



WESTERN STATES WATER COUNCIL

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Web Page: www.westgov.org/hwswc

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Position No. 302
(see also Position No. 263)

The Honorable Jeff Bingaman, Chairman
Energy and Natural Resources Committee
United States Senate
304 Dirksen Senate Building
Washington, DC 20510

The Honorable Pete Domenici, Ranking Member
Energy and Natural Resources Committee
United States Senate
304 Dirksen Senate Building
Washington, DC 20510

The Honorable Tim Johnson, Chairman
Subcommittee on Water and Power
Energy and Natural Resources Committee
United States Senate
304 Dirksen Senate Building
Washington, DC 20510

The Honorable Bob Corker, Ranking Member
Subcommittee on Water and Power
Energy and Natural Resources Committee
United States Senate
312 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Bingaman, Ranking Member Domenici, Chairman Johnson and Ranking Member Corker:

The Western States Water Council (WSWC) and Western Governors' Association (WGA) supported the enactment of S. 895 (P.L. 109-451) to provide the U.S. Bureau of Reclamation with authority to assess rural water supply needs – in cooperation with the states and other federal agencies – and provide loan guarantee authority to address the financing needs of non-federal entities responsible for operation and maintenance of “transferred projects.” Extraordinary O&M costs and rehabilitation and betterment projects often exceed the resources available to local water districts, but private financing opportunities are limited given title to these projects remain with the United States. Title II loan guarantees address this problem.

We understand that the Administration has requested \$1 million for FY 2009 to implement the legislation, apparently to begin the process of writing rules for the needs assessment. However, no money appears in “out year” requests. This is disappointing.

Moreover, in an April 3rd memorandum to Interior, the Office of Management and Budget (OMB) says that loan guarantees to finance improvements and major rehabilitation involving federal assets must be treated for budgetary purposes as up front obligations. “Agencies are required to record obligations up front for the *subsidy cost* of loan guarantees issued to finance non-Federal assets, reflecting the private ownership and risk-sharing between the private sector and the Federal Government. Similarly, agencies are required to record obligations up front for the *full Government contingent liability* of loans that are guaranteed by the Government and used to finance improvements to Federally owned assets, reflecting the Government’s ownership and its full risk for repayment of the loans...consistent with the Congressional Budget Office’s stated position on the budgetary treatment of similar financings....”

OMB misinterprets CBO's issue brief on Third Party Financing of Federal Projects, which addresses raising money on behalf of a federal program to be later repaid by some kind of long-term federal commitment. Title II addresses guarantees of the non-federal financing of the non-federal share of the cost – not the government's share. The effect of this OMB interpretation is to eviscerate Title II and negate the Congress' intent to fill a critical gap in federal and non-federal financing capabilities by supplementing direct federal funding and leveraging federal spending by making it easier for non-federal beneficiaries to fund projects through private lenders.

OMB also erroneously suggests that the "...Government bears the full risk of a loan guarantee issued to finance a Federally owned asset because it owns the asset.... The water district lacking any ownership interest does not have a comparable economic stake in the overall success of the project...."

OMB erroneously says, "Such financing arrangements are equivalent to direct Federal borrowing to finance the improvements and using receipts from water users to repay the Federal debt.... Direct Federal borrowing is generally less expensive for the taxpayer because the rates on Treasury bonds are lower than the rates on private-sector, third-party financing.... [The] cost of a loan guarantee to finance improvements to Federally-owned assets would be 100 percent of the guaranteed amount. Thus, an 80 percent loan guarantee of a \$10 million loan would require an appropriation of \$8 million of budget authority, up front."

In fact, the government bears only contingent liability and realistically only a small percentage of loans are likely to default. In fact, CBO scored the loan guarantees at only 1%-2% for future appropriation purposes. The value of non-federal real private property rights are directly dependent on the federal assets, maintained privately through contractual legally binding agreements. The non-federal water districts named in the OMB memo are essentially "public" entities, either organized as an instrumentality on the states in which they are located or as special tax-exempt public-purpose organizations. They bear substantial economic and social trust responsibilities. They are credit-worthy local entities, private collateral is pledged as security and the government has significant recourse to recover its costs if there is a default.

The minimal federal investment through federal loan guarantees promises to substantially reduce the rising risks to life and property that is a result of the current inability to privately finance the proper maintenance, repair and rehabilitation of these federal facilities, operated by non-federal entities.

We urge the Congress to address this issue promptly and clear the way for implementation of the law as the Congress intended in a timely manner. Moreover, we ask that sufficient funds be requested and appropriated to make meaningful progress towards identifying and addressing our Nation's rural water supply needs.

Respectfully,



Garland Erbe, Chairman
Western States Water Council