

**NEW MEXICO
CLEAN WATER STATE REVOLVING FUND (CWSRF)
INTENDED USE PLAN
STATE FISCAL YEAR 2008**

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U.S. Environmental Protection Agency-Region 6
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I. FUND ESTABLISHMENT-INSTRUMENTALITY OF THE STATE, Sec. 603(a) & (b)

Through enactment of the Wastewater Facility Construction Loan Act, Chapter 74, Article 6A, NMSA 1978, as amended, the New Mexico Legislature created a revolving loan fund (“the fund”). The purpose of the Loan Act “is to provide local authorities in New Mexico with low-cost financial assistance in the construction of necessary wastewater facilities through the creation of a self-sustaining revolving loan program so as to improve and protect water quality and public health.”

The Fund is administered by the New Mexico Environment Department (NMED) as agent for the Water Quality Control Commission. State money appropriated to NMED to carry out the provisions of the Loan Act may be used to match Federal funds allocated to New Mexico pursuant to the Federal Clean Water Act, as amended, for the purpose of making loans to eligible local authorities. Federal capitalization grants, loan principal, interest repayments and earnings on balances in the Fund are deposited into the Fund. Administrative fees collected in FY08 will be deposited in the Clean Water Administrative Fund as provided for in legislation passed during New Mexico’s 2007 session.

The Water Quality Control Commission (WQCC), which is New Mexico’s water pollution control agency, has adopted regulations, application procedures, and an integrated priority ranking system pursuant to the Loan Act, which is used by NMED in administering the loan program. New Mexico Water Quality Act of 1967 (Sec. 74-6-4) NMSA 1978 identified the duties and powers of the Water Quality Control Commission. The provision states:

“The Commission:

- A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purpose for which provided.”

On June 14, 1983, the Commission delegated day-to-day responsibility for administering the Wastewater Facility Construction Program to the Environmental Improvement Division, now known as the New Mexico Environment Department for the purposes of the New Mexico Water Quality Act. The Commission reiterated that delegation in January 1986. On June 13, 2000 the Water Quality Control Commission adopted amendments to the Regulations and re-codified the regulations Pursuant to the Authority provided by Sec. 74-6A-5, NMSA 1978.

II. FUND GOALS, Clean Water Act Sec. 606 (c) (2)

Long-term Goals for State Fiscal Year 2008 include:

- a. to provide local authorities in New Mexico with low-cost financial assistance in the construction of necessary wastewater facilities through the creation of a self-sustaining State Revolving Loan Program so as to improve and protect water quality and public health.
- b. to maintain the fund in perpetuity
- c. to maintain fiscal integrity of the CWSRF
- d. to eliminate discharges of pollutants into the State’s waters and to improve water quality in all state waters.

Short-term Goals for State Fiscal Year 2008 include:

- a. Completion of an annual audit, intended use plan and an annual report in a timely manner. Clean Water Act Sec. 606 (b, c, d)
- b. Completion of one capitalization grant agreement (utilizing the FFY 07 Allotment) with the U.S. Environmental Protection Agency, CWA Sec. 602 (A).

- c. During SFY08, NMED will allow \$20,000 from it's FFY06 Allotment (FFY07 Award) to be used as in-kind assistance in a National Contract for the development of a project management software program to be developed by Northbridge Consultants. This program will give NMED a management tool that will enable them to do a better job of tracking loans from the beginning of the project, through construction and on through collections to the total pay off of the loan.
- d. Execution of \$68.5 million in binding commitments and a substantial reduction in available cash balance from the prior year.
- e. Execution of 20-year loan agreements (converting loans from construction phase to post construction/repayment phase) for the City of Lovington and City of Clovis.
- f. The state commits to completing the Environmental Benefits Form and providing these forms with our Annual Report. These forms will help the NMED and the EPA report on the benefits realized by the CWSRF funding activities.
- g. Create and administer the "Clean Water Administrative Fund". The clean water administrative fund shall be a dedicated fund used solely to administer the wastewater facility construction loan fund. Administrative fees collected by NMED will be deposited into this fund. Administrative fee means a fee assessed and collected by NMED from a local authority on each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean water administrative fund.

- h. Advance a “community outreach effort” on behalf of the Construction Programs Bureau, to include full cost pricing and better utility management practices for the benefit of local communities.

III. CRITERIA AND METHOD ESTABLISHED FOR DISTRIBUTION OF FUNDS, Clean Water Act Sec. 606 (c) (5)

Pursuant to the Loan Act, the WQCC adopted regulations concerning eligibility requirements for financial assistance, application procedures, priority rating system and administration of the loan program and fund. The current integrated priority rating system was approved by EPA and adopted by the WQCC on January 12, 1999. The priority rating system was revised to be an integrated priority rating system to allow the CWSRF staff to evaluate and rank projects to mitigate point sources (i.e., discharges from Wastewater Treatment Plants) and Non-point sources including Brownfield Redevelopment Projects under the Clean Water Act Sec. 319 of water pollution (see attached Integrated Projects Priority List (IPPL) for more information).

The integrated projects priority rating system is as follows:

Priority Rating Number = PS + NPS + BR

Where: PS = the point source discharge component
NPS = the Non-point source component
BR = the Brownfield Redevelopment component

Public notice of the Integrated Projects Priority List process will be provided through publication in independent newspapers statewide and the NMED website. NMED will forego a public hearing in lieu of this method of public notice in order to expedite the process. The Department will accept public comment regarding the 2008 – 2012 integrated Projects Priority List in May of 2007.

A project must be on the current New Mexico multi fiscal year Integrated Projects Priority List in order to receive a loan. It is the policy of NMED to make loans to communities in order of priority on the current five-year priority list to the extent reasonable considering the following:

1. willingness of a community to accept a loan;
2. financial capability of the community to service the loan, to perform operation and to maintain a replacement reserve fund; and
3. readiness to proceed.

A community may be by-passed if they are not willing to accept a loan, financially incapable of servicing the loan and / or NOT ready to proceed with the project.

IV. ELIGIBLE PROJECTS TO BE FUNDED, Clean Water Act Sec. 606 (c) (1) and (3)

The SFY 2008-2012 Integrated Projects Priority List contains a list of all projects eligible for assistance pursuant to Sec. 212 of the Clean Water Act as amended in March of 1988. All identified national municipal policy (NMP) projects in New Mexico have been funded or are in compliance.

V. DISCHARGE REQUIREMENTS, Clean Water Act Sec. 606 (c) (3) and (4) AND Sec. 602 (b) (5)

Some projects are total retention lagoons or discharge to groundwater, while other projects which discharge to surface water will comply with secondary treatment requirements.

VI. FINANCIAL DATA, Clean Water Act Sec. 606 (c)(2) and (3) and 603 (d)(1)(a)

Pursuant to the Loan Act, a loan shall be made for the period of time not to exceed twenty years with an annual base interest rate of three percent or less. On June 16, 2000, the Water Quality Control Commission adopted amendments to the regulations and re-codified the regulations.

These changes are established in 20.7.5.14 NMAC Subsection F., the variable interest rate categories are as follows:

“The interest rate for the loan portion of the financial assistance shall be the rate in effect when the original financial assistance agreement is executed. The interest rate shall not change during the term of the financial assistance unless refinanced in accordance with Section 20.7.5.14 NMAC Subsection I. The interest rate shall be the base rate provided in Section 20.7.5.14 NMAC Subsection G. unless the Local Authority qualifies for a hardship rate provided in Section 20.7.5.14 NMAC Subsection H”.

20.7.5.14 NMAC Subsection G states:

“The base rate for the loan portion of the financial assistance shall be three percent. At the beginning of each State fiscal year, the Commission may determine a base rate for the State fiscal year which is less than or greater than the current base rate.”

20.7.5.14 NMAC Subsection H states:

“The following hardship rates shall be approved by the Department when a local authority meets the associated conditions at the time the financial assistance agreement is executed:

- (1) An interest rate which is two percent, when the local authority’s median household income is less than the statewide non-metropolitan median household income based on the most current decennial U.S. Bureau of Census statistics.
- (2) An interest rate of one percent when the local authority’s median household income is less than three-fourths of the statewide non-metropolitan median household income based upon the most current decennial U.S. Bureau of Census statistics.

- (3) A combination of loan and grant funds in those years when grant funding is available for assistance to rural communities.
- (4) An interest rate of zero percent when:
 - a. the local authority's average user cost is at least fifteen (\$15.00) per month or a higher amount as determined by the Commission. The calculation of average user cost shall be consistent with a statewide methodology established by the Department; and
 - b. the local authority's median household income is less than three-fourths of the statewide non-metropolitan median household income based upon the most current decennial U.S. Bureau of Census statistics.

20.7.5.14 Subsection I states:

“A local authority may refinance the loan portion of the financial assistance if the local authority later qualifies for a reduced rate. The refinancing may only occur at or after the execution of a final loan agreement.”

Loans must be repaid in annual installments. The first annual installment is due no later than one year after completion of the project. At that time, previous cash disbursements to the community, plus accrued interest during construction, may be paid immediately or “rolled” into a final loan.

Authority for the NMED to administer a credit enhancement program was provided by the 1989 amendments to the Loan Act. Authority to refinance a local authority's wastewater debt and to leverage state appropriations and federal capitalization grants was provided by the 1991 amendments to the Loan Act in conformance with the Clean Water Act. The Commission adopted and re-codified changes to the Wastewater Facility Construction Loan Act Regulations on June 16, 2000.

VII. STATE MATCH

The State of New Mexico has proposed and the Environmental Protection Agency (EPA) Region 6 has accepted that New Mexico will expend all of the required Clean Water State Revolving Fund (CWSRF) State match funds up-front (first) in distributions/loans to communities toward addressing the wastewater needs in New Mexico. Once the total required state match for each CWSRF Capitalization Grant has been expended, the State will draw down at 100 percent, Federal funds for each respective CWSRF Capitalization Grant. This process began in FY95 and will continue in the future. The State of New Mexico began using a new state-wide financial and personnel software in FY07. The State of New Mexico will continue to expend all of the CWSRF State match funds first. This drawing arrangement is for the convenience of the state and does not alter any other provision that would have otherwise been applicable if Federal funds had been drawn proportionately with State funds. The State of New Mexico will request a state appropriation from the New Mexico Legislature for the required 20% state match for the FFY 2008 Capitalization Grant and has received the required 20% match for the 2007 federal cap grants.

VIII. PROGRAM ADMINISTRATION

Beginning in fiscal year 1990 reasonable costs for administering the loan program have been paid out of the loan fund in conformance with 40 CFR Part 35.3120 of the Federal Clean Water Act and 74-6a-4, NMSA 1978, as amended. The NMED will use an estimated amount of \$221,000 from the CS-35000207-0 capitalization grant to administer the CWSRF program. This amount includes “surplus” administration budget not spent from prior federal CWSRF grants, this amount will not exceed the 4% allotment.

IX. ASSURANCE AND SPECIFIC PROPOSALS, Clean Water Act Sec. 606 (c) (4); Sec. 602 (a) AND (b) (3), (4), (5), (6); Sec. 603 (h)

Environmental Reviews: Sec. 602 (a). The State certifies that it will conduct environmental reviews of each project receiving assistance from the Fund. Environmental review procedures have been adopted following criteria established by the USEPA. In FFY 2003, the State modified its environmental review procedures and EPA formally concurred with on December 15th, 2005.

Binding Commitments: Sec. 602 (b) (3). The State certifies that it will enter into binding commitments equal to at least 120% of each quarterly grant payment within one year after receipt of payment.

Timely Expenditures: Sec. 602 (b) (4). The State certifies to expend all funds in the Fund in an expeditious and timely manner. The NM CWSRF program currently funds any and all communities that are eligible, ready to proceed, willing to accept a loan and can demonstrate repayment ability. It is the goal of our program to market our program so that we will eventually have a waiting list of fundable projects.

To improve the PACE of the CWSRF program, the Construction Programs Bureau (CPB) formally organized a Marketing Committee in November of 2005. The Committee has produced a marketing plan to execute more loans for the CWSRF. The marketing plan has identified borrowers, partners, competitors and strategies. The CPB has a goal to execute \$68.5 million in binding commitments in FY08. This goal is consistent with our cash flow model. The result of achieving this goal will be a reduction in available cash balances for this fund. Using our marketing strategies, we will seek to commit the remaining funds to projects that are as high on

the priority list as possible, and who are ready, willing and able to proceed in SFY09 and beyond.

First Use of Funds for Enforceable Requirements: Sec. 602 (b) (5). The State certifies that all major and minor Publicly Owned Treatment Works (POTW) that have previously been identified by the U.S. EPA and the State of New Mexico as part of the National Municipal Policy universe (NMP) projects are:

- (a) in compliance, or
- (b) on an enforceable schedule, or
- (c) have an enforcement action filed, or
- (d) have a funding commitment during or prior to Federal Fiscal Year 1988.

Therefore, pursuant to Sections 602 and 603 of Public Law 100-4, other municipal wastewater facilities without unmet enforceable requirements under Sec. 212 and the programs and projects in Sec. 319 and 320 may be provided assistance from the New Mexico Wastewater Facility Construction Loan Fund.

Procurement Assurances:

The State certifies that it shall comply with 40 CFR Part 31 and that Federal regulations governing procurement in 40 CFR Part 31 and State procurement regulations shall be complied with for the use of capitalization grant funds for procurement activities in the State's administration of the Fund.

The State assures that minority-owned and women-owned businesses (MBE/WBE's) requirement including the six affirmative steps described in 40 CFR Part 31 Sec. 31.36 (e) shall be complied with.

The State has negotiated a “fair share” objective for the following goals:

	<u>MBE (%)</u>	<u>WBE (%)</u>
Construction	37.0	8.0
Supplies	26.0	33.0
Equipment	26.0	33.0
Services	25.0	35.0

These goals were based on an availability study using the U.S. Department of Commerce 1992 Census Summaries.

Assistance for the Non-Federal Share: Sec. 603 (h). The State certifies it will not provide loans from the Fund to a community for the non-federal share of a project receiving construction grant assistance from the U.S. EPA unless allowed by Federal law. The State proposes to use its fiscal year of July 1 through June 30 as the accounting period for the Fund.

The state will be utilizing the class deviation from the provisions of 40 CFR 35.3125. This class deviation will allow the non-Federal, non-State match CWSRF Second Tier Funds to be used to provide loans that can be used as the match for all EPA Grant Funded treatment works projects, except construction grant projects authorized by section 201 of the Clean Water Act.

NMED respectfully submits this IUP. See the attached tables for details of the CWSRF activities for FY08. If readers are viewing this IUP from the website, the Integrated Projects Priority List (IPPL) is available from the web. Supporting tables 2 – 7 are available upon request.