



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
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CONSTITUENT AGENCIES

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| Environment Department | State Engineer & Interstate Stream Commission |
| Game and Fish Department | Oil Conservation Division |
| Department of Agriculture | Department of |
| Health | |
| State Parks Division | Soil and Water Conservation Commission |
| Bureau of Geology and Mineral Resources | Members-at-Large |

The Water Quality Control Commission (“Commission”), at a public meeting held on March 10, 2020, pursuant to the Open Meetings Act, NMSA 1978, §§ 10-15-1 to -4 (1974, as amended through 2019) and other applicable provisions of law, after due deliberation granted the Petition for Regulatory Change of the New Mexico Environment Department (“Department”), in accordance with the relevant provisions of NMSA 1978, § 74-6A-4.1(A) (2007) and NMSA 1978, § 74-6A-9(A) (2018). The Commission scheduled a public hearing on the Department’s proposed changes to 20.7.5 NMAC (“Wastewater Facility Construction Loans”) for July 14, 2020; however, due to the ongoing COVID-19 public health emergency, and the restrictions in the Governor’s executive orders and various public health emergency orders, the Commission held the public hearing on the Petition for Regulatory Change on September 8, 2020, using a Cisco WebEx platform. *See*, Public Notice. The Department provided proper public notice of the proposed rulemaking, as required by 20.1.6.201 NMAC.

The Department filed its Notice of Intent to Present Technical Testimony on June 29, 2020, in accordance with 20.1.6.202 NMAC. No other person filed a Notice of Intent to Present Technical Testimony in the rulemaking proceeding. The Albuquerque Bernalillo County Water Utility Authority submitted a written statement in support of the proposed changes to 20.7.5 NMAC.

NMSA 1978, § 74-6A-4 (2018) of the Wastewater Facility Construction Loan Act (“Act”), NMSA 1978, §§ 74-6A-1 to -15 (1986, as amended through 2019), creates the revolving “Wastewater Facility Construction Loan Fund,” which is also referred to as the Clean Water State Revolving Loan Fund (“CWSRF”). The legislative purpose of the Act is to provide low-cost financial assistance in the construction of wastewater and storm water drainage projects that protect surface and ground waters, including projects that control nonpoint source water pollution and projects that involve solid waste and septic tank installations. *See*, NMSA 1978, § 74-6A-2 (2018). The CWSRF is funded through a mixture of federal and state dollars pursuant to a capitalization grant agreement between the State and the Administrator. 33 U.S.C. § 1382 (2014).

The CWSRF is administered by the Construction Programs Bureau (“Bureau”) of the Department pursuant to procedures established and regulations adopted by the Commission at 20.7.5 NMAC. *See*, NMSA 1978, § 74-6A-4(A) (2018). Congress appropriates funds for fiscal years to be allotted for grants for constructing needed publicly owned

treatment works in each State, 33 U.S.C. § 1285 (1998), which are administered as a dedicated fund by the Bureau as agent for the Commission, pursuant to NMSA 1978, § 74-6A-4.1 (2007).

At the beginning of each State fiscal year, the Commission may determine a base rate for that fiscal year which is less than or greater than the current base rate, 20.7.5.14(G) NMAC, and financial assistance must be made with an annual interest rate of five percent or less, as determined by the Commission. NMSA 1978, § 74-6A-8(D) (2018). Other available rates are lower than and are exceptions to the base rate. 20.7.5.14 NMAC. Current alternative rates are set forth in 20.7.5.14(H) NMAC. 33 U.S.C. § 1383(d) and NMSA 1978, §§ 74-6A-8(A), (D), and (E) (2018) do not require those interest rates to be set forth in the Wastewater Facility Construction Loans regulations issued by the Commission.

Removing the promulgation and issuance of annual interest rates by regulation allows the Commission and the Bureau flexibility in periodically establishing annual interest rates which are more reflective of current market conditions. *Cf.*, NMSA 1978, § 6-21A-2 (1997). Allowing the Bureau to determine hardship criteria and rates will also provide needed flexibility to drawdown current CWSRF balances.

Conditions to be met by a “local authority” (as defined in NMSA 1978, § 74-6A-3(O) (2018)) for a zero percent interest rate, including the local authority’s per capita income relative to the State’s per capita income, are set forth in NMSA 1978, § 74-6A-8(E)(2018). The Bureau’s proposed means of determining additional alternative rates is likewise based on per capita income which the Legislature has found to be an appropriate method of determining hardship rates. *Cf.*, NMSA 1978, § 74-6A-8(E) (2018).

As promulgated by the Commission, the associated conditions local authorities must meet for hardship rates, as set forth in 20.7.5.14(H)(3) NMAC, effectively limit financial assistance (grant subsidies) to rural communities. Applicable federal statutes and regulations on the determination of the priority to be given for each category of projects for construction of publicly owned treatment works provide that “[t]he [State] priority system should give high priority to projects in priority water quality areas.” *See*, 33 U.S.C. § 1296 (1981); 40 C.F.R. § 35.2015(b) (2015). State priority ranking systems must include criteria for ranking projects including at least (a) “[t]he impairment of classified water uses resulting from existing municipal pollutant discharges,” and (b) “[t]he extent of surface or ground water use restoration or public health improvement resulting from the reduction of pollution.” 40 C.F.R. § 35.2015(b)(1)(i) (2015). 40 C.F.R. § 35.2015(b) places importance on water quality and pollution reduction, but make no mention of population.

Removing the grant restriction will allow grants to be made based on water quality and pollution reduction, while still giving due consideration to population and socioeconomic factors through the affordability criteria.

Based on the foregoing reasons, the Commission adopted the proposed amendments to 20.7.5 NMAC on September 8, 2020 by a unanimous roll call vote.