

Exhibit 1 – Statement of Reasons

STATEMENT OF REASONS

The Wastewater Facility Construction Loan Act (“Act”) (NMSA 1978, §§ 74-6A-1 to -15) creates the Wastewater Facility Construction Loan Fund, which is also referred to as the Clean Water State Revolving Loan Fund (“CWSRF”). The purpose of the CWSRF is to provide low-cost financing for wastewater and storm water drainage projects that protect surface and ground water, including projects that control nonpoint source water pollution and projects involving solid waste and septic tank installations. The CWSRF is funded through a mixture of federal and state dollars pursuant to a capitalization grant agreement. 33 U.S.C. § 1382. The CWSRF is administered by the Construction Programs Bureau (“Bureau”) of the New Mexico Environment Department (“Department”) pursuant to regulations established by the Water Quality Control Commission at 20.7.5 NMAC.

During the 2017 New Mexico Legislative Session, Representatives Randall Crowder and Rodolpho Martinez sponsored House Bill 415 (“HB 415”), which added state agencies to the list of entities eligible to apply for CWSRF funding. *See* Chapter 114, 53rd Legislature, 1st session, Laws of New Mexico (2017). Specifically, HB 415 amended NMSA 1978, Section 74-6A-8(A) to allow state agencies, in addition to local authorities, to received financial assistance. *Id.* While there are other requirements to be met in determining state agency eligibility for a CWSRF loan, including compliance with Article 9, Section 8 of the New Mexico Constitution, this amendment allowed state agencies to apply for CWSRF funding in certain circumstances. Governor Martinez signed HB 415 on April 6, 2017.

On June 10, 2014, President Obama signed the Water Resources Reform and Development Act of 2014 (“WRRDA”). WRRDA, H.R. 3080, 113th Cong. (2014). The United States Environmental Protection Agency (“EPA”) issued guidance on September 18, 2014, and again on January 6, 2015, to aid states in administering CWSRF. Generally, the EPA’s guidance expands the understanding of entities eligible for CWSRF funding as well as the potential eligible projects. During the 2018 New Mexico Legislative Session, Representative Randall Crowder sponsored House Bill 66 (“HB 66”), which proposed amendments to the Act that expanded the scope and eligibility of borrowers and projects for the CWSRF beyond the addition of state agencies in 2017. *See* Chapter 19, 53rd Legislature, 2nd Session, Laws of New Mexico (2018).

Most importantly, HB 66:

1. Amended the definition of an eligible project in NMSA 1978, Section 74-6A-3(H) to specify that eligible projects and activities are those allowed pursuant to Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United State Code;
2. Amended the definition of a qualified borrower in NMSA 1978, Section 74-6A-3(Q) to include any creditworthy borrower with an identified and verifiable repayment source eligible to receive funding pursuant to the Clean Water Act;
3. Restructured and revised the definitions in NMSA 1978, Section 74-6A-3 to alphabetical order and for consistency with the amendments to eligible projects and qualified borrowers;
4. Amended language throughout the Act to accommodate the expanded scope of eligible projects and borrowers as well as accounting for the related practical considerations in administering the CWSRF; and

5. Amended NMSA 1978, Section 74-6A-8(E) to change the financial criteria for a zero-percent loan from an average user cost of at least \$15 per month or higher to an average user cost greater than one and eighty-two hundredths percent of the local authority's per capita income and from a median household income of less than three-fourths of the statewide nonmetropolitan median household income to per capita income. *Id.*

Ultimately, HB 66 aligned the statutory grant of authority to the Commission for the CWSRF with the EPA's expanded interpretation of WRRDA. Governor Martinez signed HB 66 on February 28, 2018.

On April 2, 2018, the Bureau petitioned the Commission to amend 20.7.5 NMAC to align the controlling regulations with the amended grant of authority from the Legislature. The Commission held a hearing on the proposed changes on August 14, 2018, and issued an Order and Statement of Reasons adopting the proposed amendments on August 17, 2018. Among other reasons, the Commission adopted the proposed revisions to 20.7.5 NMAC because they expanded the list of potential eligible applicants for CWSRF funding as well as potential projects, thus allowing for greater drawdown of currently available funds and fulfilment of the purposes of the Act. *See Statement of Reasons for 20.7.5 NMAC, Aug. 14, 2018 (attached hereto as Exhibit 4).*

With the changes to 20.7.5 NMAC, the Bureau now petitions the Secretary of NMED to amend 20.7.6 and 20.7.7 NMAC to correspond to the changes made by the Legislature and the Commission as well as updating the procedures contained therein. The proposed amendments will:

1. Adjust the definitions found in 20.7.6.7 NMAC to reflect the expanded list of potential eligible projects and borrowers;
2. Revise Priority System and Priority List Procedures found in 20.7.6.13 NMAC for clarity;
3. Removal of the current 20.7.6.14 NMAC Preplanning Conference requirement;
4. Revised language for interim loan agreement requirements and security interest requirements for state agencies in the current 20.7.6.15 NMAC;
5. Clarifications on Project Planning Guidelines and Project Design Requirements in 20.7.6.16 and 20.7.6.19 NMAC including specifying a preliminary engineering report requirement;
6. Revise and update Project Construction Requirements in 20.7.6.20 NMAC;
7. Update requirements for the Final Loan Agreement and Repayment Policy in 20.4.6.21 NMAC to match current procedure;
8. Revises the definitions found in 20.7.7 NMAC for formatting and to reflect the expanded scope of borrowers and projects;
9. Revises 20.7.7.8 NMAC – Background to correct citations and reflect most recent federal law;
10. Amend 20.7.7.11 NMAC to provide the Bureau more authority to request documents to support a categorical exclusion;
11. Changes requirements in 20.7.7.12 NMAC from a facilities planning process to a preliminary engineering report;
12. Updates 20.7.7.13 NMAC – Coordination with Other Environmental Review and Consultation Requirements;

13. Amends 20.7.7.14 NMAC to remove facilities plans in favor of a preliminary engineering report;
14. Reformat and update 20.7.7.15 and .16 NMAC to reflect change from facilities plan to preliminary engineering report;
15. Provide minor updates to 20.7.7.18 NMAC to fit with revised language elsewhere in 20.7.7 NMAC; and
16. Reformat 20.7.7.19 NMAC to better match the federal listings;

Through the more expansive grant of authority recognized by the proposed changes, the Bureau may be able to better use existing balances within the CWSRF for infrastructure development within the state. Therefore, the Bureau respectfully requests that the Secretary grant a public hearing to consider the proposed changes to 20.7.6 and 20.7.7 NMAC.