

1 **Exhibit 2 - Proposed Changes to 20.7.6 NMAC**  
2 **TITLE 20 ENVIRONMENTAL PROTECTION**  
3 **CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES**  
4 **PART 6 WASTEWATER FACILITY CONSTRUCTION LOAN POLICIES AND GUIDELINES**  
5

6 **20.7.6.1 ISSUING AGENCY:** New Mexico Environment Department.  
7 [20.7.6.1 NMAC - Rp, 20.7.6.1 NMAC, 12/30/2015]  
8

9 **20.7.6.2 SCOPE:** These policies, procedures and guidelines apply to all construction projects funded in-  
10 part from funds within the wastewater facilities construction loan fund.  
11 [20.7.6.2 NMAC - Rp, 20.7.6.2 NMAC, 12/30/2015]  
12

13 **20.7.6.3 STATUTORY AUTHORITY:** Department of Environment Act, NMSA 1978, 9-7A-6.F;  
14 Wastewater Facility Construction Loan Act, NMSA 1978, Sections 74-6A-1 to 15; and Water Quality Control Act,  
15 NMSA 1978, Sections 74-6-1 to 17.  
16 [20.7.6.3 NMAC - Rp, 20.7.6.3 NMAC, 12/30/2015]  
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18 **20.7.6.4 DURATION:** Permanent.  
19 [20.7.6.4 NMAC - Rp, 20.7.6.4 NMAC, 12/30/2015]  
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21 **20.7.6.5 EFFECTIVE DATE:** December 30, 2015, unless a later date is cited at the end of a section.

22 **A.** All references to HED 88-2 (EID) or to the New Mexico Wastewater Facility Construction Loan  
23 Fund Policies, Procedures and Guidelines in any other rule shall be construed as a reference to this part.

24 **B.** The amendment and replacement of HED 88-2 (EID) shall not affect any administrative or judicial  
25 enforcement action pending on the effective date of such amendment nor the validity of any financial assistance  
26 provided pursuant to HED 88-2 (EID).  
27 [20.7.6.5 NMAC - Rp, 20.7.6.5 NMAC, 12/30/2015]  
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29 **20.7.6.6 OBJECTIVE:** The objective of this part is to establish policies, procedures, and guidelines in the  
30 administration of loans from the wastewater facility construction loan fund.  
31 [20.7.6.6 NMAC - Rp, 20.7.6.6 NMAC, 12/30/2015]  
32

33 **20.7.6.7 DEFINITIONS:** As used in this part.

34 **A.** **"Administrative fee"** means a fee assessed and collected by the department from the ~~local~~  
35 ~~authority~~ state agency or qualified borrower on each loan with an interest greater than zero percent and expressed as  
36 a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that  
37 principal and interest on the loan are due, for deposit in the clean water administrative fund.

38 **B.** **"Applicant"** means a ~~local authority~~ state agency or qualified borrower that meets the following  
39 criteria:- (1) placement on the current fiscal year priority list, (2) financial capability to service a loan, to perform  
40 operation and maintenance, to maintain a replacement fund and debt service reserve fund, and (3) readiness to  
41 proceed.

42 **C.** **"Borrower"** means a ~~local authority~~ state agency or qualified borrower whose application has  
43 been approved for eligibility and is ready to proceed to an interim loan agreement.

44 **D.** **"Commission"** or **"WQCC"** means the New Mexico water quality control commission.

45 **E.** **"Department"** or **"NMED"** means the New Mexico environment department.

46 **F.** **"Event of default"** means the borrower failed to make the complete annual payment of principal,  
47 plus interest and administrative fee when the same shall become due and payable, as identified in the repayment  
48 schedule of the final loan agreement.

49 **G.** **"Final loan agreement"** means a note issued by the borrower and the state upon completion of  
50 the project to ~~evidence~~ document the permanent financing of the final loan amount in substantially the form as  
51 shown in the attachments.

52 **H.** **"Final loan amount"** means the aggregate amount of the principal disbursed by NMED to the  
53 borrower during the project, together with accrued interest on the aggregate principal thereof.

54 **I.** **"Force account"** means ~~[that the local authority provides the materials, equipment, or labor~~  
55 ~~necessary to design or construct the project.]~~ construction performed by the employees of a local authority rather  
56 than through a contractor.

1           **J. "Fund"** or "SRF" means the state water pollution control revolving fund pursuant to Title VI of  
2 the Clean Water Act.

3           **K. "Interim loan agreement"** means a note, in the form of a line-of-credit, issued by the borrower  
4 and the state at the beginning of the project in anticipation of the issuance of the final loan agreement upon  
5 completion of the project in substantially the form as shown in the attachments.

6           **L. "Loan issuance"** means execution of the final loan agreement and revised promissory note.

7           **M. "Local authority"** means any municipality, intermunicipal agency, county, incorporated county,  
8 water and sanitation district or any similar district, recognized Indian tribe, mutual domestic water consumers  
9 association as defined by the Sanitary Projects Act, or other issuing agency created pursuant to a joint powers  
10 agreement acting on behalf of any entity listed in this subsection.

11           **N. "Operate and maintain"** means all necessary activities including replacement of equipment or  
12 appurtenances to ensure the dependable and economical function of a wastewater facility in accordance with its  
13 intended purpose.

14           **O. "Priority system"** means the system for ranking [~~wastewater facility construction projects~~]  
15 eligible projects for which loan applications have been received pursuant to the Wastewater Facility Construction  
16 Loan Act.

17           **P. "Priority list"** means the list of [~~wastewater facility construction projects~~] eligible projects ranked  
18 according to the priority system pursuant to the Wastewater Facility Construction Loan Act.

19           **Q. "Project"** means the planning, design, construction, repair, extension, improvement, alteration, or  
20 reconstruction of the wastewater facilities or other eligible projects as listed in the Clean Water Act by the borrower  
21 as described in the loan application.

22           **R. "Project completion"** means the date that [~~operations of the completed works are initiated or~~  
23 ~~capable of being initiated, whichever is earlier. This also applies to individual phases or segments.~~] the Department  
24 has procedurally determined that the project, phase, or segment is completed.

25           **S. "Project engineer"** means the NMED staff engineer assigned to the project.

26           **T. "Qualified Borrower"** means any credit worthy borrower with an identified and verifiable  
27 repayment source that is eligible for funding pursuant to the Clean Water Act.

28           **U. "State agency"** means an agency or department of the executive branch of government.

29           ~~[F.]~~ **V. "Wastewater facility"** means a publicly owned system for treating or disposing of sewage or  
30 wastes either by surface or underground methods, including any equipment, plant, treatment works, structure,  
31 machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage,  
32 collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final  
33 disposal of residues resulting from the treatment of water or wastes, such as pumping stations, facilities, plants and  
34 works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances  
35 incidental to their use or operation. "Wastewater facility" also includes a nonpoint source water pollution control or  
36 Brownfield redevelopment project as eligible under the Clean Water Act.

37 [20.7.6.7 NMAC - Rp, 20.7.6.7 NMAC, 12/30/2015; A / /2020]

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39 **20.7.6.8 BACKGROUND:** [~~The Environment Department Act, Section 9-7A-6.F NMSA 1978;~~] The  
40 Department of Environment Act, Section 9-7A-6.D, NMSA 1978, provides authority to the secretary of environment  
41 to make and adopt reasonable and procedural rules and regulations as may be necessary to carry out the duties of the  
42 department and its division. The authority for the New Mexico environment department to provide loans to eligible  
43 applicants for the construction of wastewater facilities is provided in Sections 74-6A-1 to 15 NMSA 1978,  
44 Wastewater Facility Construction Loan Act and in Sections 74-6-1 to 17 NMSA 1978, the New Mexico Water  
45 Quality Act. The water quality control commission adopted regulations pursuant to the Wastewater Facility  
46 Construction Loan Act which [~~address:~~

47 ~~6-102 Definitions;~~

48 ~~6-103 Eligibility;~~

49 ~~6-104 Eligible and Non-eligible Construction Items;~~

50 ~~6-105 Priority System and Priority List; and~~

51 ~~6-107 Application Procedures.]~~ establish a program to provide financial assistance to state agencies, local

52 authorities, interstate agencies, and other qualified borrowers for the acquisition, construction, or modification of  
53 wastewater facilities or other eligible projects or activities.

54 Title VI of the Federal Clean Water Act, as amended, authorizes the U.S. environmental protection agency (EPA) to  
55 make capitalization grants to states for deposit in the wastewater facility construction loan fund (state revolving fund  
56 - SRF). "Final Initial Guidance - State Water Pollution Control Revolving Fund" was published by EPA on January

1 28, 1988, which represents EPA's approach to implementation of Title VI. EPA updated its approach to  
2 implementation of Title VI with the "Interpretive Guidance for Certain Amendments in the Water Resources Reform  
3 and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act" published on January 6,  
4 2015.

5 [20.7.6.8 NMAC - Rp, 20.7.6.8 NMAC, 12/30/2015; A / /2020]

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7 **20.7.6.9 CONSTRUCTION:** This part shall be liberally construed to carry out the purposes of the act. If  
8 any provision or application of this part is held invalid, the remainder or its application to other situations or persons  
9 shall not be affected.

10 [20.7.6.9 NMAC - Rp, 20.7.6.9 NMAC, 12/30/2015]

11  
12 **20.7.6.10 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with this part does not relieve  
13 a person from the obligation to comply with other applicable state and federal regulations.

14 [20.7.6.10 NMAC - Rp, 20.7.6.10 NMAC, 12/30/2015]

15  
16 **20.7.6.11 GENERAL:**

17 **A.** Direct loans from the fund may be offered for up to one hundred percent of total eligible project  
18 costs under state and federal statutes and regulations, subject to availability of loan monies.

19 **B.** Two types of loans are available: planning/design loans and construction loans.

20 (1) Planning/design loans. The maximum repayment period is limited to five years from the  
21 date of the interim loan agreement. If the borrower receives a construction loan for the same project, the borrower  
22 will be provided the option of [~~re-amortizing~~] re-amortizing any remaining principal balance plus accrued interest  
23 and administrative fees on the planning/design loan upon completion of the construction project, or may make  
24 payments under both loans.

25 (2) Construction loans. The length of the loan repayment period will not exceed 30 years or  
26 the expected life of the project improvements, whichever is less. Loans of lesser amounts will receive a shorter  
27 repayment period depending upon the borrower's ability to service the debt in a reduced time period. The  
28 construction loan may include the cost of design and may precede the design phase of the project if the design  
29 period is relatively short and if a reasonable estimate of construction costs is available. Since the interim loan  
30 agreement is essentially a line-of-credit for planning, design, and construction of the project the borrower must agree  
31 to complete the appropriate planning requirements prior to proceeding to the design and construction phases of the  
32 project.

33 **C.** A long-term commitment for future funding of a phased or segmented project will not be made;  
34 although, partial or phased funding for a project (without a guarantee of future funding) may be offered when  
35 deemed necessary to meet state water quality and financial assistance objectives.

36 **D.** Monies in the fund shall be loaned to eligible applicants as soon as possible after the monies  
37 become available. The fund will be managed so that a reserve is held available. The amount of the reserve will be  
38 dependent on the total size of the fund, including both available and committed monies. This reserve may be used  
39 for administration of the fund, investment, and limited-purpose contingencies, including increases subject to federal  
40 and state statutes.

41 **E.** In the event project costs exceed the estimates in the interim loan agreement, the borrower may  
42 request that NMED consider an increase to the loan. Such request will be evaluated [~~in~~] with respect to available  
43 uncommitted monies in the fund, financial risk of the request, and other criteria set by NMED. NMED may follow  
44 any procedure deemed appropriate under the circumstances, including renegotiation of the loan agreement in  
45 accordance with federal and state statutes.

46 **F.** In the event project costs are less than the estimates in the interim loan agreement, then the loan  
47 amount shall be adjusted downward by a corresponding amount at the time the final loan agreement is executed  
48 following completion of the project.

49 **G.** A loan shall be declared in default if the full payment is not received on the due date. Should a  
50 loan be declared in default, NMED may initiate legal action to collect past due amounts. NMED may also notify  
51 other state agencies and may take actions to preclude the borrower from receiving grant or other financial assistance  
52 from state agencies until all delinquent amounts due on the loan have been paid. In addition to these provisions,  
53 technical assistance will be provided to a borrower with a loan in default to help assess the problem and advise on  
54 corrective actions needed to bring the loan current. Should these efforts fail to produce results and the borrower  
55 fails to adhere to the prescribed payment schedule, [~~the~~] NMED will dispatch an interdisciplinary team  
56 (representatives of the general counsel, state auditor, and local government division, as needed) to conduct a

1 comprehensive assessment of the borrower, including, but not limited to, financial condition, management practices,  
2 fiscal capacity, economic circumstances, and violations of the terms and conditions of the legally binding final loan  
3 agreement. Upon the report of this team, NMED shall take whatever actions deemed appropriate, including court  
4 actions, to resolve the outstanding obligation.

5 **H.** NMED may waive or adjust any rule relative to the administration of the wastewater facility  
6 construction loan fund where it is deemed that the waiver or adjustment is in the best interest of the state and the  
7 community, and the waiver or adjustment does not violate any state or federal statute or regulation.

8 [20.7.6.11 NMAC - Rp, 20.7.6.11 NMAC, 12/30/2015; A / /2020]

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10 **20.7.6.12 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT:**

11 **A.** The commission at 20.7.5.11 NMAC specifies loan program application procedures. Applicants  
12 for loans shall submit a complete loan application to NMED on a form specified by ~~the~~ NMED. Applications may  
13 be submitted at any time; although, generally an annual funding cycle is followed.

14 **B.** NMED shall review the applications for eligibility, technical merits, and rank the applications  
15 based on the project priority system described in 20.7.5.12 NMAC, following NMED procedures for priority system  
16 and priority list.

17 [20.7.6.12 NMAC - Rp, 20.7.6.12 NMAC, 12/30/2015]

18  
19 **20.7.6.13 PRIORITY SYSTEM AND PRIORITY LIST PROCEDURES:**

20 **A.** ~~[A project must be on the current federal fiscal year priority list in order to receive a~~  
21 ~~planning/design or construction loan. It is the policy of NMED to make loans to communities in order of priority on~~  
22 ~~the current federal fiscal year priority list for loans to the extent reasonable considering the following:]~~

23 A project must be on the state priority list to receive a planning/design or construction loan. It is  
24 the policy of NMED to make loans to state agencies and qualified borrowers in order of priority on the current state  
25 priority list for loans to the extent reasonable considering the following:

26 (1) willingness of ~~[a community]~~ an applicant to accept a loan;  
27 (2) ~~[financial capability of the community to service the loan, to perform operation and~~  
28 ~~maintenance, to maintain a replacement fund and a debt service reserve fund; and]~~ Financial capability of the  
29 applicant to service the loan, to perform operation and maintenance, and to maintain a debt coverage ratio as  
30 determined by NMED; and

31 (3) readiness to proceed.

32 **B.** Procedures for developing and handling the annual priority system and priority list under the loan  
33 program generally follow existing procedures for the construction grants program which are briefly summarized  
34 here.

35 (1) A specific cap on an individual loan amount may be established by NMED each fiscal  
36 year so that the fund will be able to assist several communities each year. The cap may be set as a total of the loan  
37 funds available or as a specific dollar amount.

38 (2) This policy serves to maintain the flexibility of the fund each year by not excluding  
39 higher cost projects from participation, yet ensures that more than one worthwhile project will be funded each year.

40 (3) Fundable applicants will be notified by NMED following approval of the final priority  
41 list and a preplanning conference will be held with the applicant and its consulting engineer to identify the  
42 procedures and requirements which must be met prior to execution of an interim loan agreement.

43 [20.7.6.13 NMAC - Rp, 20.7.6.13 NMAC, 12/30/2015; A / /2020]

44  
45 **20.7.6.14 APPLICATION FOR FUNDABLE PROJECTS GUIDELINES - PROJECT**  
46 **PREPLANNING CONFERENCE:**

47 **A.** At NMED's request, a preplanning conference will be scheduled. The applicants' representatives  
48 and possibly the applicants' consulting engineers will meet with the NMED project engineers to discuss the project.  
49 Items that may be discussed are:

50 (1) review of SRF policies, procedures, and guidelines;  
51 (2) enforceable requirements;  
52 (3) eligibility of applicant;  
53 (4) appropriate technology;  
54 (5) user charges in relation to financial capability of the applicant being able to repay the  
55 loan;

56 (6) environmental impacts;

- 1 (7) procurement of A/E services;
- 2 (8) the importance of public participation; (citizen involvement will be an asset in the
- 3 development of plans that reflect the needs and values of your community; informing the public early on can result
- 4 in issues being resolved before delay and additional costs occur; citizen support is necessary for capital and user
- 5 charge systems to fund a project); and
- 6 (9) project schedule.
- 7 [20.7.6.14 NMAC - Rp, 20.7.6.14 NMAC, 12/30/2015]

8

9 **20.7.6.15 GENERAL PROJECT ADMINISTRATIVE REQUIREMENTS:**

10 **A. Loan agreement.**

11 (1) An interim loan agreement will be prepared by ~~the~~ NMED and executed by the

12 borrower for the project which can be financed with available loan funds and which has completed requirements set

13 by ~~the~~ NMED pursuant to the Clean Water Act, as amended, and the New Mexico Wastewater Facility

14 Construction Loan Act. Projects which are not ready to proceed to the interim loan agreement stage within six

15 months of allocation of available loan funds may be bypassed by projects lower on the priority list which are ready

16 to proceed.

17 (2) The interim loan agreement contains several conditions and certifications including:

- 18 (a) certification that the borrower is a legal entity with authority to execute a loan
- 19 agreement by ordinance; certification that a resolution designating signatory authority has been passed;
- 20 (b) copies of all executed contracts, subcontracts, agreements, and related
- 21 amendments entered into by the borrower prior to the interim loan agreement, but related to this project;
- 22 (c) request for proposals (RFP) documentation and an engineering agreement, or
- 23 letter of certificate if employing staff engineers.

24 **B. Security interest.**

25 (1) Upon execution of an interim loan agreement with ~~the~~ NMED for a construction project

26 and before any proceeds of the loan are paid out to the borrower, the borrower shall execute a promissory note for

27 the principal amount of the interim loan agreement plus interest and administrative fee on the unpaid balance at the

28 appropriate rate per annum, and may transfer title to the property upon which the facilities are to be constructed to

29 ~~the~~ NMED. In lieu of, or in addition to, the transfer of title requirement, the borrower may transfer whatever

30 interest it possesses in the property upon which facilities are to be constructed, to ~~the~~ NMED. In either case, the

31 value of such property or interest so transferred shall be at least equal to the amount of the loan. All such titles and

32 interest transferred to ~~the~~ NMED shall be secured by title insurance, if applicable, the cost of which shall be paid

33 by the borrower. ~~The~~ NMED shall be named as primary beneficiary of all such title insurance policies. If title

34 insurance for the property is not applicable or is not reasonably available, as determined by ~~the~~ NMED, then the

35 borrower shall provide a title company's opinion on the abstract of title to the property up to the time the property

36 was acquired by the borrower for use as a wastewater facility.

37 (2) Upon repayment of the loan, such interest or title shall be reconveyed to the borrower.

38 Where the transfer of title or interest in the property would preclude the obtaining of federal grants, or where such

39 transfer of title or interest is inappropriate or is prohibited by or would be in violation of existing grant-in-aid

40 agreements, NMED may waive the requirements of transfer of title or transfer of any interest in the property, and

41 substitute therefore such other security of sufficient value it deems necessary such as an irrevocable pledge of

42 revenue covenant by the borrower.

43 (3) After the borrower transfers title or its interest in the property to ~~the~~ NMED as security,

44 the borrower shall:

- 45 (a) continue to insure the property;
  - 46 (b) be liable for all taxes and assessments; and
  - 47 (c) refrain from making major alterations that destroy the value of the security,
- 48 unless NMED gives prior approval.

49 **C. Allowable and unallowable costs.**

50 (1) Allowable costs shall be limited to those costs which are necessary, reasonable, and

51 directly related to the efficient achievement of the objectives of the project. Costs incurred by the borrower for work

52 performed on the project prior to execution of the interim loan agreement, but which received NMED prior

53 approval, may be considered as allowable costs. The borrower must justify all expenditures for which it requests a

54 disbursement of loan funds according to accepted NMED criteria and procedures. NMED may withhold

55 disbursement of funds and may reclaim improperly documented disbursements until the borrower provides sufficient

56 justification.

1 (2) All unallowable costs, including but not limited to overhead charges, administrative  
2 expenses, indirect costs, and all costs of borrower's employed inspectors and noneligible construction costs shall be  
3 paid by the borrower. The administrative fee shall not be included as principal in the loans and therefore considered  
4 an unallowable cost.

5 (3) The borrower agrees that it will implement, in all respects, the project outlined in the  
6 interim loan agreement.

7 (4) The borrower agrees to make no change in the project description without first submitting  
8 a written request to NMED and obtaining NMED approval of the required change.

9 **D. Accounting.** Funds received by the borrower from NMED and those funds which are contributed  
10 by the borrower shall be deposited in separate bank accounts or in a separate, identifiable ledger account. In  
11 addition, the borrower shall establish and maintain accounting procedures which will ensure strict accountability for  
12 all funds received and disbursements made by the borrower in connection with the interim loan agreement. NMED  
13 shall be responsible for examining the borrower's audited financial statements in accordance with the most recent  
14 circular on audits of states, local governments and non-profit organizations as published by the U.S. office of  
15 management and budget.

16 **E. Records.** The borrower shall maintain books, records, documents, and other evidence sufficient to  
17 reflect properly all costs of whatever nature claimed to have been incurred for the performance of this interim loan  
18 agreement. Such books, records, documents, ledgers, and other evidence shall be preserved and made available to  
19 NMED, state auditor, U.S. governmental accounting office, and U.S.E.P.A. office of the inspector general during the  
20 loan agreement period and for a period of six years from date of final repayment. If upon termination of the interim  
21 loan agreement, questions exist concerning proper expenditure of funds, then the borrower shall preserve and make  
22 available all books, records, documents, ledgers and other evidence relating to the interim loan agreement until such  
23 questions are settled and the borrower has received written notification to that effect from NMED.

24 **F. Audit and inspection.** The project sites and borrower facilities which are in any part the subject of  
25 the loan agreement, and borrower records as defined elsewhere herein, shall be subject at all reasonable times to  
26 inspection and audit by NMED, state auditor, U.S. governmental accounting office, and U.S.E.P.A. office of the  
27 inspector general during the period of the loan agreement and for a period of six years following final payment  
28 hereunder. All subcontracts let by the borrower, the cost of which are included in the interim loan agreement, shall  
29 include the substance of this audit and inspection clause.

30 **G. Occupational health and safety.** The borrower covenants that it will take affirmative action to  
31 ensure that the project shall be conducted in conformance with federal and state laws and regulations relating to  
32 occupational health and safety. In addition, the borrower shall assure that any contract entered into by the borrower  
33 for the performance of work on this project shall contain language by which the contractor and the borrower agree  
34 that authorized representatives of ~~the~~ NMED occupational health and safety bureau shall have free access to the  
35 project site, and shall not be impeded in any way from performance of their duties.

36 **H. Nondiscrimination.**

37 (1) During the performance of the interim loan agreement, the borrower shall not  
38 discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national  
39 origin. The borrower shall take affirmative action to ensure nondiscrimination in employee recruitment advertising,  
40 hiring, upgrading, promotion, and selection for training (including apprenticeship).

41 (2) The borrower agrees to post in conspicuous places, available to employees and applicants  
42 for employment, notices setting forth the provisions of this clause. All solicitation or advertisement for employees  
43 placed by or on behalf of the borrower shall state that all qualified applicants will receive consideration without  
44 regard to race, color, age, religion, sex, sexual preference, or national origin. The borrower shall comply with all  
45 provisions of Title VI of the Civil Rights Act of 1964, Executive Order 11246, dated September 24, 1965, and all  
46 relevant rules, regulations, and orders of the U.S. secretary of labor. The borrower shall include the provisions of  
47 the clause in all project subcontracts.

48 **I. Termination.** NMED shall have the right to terminate the interim loan agreement if at any time in  
49 the judgement of NMED, the terms of the interim loan agreement have been violated or the activities described in  
50 the project description are not progressing satisfactorily. The borrower may terminate the interim loan agreement  
51 with sufficient reason. In either case, ~~the~~ NMED shall establish following negotiations with the borrower a  
52 repayment schedule for the funds disbursed to the borrower. Such termination must be in writing.

53 **J. Procurement.** Sections 13-1-28 through 13-1-199 NMSA 1978 of, The Procurement Code,  
54 imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony  
55 penalties for illegal bribes, gratuities, and kick-backs.

56 [20.7.6.15 NMAC - Rp, 20.7.6.15 NMAC, 12/30/2015; A / /2020]

1  
2 **20.7.6.16 PROJECT PLANNING GUIDELINES:**

3 **A.** Facilities planning consists of those necessary plans and studies that directly relate to treatment  
4 works or other eligible projects needed to comply with enforceable requirements of the Federal Clean Water Act and  
5 New Mexico Water Quality Act. Facilities planning will substantiate the need for the proposed facilities. It is a  
6 systematic evaluation of alternatives in regard to unique demographic, topographic, hydrologic, and institutional  
7 characteristics of the area that demonstrates that the selected alternative is cost effective in meeting the applicable  
8 effluent, groundwater, and surface water quality and public health requirements over the design life of the facility or  
9 other eligible project (while recognizing environmental and other nonmonetary considerations).

10 **B.** The most important outcome of the planning process is the selection of the best water pollution  
11 control alternative. The facilities plan (feasibility report or engineer's report) should include:

12 (1) A description of the proposed project and the complete system of which it is a part.

13 (2) A description of the best practicable water pollution control technology (BPWPCT).

14 (3) A cost-effective analysis of the project in meeting enforceable requirements over the  
15 design life of the project which includes a 30-year reserve capacity, if appropriate. Costs to be considered must  
16 include the present worth or equivalent annual value of all capital costs as well as operation and maintenance costs.  
17 Population forecasts should be consistent with the state needs survey.

18 (4) An evaluation of improved water quality attainable by upgrading the operation and  
19 maintenance ("O & M") and efficiency of existing facilities as an alternative to new construction.

20 (5) Cost information on total capital costs and annual O & M as well as estimated annual or  
21 monthly costs to residential and commercial users.

22 (6) A demonstration of the nonexistence or possible existence of excessive infiltration/inflow  
23 in an existing system.

24 (7) An adequate evaluation of the environmental impacts of alternatives.

25 (8) An evaluation of the water supply implications of the project.

26 (9) For the selected alternative, a concise description of relevant design parameters.

27 (10) A description of the proposed pretreatment program if applicable.

28 (11) A demonstration that the selected alternative is consistent with the applicable water  
29 quality management (WQM) plan.

30 (12) Demonstration that the borrower has the legal, institutional, managerial, and financial  
31 capability to ensure adequate construction and operation and maintenance of the treatment works throughout the  
32 service area. Financial capability to service this loan must also be demonstrated.

33 (13) Summary of public participation in the development of the facilities plan.

34 **D.** If any of the above information has been developed separately, it may be incorporated by  
35 reference rather than duplication.

36 [20.7.6.16 NMAC - Rp, 20.7.6.16 NMAC, 12/30/2015]

37  
38 **20.7.6.17 INTERIM PAYMENTS:**

39 **A.** For satisfactory performance of all work and services required to be performed under the terms of  
40 the interim loan agreement, NMED shall reimburse the borrower its actual costs incurred. The borrower may submit  
41 requests for reimbursement as often as every month. NMED shall disburse funds to the borrower when NMED  
42 determines, in its sole discretion, that expenditures have been properly documented as provided for in general  
43 requirements for allowable and unallowable costs, accounting procedures, and record keeping. Copies of all pay  
44 request vouchers shall be submitted to NMED with request for payment. Copies of all requests shall be submitted  
45 on the appropriate form furnished by NMED and shall be accompanied by appropriate documentation to assure that  
46 those costs are correct and within the approved scope of work and attached budget form. Requests shall include  
47 expenditures to date by category.

48 **B.** NMED and the borrower will comply with the Retainage Act (Section 57-28-2 et. seq. NMSA  
49 1978) if money is to be withheld during construction. The project will not be considered complete until the work as  
50 defined in the interim loan agreement has been fully performed and finally and unconditionally accepted by the  
51 borrower and NMED.

52 **C.** Interim payments will be made as the work progresses. Said payments will be based upon  
53 requests for payment prepared and certified by the borrower or the borrower's engineer to include value of work  
54 performed, materials on hand, and materials in place in accordance with the contract. Interim payments for  
55 engineering, inspection, legal services, or other approved services shall be made in accordance with the approved  
56 contracts or agreements.

1           **D.**       Any portion of funds allocated to the project which remain unexpended after completion of the  
2 project shall revert to the wastewater facility construction loan fund.

3           **E.**       The borrower shall furnish NMED with an estimated disbursement schedule at the beginning of  
4 the project.

5 [20.7.6.17 NMAC - Rp, 20.7.6.17 NMAC, 12/30/2015]

6  
7 **20.7.6.18       FINAL PAYMENT:** Upon completion of the project, final payment shall be made after final  
8 inspection has been conducted and the following have been provided, reviewed, and approved by NMED:

9           **A.**       The borrower's certified request for payment prepared by the engineer and approved by the  
10 borrower.

11          **B.**       A statement by the project engineer that work has been satisfactorily completed and the contractor  
12 has fulfilled all of the obligations required under the contract documents with the borrower, or if payment and  
13 materials performance bonds are "called," an acceptable close-out settlement to the borrower and contractors shall  
14 be submitted to NMED for review and approval.

15          **C.**       Final engineering statement and recap of all engineering services, legal, administrative, and other  
16 eligible and ineligible expenses and a final request for disbursement.

17          **D.**       Certification by the borrower that the labor standards contract provisions have been met.

18          **E.**       Final project inspection report prepared by the engineer.

19          **F.**       Record drawings and, if applicable, an operation and maintenance manual.

20          **G.**       Final budget showing all funding sources utilized for costs incurred for the project by designated  
21 budget categories.

22          **H.**       Written consent of the surety, if any, to final payment is prepared and submitted.

23          **I.**       For projects which receive planning/design loans but do not proceed to the construction phase,  
24 completion of the project is defined as substantial completion of the project description in the interim loan  
25 agreement as determined by NMED.

26 [20.7.6.18 NMAC - Rp, 20.7.6.18 NMAC, 12/30/2015]

27  
28 **20.7.6.19       PROJECT DESIGN REQUIREMENTS:** Before beginning the design of the project, the  
29 following requirements must be completed and submitted by the borrower to NMED and approved by NMED:

30          **A.**       Engineering report/facilities plan, which will include:

31                **(1)**       When real property is to be acquired as part of the project and within the project period  
32 submit documentation of the acquisition, including legal description, the date the property was acquired, a certified  
33 copy of title to the property, and an appraisal report by a qualified appraiser.

34                **(2)**       Cost effective analyses of project alternatives capable of meeting state and federal water  
35 quality and public health requirements.

36                **(3)**       Consideration of present worth or equivalent annual value of all capital cost, operation,  
37 and replacement costs.

38                **(4)**       Environmental information document (EID) in detail sufficient to determine categorical  
39 exclusion, finding of no significant impact (FONSI), or need for an environmental impact statement (EIS).

40                **(5)**       Evidence of public participation.

41                **(6)**       Information to demonstrate legal, managerial, and financial capability to properly operate  
42 and maintain the facility, maintain a repair and replacement reserve, and the ability to service this debt.

43          **B.**       Proof of adequate property, liability, and fidelity insurance coverage for the project as shall be  
44 required by NMED. Fidelity insurance shall cover the borrower(s) employees who are responsible for handling loan  
45 monies.

46          **C.**       Draft plan of operation which outlines staffing in compliance with the New Mexico Utility  
47 Operator Certification Act with start-up procedures that assure efficient operation and maintenance for the facilities.

48          **D.**       Project schedule.

49          **E.**       Proposed sewer use ordinance.

50          **F.**       Proposed user charge system. The user charge system represents revenue for good operation and  
51 maintenance and replacement of worn-out equipment. One basis for the system is actual use which is measured in  
52 terms of water meter readings, measurement of sewer flow, etc. The rates are uniformly applied to each class  
53 (residential, commercial, or industrial) of user in proportions. If there is no existing user charge system, the first  
54 year rates should be based on the estimates of O & M costs and then adjusted annually thereafter to reflect actual O  
55 & M and replacement costs.

56          **G.**       Number and name of NPDES permit and state groundwater permit, as applicable.



1           **H.**       Sludge management plan which assures compliance with Sections 201 and 405 of the Clean Water  
2 Act, 40 CFR, Parts 35, 257 and 503, and New Mexico Water Quality Control Commission Groundwater Discharge  
3 Regulations 20.6.2 NMAC.

4           **I.**       Design of the project shall be done by a consulting engineer who is registered in the state.

5               (1)       Designs should adhere to sound construction practice using materials, methods, and  
6 equipment of proven dependability.

7               (2)       Buildings shall be economical to operate and maintain and should be accessible to the  
8 handicapped.

9               (3)       Design shall insure compliance with the NPDES permit or state groundwater discharge  
10 permit as appropriate.

11              (4)       Safety shall be a prime consideration in design.

12 [20.7.6.19 NMAC - Rp, 20.7.6.19 NMAC, 12/30/2015]

13  
14 **20.7.6.20       PROJECT CONSTRUCTION REQUIREMENTS:**

15           **A.**       All plans and specifications and related addenda for the project must be submitted to NMED for  
16 review and approval before the project is advertised for sealed construction bids.

17           **B.**       All work relating to easements, rights of way, other property rights, and financing provisions shall  
18 be completed prior to advertising for construction sealed bids.

19           **C.**       Certified bid tabulation, recommendation of award, and evidence of full project financing should  
20 be submitted to NMED for review and approval prior to construction contract award.

21           **D.**       Competitive bidding, in accordance with applicable state laws (including local wage  
22 determinations as provided for in Section 13-4-11 NMSA 1978), shall be used for awarding of contracts. Contracts  
23 shall be awarded to the responsible bidder who submits the lowest acceptable bid, or as provided for by state law.

24           **E.**       Following NMED approval of the proposed award the borrower shall provide for each contract:  
25 (1) notice of award, (2) notice of preconstruction conference, (3) executed copies of previously approved contract  
26 form documents, and (4) notice to contractor to proceed. Performance, and payment bonds in the amount of one  
27 ~~hundred~~ hundred percent of the project bid will be required of each contractor and copies of said documents will  
28 be filed with NMED. A copy of bid bond (for five percent of the construction cost) for the selected contractor will  
29 be filed with ~~the~~ NMED.

30           **F.**       The contractor shall be required to submit a schedule for construction at the preconstruction  
31 conference for that contract.

32           **G.**       The borrower shall submit all modifications to plans, specifications, and contract change orders to  
33 NMED's project engineer promptly for approval prior to implementation of such modification or change. NMED's  
34 decision shall be rendered promptly in writing. In cases necessitating immediate action, a verbal decision will be  
35 rendered by NMED and followed by a written notification.

36           **H.**       The borrower shall arrange for the services of a qualified full-time resident project inspector,  
37 unless waived by NMED, during construction of the project. Borrower shall provide NMED with a summary of the  
38 inspector's qualifications and training to be approved by NMED prior to the preconstruction conference.

39           **I.**       Notwithstanding those inspections performed by the borrower and its engineer, NMED shall have  
40 the right to examine all installations comprising the project, including materials delivered and stored on-site for use  
41 on the project.

42           **J.**       After completion of the project, the borrower shall obtain from its engineer as built drawings for  
43 the project and certify to NMED that such drawings have been received.

44           **K.**       The borrower shall provide for NMED review and approval, unless waived by NMED, an  
45 operation and maintenance manual for the project prior to ninety percent construction completion. The operation  
46 and maintenance manual shall conform to NMED requirements.

47           **L.**       If this assistance is awarded for construction of collection lines, the borrower shall assure NMED  
48 that the existing population will connect to the collection system within a reasonable time after project completion.  
49 This shall be accomplished by adoption and annual review of an ordinance and user charge system requiring such  
50 connection to the system.

51 [20.7.6.20 NMAC - Rp, 20.7.6.20 NMAC, 12/30/2015; A / / 2020]

52  
53 **20.7.6.21       FINAL LOAN AGREEMENT AND REPAYMENT POLICY:** Upon completion of the  
54 planning/design or construction project and after final disbursement of principal to the borrower:

55           **A.**       NMED and borrower shall execute a final loan agreement which details the final loan amount plus  
56 accrued interest and administrative fees due to the date of the final loan agreement.

1           **B.**       NMED and borrower shall execute a revision to the promissory note and real estate mortgage (if  
2 applicable) which were recorded at the county seat at the time of the initial loan agreement. The revision shall  
3 reflect final loan amount, plus accrued interest and administrative fees due.

4           **C.**       NMED shall prepare a repayment schedule for the borrower which details principal, plus accrued  
5 interest and administrative fees due. The schedule shall fully amortize the loan within 30 years of project  
6 completion. In some cases the amortization shall be less than 30 years. NMED shall address each loan on a case-  
7 by-case basis. The borrower may prepay the loan or any portion thereof at any time. The repayment period for a  
8 planning/design loan shall not exceed five years. The first annual repayment of principal, interest and administrative  
9 fees shall be due within one year after completion of the project.

10          **D.**       For borrowers with planning/design loans who subsequently receive a construction loan and who  
11 choose to reamortize (roll-over) the planning/design loan, repayments for the planning/design loan may be  
12 postponed until construction of the project is completed, at which time the principal plus accrued interest and  
13 administrative fees for the planning/design loan will be rolled into the final loan agreement for the construction loan  
14 with one subsequent repayment schedule.

15          **E.**       NMED shall annually prepare and send to the borrower a notice of payment due.

16          **F.**       The borrower shall make a check for the full amount of the notice payable to Wastewater Facility  
17 Construction Loan Fund, Attention:

18                           Chief, Construction Programs Bureau  
19                           New Mexico Environment Department  
20                           P.O. Box 26110  
21                           Santa Fe, New Mexico 87502-6110

22 and mail in time to insure delivery by due date.

23          **G.**       In the event of late payment or default by the borrower, NMED shall have the option to declare the  
24 principal, interest accrued and administrative fee on, any outstanding indebtedness forthwith due and payable  
25 automatically without notice or demand of any kind, whereupon the same shall become forthwith due and payable;  
26 and NMED may take legal recourse to implement collection.

27 [20.7.6.21 NMAC - Rp, 20.7.6.21 NMAC, 12/30/2015]