building 67, Denver, CO 80225, Policy and Program Services, 303-445-2906 where copies are