

**NEW MEXICO
CLEAN WATER STATE REVOLVING FUND
INTENDED USE PLAN
STATE FISCAL YEAR 2012**

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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.

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 WQCC. 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 WQCC 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 WQCC reiterated that delegation in January 1986. On June 13, 2000 the WQCC adopted amendments to the Regulations and re-codified the regulations pursuant to the Authority provided by Sec. 74-6A-4-F, NMSA 1978.

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

Long-term Goals for State Fiscal Year 2012 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. (See attached Table 1, Integrated Projects Priority List)
- b. To maintain the fund in perpetuity.
- c. To maintain fiscal integrity of the Clean Water State Revolving Loan Fund (CWSRF).
- d. To reduce and/or 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 2012 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 the CS-35000210-0 Capitalization Grant (Federal Fiscal Year (FFY) 2009 Allotment) in the amount of \$3,274,300 with the U.S. Environmental Protection Agency (EPA). CWA Sec. 602 (A).
- c. Completion of the 2W-96689201-2 Capitalization Grant (American Recovery and Reinvestment Act (ARRA) Allotment) in the amount of \$23,789,100 with the EPA. CWA Sec. 602 (A).
- d. Continue reporting on ARRA projects.
- e. Execution of \$15 million in binding commitments.
- f. Submit application to EPA for FFY 2011 Allotment in the amount of \$7,222,000 by December 31, 2011.
- g. Execution of 20-year loan agreements (converting loans from construction phase to post construction/repayment phase) for the City of Elephant Butte, Incorporated County of Los Alamos, County of San Miguel, Village of Wagon Mound, Village of Eagle Nest, Town of Taos, and Village of Questa.
- h. 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.
- i. Refine the process for soliciting and funding non-traditional CWSRF projects to include future capitalization grant green project reserves. Activities to achieve this goal include a review and update of New Mexico statutes and administrative code; adding appropriate application questions to allow for broader project scope; and a review and update of the NM CWSRF priority rating system.
- j. Further advance the “community outreach effort” through the Community Services section recently added to the Construction Programs Bureau. Education and training of small communities will include full cost pricing and better utility management practices for sustainability for the benefit of local communities.
- k. Transition the Bureau into using the Loan Grant Tracking System (LGTS) without Excel backup for the Clean Water State Revolving Loan program. This will meet a goal that’s been in process for many years.

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 CWSRF staff evaluates and ranks projects to mitigate point sources and non-point sources (see attached Table 1, Integrated Projects Priority List).

The integrated projects priority rating system is as follows:

$$\text{Priority Rating Number} = \text{PS} + \text{NPS} + \text{BR}$$

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 (IPPL) process will be provided through publication in independent newspapers statewide and the NMED website. NMED is accepting public comment regarding the SFY 2012 Intended Use Plan (IUP) and associated IPPL May 23rd – June 10th of 2011 (see Table 1, Integrated Projects Priority List, State Fiscal Year 2012 attached). A project must be on the current New Mexico state fiscal year IPPL in order to receive a loan. It is the policy of NMED to make loans to communities in order of priority on the current fiscal 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.

Additional Subsidization

NMED, under the authority of New Mexico Administrative Code 20.7.5.14.H(3), has the authority to award a combination of loan and grant in those years when grant funding is available for assistance to rural communities. The FFY 2010 allotment of \$10,002,000 was awarded to NMED in SFY 2011. NMED will utilize between \$1,497,982 and \$4,993,274 of the FFY 2010 allotment as additional subsidization in the form of grants to eligible CWSRF recipients in SFY 2012. The FFY 2011 allotment of \$7,222,000 is anticipated to be awarded to NMED in SFY 2012. NMED will utilize between \$669,233 and \$2,230,777 of the FFY 2011 allotment as additional subsidization in the form of grants to eligible CWSRF recipients. Subsidy recipients will be identified in an amendment to the SFY 2012 IUP at a future date. NMED understands that until the amount of the subsidizations has been determined, NMED will only be able to draw the non-subsidy portion of the capitalization grant.

Green Project Reserve

The FFY 2010 and 2011 appropriations acts require that, to the extent there are sufficient eligible project applications, not less than 20% of the funds made available shall be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities. NMED will identify at least \$2,000,400 in green projects for the FFY 2010 allotment in an amendment to the SFY 2012 IUP at a future date. NMED will also identify \$1,444,400 in green projects for the FFY 2011 allotment. NMED understands that until the full amount of green projects has been determined, NMED will only be able to draw the non-green portion of the capitalization grant.

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

The SFY 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.

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 (20) years with an annual base interest rate of three percent (3%). 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 New Mexico Administrative Code (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 (3%). 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 (2%), 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 (1%) when the local authority’s median household income is less than three-fourths (3/4) 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 (0%) when:
 - a. the local authority’s average user cost is at least fifteen dollars (\$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 (3/4) of the statewide non-metropolitan median household income based upon the most current decennial U.S. Bureau of Census statistics.

20.7.5.14 NMAC 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 (1) 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 EPA Region 6 has accepted that NMED will expend all of the required 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 one hundred percent (100%) of the Federal funds for each respective CWSRF capitalization grant. This process began in FY95 and will continue in the future. 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.

NMED has overmatched the cumulative Federal Capitalization Grants over the life of the CWSRF program. NMED did not request a match from the New Mexico Legislature for the FFY 2010 allotment of \$10,002,000, but instead will use the accumulated overmatch as follows:

Source	Amount
State Treasury Bond (Laws of 2009) remaining balance	\$ 5,140
State Appropriations previously made from General Funds and deposited in CWSRF	\$ 1,995,260
Total	\$ 2,000,400

NMED has submitted a request to the New Mexico Legislature for \$1,444,400 in state match funds for the FFY 2011 allotment of \$7,222,000. The request has the support of the New Mexico Department of Finance and Administration Capital Outlay Bureau and as of the writing of this plan, will be presented in a special session of the Legislature in the fall of 2011.

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. Up to 4% of all grant awards may be used for reasonable administrative costs. NMED has the following amounts available for administrative costs from open capitalization grants:

FFY Allotment	Allotment Amount	4% Admin Amount	Amount Remaining as of 5/1/2011
2009	\$ 3,274,300	\$ 130,972	\$ 63,861
CWSRF ARRA (before DWSRF transfer)	\$ 19,239,100	\$ 769,564	\$ 194,800
2010	\$ 10,002,000	\$ 400,080	\$ 400,080
Total Available Admin			\$ 658,741

NM CWSRF currently charges an administrative fee of 0.004356 (0.4356%) that is earned annually on principal amount owed during repayment. The fee began to apply to loans that finished construction and went into repayment in SFY 2008. The administrative fee is subtracted from the interest rate charged to borrowers and as such, does not add to the financial burden of the borrowers. This administrative fee is deposited into the Clean Water Administrative Fund (32700) which is budgeted and tracked separately from the Clean Water State Revolving Loan Fund. The fee promises to perpetuate the administration of the revolving loan fund with no fiscal impact on the State's general fund or any material impact on the financial strength of the fund itself.

IX. ASSURANCE AND SPECIFIC PROPOSALS, Clean Water Act Sec. 606 (c) (4); Sec. 602 (a) and (b) (3), (4), (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 in accordance with 40 CFR 35.3140. 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 July 28th, 2005. NMED is currently coordinating a statewide effort to make the environmental review process more streamlined and uniform among all agencies that regulate and perform the reviews. Participating agencies include all identified state and federal entities, some private sector entities, and tribes operating in New Mexico. If successful, this project will save time and money for infrastructure projects throughout New Mexico. A draft of the new process will be ready at the end of calendar year 2011 for EPA review and for public comment.

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.

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 projects that all funds are committed.

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 the disadvantaged business enterprises (DBE) requirements 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	5.14	10.18
Supplies	8.56	35.77
Services	10.81	38.25
Equipment	23.22	29.32

These goals are negotiated with EPA and are reflected in the current capitalization grant agreement.

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 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. The State proposes to use its fiscal year of July 1 through June 30 as the accounting period for the Fund.

X. PLAN FOR THE USE OF ALL CWSRF FUNDS

**Figure 1
Sources and Uses
SFY 2012 ***

Beginning balance as of 5/1/2011:	
Ending cash balance as of 04/30/11	\$68,963,309.58
Unused admin portion of SFY 2010 Cap Grant as of 04/30/11	\$63,861.02
Unused admin portion of ARRA Cap Grant as of 04/30/11	\$194,800.09
Unused admin portion of SFY 2011 Cap Grant as of 04/30/11	\$400,080.00
State Match to be drawn from Laws of 2009 Severance Tax Bond as of 04/30/11	\$5,140.00
Unused construction portion of ARRA Cap Grant as of 04/30/11	\$2,166,239.13
Unused construction portion of 2010 Cap Grant as of 04/30/11	\$2,090,135.27
Unused construction portion of SFY 2011 Cap Grant as of 04/30/11	\$9,601,920.00
Projected Sources during SFY 2012:	
2012 Repayment Principal	\$10,762,721.82
2012 Repayment Interest	\$3,296,622.85
2012 Overnight Interest (Estimated from SFY 2011 State Treasurer reports)	\$125,000.00
FY11 Allotment/2012 Cap Grant (incl 4% Admin)	\$7,222,000.00
State Treasury Bond Capital Appropriation (Requested from Fall 2011 Special Legislative Session)	\$1,444,400.00
Total Sources	<u>\$106,336,229.76</u>
Projected Uses	
Projected Admin Expense **	\$658,741.11
Projected Disbursements	\$28,211,464.00
Total Projected Uses	<u>\$28,870,205.11</u>
Available Resources ***	\$77,466,024.65

* Using 5/1/11 as an estimated starting point because of publication date of 5/23/11.

** Estimated administrative expenses in FY12 will be paid for with the 10CG admin balance (\$63,861.02), ARRA CG admin balance (\$194,800.09), and the 4% admin of the FY 10 Allotment (\$400,080.00).

*** NMED plans to use all CWSRF funds not committed to projects in the manner detailed in the Cash Flow Projection charts attached to this report. As of 5/1/11, the balance remaining to be disbursed from the loans in construction is \$41 million and the balance remaining to be disbursed from the ARRA grant is \$2.3 million. This amount is a portion of the \$77,466,025 in available resources identified.

NMED respectfully submits this Intended Use Plan. If readers are viewing this IUP from the website, the Integrated Projects Priority List (IPPL) is also available from the Construction Programs Bureau's website:

<http://www.nmenv.state.nm.us/cpb/cpbtop.html>