

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF PROPOSED
REVISIONS TO: 20.7.5 NMAC –
Wastewater Facility Construction Loans

No. WQCC 18-01 (R)

**NEW MEXICO ENVIRONMENT DEPARTMENT'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY**

The New Mexico Environment Department (“Department”), pursuant to 20.1.6.202 NMAC, hereby files this Notice of Intent to Present Technical Testimony at the public hearing scheduled to commence on August 14, 2018.

1. Entity Represented by Technical Witnesses

The technical witnesses will testify on behalf of the Department.

2. Name and Qualifications of the Technical Witnesses

The Department intends to call Ms. Rhonda Holderman and Ms. Judi Kahl at the hearing to present direct technical testimony.

Rhonda Holderman: Ms. Holderman has been the Financial Manager for Loans and Grants with the Department’s Construction Programs Bureau (“Bureau”) for nearly two years. In this position, Ms. Holderman directly manages the Clean Water State Revolving Loan Fund (“CWRSF”) Program. Prior to working as the Financial Manager, Ms. Holderman was employed as a Loan Manager in the CWSRF Program. Ms. Holderman will present direct testimony as to the merits of the proposed amendments to 20.7.5 NMAC.

Judi Kahl: Ms. Kahl is the Chief of the Bureau, and in this position, she directly oversees Ms. Holderman and the CWSRF Program. Ms. Kahl has worked with the Bureau for nearly 10 years as both a Technical Section Manager and Bureau Chief. She is a New Mexico registered

professional engineer. Ms. Kahl will not present direct testimony, but she will be available for background or policy related testimony if necessary.

3. List and Description of Exhibits

The Department submits the following exhibits:

NMED Exhibit 1	Proposed Amendments to 20.7.5 NMAC
NMED Exhibit 2	Resume of Judi Kahl
NMED Exhibit 3	Resume of Rhonda Holderman
NMED Exhibit 4	Written Testimony of Rhonda Holderman
NMED Exhibit 5	House Bill 415
NMED Exhibit 6	House Bill 66
NMED Exhibit 7	New Mexico Register Publications, English and Spanish
NMED Exhibit 8	Affidavit of Publication, <i>Albuquerque Journal</i>
NMED Exhibit 9	Small Business Regulatory Advisory Commission Letter
NMED Exhibit 10	2018 Fiscal Impact Report for House Bill 66
NMED Exhibit 11	Proposed Statement of Reasons

4. Reservation of Rights

The Department reserves the right to call any other person to present original and/or rebuttal testimony in response to another notice of intent to present technical testimony or public comment filed in this matter or to any other testimony or exhibit offered at the public hearing.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

/s/ Christopher Atencio
Christopher Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102
Telephone: (505) 222-9554
christopher.atencio@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Notice of Intent to Present Technical Testimony was sent via electronic mail on July 25, 2018, to:

Via electronic mail

Stephen Vigil
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504
svigil@nmag.gov
Counsel for Water Quality Control Commission

/s/ Christopher Atencio
Christopher Atencio

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES
PART 5 WASTEWATER FACILITY CONSTRUCTION LOANS

20.7.5.1 ISSUING AGENCY: Water Quality Control Commission.
[20.7.5.1 NMAC - Rp, 20.7.5.1 NMAC, 12/16/2015]

20.7.5.2 SCOPE: This part applies to financial assistance and actions pursuant to the Wastewater Facility Construction Loan Act.
[20.7.5.2 NMAC - Rp, 20.7.5.2 NMAC, 12/16/2015]

20.7.5.3 STATUTORY AUTHORITY: Wastewater Facility Construction Loan Act, Sections 74-6A-1 to -15 NMSA 1978, as amended.
[20.7.5.3 NMAC - Rp, 20.7.5.3 NMAC, 12/16/2015]

20.7.5.4 DURATION: Permanent.
[20.7.5.4 NMAC - Rp, 20.7.5.4 NMAC, 12/16/2015]

20.7.5.5 EFFECTIVE DATE: December 16, 2015, unless a later date is cited at the end of a section.
[20.7.5.5 NMAC - Rp, 20.7.5.5 NMAC, 12/16/2015]

20.7.5.6 OBJECTIVE: The objective of this part is to establish a program to provide low cost financial assistance to state agencies, local authorities, interstate agencies, and other qualified borrowers for the acquisition, construction, or modification of wastewater facilities or other eligible projects or activities pursuant to the act.
[20.7.5.6 NMAC - Rp, 20.7.5.6 NMAC, 12/16/2015]

20.7.5.7 DEFINITIONS: as used in this part:

- A. "Act" means the Wastewater Facility Construction Loan Act.
- B. "Administrative fee" means a fee assessed and collected by the department from the [~~local authority~~] qualified borrower 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.
- C. "Clean Water Act" means the federal Clean Water Act of 1977 and its subsequent amendments or successor provisions.
- D. "Clean water state revolving loan administrative fund" means a separate fund created outside the wastewater facility construction loan fund/clean water state revolving fund designated solely for the costs of administering the clean water state revolving loan fund, in accordance with the Clean Water Act. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the loan administrative fund and shall be used explicitly for the purpose above.
- E. "Commission" means the water quality control commission.
- F. "Department" means the New Mexico environment department.
- G. "Eligible project" means any project or activity that is eligible for funding assistance under Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code, as of January 1, 2018, including a wastewater facility project, a nonpoint source water pollution control project, and a watershed project that meet the criteria of the Clean Water Act.

~~[G.]~~**H.** "Final loan agreement" means an agreement executed by the [~~local authority~~] qualified borrower and the department upon completion of the project in order to [~~evidence~~] document the permanent financing of the final loan amount.

~~[H.]~~**L.** "Final loan amount" means the aggregate amount of the principal disbursed by the department to the [~~local authority~~] qualified borrower during the construction of the [~~wastewater facility~~] eligible project, together with accrued and unpaid interest on the aggregate principal thereof.

~~[I.]~~**J.** "Financial assistance" means loans, combination loan/grants, the purchase or refinancing of existing state agency or local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on loans and bonds, bond insurance and bond guarantees, or any combination of these purposes.

~~[J.]~~**K.** "Force account construction" means construction performed by the employees of a local authority rather than through a contractor.

~~[K.]L.~~ “Fund” means the wastewater facility construction loan fund established in Section 74-6A-4 of the ~~[Wastewater Facility Construction Loan Act]Act.~~

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

~~[M.]N.~~ “Payment” means a disbursement from the fund directly to the ~~[local authority] qualified~~ borrower.

~~[N.]O.~~ “Priority list” means the list of eligible projects ranked according to the priority system pursuant to the ~~[Wastewater Facility Construction Loan Act.]Act.~~

~~[O.]P.~~ “Priority system” means the system approved by the commission for ranking eligible projects for which financial assistance applications have been received pursuant to the act.

Q. “Qualified borrower” means a creditworthy borrower with an identified and verifiable repayment source that is eligible for funding pursuant to the Clean Water Act, as of January 1, 2018, including a state agency, an interstate agency, and a local authority.

R. “State agency” means an agency or department of the executive branch of government.

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

~~[Q.]T. Other terms will retain their definition as given in the act.~~

[20.7.5.7 NMAC - Rp, 20.7.5.7 NMAC, 12/16/2015]

20.7.5.8 CONSTRUCTION: This part shall be liberally construed to effectuate the purposes of the act. If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.7.5.8 NMAC - Rp, 20.7.5.8 NMAC, 12/16/2015]

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

[20.7.5.9 NMAC - Rp, 20.7.5.9 NMAC, 12/16/2015]

20.7.5.10 ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE:

- A. Only ~~[local authorities] qualified borrowers~~ will be eligible for financial assistance from the fund.
- B. The project must appear on the current priority list at the time of the financial assistance award.
- C. To be eligible for financial assistance from the fund, ~~[local authorities] qualified borrowers~~ shall:
 - (1) meet the requirements of financial capability set by the department to assure sufficient revenue to operate and maintain the facility for its useful life, if applicable, and to repay the financial assistance;
 - (2) agree to operate and maintain the ~~[wastewater facility] eligible project~~ so that the ~~[facility] project~~ will function properly over its structural and material design life, if applicable;
 - (3) agree to maintain separate project accounts, to maintain project accounts properly in accordance with generally accepted accounting principles and to conduct an audit of the project's financial records;
 - (4) agree to provide a written assurance prior to construction, signed by an attorney, or other authorized representative, that the ~~[local authority] qualified borrower~~ has or will acquire proper title, easements and rights-of-way to the property upon or through which the ~~[wastewater facility] eligible project~~ proposed for funding is to be constructed or extended;
 - (5) require the contractor of the ~~[construction] eligible project~~ to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions;

(6) provide a written notice of project completion [~~and start of operation of the wastewater facility~~]; and

(7) provide such information to the department as required [~~by the commission~~] in order to comply with the provisions of the Clean Water Act and state law.

D. Financial assistance shall be made only to [~~local authorities~~] qualified borrowers that establish one or more dedicated sources of revenue to repay the money received from the commission and to provide for operation, maintenance, and equipment replacement expenses.
[20.7.5.10 NMAC - Rp, 20.7.5.10 NMAC, 12/16/2015]

20.7.5.11 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT:

A. Applications for financial assistance shall be made by the [~~local authority~~] qualified borrower on a form specified by the department.

B. Applicants for financial assistance shall provide the department with:

- (1) a description of the scope of work of the project;
- (2) a cost estimate of the project; and
- (3) a target date for initiation of construction.

C. The department will review the application for eligibility, and technical merits. The department will notify the [~~local authority~~] qualified borrower of any inadequacies in the submittal. The [~~local authority~~] qualified borrower may correct any inadequacies and resubmit the application.

D. Upon determination by the department that an application is eligible and complete, the application will be ranked utilizing the priority system and will be placed on the priority list.
[20.7.5.11 NMAC - Rp, 20.7.5.11 NMAC, 12/16/2015]

20.7.5.12 PRIORITY SYSTEM AND PRIORITY LIST:

A. Financial assistance shall only be made to [~~local authorities~~] qualified borrowers on the project priority list developed in accordance with the priority system as adopted by the commission.

B. The commission shall adopt a system for the ranking of projects for financial assistance.

C. The department shall prepare a priority list of applicants for financial assistance based on the priority system approved by the commission.

[20.7.5.12 NMAC - Rp, 20.7.5.12 NMAC, 12/16/2015]

20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS:

A. Eligible items for financial assistance made from state-only funds include but are not limited to the costs of engineering [~~feasibility~~] reports, contracted engineering design, inspection of construction, special engineering services, start-up services, contracted construction, materials purchased or equipment leased for force account construction, land, or acquisition of existing facilities. For financial assistance made from federal funds, eligible items are those identified pursuant to the Clean Water Act.

B. Financial assistance shall be made only to [~~local authorities~~] qualified borrowers that employ or contract with a [~~registered~~] New Mexico licensed professional engineer to provide and be responsible for engineering services on the project. Such services include, but are not limited to [~~an engineering report~~] engineering reports, construction contract documents, supervision of construction, and start-up services.

C. Ineligible for financial assistance made with state-only funds items include:

- (1) the costs of water rights;
- (2) [~~local authority~~] administrative costs;
- (3) fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act or the New Mexico Subdivision Act;
- (4) force account construction; and
- (5) administrative [~~fee~~]fees.

[20.7.5.13 NMAC - Rp, 20.7.5.13 NMAC, 12/16/2015]

20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND:

A. The loan program and fund is administered by the department as agent for the commission. Pursuant to Section 74-6A-9.A(10) of the [~~Wastewater Facility Construction Loan~~] Act, the department shall develop new, and implement existing, policies, procedures, and guidelines necessary and appropriate to implement the provisions of the act and the Clean Water Act.

B. The necessary administrative expenses required of the board, the commission, and the department to implement the provisions of the act will be appropriated from the fund.

C. The department may impose and collect a fee from each ~~[local authority]~~ qualified borrower that receives financial assistance from the fund, which fee shall be deposited into the clean water state revolving loan administrative fund, and used solely for the costs of administering the fund as follows:

(1) an administrative fee may be assessed on all financial assistance provided after January 1, 1996, and will be assessed on the refinancing of financial assistance after October 1, 1993;

(2) if an administrative fee is assessed pursuant to Paragraph (1) of Subsection C of 20.7.5.14 NMAC above, the total administrative fee assessed shall not exceed five percent of the total loan amount; the fee will be assessed on the outstanding principal balance of the loan payable; these fees are due on the same dates the payment of principal and interest on the loans are due, and shall be charged to each borrower, unless waived from the requirement by the department; the department may determine, establish and revise from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenue available to pay such costs; the administrative fee payments must be deposited in the clean water state revolving loan administrative fund as they are received; interest on the clean water state revolving loan administrative fund shall be transferred to the administrative fund as it is received; and

(3) an administrative fee of two percent of the unpaid principal balance of the refinanced loan will be assessed against the ~~[local authority]~~ qualified borrower and shall be paid into the clean water state revolving loan administrative fund at the time of closing of the refinancing.

D. Financial assistance agreements will be prepared by the department and executed by the ~~[local authority]~~ qualified borrower for the project which can be financed with available balances in the fund.

E. Repayment of the loan portion of the financial assistance shall begin no later than one year after completion of the project for which the loan was executed and shall be repaid in full no later than 30 years after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

F. The interest rate for the loan portion of the financial assistance shall be the rate in effect when the final loan agreement is executed. The interest rate shall not change during the term of the financial assistance unless refinanced in accordance with Subsection I of 20.7.5.14 NMAC. The interest rate shall be the base rate provided in Subsection G of 20.7.5.14 NMAC unless the local authority qualifies for a hardship rate provided in Subsection H of 20.7.5.14 NMAC.

G. 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.

H. 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) When the local authority's per capita income is less than the statewide per capita income based on the most current United States (U.S.) bureau of census statistics.

(2) The local authority's per capita income is less than three-fourths of the statewide per capita income based upon the most current 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 dollars per month or a higher amount as determined by the commission.]~~ greater than one and eighty-two hundredths percent of the local authority's per capita income. 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]~~ per capita income is less than three-fourths of the statewide ~~[non-metropolitan median household income]~~ per capita income based upon the most current U.S. bureau of census statistics.

Interest Rate	Local Authority Criteria
2.375%	Per capita income equal to or above statewide average; base interest rate. (G.)
1.2%	Per capita income less than that statewide average. (H.)(1)
0.6%	Per capita income less than ¾ of the statewide average. (H.)(2)
0%	[Median household income] <u>Per capita income</u> less than [¾] <u>three-fourths</u> [if] <u>of the statewide</u> [median household income] <u>per capita income</u> and the average user cost is [equal to or greater than \$15.00 per month] <u>greater than</u>

one and eighty-two hundredths percent of the local authority's per capita income. (H.)(4)(a)(b)

I. The interest rate for a state agency shall be the lowest interest rate available above zero percent in 20.7.5.14 H, and the interest rate for all other eligible borrowers will be the base rate at the time the loan agreement is executed.

[I.]J. 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.

[J.]K. Financial assistance recipients shall comply with all applicable federal, state, and local laws and regulations, including but not limited to:

- (1) procurement;
- (2) record keeping;
- (3) accounting;
- (4) audit and inspection;
- (5) occupational health and safety;
- (6) environmental review; and
- (7) non-discrimination.

[K.]L. In the event of default by the [local authority] qualified borrower, the department as agent for the commission may enforce its rights by suit or mandamus or may utilize all other available remedies under state law. [20.7.5.14 NMAC - Rp, 20.7.5.14 NMAC, 12/16/2015; A, 05/30/2017]

HISTORY OF 20.7.5 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

WQC Rule 67-2, Regulations Governing Water Pollution Control in New Mexico, filed 12/5/1967.

WQC Rule 72-1, Water Quality Control Commission Regulations, filed 8/4/1972.

WQCC Rule 77-1, Amended Water Quality Control Commission Regulations, filed 1/18/1977.

WQCC Rule 81-2, Water Quality Control Commission Regulations, filed 6/2/1981.

WQCC Rule 82-1, Water Quality Control Commission Regulations, filed 8/19/1982.

History of Repealed Material:

20.7.5 NMAC, Wastewater Facility Construction Loans, filed 6/16/2000 - Repealed effective 12/16/2015.

Other History:

That applicable portion of WQCC Rule 82-1, Water Quality Control Commission Regulations (filed 8/19/1982) was renumbered, reformatted and replaced by 20 NMAC 7.5, Wastewater and Water Supply Facilities - Wastewater Facility Construction Loans, effective 11/30/1995.

20 NMAC 7.5, Wastewater and Water Supply Facilities - Wastewater Facility Construction Loans (filed 10/25/1995) renumbered, reformatted, amended, and replaced by 20.7.5 NMAC, Wastewater and Water Supply Facilities - Wastewater Facility Construction Loans, effective 7/16/2000.

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NEW MEXICO ENVIRONMENT DEPARTMENT

/s/ Christopher Atencio
Christopher Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102
Telephone: (505) 222-9554
christopher.atencio@state.nm.us

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Via electronic mail

Stephen Vigil
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504
svigil@nmag.gov
Counsel for Water Quality Control Commission

/s/ Christopher Atencio
Christopher Atencio

Judith Lynn Kahl
Email: judi.kahl@state.nm.us

WORK EXPERIENCE:

New Mexico Environment Department – Construction Programs Bureau
11/2008-present
Santa Fe, NM

Bureau Chief

The Bureau Chief manages all aspects of the day to day operations of the Construction Programs Bureau. This includes oversight of both the financial and technical aspects of two in house loan programs and capital outlay for water, wastewater and solid waste projects. Oversight of the Bureau technical section and their work under MOA with the New Mexico Finance Authority, the NM Indian Affairs Department and the NM Economic Development Department to provide technical oversight of projects funded by those agencies for water, wastewater and storm water projects. This position directly supervises the technical section manager, the administrative section manager, and the financial section manager. The Bureau Chief also acts a designee for the Cabinet Secretary on the Tribal Infrastructure Board, the Water Trust Board and the New Mexico Finance Authority Board.

Technical Section Manager

Responsible for the oversight of seven engineers and a data base administrator in the technical section of the Construction Programs Bureau. Oversee the day to day operations of the technical staff providing guidance on contracts, funding programs, and financial and technical issues. Provide direct support to the financial staff in the form of approval of disbursement requests and notices of obligation for capital outlay projects. Support agency financial and management staff by providing information required by the Department of Finance and Administration, Legislative Finance Council, and legislative staff. Interact with funding agencies outside the Environment Department to fund projects requiring multiple funding sources. Provide guidance to engineering consultants on projects to ensure successful outcomes.

New Mexico Environment Department - Drinking Water Bureau
8/2006 – 11/2008
Santa Fe, NM

Administrative Operations Manager

Duties include managing the set aside grant funds associated with the Safe Drinking Water Act State Revolving Loan Fund, the Public Water Supply System grant, the Expense Reimbursement Grant, and the Counterterrorism Grant. The total grant amount was approximately 3.7 million dollars per year. Supervise the Engineering Program in the Drinking Water Bureau. Manage a staff of three engineers, one hydrologist, and support staff. Oversee the set aside programs associated with the Drinking Water primacy requirements and the SRF. Prepare required reports to the Federal Government and organize and run end of year program evaluations for the grants managed.

State of New Mexico, Environment Department,
Construction Programs Bureau
6/2004 - 8/2006
Santa Fe, NM

Project Engineer/Supervisor

Project Engineer in the Construction Programs Bureau. Responsible for managing grants and loans from multiple funding sources for water, wastewater and solid waste projects in the south-central part of New Mexico. Reviewed and approved procurement documents, engineering contracts, and pay requests. Reviewed NEPA documents and prepared Environmental Assessments, FONSI's, and Categorical Exclusions for a variety projects. Reviewed and approved plans and specifications for water and wastewater construction projects. Supervised the engineers in the Santa Fe office who were responsible for projects in the north central and north-eastern portion of the State. Prepared EDAs and personnel paperwork for engineering staff in Santa Fe. Gave presentations on a variety of job related topics to groups of up to 50 people.

U.S. Environmental Protection Agency
12/1992 - 6/2004
Washington, DC

Environmental Engineer

Lead technical negotiator on team of attorneys and environmental protection specialists in complex litigation involving water issues. One of the largest cases resulted in ground breaking injunctive relief and penalty. Case team received EPA's highest honor. Originated, developed, and negotiated civil judicial and administrative cases for violations of the Clean Water Act and the Safe Drinking Act. Leader on several workgroups developing regulations, strategies, policy and guidance. Provided technical analysis and design expertise on environmental systems including pollution prevention and remedial technologies in enforcement cases. Contract Task Order Manager responsible for case support and development contract and data base contract.

Federal Highway Administration

8/1991 - 12/1992
Washington, DC
Highway Engineer

Worked in the Planning Analysis Branch analyzing trends in roadway performance. Successfully managed research projects in excess of \$300,000 to update and enhance the Highway Performance Monitoring System (HPMS), a large mainframe data base of National Highway Information. Acted as technical support to the Chairman of the Ground Transportation Subcommittee of the Federal Geographic Data Committee.

Greenhorne and O'Mara

6/1985 - 2/1991
Greenbelt, MD
Project Manager

Managed multi-million-dollar land development projects through daily monitoring, training and scheduling of work for a staff of engineers, draftsmen, computer operators and surveyors. Coordinated work between clients, contractors, attorneys, and multiple government agencies. Prepared engineering designs and cost estimates. Negotiated proposals and contracts for large land development projects. Prepared and gave presentations for Planning Commissions. Developed an in-house training program.

EDUCATION: West Virginia University
Morgantown, West Virginia US
Bachelor's Degree - 5/1982
Major: Civil Engineering
GPA: 3.0 out of 4.0

LICENSURES AND CERTIFICATIONS:

Professional Engineer, New Mexico, 16833

ADDITIONAL INFORMATION:

Office of Water Special Recognition for Team of the Quarter, 1994
U.S. Dept. of Justice Certificate of Commendation, 1998
U.S. Dept. of Justice Certificate of Commendation, 2001
U.S. EPA Gold Medal for Exceptional Service, 2002
U.S. Dept. of Justice Certificate of Commendation, 2002
U.S. EPA Bronze Medal, 2003
State/EPA SRF Workgroup member 2010-2014
State Government Representative on the Recycling and Illegal Dumping Alliance 2013-2016

Rhonda Holderman

rhonda.holderman@state.nm.us

Professional Experience

***September 2016-Current
New Mexico Environment Department
Financial Manager, Loans and Grants
Construction Programs Bureau***

Oversee administrative and financial responsibilities for the Construction Programs Bureau's (CPB) Loan Program and Capital Outlay Special Appropriations Program.

- Capital Outlay Special Appropriations Program
 - Oversee compliance with Executive Order 2013-006;
 - Ensure bond questionnaires are completed and submitted;
 - Work collaboratively with the Capital Outlay Bureau;
 - Manage the distribution and execution of Grant Agreements;
 - Ensure accurate daily execution of day to day operations.
- Loan Program—Clean Water State Revolving Fund (CWSRF) and Rural Infrastructure Revolving Loan Program (RIP).
 - Manage a combined fund balance of \$340 million;
 - Ensure federal, state and agency compliance;
 - Oversee programmatic initiatives for both programs;
 - Maintain fiscal integrity the programs;
 - Work with independent auditors annually.

***July 2015-September 2016
New Mexico Environment Department
Loan Manager
Construction Programs Bureau***

Manage the financial and administrative aspects of the Clean Water State Revolving Fund the Rural Infrastructure Revolving Loan Program.

- Develop and implement fiscal policies for loan programs;
- Ensure compliance with federal and state laws and agency policies;
- Market programs to ensure needed infrastructure dollars are reaching communities;
- Implement programmatic policies to increase efficiency and eliminate redundancy.

***April 2011-July 2015
New Mexico Department of Game and Fish
Assistant Chief
Licensing Operations***

Planned, organized and directed agency functions related to licensing.

- Transitioned the Department's licensing operations to web-based from paper;
- Supervised revenue recognition for all licensing, \$60 million annually;
- Worked closely with IT on all hunting lottery programming, testing and deployment;
- Developed and deployed training for all initial Vendor web-based sales;
- Supervised personnel in Special Hunts program and Vendor licensing;

July 2007-April 2011
New Mexico Department of Game and Fish
Special Hunts Supervisor
Licensing Operations

Managed statewide special hunts licensing.

- Oversaw execution of hunting lotteries; initially paper-based processes, transitioning to web-based processes;
- Managed issuance of all Private Land Use System hunting licenses;
- Interacted regularly with customers including hunters, guides and outfitters;
- Supervised front counter at headquarters with up to three employees;

May 2006-July 2007
New Mexico Department of Game and Fish
Special Permits Manager
Law Enforcement Division

Managed a diverse program with multiple permitting components including importation, wildlife rehabilitation, falconry, field trials and others.

October 2005-March 2006
Farmers Insurance
Agent

February 2005-October 2005
Fed-Ex Kinkos
Store Manager

July 1999-January 2005
Romano's Macaroni Grill
Store Manager

March 1993-July 1999
June 1987-March 1992
Black-eyed Pea Restaurants
Store Manager

Education

Master of Business Administration
Eastern New Mexico University
2014

Bachelor of Science Business Administration
Tulsa University
1987

WRITTEN TESTIMONY OF RHONDA HOLDERMAN

PURPOSE OF 20.7.5 NMAC, “WASTEWATER FACILITY CONSTRUCTION LOANS”

The purpose of the Wastewater Facility Construction Loan Act (NMSA 1978, Sections 74-6A-1 to -15) (“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 program to improve and protect water quality and public health. The Legislature amended the Act in 2017 and 2018 to include state agencies and other qualified borrowers as loan recipients and to expand the list of eligible projects. NMED Exhibits 5 (House Bill 415) and 6 (House Bill 66). 20.7.5 NMAC provides guidance regarding local authority eligibility, the application process, eligible financial assistance items, and administration of the loan program including interest rates which may be levied as part of the loan.

Notice for this hearing was published in the New Mexico Register on June 12, 2018, in English and Spanish. NMED Exhibit 7. It was also published in the *Albuquerque Journal*, on June 10, 2018. NMED Exhibit 8. Notice was properly provided pursuant to 20.1.6.201 NMAC. This includes notice to the New Mexico Small Business Regulatory Advisory Commission. NMED Exhibit 9.

PROPOSED CHANGES TO 20.7.5. NMAC

20.7.5.6 OBJECTIVE: The objective of this part is to establish a program to provide low cost financial assistance to state agencies, local authorities, interstate agencies, and other qualified borrowers for the acquisition, construction, or modification of wastewater facilities or other eligible projects or activities pursuant to the act.

[20.7.5.6 NMAC - Rp, 20.7.5.6 NMAC, 12/16/2015]

The Bureau requests to add the descriptor “low cost” and to add “other qualified borrowers: as defined below and “other eligible projects as defined below.” These changes broaden the scope of the Fund allowing the Bureau to consider more projects and borrowers. Adding “low cost” to the description of the financial assistance helps to clarify the nature of the CWSRF. The Bureau requests to add state agencies in response to HB 415, NMED Exhibit 5. The Bureau further requests to add interstate agencies and other qualified borrowers to the list of eligible loan recipients in response to HB 66. NMED Exhibit 6. These changes bring the CWSRF in line with the United States Environmental Protection Agency’s (“EPA”) expanded interpretation of federal law. NMED Exhibit 10. The Bureau notes, as noted in the Fiscal Impact Report, NMED Exhibit 11, that state agencies must satisfy additional requirements, including compliance with Article 9, Section 8 of the New Mexico Constitution, to be eligible for a loan.

20.7.5.7 DEFINITIONS:

B. “Administrative fee” means a fee assessed and collected by the department from the [local authority] qualified borrower 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.

G. “Eligible project” means any project or activity that is eligible for funding assistance under Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code, as of January 1, 2018, including a wastewater facility project, a nonpoint source water pollution control project, and a watershed project that meet the criteria of the Clean Water Act.

~~[H.]~~**J.** “Final loan amount” means the aggregate amount of the principal disbursed by the department to the ~~[local authority]~~ qualified borrower during the construction of the ~~[wastewater facility]~~ eligible project, together with accrued and unpaid interest on the aggregate principal thereof.

~~[I.]~~**J.** “Financial assistance” means loans, combination loan/grants, the purchase or refinancing of existing state agency or local political subdivision obligations, loan guarantees, credit enhancement techniques to

~~[I.]~~**J.** “Financial assistance” means loans, combination loan/grants, the purchase or refinancing of existing state agency or local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on loans and bonds, bond insurance and bond guarantees, or any combination of these purposes.

~~[K.]~~**L.** “Fund” means the wastewater facility construction loan fund established in Section 74-6A-4 of the ~~[Wastewater Facility Construction Loan Act]~~ Act.

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

~~[M.]~~**N.** “Payment” means a disbursement from the fund directly to the ~~[local authority]~~ qualified borrower.

~~[N.]~~**O.** “Priority list” means the list of eligible projects ranked according to the priority system pursuant to the ~~[Wastewater Facility Construction Loan Act.]~~ Act.

Q. “Qualified borrower” means a creditworthy borrower with an identified and verifiable repayment source that is eligible for funding pursuant to the Clean Water Act, as of January 1, 2018, including a state agency, an interstate agency, and a local authority.

R. “State agency” means an agency or department of the executive branch of government.

~~[P.]~~**S.** “Wastewater facility” means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal,

separation or treatment of water or wastes, or for the final disposal of residues resulting from the treatment of water or wastes, such as pumping and ventilating stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers, and other real or personal property and appurtenances incidental to their use or operation. [~~“Wastewater facility”~~ also includes a nonpoint source water pollution control or Brownfield redevelopment project as eligible under the Clean Water Act

The Bureau requests the addition of “Eligible Projects,” “Qualified borrower,” and “State agency,” as well as changes to other definitions that include the newly defined additions and changes to definitions for language clarity and to alphabetize. The addition of “eligible project,” “state agency,” and “qualified borrower” expands the types of projects and entities the Bureau can fund and brings the scope into alignment with Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code. Through this more expansive authority, the Bureau may be better able to use existing balances for water quality projects in New Mexico. EPA issued guidance on September 18, 2014, and January 6, 2015, to aid states in administering CWSRF money. The language as proposed will allow the Bureau to comply with the Clean Water Act and prevailing EPA guidance.

20.7.5.10 ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE:

- A. Only [~~local authorities~~] qualified borrowers will be eligible for financial assistance from the fund.
- B. The project must appear on the current priority list at the time of the financial assistance award.
- C. To be eligible for financial assistance from the fund, [~~local authorities~~] qualified borrowers shall:
- (1) meet the requirements of financial capability set by the department to assure sufficient revenue to operate and maintain the facility for its useful life, if applicable, and to repay the financial assistance;
 - (2) agree to operate and maintain the [~~wastewater facility~~] eligible project so that the [~~facility~~] project will function properly over its structural and material design life, if applicable;
 - (3) agree to maintain separate project accounts, to maintain project accounts properly in accordance with generally accepted accounting principles and to conduct an audit of the project's financial records;
 - (4) agree to provide a written assurance prior to construction, signed by an attorney, or other authorized representative, that the [~~local authority~~] qualified borrower has or will acquire proper title, easements and rights-of-way to the property upon or through which the [~~wastewater facility~~] eligible project proposed for funding is to be constructed or extended;
 - (5) require the contractor of the [~~construction~~] eligible project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions;
 - (6) provide a written notice of project completion [~~and start of operation of the wastewater facility~~]; and
 - (7) provide such information to the department as required [~~by the commission~~] in order to comply with the provisions of the Clean Water Act and state law.

D. Financial assistance shall be made only to [~~local authorities~~] qualified borrowers that establish one or more dedicated sources of revenue to repay the money received from the commission and to provide for operation, maintenance, and equipment replacement expenses. [20.7.5.10 NMAC - Rp, 20.7.5.10 NMAC, 12/16/2015]

Changes to 20.7.5.10 reflect the change from “local authority” to “qualified borrower;” “wastewater facility” to “eligible project;” and other language changes for clarity. As described in Section 7 above, these changes correspond to the expanding scope of eligible borrowers in accordance with state statute as well as the Clean Water Act. The main eligibility requirements remain unchanged.

20.7.5.11 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT:

A. Applications for financial assistance shall be made by the [~~local authority~~] qualified borrower on a form specified by the department.

B. Applicants for financial assistance shall provide the department with:

- (1) a description of the scope of work of the project;
- (2) a cost estimate of the project; and
- (3) a target date for initiation of construction.

C. The department will review the application for eligibility, and technical merits. The department will notify the [~~local authority~~] qualified borrower of any inadequacies in the submittal. The [~~local authority~~] qualified borrower may correct any inadequacies and resubmit the application.

D. Upon determination by the department that an application is eligible and complete, the application will be ranked utilizing the priority system and will be placed on the priority list.

[20.7.5.11 NMAC - Rp, 20.7.5.11 NMAC, 12/16/2015]

In 20.7.5.11 “local authority” is replaced with “qualified borrower”, and the Bureau clarifies that an application must be “eligible” and not just complete before being ranked.

20.7.5.12 PRIORITY SYSTEM AND PRIORITY LIST:

A. Financial assistance shall only be made to [~~local authorities~~] qualified borrowers on the project priority list developed in accordance with the priority system as adopted by the commission.

This section shows the replacement of “local authorities” with “qualified borrowers”.

20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS:

A. Eligible items for financial assistance made from state-only funds include, but are not limited to, the costs of engineering [~~feasibility~~] reports, contracted engineering design, inspection of construction, special engineering services, start-up services, contracted construction, materials purchased or equipment leased for force account construction, land, or acquisition of existing facilities. For financial assistance made from federal funds, eligible items are those identified pursuant to the Clean Water Act.

B. Financial assistance shall be made only to [~~local authorities~~] qualified borrowers that employ or contract with a [~~registered~~] New Mexico licensed professional engineer to

provide and be responsible for engineering services on the project. Such services include, but are not limited to ~~[an engineering report]~~ engineering reports, construction contract documents, supervision of construction, and start-up services.

- C. Ineligible for financial assistance made with state-only funds items include:
- (1) the costs of water rights;
 - (2) ~~[local authority]~~ administrative costs;
 - (3) fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act or the New Mexico Subdivision Act;
 - (4) force account construction; and
 - (5) administrative ~~[fee]~~ fees.

[20.7.5.13 NMAC - Rp, 20.7.5.13 NMAC, 12/16/2015]

The proposed amendments to 20.7.5.13 NMAC clarify the use of assistance from state-only funds, change "local authorities" to "qualified borrowers" for consistency with the expanded eligibility requirements and specifies that "New Mexico licensed" professional engineers must be utilized. This is a requirement of NMSA 1978, Section 61-23-2. This section states,

The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that the person is qualified to so practice and shall be licensed as provided in the Engineering and Surveying Practice Act. It is unlawful for any person to practice, offer to practice, engage in the business, act in the capacity of, advertise or use in connection with the person's name or otherwise assume, use or advertise any title or description tending to convey the impression that the person is a professional, licensed engineer or surveyor unless that person is licensed or exempt under the provisions of the Engineering and Surveying Practice Act. [Chapter 61, Article 23 NMSA 1978]

Borrowers may use other funding sources for items that are ineligible for assistance with state-only funds.

20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND:

C. The department may impose and collect a fee from each ~~[local authority]~~ qualified borrower that receives financial assistance from the fund, which fee shall be deposited into the clean water state revolving loan administrative fund, and used solely for the costs of administering the fund as follows:

- (3) an administrative fee of two percent of the unpaid principal balance of the refinanced loan will be assessed against the ~~[local authority]~~ qualified borrower and shall be paid into the clean water state revolving loan administrative fund at the time of closing of the refinancing.

D. Financial assistance agreements will be prepared by the department and executed by the ~~[local authority]~~ qualified borrower for the project which can be financed with available balances in the fund.

H. 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:

- (4) An interest rate of zero percent when:
- (a) the local authority's average user cost is ~~[at least fifteen dollars per month or a higher amount as determined by the commission.]~~ greater than one and eighty-two hundredths percent of the local authority's per capita income. 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]~~ per capita income is less than three-fourths of the statewide ~~[non-metropolitan median household income]~~ per capita income based upon the most current U.S. bureau of census statistics.

Interest Rate	Local Authority Criteria
2.375%	Per capita income equal to or above statewide average; base interest rate. (G.)
1.2%	Per capita income less than that statewide average. (H.)(1)
0.6%	Per capita income less than ¼ of the statewide average. (H.)(2)
0%	[Median household income] <u>Per capita income</u> less than ¾ [if] of the statewide [median household income] <u>per capita income</u> and the average user cost is [equal to or greater than \$15.00 per month] <u>greater than one and eighty-two hundredths percent of the local authority's per capita income.</u> (H.)(4)(a)(b)

I. The interest rate for a state agency shall be the lowest interest rate available above zero percent in 20.7.5.14.H, and the interest rate for all other eligible borrowers will be the base rate at the time the loan agreement is executed.

~~[K.]L.~~ In the event of default by the ~~[local authority]~~ qualified borrower, the department as agent for the commission may enforce its rights by suit or mandamus or may utilize all other available remedies under state law.

[20.7.5.14 NMAC - Rp, 20.7.5.14 NMAC, 12/16/2015; A, 05/30/2017]

Proposed changes in 20.7.5.14 C. and D. are the change from "local authority" to "qualified borrower" to be consistent with the change in eligibility requirements.

Changes in H (4)(a) and (b) change the financial criteria for a zero-percent loan from the average user cost of at least \$15.00 per month or higher to an average user cost greater than one and eighty-two hundredths percent of a local authority's per capita income and from a median income of less than three-fourths of the statewide nonmetropolitan median household income to per capita income. Through the United States Census Bureau's American Factfinder website per capita income (PCI) data is available for more communities in New Mexico than median household income (MHI). The priority ranking system was last approved by the Water Quality Control Commission in 2013, at that time the margin of error for PCI was twenty percent versus a margin of error of twenty-five-point four percent for MHI. The change of a set fifteen dollars (\$15.00) to a metric that is a percentage of per capita income allows the Bureau to evaluate a local authority's need as a value-based assessment of user fees to income, providing a more accurate representation of how the utility user fee is impacting the community. Further, this change corresponds to the statutory change in NMSA 1978, Section 74-6A-8(E).

The addition of Paragraph I. sets the interest rate for State Agencies and other eligible borrowers. Rates for state agencies will be the lowest rate available that is above zero percent, currently six

hundredths percent (.06%). All other borrowers will be at the base rate which is currently two and three hundred seventy-five thousandths percent (2.375%).

The change in L. is the change of “local authority” to “qualified borrower.”

In conclusion, the Bureau requests approval of the aforementioned changes. These changes conform to the recent statutory change signed into law by the governor and will allow the Bureau to expand the pool of eligible applicants. In so doing, this expands the beneficial use of the Fund for projects to improve water quality and protect public health. Additionally, these changes will bring the New Mexico Clean Water State Revolving Fund into alignment with the Clean Water Act. The Bureau has prepared and submitted a proposed Statement of Reasons supporting adoption of the proposed revisions for the Commission’s review and consideration. NMED Exhibit 12.

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AN ACT
RELATING TO PUBLIC FINANCE; MAKING STATE AGENCIES ELIGIBLE
FOR FUNDING FOR WASTEWATER PROJECTS PURSUANT TO THE
WASTEWATER FACILITY CONSTRUCTION LOAN ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 74-6A-2 NMSA 1978 (being Laws 1986,
Chapter 72, Section 2, as amended) is amended to read:

"74-6A-2. PURPOSE.--The purpose of the Wastewater
Facility Construction Loan Act is to provide state agencies
and local authorities in New Mexico with low-cost financial
assistance in the construction of necessary wastewater
facilities through the creation of a self-sustaining program
so as to improve and protect water quality and public
health."

SECTION 2. Section 74-6A-3 NMSA 1978 (being Laws 1986,
Chapter 72, Section 3, as amended) is amended to read:

"74-6A-3. DEFINITIONS.--As used in the Wastewater
Facility Construction Loan Act:

A. "administrative fee" means a fee assessed and
collected by the department from a state agency or 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

1 administrative fund;

2 B. "commission" means the water quality control
3 commission;

4 C. "division" or "department" means the department
5 of environment;

6 D. "financial assistance" means loans, the
7 purchase or refinancing of existing state agency or local
8 political subdivision obligations, loan guarantees, credit
9 enhancement techniques to reduce interest on loans and bonds,
10 bond insurance and bond guarantees or any combination of
11 these purposes;

12 E. "fund" means the wastewater facility
13 construction loan fund;

14 F. "local authority" means any municipality,
15 county, incorporated county, mutual domestic water consumers
16 association as defined by the Sanitary Projects Act,
17 sanitation district, water and sanitation district or any
18 similar district, recognized Indian tribe or other issuing
19 agency created pursuant to a joint powers agreement acting on
20 behalf of any entity listed in this subsection;

21 G. "operate and maintain" means to perform all
22 necessary activities, including replacement of equipment or
23 appurtenances, to ensure the dependable and economical
24 function of a wastewater facility in accordance with its
25 intended purpose;

1 H. "wastewater facility" means a publicly owned
2 system for treating or disposing of sewage or wastes either
3 by surface or underground methods, including any equipment,
4 plant, treatment works, structure, machinery, apparatus or
5 land, in any combination, that is acquired, used, constructed
6 or operated for the storage, collection, reduction,
7 recycling, reclamation, disposal, separation or treatment of
8 water or wastes or for the final disposal of residues
9 resulting from the treatment of water or wastes, such as
10 pumping and ventilating stations, facilities, plants and
11 works, outfall sewers, interceptor sewers and collector
12 sewers and other real or personal property and appurtenances
13 incident to their use or operation. "Wastewater facility"
14 also includes a nonpoint source water pollution control
15 project as eligible under the Clean Water Act;

16 I. "account" means the wastewater suspense
17 account;

18 J. "board" means the state board of finance;

19 K. "bonds" means wastewater bonds or other
20 obligations authorized by the commission to be issued by the
21 board pursuant to the Wastewater Facility Construction Loan
22 Act;

23 L. "Clean Water Act" means the federal Clean Water
24 Act of 1977 and its subsequent amendments or successor
25 provisions;

1 M. "federal securities" means direct obligations
2 of the United States, or obligations the principal and
3 interest of which are unconditionally guaranteed by the
4 United States, or an ownership interest in either of the
5 foregoing;

6 N. "force account construction" means construction
7 performed by the employees of a local authority rather than
8 through a contractor;

9 O. "holders" means persons who are owners of
10 bonds, whether registered or not, issued pursuant to the
11 Wastewater Facility Construction Loan Act;

12 P. "issuing resolution" means a formal statement
13 adopted by the board to issue bonds pursuant to the
14 Wastewater Facility Construction Loan Act, including any
15 trust agreement, trust indenture or similar instrument
16 providing terms and conditions for the bonds to be issued;

17 Q. "recommending resolution" means a formal
18 statement adopted by the commission recommending to the board
19 that bonds be issued pursuant to the Wastewater Facility
20 Construction Loan Act, including any trust agreement, trust
21 indenture or similar instrument providing the terms and
22 conditions for the bonds that are issued; and

23 R. "state agency" means an agency or department of
24 the executive branch of government."

25 SECTION 3. Section 74-6A-8 NMSA 1978 (being Laws 1991, HB 415
Page 4

1 Chapter 172, Section 6, as amended) is amended to read:

2 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

3 A. Financial assistance shall be provided only to
4 state agencies and local authorities that:

5 (1) meet the requirements for financial
6 capability set by the division to assure sufficient revenues
7 to operate and maintain the wastewater facility for its
8 useful life and to repay the financial assistance;

9 (2) agree to operate and maintain the
10 wastewater facility so that the facility will function
11 properly over its structural and material design life;

12 (3) agree to maintain separate project
13 accounts, to maintain project accounts properly in accordance
14 with generally accepted governmental accounting standards and
15 to conduct an audit of the project's financial records;

16 (4) provide a written assurance, signed by
17 an attorney, that the state agency or local authority has or
18 will acquire proper title, easements and rights of way to the
19 property upon or through which the wastewater facility
20 proposed for funding is to be constructed or extended;

21 (5) require the contractor of the wastewater
22 facility construction project to post a performance and
23 payment bond in accordance with the requirements of Section
24 13-4-18 NMSA 1978 and its subsequent amendments and successor
25 provisions;

1 (6) provide a written notice of completion
2 and start of operation of the wastewater facility;

3 (7) appear on the priority list of the fund,
4 regardless of rank on such list; and

5 (8) provide such information to the division
6 as required by the commission in order to comply with the
7 provisions of the Clean Water Act and state law.

8 B. Loans shall be made only to state agencies and
9 local authorities that establish one or more dedicated
10 sources of revenue to repay the money received from the
11 commission and to provide for operation, maintenance and
12 equipment replacement expenses. A state agency or local
13 authority, any existing statute to the contrary
14 notwithstanding, may do any of the following:

15 (1) obligate itself to pay to the commission
16 at periodic intervals a sum sufficient to provide all or any
17 part of bond debt service with respect to the bonds
18 recommended by the commission and issued by the board to fund
19 the loan for the wastewater facility project of the state
20 agency or local authority and pay over the debt service to
21 the account of the wastewater facility project for deposit to
22 the fund;

23 (2) fulfill any obligation to pay the
24 commission by the issuance of bonds, notes or other
25 obligations in accordance with the laws authorizing issuance

1 of state or local authority obligations; provided, however,
2 that, notwithstanding the provisions of Section 4-54-3 or
3 6-15-5 NMSA 1978 or other statute or law requiring the
4 public sale of local authority obligations, such obligations
5 may be sold at private sale to the commission at the price
6 and upon the terms and conditions the local authority shall
7 determine;

8 (3) levy, collect and pay over to the
9 commission and obligate itself to continue to levy, collect
10 and pay over to the commission the proceeds of one or more of
11 the following:

12 (a) sewer or waste disposal service
13 fees or charges;

14 (b) licenses, permits, taxes and fees;

15 (c) special assessments on the property
16 served or benefited by the wastewater facility project; or

17 (d) other revenue available to the
18 state agency or local authority;

19 (4) undertake and obligate itself to pay its
20 contractual obligation to the commission solely from the
21 proceeds from any of the sources specified in Paragraph (3)
22 of this subsection or, in accordance with the laws
23 authorizing issuance of state agency or local authority
24 obligations, impose upon itself a general obligation pledge
25 to the commission additionally secured by a pledge of any of

1 the sources specified in Paragraph (3) of this subsection; or
2 (5) enter into agreements, perform acts and
3 delegate functions and duties as its governing body shall
4 determine is necessary or desirable to enable the division as
5 agent for the commission to fund a loan to the state agency
6 or local authority to aid it in the construction or
7 acquisition of a wastewater facility project.

8 C. Each loan made by the division as agent for the
9 commission shall provide that repayment of the loan shall
10 begin not later than one year after completion of
11 construction of the wastewater facility project for which the
12 loan was made and shall be repaid in full no later than
13 thirty years after completion of the construction. All
14 principal and interest on loan payments shall be deposited in
15 the fund.

16 D. Financial assistance shall be made with an
17 annual interest rate to be five percent or less as determined
18 by the commission.

19 E. A zero-percent interest rate may be approved by
20 the division when the following conditions have been met by
21 the local authority:

22 (1) the local authority's average user cost
23 is at least fifteen dollars (\$15.00) per month or a higher
24 amount as determined by the commission; and

25 (2) the local authority's median household

1 income is less than three-fourths of the statewide
2 nonmetropolitan median household income.

3 F. A local authority may use the proceeds from
4 financial assistance received under the Wastewater Facility
5 Construction Loan Act to provide a local match or any other
6 nonfederal share of a wastewater facility construction
7 project as allowed pursuant to the Clean Water Act.

8 G. Financial assistance received pursuant to the
9 Wastewater Facility Construction Loan Act shall not be used
10 by a state agency or local authority on any wastewater
11 facility project constructed in fulfillment or partial
12 fulfillment of requirements made of a subdivider under the
13 provisions of the Land Subdivision Act or the New Mexico
14 Subdivision Act.

15 H. Financial assistance shall be made only to
16 state agencies and local authorities that employ or contract
17 with a professional engineer to provide and be responsible
18 for engineering services on the wastewater facility project.
19 Such services include but are not limited to an engineering
20 report, construction contract documents, supervision of
21 construction and start-up services.

22 I. Financial assistance shall be made only for
23 eligible items. For financial assistance composed entirely
24 of state funds, eligible items include but are not limited to
25 the costs of engineering feasibility reports, contracted

1 engineering design, inspection of construction, special
2 engineering services, start-up services, contracted
3 construction, materials purchased or equipment leased for
4 force account construction, land or acquisition of existing
5 facilities, but eligible items do not include the costs of
6 water rights and local authority administrative costs. For
7 financial assistance made from federal funds, eligible items
8 are those identified pursuant to the Clean Water Act.

9 J. In the event of default by the state agency or
10 local authority, the commission may enforce its rights by
11 suit or mandamus or may utilize all other available remedies
12 under state law."

13 SECTION 4. Section 74-6A-9 NMSA 1978 (being Laws 1991,
14 Chapter 172, Section 7) is amended to read:

15 "74-6A-9. COMMISSION--POWERS.--

16 A. In administering the Wastewater Facility
17 Construction Loan Act, the commission shall have the
18 following powers, which may be implemented by the division,
19 in addition to those specified in the Water Quality Act:

20 (1) to provide financial assistance to state
21 agencies or local authorities to finance all or part of a
22 wastewater facility, including all forms of assistance for
23 which the fund may be used pursuant to the Wastewater
24 Facility Construction Loan Act;

25 (2) to adopt resolutions recommending that

HB 415
Page 10

1 the board issue bonds or refunding bonds pursuant to the
2 provisions of the Wastewater Facility Construction Loan Act;

3 (3) to execute agreements concerning state
4 contributions to the fund made pursuant to the Clean Water
5 Act, including obligating the commission to pay a portion of
6 the estimated reasonable cost of a wastewater facility of a
7 local authority as may be required to meet the water quality
8 goals of the Clean Water Act and the state;

9 (4) to foreclose upon, attach or condemn any
10 wastewater facility, property or interest in the facility
11 pledged, mortgaged or otherwise available as security for a
12 project financed in whole or in part pursuant to the
13 Wastewater Facility Construction Loan Act in the event of a
14 default by a state agency or local authority;

15 (5) to acquire and hold title to or
16 leasehold interest in real and personal property and to sell,
17 convey or lease that property for the purpose of satisfying a
18 default or enforcing the provisions of a loan agreement;

19 (6) through its agent the division, to
20 manage the fund, to grant and administer financial assistance
21 to local authorities and to apply for and accept grants,
22 including but not limited to capitalization grant awards made
23 to the state in accordance with the Clean Water Act and the
24 Wastewater Facility Construction Loan Act;

25 (7) to appoint and employ attorneys,

HB 415
Page 11

1 financial advisors, underwriters and other experts and agents
2 and employees as the business of the commission may require;

3 (8) to sue or be sued and to prosecute and
4 defend, at law or in equity, in any court having jurisdiction
5 over the subject matter and the parties to the matter;

6 (9) to collect application, origination and
7 administrative fees from the state agency or local authority,
8 the total of which for any loan shall not exceed four percent
9 of the value of the loan requested or authorized;

10 (10) to adopt regulations necessary and
11 appropriate to implement the provisions of the Wastewater
12 Facility Construction Loan Act; and

13 (11) to have and exercise all the rights and
14 powers necessary, incidental to or implied from the specific
15 powers enumerated in this section.

16 B. Specific powers enumerated in this section
17 shall not limit any power necessary or appropriate to carry
18 out the purposes and intent of the Wastewater Facility
19 Construction Loan Act.

20 C. The commission shall use accounting, audit and
21 fiscal procedures conforming to generally accepted government
22 accounting standards and shall otherwise prepare audits and
23 budgets in accordance with state law. The fiscal year of the
24 commission shall coincide with the fiscal year of the state.

25 D. The commission shall deliver an annual report

HB 415
Page 12

1 during the first week of each regular session of the
2 legislature on the status of the wastewater facility
3 construction loan program and the fund to the governor and
4 legislature."

5 SECTION 5. Section 74-6A-12 NMSA 1978 (being Laws 1991,
6 Chapter 172, Section 10) is amended to read:

7 "74-6A-12. COMMISSION BONDS.--

8 A. The board, upon recommendation from the
9 commission, may issue and sell bonds or other obligations
10 recommended by the commission to provide funds for any
11 purpose enumerated in the Wastewater Facility Construction
12 Loan Act or for payment of obligations incurred or temporary
13 loans made to accomplish any purpose of that act. As
14 prescribed in the recommending resolution, bonds may be
15 issued in one or more series; shall bear prescribed dates;
16 shall be in the form provided in the Supplemental Public
17 Securities Act; shall be issued in prescribed denominations;
18 shall have terms and maturities that do not exceed twenty-
19 five years from the date of issue of each series; shall bear
20 interest at prescribed rates; shall be payable and evidenced
21 in the manner and times as set by the board; may be redeemed
22 with or without premiums prior to maturity; may be ranked or
23 assigned priority status; and may contain provisions not
24 inconsistent with this subsection.

25 B. As security for the payment of the principal

HB 415
Page 13

1 and interest on bonds recommended by the commission and
2 issued by the board, the commission is authorized to pledge,
3 transfer and assign after consultation with the board:

4 (1) any obligations of each state agency or
5 local authority, payable to the commission;

6 (2) the security for the state agency or
7 local authority obligations;

8 (3) any grant, subsidy or contribution from
9 the United States or any of its agencies or
10 instrumentalities; or

11 (4) any income, revenues, funds or other
12 money of the commission from any other source appropriated or
13 authorized for use for the purpose of implementing the
14 provisions of the Wastewater Facility Construction Loan Act.

15 C. The bonds and other obligations recommended by
16 the commission and issued by the board may be sold at any
17 time the commission and the board agree upon. The bonds may
18 be sold at private or public sale at prices as provided in
19 the Public Securities Act and in a manner agreed upon by the
20 board and the commission. The commission may apply the
21 proceeds of the sale of the bonds it recommends that have
22 been issued by the board to:

23 (1) the purposes of the Wastewater Facility
24 Construction Loan Act or the purposes for which the fund may
25 be used;

1 (2) the payment of interest on bonds
2 recommended by the commission and issued by the board for a
3 period not to exceed three years from the date of issuance of
4 the bonds; and

5 (3) the payment of all expenses, including
6 publication and printing charges, attorney fees, financial
7 advisory and underwriter fees, and premiums or commissions
8 that the commission or the board determines are necessary or
9 advantageous in connection with the recommendation,
10 advertisement, sale, creation and issuance of commission-
11 recommended obligations.

12 The board retains the power to fix the date of sale of
13 the bonds and to take all actions necessary to sell and
14 deliver the bonds.

15 D. In anticipation of the issuance of bonds, the
16 board or the commission may borrow such sums as may be needed
17 for any of the purposes enumerated in Subsection C of this
18 section, obligate itself by certificate or promissory note,
19 bearing interest at a rate to be specified by the commission
20 and maturing within fifteen months from the date of the
21 certificate or promissory note. The certificates or
22 promissory notes shall be payable solely from the proceeds of
23 the bonds recommended by the commission and issued by the
24 board and from the funds from which commission-recommended
25 bonds are payable. In the event that commission funds are

1 not available for a loan for a wastewater facility project
2 when application is made, in order to accelerate the
3 completion of any wastewater facility project, the local
4 authority may, with the approval of the commission, obligate
5 such local authority to provide local funds to pay that
6 portion of the cost of the wastewater facility project that
7 the commission agrees to make available by loan, and the
8 commission may refund the amount expended on its behalf by
9 the local authority.

10 E. The commission may recommend that the board
11 issue and sell refunding bonds for the purpose of paying,
12 defeasing or refunding the principal of, interest on and any
13 redemption premiums on any matured or unmatured outstanding
14 bonds recommended by the commission and issued by the board
15 or any matured or unmatured bonds of the state issued to
16 finance wastewater facility projects constructed pursuant to
17 the Clean Water Act grant program. Refunding bonds issued by
18 the board pursuant to a recommendation by the commission
19 shall be subject to the provisions of the Wastewater Facility
20 Construction Loan Act in the same manner and to the same
21 extent as other bonds issued pursuant to that act. The
22 holders of refunding bonds shall be subrogated and entitled
23 to all priorities, rights and pledges to which the bonds
24 refunded thereby were entitled.

25 F. Except as otherwise provided in the Wastewater

1 Facility Construction Loan Act, the proceeds of refunding
2 bonds shall be immediately applied to the retirement of the
3 bonds to be refunded or be placed in escrow or trust in one
4 or more trust banks within or without the state to be applied
5 to the payment of the refunded bonds or the refunding bonds,
6 or both, in such priority and in the manner that the
7 commission and the board may determine.

8 G. The incidental costs of refunding bonds may be
9 paid by the purchaser of the refunding bonds or be defrayed
10 from other available revenues of the commission, from the
11 proceeds of the refunding bonds, from the interest or other
12 yield derived from the investment of any refunding bond
13 proceeds or other money in escrow or trust, from any other
14 sources legally available for that purpose or from any
15 combination of sources as the commission may determine.

16 H. Any accrued interest and any premium
17 appertaining to a sale of refunding bonds may be applied to
18 the payment of the interest or the principal of the bonds, or
19 to both interest and principal, may be deposited in the
20 account or in the fund and expended solely for the purposes
21 of this subsection, may be used to refund bonds by deposit in
22 escrow, trust or otherwise or may be used to defray any
23 incidental costs appertaining to the refunding or any
24 combination thereof, as the commission may determine.

25 I. An escrow or trust shall be limited to proceeds HB 415
Page 17

1 of refunding bonds.

2 J. A trust bank accounting for federal securities
3 and other securities issued by the federal government in
4 escrow or trust may place those securities for safekeeping
5 wholly or in part in one or more trust banks within or
6 without the state. Proceeds in escrow or trust may be
7 invested or reinvested in federal securities and, in the case
8 of an escrow or trust for the refunding of outstanding bonds
9 or securities, in other securities issued by the federal
10 government if the recommending and issuing resolutions
11 expressly permit the investment or reinvestment in securities
12 issued by the federal government other than federal
13 securities.

14 K. A trust bank shall continuously secure, by a
15 pledge of federal securities in an amount at all times at
16 least equal to the total uninvested amount of the money, any
17 money placed in escrow or trust in that trust bank, or by
18 that trust bank in one or more trust banks within or without
19 the state, and not invested or reinvested in federal
20 securities and other securities issued by the federal
21 government.

22 L. Proceeds and investments in escrow or trust,
23 together with interest or gain to be derived from that
24 investment, shall be in an amount at all times sufficient to
25 pay principal, interest, prior redemption premiums due,

1 charges of the escrow agent or trustee and other incidental
2 expenses, except to the extent otherwise provided for, as
3 such obligations become due at their respective maturities or
4 due at designated prior redemption dates in connection with
5 which the commission has exercised or is obligated to
6 exercise a prior redemption option.

7 M. The computations made in determining
8 sufficiency shall be verified by a certified public
9 accountant.

10 N. A purchaser of a refunding bond issued pursuant
11 to this section shall not be responsible for the application
12 of the proceeds by the commission or any of the officers,
13 agents or employees of the commission.

14 O. The state treasurer may invest any idle or
15 surplus money of the state in bonds recommended by the
16 commission and issued by the board. The governing body of
17 any public entity in the state may invest any idle or surplus
18 money held in its treasury in bonds recommended by the
19 commission and issued by the board. Bonds recommended by the
20 commission and issued by the board shall be legal investments
21 for executors, administrators, trustees and other
22 fiduciaries, unless otherwise directed by the court having
23 jurisdiction of the fiduciary relation or by the document
24 that is the source of the fiduciary's authority, and for
25 savings banks and insurance companies organized under the

1 laws of the state.

2 P. Bonds or other obligations recommended by the
3 commission and issued by the board and the interest
4 applicable thereto and the income therefrom and all projects
5 or parts thereof and all assets of the commission shall be
6 exempt from taxation in the state.

7 Q. Bonds may be issued under the provisions of the
8 Wastewater Facility Construction Loan Act only with the
9 approval of the commission and the board pursuant to
10 authority provided in that act.

11 R. Commission members or employees or board
12 members or employees and any person executing bonds issued
13 pursuant to the Wastewater Facility Construction Loan Act
14 shall not be liable personally on the bonds or be subject to
15 any personal liability or accountability by reason of the
16 issuance of the bonds.

17 S. All bonds recommended by the commission and
18 issued by the board, while registered, are declared and shall
19 be construed to be negotiable instruments.

20 T. All bonds, notes and certificates recommended
21 by the commission and issued by the board shall be special
22 obligations of the board, payable solely from the revenue,
23 income, fees or charges that may, pursuant to the provisions
24 of the Wastewater Facility Construction Loan Act, be pledged
25 to the payment of such obligations, and the bonds, notes or

1 certificates shall not create an obligation, debt or
2 liability of the state. No breach of any pledge, obligation
3 or agreement of the commission shall impose a pecuniary
4 liability upon the state or a charge upon its general credit
5 or taxing power.

6 U. Any recommending or issuing resolution shall
7 provide that each bond recommended or authorized shall recite
8 that it is issued by the board under recommendation of the
9 commission. The recital shall clearly state that the bonds
10 are in full compliance with all of the provisions of the
11 Wastewater Facility Construction Loan Act, and all bonds
12 issued containing such recital shall be incontestable for any
13 cause whatsoever after their delivery for value."

14 SECTION 6. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2017.

HB 415
Page 21

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AN ACT

RELATING TO THE WASTEWATER FACILITY CONSTRUCTION LOAN ACT;
CLARIFYING THAT FUNDING ASSISTANCE IS AVAILABLE FOR ELIGIBLE
PROJECTS AS PROVIDED BY THE FEDERAL CLEAN WATER ACT;
ALPHABETIZING DEFINITIONS AND ADDING DEFINITIONS FOR
"ELIGIBLE PROJECT" AND "QUALIFIED BORROWER"; MAKING
CONFORMING CHANGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 74-6A-2 NMSA 1978 (being Laws 1986,
Chapter 72, Section 2, as amended) is amended to read:

"74-6A-2. PURPOSE.--The purpose of the Wastewater
Facility Construction Loan Act is to provide state agencies,
local authorities, interstate agencies and other qualified
borrowers in New Mexico with low-cost financial assistance in
the construction of necessary wastewater facilities and other
eligible projects through the creation of a self-sustaining
program so as to improve and protect water quality and public
health."

SECTION 2. Section 74-6A-3 NMSA 1978 (being Laws 1986,
Chapter 72, Section 3, as amended) is amended to read:

"74-6A-3. DEFINITIONS.--As used in the Wastewater
Facility Construction Loan Act:

A. "account" means the wastewater suspense
account;

1 B. "administrative fee" means a fee assessed and
2 collected by the department from a qualified borrower on each
3 loan and expressed as a percentage per year on the
4 outstanding principal amount of the loan, payable by the
5 borrower on the same date that principal and interest on the
6 loan are due, for deposit in the clean water administrative
7 fund;

8 C. "board" means the state board of finance;

9 D. "bonds" means wastewater bonds or other
10 obligations authorized by the commission to be issued by the
11 board pursuant to the Wastewater Facility Construction Loan
12 Act;

13 E. "Clean Water Act" means the federal Clean Water
14 Act of 1977 and its subsequent amendments or successor
15 provisions;

16 F. "commission" means the water quality control
17 commission;

18 G. "division" or "department" means the department
19 of environment;

20 H. "eligible project" means a project or activity
21 that is eligible for funding assistance under Section 603(c)
22 of the Clean Water Act, Section 1383 of Title 33 of the
23 United States Code, as of January 1, 2018 including a
24 wastewater facility project, a nonpoint source water
25 pollution control project and a watershed project that meet

1 the criteria of the Clean Water Act;

2 I. "federal securities" means direct obligations
3 of the United States, or obligations the principal and
4 interest of which are unconditionally guaranteed by the
5 United States, or an ownership interest in either of the
6 foregoing;

7 J. "financial assistance" means loans, the
8 purchase or refinancing of existing state agency or local
9 political subdivision obligations, loan guarantees, credit
10 enhancement techniques to reduce interest on loans and bonds,
11 bond insurance and bond guarantees or any combination of
12 these purposes;

13 K. "force account construction" means construction
14 performed by the employees of a local authority rather than
15 through a contractor;

16 L. "fund" means the wastewater facility
17 construction loan fund;

18 M. "holders" means persons who are owners of
19 bonds, whether registered or not, issued pursuant to the
20 Wastewater Facility Construction Loan Act;

21 N. "issuing resolution" means a formal statement
22 adopted by the board to issue bonds pursuant to the
23 Wastewater Facility Construction Loan Act, including any
24 trust agreement, trust indenture or similar instrument
25 providing terms and conditions for the bonds to be issued;

1 O. "local authority" means a municipality,
2 intermunicipal agency, county, incorporated county, mutual
3 domestic water consumers association as defined by the
4 Sanitary Projects Act, sanitation district, water and
5 sanitation district or any similar district, recognized
6 Indian tribe or other issuing agency created pursuant to a
7 joint powers agreement acting on behalf of any entity listed
8 in this subsection;

9 P. "operate and maintain" means to perform all
10 necessary activities, including replacement of equipment or
11 appurtenances, to ensure the dependable and economical
12 function of an eligible project in accordance with its
13 intended purpose;

14 Q. "qualified borrower" means a creditworthy
15 borrower with an identified and verifiable repayment source
16 that is eligible to receive funding pursuant to the Clean
17 Water Act, as of January 1, 2018 including a state agency, an
18 interstate agency and a local authority;

19 R. "recommending resolution" means a formal
20 statement adopted by the commission recommending to the board
21 that bonds be issued pursuant to the Wastewater Facility
22 Construction Loan Act, including any trust agreement, trust
23 indenture or similar instrument providing the terms and
24 conditions for the bonds that are issued;

25 S. "state agency" means an agency or department of HB 66
Page 4

1 the executive branch of government; and

2 T. "wastewater facility" means a publicly owned
3 system for treating or disposing of sewage or wastes either
4 by surface or underground methods, including any equipment,
5 plant, treatment works, structure, machinery, apparatus or
6 land, in any combination, that is acquired, used, constructed
7 or operated for the storage, collection, reduction,
8 recycling, reclamation, disposal, separation or treatment of
9 water or wastes or for the final disposal of residues
10 resulting from the treatment of water or wastes, such as
11 pumping and ventilating stations, facilities, plants and
12 works, outfall sewers, interceptor sewers and collector
13 sewers and other real or personal property and appurtenances
14 incident to their use or operation."

15 SECTION 3. Section 74-6A-4 NMSA 1978 (being Laws 1991,
16 Chapter 172, Section 4, as amended) is amended to read:

17 "74-6A-4. WASTEWATER FACILITY CONSTRUCTION LOAN FUND
18 CREATED--ADMINISTRATION.--

19 A. There is created in the state treasury a
20 revolving loan fund to be known as the "wastewater facility
21 construction loan fund", which shall be administered by the
22 division as agent for the commission and operated as a
23 separate account. The commission is authorized to establish
24 procedures and adopt regulations as required to administer
25 the fund in accordance with the Clean Water Act and state

HB 66
Page 5

1 law. Any regulations relating to the issuance of bonds and
2 the expenditure of proceeds of bond issues shall be approved
3 by the board. The commission shall, whenever possible,
4 coordinate application procedures and funding cycles with the
5 New Mexico Community Assistance Act.

6 B. The following shall be deposited directly in
7 the fund:

8 (1) grants from the federal government or
9 its agencies allotted to the state for capitalization of the
10 fund;

11 (2) funds as appropriated by the legislature
12 to implement the provisions of the Wastewater Facility
13 Construction Loan Act or to provide state matching funds that
14 are required by the terms of any federal grant under the
15 Clean Water Act;

16 (3) loan principal, interest and penalty
17 payments if required by the terms of any federal grant under
18 the Clean Water Act;

19 (4) money transferred from the account as
20 needed to fulfill requirements of the Clean Water Act; and

21 (5) any other public or private money
22 dedicated to the fund.

23 C. Money in the fund is appropriated for
24 expenditure by the commission in a manner consistent with the
25 terms and conditions of the federal capitalization grants and

1 the Clean Water Act and may be used:

2 (1) to provide funding for eligible
3 projects;

4 (2) to purchase, refund or refinance
5 obligations incurred by local authorities in the state for
6 eligible projects where the obligations were incurred and
7 construction commenced after March 7, 1985;

8 (3) to guarantee, or purchase insurance for,
9 obligations of local authorities to improve credit market
10 access or reduce interest rates;

11 (4) to provide a source of revenue or
12 security for the payments of principal and interest on bonds
13 recommended by the commission and issued by the board if the
14 proceeds of the bonds are deposited in the fund to the extent
15 provided in the terms of the federal grant;

16 (5) to provide loan guarantees for similar
17 revolving funds established by local authorities;

18 (6) to fund the administrative expenses of
19 the board, the commission and the division necessary to
20 implement the provisions of the Wastewater Facility
21 Construction Loan Act, including costs of servicing loans and
22 issuing bonds, fund start-up costs, financial management and
23 legal consulting fees and reimbursement costs for support
24 services from other state agencies; and

25 (7) to fund other programs for which the

1 federal government authorizes use of wastewater grants or to
2 provide for any other expenditure consistent with the Clean
3 Water Act grant program and state law.

4 D. Pursuant to regulations adopted by the
5 commission, the division may impose and collect an
6 administrative fee from each qualified borrower that receives
7 financial assistance from the fund, which fee shall not
8 exceed five percent of the total loan amount and which shall
9 be deposited in the clean water administrative fund.

10 E. Money not currently needed for the operation of
11 the fund or otherwise dedicated may be invested according to
12 the provisions of Chapter 6, Article 10 NMSA 1978, and all
13 interest earned on such investments shall be credited to the
14 fund. Money remaining in the fund at the end of any fiscal
15 year shall not revert to the general fund but shall accrue to
16 the credit of the fund.

17 F. Acting as agent for the commission, the
18 division shall maintain full authority for the operation of
19 the fund in accordance with applicable federal and state law,
20 including preparing the annual intended use plan and ensuring
21 that loan recipients are on the state priority list or
22 otherwise satisfy Clean Water Act requirements.

23 G. The division shall establish fiscal controls
24 and accounting procedures that are sufficient to ensure
25 proper accounting for fund payments, disbursements and

1 balances and shall provide an annual report and an annual
2 independent audit on the fund to the governor and to the
3 United States environmental protection agency as required by
4 the Clean Water Act."

5 SECTION 4. Section 74-6A-7 NMSA 1978 (being Laws 1991,
6 Chapter 172, Section 5) is amended to read:

7 "74-6A-7. LOAN PROGRAM--ADMINISTRATION.--

8 A. The division shall establish a program to
9 provide financial assistance to qualified borrowers,
10 individually or jointly, for eligible projects. The division
11 as agent of the commission is authorized to enter into
12 contracts and other agreements to carry out the provisions of
13 the Wastewater Facility Construction Loan Act, including
14 contracts and agreements with federal agencies, local
15 authorities and other parties.

16 B. The commission shall adopt a system for the
17 ranking of eligible projects for financial assistance."

18 SECTION 5. Section 74-6A-8 NMSA 1978 (being Laws 1991,
19 Chapter 172, Section 6, as amended) is amended to read:

20 "74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

21 A. Financial assistance shall be provided only to
22 qualified borrowers that:

23 (1) meet the requirements for financial
24 capability set by the division to assure sufficient revenues
25 to operate and maintain the eligible project for its useful

1 life, if applicable, and to repay the financial assistance;
2 (2) agree to operate and maintain the
3 eligible project facility so that the project facility will
4 function properly over its structural and material design
5 life, if applicable;
6 (3) agree to maintain separate project
7 accounts, to maintain project accounts properly in accordance
8 with generally accepted governmental accounting standards and
9 to conduct an audit of the project's financial records;
10 (4) provide a written assurance, signed by
11 an attorney or other authorized representative, that the
12 qualified borrower has or will acquire proper title,
13 easements and rights of way to the property upon or through
14 which the eligible project facility proposed for funding is
15 to be constructed or extended;
16 (5) require the contractor of the eligible
17 project to post a performance and payment bond in accordance
18 with the requirements of Section 13-4-18 NMSA 1978 and its
19 subsequent amendments and successor provisions;
20 (6) provide a written notice of completion
21 of the eligible project;
22 (7) appear on the priority list of the fund,
23 regardless of rank on such list; and
24 (8) provide such information to the division
25 as required by the commission in order to comply with the

1 provisions of the Clean Water Act and state law.

2 B. Loans shall be made only to qualified borrowers
3 that establish one or more dedicated sources of revenue to
4 repay the money received from the commission and to provide
5 for operation, maintenance and equipment replacement
6 expenses. Notwithstanding any existing statute to the
7 contrary, a qualified borrower may do any of the following:

8 (1) obligate itself to pay to the commission
9 at periodic intervals a sum sufficient to provide all or any
10 part of bond debt service with respect to the bonds
11 recommended by the commission and issued by the board to fund
12 the loan for the eligible project and pay over the debt
13 service to the account of the eligible project for deposit to
14 the fund;

15 (2) fulfill any obligation to pay the
16 commission by the issuance of bonds, notes or other
17 obligations in accordance with the laws authorizing issuance
18 of state or local authority obligations; provided, however,
19 that, notwithstanding the provisions of Section 4-54-3 or 6-
20 15-5 NMSA 1978 or other statute or law requiring the public
21 sale of local authority obligations, the obligations may be
22 sold at private sale to the commission at the price and upon
23 the terms and conditions the local authority shall determine;

24 (3) levy, collect and pay over to the
25 commission and obligate itself to continue to levy, collect

1 and pay over to the commission the proceeds of one or more of
2 the following:

- 3 (a) sewer or waste disposal service
4 fees or charges;
- 5 (b) licenses, permits, taxes and fees;
- 6 (c) special assessments on the property
7 served or benefited by the eligible project; or
- 8 (d) other revenue available to the
9 qualified borrower;

10 (4) undertake and obligate itself to pay its
11 contractual obligation to the commission solely from the
12 proceeds from any of the sources specified in Paragraph (3)
13 of this subsection or, in accordance with the laws
14 authorizing issuance of qualified borrower obligations,
15 impose upon itself a general obligation pledge to the
16 commission additionally secured by a pledge of any of the
17 sources specified in Paragraph (3) of this subsection; or
18 (5) enter into agreements, perform acts and
19 delegate functions and duties as its governing body shall
20 determine is necessary or desirable to enable the division as
21 agent for the commission to fund a loan to the qualified
22 borrower to aid it with an eligible project.

23 C. Each loan made by the division as agent for the
24 commission shall provide that repayment of the loan shall
25 begin not later than one year after completion of the

1 eligible project for which the loan was made and shall be
2 repaid in full no later than thirty years after completion of
3 the eligible project. All principal and interest on loan
4 payments shall be deposited in the fund.

5 D. Financial assistance shall be made with an
6 annual interest rate to be five percent or less as determined
7 by the commission.

8 E. A zero-percent interest rate may be approved by
9 the division when the following conditions have been met by
10 the local authority:

11 (1) the local authority's average user cost
12 is greater than one and eighty-two hundredths percent of the
13 local authority's per capita income; and

14 (2) the local authority's per capita income
15 is less than three-fourths of the statewide per capita
16 income.

17 F. A local authority may use the proceeds from
18 financial assistance received under the Wastewater Facility
19 Construction Loan Act to provide a local match or any other
20 nonfederal share of an eligible project as allowed pursuant
21 to the Clean Water Act.

22 G. Financial assistance received pursuant to the
23 Wastewater Facility Construction Loan Act shall not be used
24 by a qualified borrower on any eligible project constructed
25 in fulfillment or partial fulfillment of requirements made of

1 a subdivider under the provisions of the Land Subdivision Act
2 or the New Mexico Subdivision Act.

3 H. Financial assistance shall be made only to
4 qualified borrowers that employ or contract with a New Mexico
5 licensed professional engineer to provide and be responsible
6 for engineering services on the eligible project. Such
7 services include an engineering report, construction contract
8 documents, supervision of construction and start-up services.

9 I. Financial assistance shall be made only for
10 eligible items. For financial assistance composed entirely
11 of state funds, eligible items include the costs of
12 engineering reports, contracted engineering design,
13 inspection of construction, special engineering services,
14 start-up services, contracted construction, materials
15 purchased or equipment leased for force account construction,
16 land or acquisition of existing facilities, but eligible
17 items do not include the costs of water rights and local
18 authority administrative costs. For financial assistance
19 made from federal funds, eligible items are those identified
20 pursuant to the Clean Water Act.

21 J. In the event of default by the qualified
22 borrower, the commission may enforce its rights by suit or
23 mandamus or may utilize all other available remedies under
24 state law."

25 SECTION 6. Section 74-6A-9 NMSA 1978 (being Laws 1991,

HB 66
Page 14

1 Chapter 172, Section 7, as amended) is amended to read:

2 "74-6A-9. COMMISSION--POWERS.--

3 A. In administering the Wastewater Facility
4 Construction Loan Act, the commission shall have the
5 following powers, which may be implemented by the division,
6 in addition to those specified in the Water Quality Act:

7 (1) to provide financial assistance to
8 qualified borrowers to finance all or part of an eligible
9 project, including all forms of assistance for which the fund
10 may be used pursuant to the Wastewater Facility Construction
11 Loan Act;

12 (2) to adopt resolutions recommending that
13 the board issue bonds or refunding bonds pursuant to the
14 provisions of the Wastewater Facility Construction Loan Act;

15 (3) to execute agreements concerning state
16 contributions to the fund made pursuant to the Clean Water
17 Act, including obligating the commission to pay a portion of
18 the estimated reasonable cost of an eligible project of a
19 local authority as may be required to meet the water quality
20 goals of the Clean Water Act and the state;

21 (4) to foreclose upon, attach or condemn any
22 eligible project facility, property or interest in the
23 project pledged, mortgaged or otherwise available as security
24 for a project financed in whole or in part pursuant to the
25 Wastewater Facility Construction Loan Act in the event of a

HB 66
Page 15

1 default by a qualified borrower;
2 (5) to acquire and hold title to or
3 leasehold interest in real and personal property and to sell,
4 convey or lease that property for the purpose of satisfying a
5 default or enforcing the provisions of a loan agreement;

6 (6) through its agent the division, to
7 manage the fund, to grant and administer financial assistance
8 to qualified borrowers and to apply for and accept grants,
9 including capitalization grant awards made to the state in
10 accordance with the Clean Water Act and the Wastewater
11 Facility Construction Loan Act;

12 (7) to appoint and employ attorneys,
13 financial advisors, underwriters and other experts and agents
14 and employees as the business of the commission may require;

15 (8) to sue or be sued and to prosecute and
16 defend, at law or in equity, in any court having jurisdiction
17 over the subject matter and the parties to the matter;

18 (9) to collect application, origination and
19 administrative fees from qualified borrowers, the total of
20 which for any loan shall not exceed four percent of the value
21 of the loan requested or authorized;

22 (10) to adopt regulations necessary and
23 appropriate to implement the provisions of the Wastewater
24 Facility Construction Loan Act; and

25 (11) to have and exercise all the rights and

1 powers necessary, incidental to or implied from the specific
2 powers enumerated in this section.

3 B. Specific powers enumerated in this section
4 shall not limit any power necessary or appropriate to carry
5 out the purposes and intent of the Wastewater Facility
6 Construction Loan Act.

7 C. The commission shall use accounting, audit and
8 fiscal procedures conforming to generally accepted government
9 accounting standards and shall otherwise prepare audits and
10 budgets in accordance with state law. The fiscal year of the
11 commission shall coincide with the fiscal year of the state.

12 D. The commission shall deliver an annual report
13 during the first week of each regular session of the
14 legislature on the status of the wastewater facility
15 construction loan program and the fund to the governor and
16 legislature."

17 SECTION 7. Section 74-6A-12 NMSA 1978 (being Laws 1991,
18 Chapter 172, Section 10, as amended) is amended to read:

19 "74-6A-12. COMMISSION BONDS.--

20 A. The board, upon recommendation from the
21 commission, may issue and sell bonds or other obligations
22 recommended by the commission to provide funds for any
23 purpose enumerated in the Wastewater Facility Construction
24 Loan Act or for payment of obligations incurred or temporary
25 loans made to accomplish any purpose of that act. As

HB 66
Page 17

1 prescribed in the recommending resolution, bonds may be
2 issued in one or more series; shall bear prescribed dates;
3 shall be in the form provided in the Supplemental Public
4 Securities Act; shall be issued in prescribed denominations;
5 shall have terms and maturities that do not exceed twenty-
6 five years from the date of issue of each series; shall bear
7 interest at prescribed rates; shall be payable and evidenced
8 in the manner and times as set by the board; may be redeemed
9 with or without premiums prior to maturity; may be ranked or
10 assigned priority status; and may contain provisions not
11 inconsistent with this subsection.

12 B. As security for the payment of the principal
13 and interest on bonds recommended by the commission and
14 issued by the board, the commission is authorized to pledge,
15 transfer and assign after consultation with the board:

16 (1) any obligations of each qualified
17 borrower, payable to the commission;

18 (2) the security for the qualified borrower
19 obligations;

20 (3) any grant, subsidy or contribution from
21 the United States or any of its agencies or
22 instrumentalities; or

23 (4) any income, revenues, funds or other
24 money of the commission from any other source appropriated or
25 authorized for use for the purpose of implementing the

1 provisions of the Wastewater Facility Construction Loan Act.

2 C. The bonds and other obligations recommended by
3 the commission and issued by the board may be sold at any
4 time the commission and the board agree upon. The bonds may
5 be sold at private or public sale at prices as provided in
6 the Public Securities Act and in a manner agreed upon by the
7 board and the commission. The commission may apply the
8 proceeds of the sale of the bonds it recommends that have
9 been issued by the board to:

10 (1) the purposes of the Wastewater Facility
11 Construction Loan Act or the purposes for which the fund may
12 be used;

13 (2) the payment of interest on bonds
14 recommended by the commission and issued by the board for a
15 period not to exceed three years from the date of issuance of
16 the bonds; and

17 (3) the payment of all expenses, including
18 publication and printing charges, attorney fees, financial
19 advisory and underwriter fees, and premiums or commissions
20 that the commission or the board determines are necessary or
21 advantageous in connection with the recommendation,
22 advertisement, sale, creation and issuance of commission-
23 recommended obligations.

24 The board retains the power to fix the date of sale of
25 the bonds and to take all actions necessary to sell and

1 deliver the bonds.

2 D. In anticipation of the issuance of bonds, the
3 board or the commission may borrow such sums as may be needed
4 for any of the purposes enumerated in Subsection C of this
5 section, obligate itself by certificate or promissory note,
6 bearing interest at a rate to be specified by the commission
7 and maturing within fifteen months from the date of the
8 certificate or promissory note. The certificates or
9 promissory notes shall be payable solely from the proceeds of
10 the bonds recommended by the commission and issued by the
11 board and from the funds from which commission-recommended
12 bonds are payable. In the event that commission funds are
13 not available for a loan for an eligible project when
14 application is made, in order to accelerate the completion of
15 any eligible project, the local authority may, with the
16 approval of the commission, obligate such local authority to
17 provide local funds to pay that portion of the cost of the
18 eligible project that the commission agrees to make available
19 by loan, and the commission may refund the amount expended on
20 its behalf by the local authority.

21 E. The commission may recommend that the board
22 issue and sell refunding bonds for the purpose of paying,
23 defeasing or refunding the principal of, interest on and any
24 redemption premiums on any matured or unmatured outstanding
25 bonds recommended by the commission and issued by the board

1 or any matured or unmatured bonds of the state issued to
2 finance eligible projects constructed pursuant to the Clean
3 Water Act grant program. Refunding bonds issued by the board
4 pursuant to a recommendation by the commission shall be
5 subject to the provisions of the Wastewater Facility
6 Construction Loan Act in the same manner and to the same
7 extent as other bonds issued pursuant to that act. The
8 holders of refunding bonds shall be subrogated and entitled
9 to all priorities, rights and pledges to which the bonds
10 refunded thereby were entitled.

11 F. Except as otherwise provided in the Wastewater
12 Facility Construction Loan Act, the proceeds of refunding
13 bonds shall be immediately applied to the retirement of the
14 bonds to be refunded or be placed in escrow or trust in one
15 or more trust banks within or without the state to be applied
16 to the payment of the refunded bonds or the refunding bonds,
17 or both, in such priority and in the manner that the
18 commission and the board may determine.

19 G. The incidental costs of refunding bonds may be
20 paid by the purchaser of the refunding bonds or be defrayed
21 from other available revenues of the commission, from the
22 proceeds of the refunding bonds, from the interest or other
23 yield derived from the investment of any refunding bond
24 proceeds or other money in escrow or trust, from any other
25 sources legally available for that purpose or from any

1 combination of sources as the commission may determine.

2 H. Any accrued interest and any premium
3 appertaining to a sale of refunding bonds may be applied to
4 the payment of the interest or the principal of the bonds, or
5 to both interest and principal, may be deposited in the
6 account or in the fund and expended solely for the purposes
7 of this subsection, may be used to refund bonds by deposit in
8 escrow, trust or otherwise or may be used to defray any
9 incidental costs appertaining to the refunding or any
10 combination thereof, as the commission may determine.

11 I. An escrow or trust shall be limited to proceeds
12 of refunding bonds.

13 J. A trust bank accounting for federal securities
14 and other securities issued by the federal government in
15 escrow or trust may place those securities for safekeeping
16 wholly or in part in one or more trust banks within or
17 without the state. Proceeds in escrow or trust may be
18 invested or reinvested in federal securities and, in the case
19 of an escrow or trust for the refunding of outstanding bonds
20 or securities, in other securities issued by the federal
21 government if the recommending and issuing resolutions
22 expressly permit the investment or reinvestment in securities
23 issued by the federal government other than federal
24 securities.

25 K. A trust bank shall continuously secure, by a

1 pledge of federal securities in an amount at all times at
2 least equal to the total uninvested amount of the money, any
3 money placed in escrow or trust in that trust bank, or by
4 that trust bank in one or more trust banks within or without
5 the state, and not invested or reinvested in federal
6 securities and other securities issued by the federal
7 government.

8 L. Proceeds and investments in escrow or trust,
9 together with interest or gain to be derived from that
10 investment, shall be in an amount at all times sufficient to
11 pay principal, interest, prior redemption premiums due,
12 charges of the escrow agent or trustee and other incidental
13 expenses, except to the extent otherwise provided for, as the
14 obligations become due at their respective maturities or due
15 at designated prior redemption dates in connection with which
16 the commission has exercised or is obligated to exercise a
17 prior redemption option.

18 M. The computations made in determining
19 sufficiency shall be verified by a certified public
20 accountant.

21 N. A purchaser of a refunding bond issued pursuant
22 to this section shall not be responsible for the application
23 of the proceeds by the commission or any of the officers,
24 agents or employees of the commission.

25 O. The state treasurer may invest any idle or

HB 66
Page 23

1 surplus money of the state in bonds recommended by the
2 commission and issued by the board. The governing body of
3 any public entity in the state may invest any idle or surplus
4 money held in its treasury in bonds recommended by the
5 commission and issued by the board. Bonds recommended by the
6 commission and issued by the board shall be legal investments
7 for executors, administrators, trustees and other
8 fiduciaries, unless otherwise directed by the court having
9 jurisdiction of the fiduciary relation or by the document
10 that is the source of the fiduciary's authority, and for
11 savings banks and insurance companies organized under the
12 laws of the state.

13 P. Bonds or other obligations recommended by the
14 commission and issued by the board and the interest
15 applicable thereto and the income therefrom and all projects
16 or parts thereof and all assets of the commission shall be
17 exempt from taxation in the state.

18 Q. Bonds may be issued under the provisions of the
19 Wastewater Facility Construction Loan Act only with the
20 approval of the commission and the board pursuant to
21 authority provided in that act.

22 R. Commission members or employees or board
23 members or employees and any person executing bonds issued
24 pursuant to the Wastewater Facility Construction Loan Act
25 shall not be liable personally on the bonds or be subject to

1 any personal liability or accountability by reason of the
2 issuance of the bonds.

3 S. All bonds recommended by the commission and
4 issued by the board, while registered, are declared and shall
5 be construed to be negotiable instruments.

6 T. All bonds, notes and certificates recommended
7 by the commission and issued by the board shall be special
8 obligations of the board, payable solely from the revenue,
9 income, fees or charges that may, pursuant to the provisions
10 of the Wastewater Facility Construction Loan Act, be pledged
11 to the payment of such obligations, and the bonds, notes or
12 certificates shall not create an obligation, debt or
13 liability of the state. No breach of any pledge, obligation
14 or agreement of the commission shall impose a pecuniary
15 liability upon the state or a charge upon its general credit
16 or taxing power.

17 U. Any recommending or issuing resolution shall
18 provide that each bond recommended or authorized shall recite
19 that it is issued by the board under recommendation of the
20 commission. The recital shall clearly state that the bonds
21 are in full compliance with all of the provisions of the
22 Wastewater Facility Construction Loan Act, and all bonds
23 issued containing such recital shall be incontestable for any
24 cause whatsoever after their delivery for value."

25 SECTION 8. Section 74-6A-14 NMSA 1978 (being Laws 1991, HB 66
Page 25

1 Chapter 172, Section 12) is amended to read:
2 "74-6A-14. VALIDATION.--All outstanding securities of
3 the state and of all qualified borrowers, all loan or other
4 agreements entered into between the state or the division and
5 any qualified borrower, all regulations promulgated by the
6 commission and all acts and proceedings taken by or on behalf
7 of the state or any qualified borrower with respect to the
8 financing of eligible projects are validated, ratified,
9 approved and confirmed. To the extent necessary to carry out
10 its purposes, the commission shall treat any bonds,
11 obligations or agreements of the state or the division that
12 were entered into prior to April 4, 1991 for the purpose of
13 effecting the provisions of the Wastewater Facility
14 Construction Loan Act or the Clean Water Act as if such bonds,
15 obligations or agreements were those recommended by the
16 commission and issued by the board."

HB 66
Page 26

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**AVISO DE AUDIENCIA PÚBLICA PARA ENMENDAR 20.7.5 NMAC,
PRÉSTAMOS PARA LA CONSTRUCCIÓN DE INSTALACIONES DE AGUAS RESIDUALES**

La Comisión de Control de Calidad del Agua de Nuevo México ("Comisión" o "WQCC", por su sigla en inglés) llevará a cabo una audiencia pública a las 9:00 de la mañana, el martes 14 de agosto de 2018 que continuará según sea necesario en la Sala 307 en el Capitolio del Estado, ubicado en 490 Old Santa Fe Trail, Santa Fe, New Mexico. La ubicación de la audiencia puede cambiar antes de la fecha de la audiencia, y los interesados en asistir deben visitar el sitio web de WQCC: <http://www.env.nm.gov/wqcc> antes de la audiencia. El objetivo de la audiencia es considerar enmiendas a las normas sobre préstamos para la construcción de instalaciones de aguas residuales, 20.7.5 NMAC ("Reglamento") propuestas por el Departamento de Medio Ambiente de Nuevo México ("NMED" por su sigla en inglés).

Las enmiendas pondrían el Reglamento en conformidad con los cambios recientes en la Ley de Préstamos para la Construcción de Instalaciones de Aguas Residuales (Secciones 74-6A-1 a 74-6A-15 NMSA 1978) ("Ley", por su sigla en inglés). La Ley rige la administración del Fondo Rotatorio Estatal de Agua Limpia de Nuevo México ("CWSRF" por su sigla en inglés) que otorga préstamos a bajo interés y paquetes de subvenciones/préstamos a entidades elegibles para proyectos de aguas residuales y aguas pluviales. En primer lugar, estas enmiendas ampliarían el alcance de los proyectos y los prestatarios elegibles para la consideración de fondos de conformidad con la Ley. Además, las enmiendas pondrían el 20.7.5 NMAC en conformidad con los criterios modificados para préstamos del cero por ciento a través de CWSRF.

Las enmiendas propuestas se pueden revisar durante el horario normal de atención al público en la Oficina de Audiencias de NMED ubicada en el edificio Harold Runnels, 1190 South St. Francis Drive, Sala S-2102 Santa Fe, NM, 87505. El texto completo de las enmiendas propuestas también está disponible en línea en <http://www.env.nm.gov/general/wqcc-18-01-r/>.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de WQCC (20.1.6 NMAC); la Ley de Calidad del Agua, Sección 74-6-6 NMSA 1978; la Ley de Reglas del Estado, Sección 14-4-5.3 NMSA 1978 y otros procedimientos aplicables.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, puntos de vista y argumentos pertinentes, oralmente o por escrito; para presentar exhibiciones; y para examinar a los testigos. Cualquier persona que desee presentar una declaración escrita que no sea de carácter técnico para que conste en actas en lugar de un testimonio oral debe presentar dicha declaración antes del cierre de la audiencia.

De conformidad con los Procedimientos de Reglamentación de WQCC, aquellos interesados en presentar un testimonio de carácter técnico, deberán presentar ante la Comisión un aviso por escrito de su intención presentar dicho testimonio antes de las 5:00 p.m. del día 25 de julio de 2018. El aviso de intención deberá:

- identificar a la persona o entidad para la cual testificará/n el/os testigo/s;
- identificar a cada testigo técnico que la persona tiene la intención de presentar y establecer las calificaciones del testigo, incluida una descripción de sus antecedentes educativos y laborales;
- incluir una copia del testimonio directo de cada testigo técnico en forma narrativa, e indicar la duración estimada del testimonio oral directo de ese testigo;
- incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
- hacer una lista y adjuntar todo los documentos y objetos de pruebas que se anticipa que van a ser presentadas por esa persona en la audiencia.

Las notificaciones de intenciones para la audiencia deberán recibirse en la Oficina de Audiencias antes o hasta las 5:00 p.m. del día 25 de julio de 2018, y deben incluir como referencia el nombre del reglamento, la fecha de la audiencia y el número de expediente WQCC 18-01 (R). Las notificaciones de intención de presentar un testimonio técnico deben enviarse a:

Pam Castaneda, Administrator of Boards and Commissions
Office of the Water Quality Control Commission
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Los interesados podrán ofrecer comentarios públicos que no sean de carácter técnico durante la audiencia o presentar declaraciones escritas que no sean de carácter técnico en lugar de testimonio oral durante o antes de la audiencia. Los comentarios escritos relativos a las revisiones propuestas pueden enviarse a la Sra. Pam Castaneda, Administradora de Juntas y Comisiones, a la dirección antes indicada, y deben incluir como referencia el número de expediente WQCC 18-01 (R).

Si alguna persona necesita asistencia, un intérprete o un dispositivo auxiliar para participar en este proceso deberá comunicarse con Pam Castaneda, Administradora de la WQCC antes o hasta el día 31 de julio de 2018, en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, o por teléfono al (505) 827-2425 o por correo electrónico a pam.castaneda@state.nm.us. (Los usuarios de TDD o TTY podrán acceder a ese número a través de la Red de retransmisión de Nuevo México: 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

La Comisión podrá tomar una decisión sobre el cambio normativo propuesto al final de la audiencia o podrá convocar una reunión después de la audiencia para considerar que acción tomar con respecto a la propuesta.

Aviso de no discriminación

NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, tal como lo exigen las leyes y regulaciones aplicables. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relacionadas con los requisitos de no discriminación implementados por 40 C.F.R. Parte 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, Título IX de las Enmiendas Educativas de 1972 y la Sección 13 de las Enmiendas a la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de NMED contra la discriminación, puede comunicarse con: Kristine Pintado, Coordinadora de No Discriminación Departamento de Medio Ambiente de Nuevo México, 1190 St. Francis Dr., Suite N4050, PO Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con el Coordinador de No Discriminación identificado anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/NMED/EJ/index.html> para aprender cómo y dónde presentar una queja de discriminación.

Aviso de no discriminación

NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigido por las leyes y los reglamentos correspondientes. NMED es responsable de la coordinación de los esfuerzos para el cumplimiento de las reglas y la recepción de consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Parte 7, que incluye el Título VI de la Ley de Derechos Civiles de 1964, según enmendado; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975; el Título IX de las Enmiendas de Educación de 1972; y la Sección 13 de las Enmiendas a la Ley Federal de Control de la Contaminación del Agua de 1972. Si usted tiene preguntas sobre este aviso o sobre cualquier programa de no discriminación, norma o procedimiento de NMED, usted puede comunicarse con la Coordinadora de No Discriminación: Kristine Pintado, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM, 87502, (505) 827-2855. nd.coordinator@state.nm.us. Si usted piensa que ha sido discriminado con respecto a un programa o actividad de NMED, usted puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/NMED/EJ/index.html> para saber cómo y dónde puede presentar una queja por discriminación.

**NOTICE OF PUBLIC HEARING TO AMEND 20.7.5 NMAC,
WASTEWATER FACILITY CONSTRUCTION LOANS**

The New Mexico Water Quality Control Commission (“Commission” or “WQCC”) will hold a public hearing beginning at 9:00 a.m. on Tuesday, August 14, 2018, and continuing thereafter as necessary in Room 307 at the State Capital Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should visit the WQCC website: <http://www.env.nm.gov/wqcc> prior to the hearing. The purpose of the hearing is to consider amendments to the rules on Wastewater Facility Construction Loans, 20.7.5 NMAC (“Rules”) proposed by the New Mexico Environment Department (“NMED”).

The amendments would bring the Rules into compliance with recent changes to the Wastewater Facility Construction Loan Act (Sections 74-6A-1 thru 74-6A-15 NMSA 1978) (“Act”). The Act governs the administration of New Mexico’s Clean Water State Revolving Fund (“CWSRF”) which provides low interest loans and grant/loan packages to eligible entities for wastewater and storm water projects. Primarily, these amendments would expand the scope of projects and borrowers eligible for consideration for funding pursuant to the Act. Additionally, the amendments would bring 20.7.5 NMAC into compliance with changed criteria for zero-percent loans through the CWSRF.

The proposed amendments may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102 Santa Fe, NM, 87505. The full text of the proposed amendments is also available online at <http://www.env.nm.gov/general/wqcc-18-01-r/>.

The hearing will be conducted in accordance with the WQCC Rulemaking Procedures (20.1.6 NMAC); the Water Quality Act, Section 74-6-6 NMSA 1978; the State Rules Act, Section 14-4-5.3 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to the WQCC Rulemaking Procedures, those wishing to present technical testimony must file a written notice of intent to do so with the Commission on or before 5:00 p.m. on July 25, 2018. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and attach all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on July 25, 2018, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 18-01(R). Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Administrator of Boards and Commissions
Office of the Water Quality Control Commission
Harold Runnels Building

P.O. Box 5469
Santa Fe, NM 87502

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Ms. Pam Castaneda, Administrator of Boards and Commissions, at the above address, and should reference docket number WQCC 18-01(R).

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, WQCC Administrator by July 31, 2018, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email pam.castaneda@state.nm.us. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal.

Notice of Non-Discrimination

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Pintado, Non-Discrimination Coordinator New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/NMED/EJ/index.html> to learn how and where to file a complaint of discrimination.

PROPOSED AMENDMENT

This is an amendment to 20.7.5 NMAC, Sections 6, 7, 10, 11, 12, 13, and 14, effective XX/XX/2018.

20.7.5.6 OBJECTIVE: The objective of this part is to establish a program to provide financial assistance to state agencies, local authorities, interstate agencies, and other qualified borrowers for the acquisition, construction, or modification of wastewater facilities or other eligible projects or activities pursuant to the act. [20.7.5.6 NMAC - Rp, 20.7.5.6 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.7 DEFINITIONS: as used in this part.

A. "Act" means the Wastewater Facility Construction Loan Act.

B. "Administrative fee" means a fee assessed and collected by the department from the [~~local authority~~] qualified borrower 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.

C. "Clean Water Act" means the federal Clean Water Act of 1977 and its subsequent amendments or successor provisions.

D. "Clean water state revolving loan administrative fund" means a separate fund created outside the wastewater facility construction loan fund/clean water state revolving fund designated solely for the costs of administering the clean water state revolving loan fund, in accordance with the Clean Water Act. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the loan administrative fund and shall be used explicitly for the purpose above.

E. "Commission" means the water quality control commission.

F. "Department" means the New Mexico environment department.

G. "Eligible project" means any project or activity that is eligible for funding assistance under Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code, as of January 1, 2018.

including a wastewater facility project, a nonpoint source water pollution control project, and a watershed project that meet the criteria of the Clean Water Act.

~~[G.]~~ **H.** “Final loan agreement” means an agreement executed by the ~~[local authority]~~ qualified borrower and the department upon completion of the project in order to ~~[evidence]~~ document the permanent financing of the final loan amount.

~~[H.]~~ **I.** “Final loan amount” means the aggregate amount of the principal disbursed by the department to the ~~[local authority]~~ qualified borrower during the construction of the ~~[wastewater facility]~~ eligible project, together with accrued and unpaid interest on the aggregate principal thereof.

~~[I.]~~ **J.** “Financial assistance” means loans, combination loan/grants, the purchase or refinancing of existing state agency or local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on loans and bonds, bond insurance and bond guarantees, or any combination of these purposes.

~~[J.]~~ **K.** “Force account construction” means construction performed by the employees of a ~~[local authority]~~ qualified borrower rather than through a contractor.

~~[K.]~~ **L.** “Fund” means the wastewater facility construction loan fund established in Section 74-6A-4 NMSA 1978 of the Wastewater Facility Construction Loan Act.

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

~~[M.]~~ **N.** “Payment” means a disbursement from the fund directly to the ~~[local authority]~~ qualified borrower.

~~[N.]~~ **O.** “Priority list” means the list of eligible projects ranked according to the priority system pursuant to the Wastewater Facility Construction Loan Act.

~~[O.]~~ **P.** “Priority system” means the system approved by the commission for ranking eligible projects for which financial assistance applications have been received pursuant to the act.

Q. “Qualified borrower” means a creditworthy borrower with an identified and verifiable repayment source that is eligible for funding pursuant to the Clean Water Act, as of January 1, 2018, including a state agency, an interstate agency, and a local authority.

R. “State agency” means an agency or department of the executive branch of government.

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

~~[Q.]~~ **T.** Other terms will retain their definition as given in the act.

[20.7.5.7 NMAC - Rp, 20.7.5.7 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.10 ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE:

- A.** Only ~~[local authorities]~~ qualified borrowers will be eligible for financial assistance from the fund.
- B.** The project must appear on the current priority list at the time of the financial assistance award.
- C.** To be eligible for financial assistance from the fund, ~~[local authorities]~~ qualified borrowers shall:
 - (1) meet the requirements of financial capability set by the department to assure sufficient revenue to operate and maintain the facility for its useful life, if applicable, and to repay the financial assistance;
 - (2) agree to operate and maintain the ~~[wastewater]~~ eligible project facility so that the project facility will function properly over its structural and material design life, if applicable;
 - (3) agree to maintain separate project accounts, to maintain project accounts properly in accordance with generally accepted accounting principles and to conduct an audit of the project's financial records;
 - (4) agree to provide a written assurance prior to construction, signed by an attorney, or other authorized representative, that the ~~[local authority]~~ qualified borrower has or will acquire proper title, easements and

rights-of-way to the property upon or through which the ~~[wastewater]~~ eligible project facility proposed for funding is to be constructed or extended;

(5) require the contractor of the ~~[construction]~~ eligible project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions;

(6) provide a written notice of project completion ~~[and start of operation of the wastewater facility]~~; and

(7) provide such information to the department as required ~~[by the commission]~~ in order to comply with the provisions of the Clean Water Act and state law.

D. Financial assistance shall be made only to ~~[local authorities]~~ qualified borrowers that establish one or more dedicated sources of revenue to repay the money received from the commission and to provide for operation, maintenance, and equipment replacement expenses.

[20.7.5.10 NMAC - Rp, 20.7.5.10 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.11 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT:

A. Applications for financial assistance shall be made by the ~~[local authority]~~ qualified borrower on a form specified by the department.

B. Applicants for financial assistance shall provide the department with:

(1) a description of the scope of work of the project;

(2) a cost estimate of the project; and

(3) a target date for initiation of construction.

C. The department will review the application for eligibility, and technical merits. The department will notify the ~~[local authority]~~ qualified borrower of any inadequacies in the submittal. The ~~[local authority]~~ qualified borrower may correct any inadequacies and resubmit the application.

D. Upon determination by the department that an application is eligible and complete, the application will be ranked utilizing the priority system and will be placed on the priority list.

[20.7.5.11 NMAC - Rp, 20.7.5.11 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.12 PRIORITY SYSTEM AND PRIORITY LIST:

A. Financial assistance shall only be made to ~~[local authorities]~~ qualified borrowers on the project priority list developed in accordance with the priority system as adopted by the commission.

B. The commission shall adopt a system for the ranking of projects for financial assistance.

C. The department shall prepare a priority list of applicants for financial assistance based on the priority system approved by the commission.

[20.7.5.12 NMAC - Rp, 20.7.5.12 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS:

A. Eligible items for financial assistance made from state only funds include but are not limited to the costs of engineering ~~[feasibility]~~ reports, contracted engineering design, inspection of construction, special engineering services, start-up services, contracted construction, materials purchased or equipment leased for force account construction, land, or acquisition of existing facilities. For financial assistance made from federal funds, eligible items are those identified pursuant to the Clean Water Act.

B. Financial assistance shall be made only to ~~[local authorities]~~ qualified borrowers that employ or contract with a ~~[registered]~~ New Mexico licensed professional engineer to provide and be responsible for engineering services on the project. Such services include, but are not limited to ~~[an engineering report]~~ engineering reports, construction contract documents, supervision of construction, and start-up services.

C. Ineligible for financial assistance made with state only funds items include:

(1) the costs of water rights;

(2) local authority administrative costs;

(3) fulfillment or partial fulfillment of requirements made of a subdivider by the provisions

of the Land Subdivision Act or the New Mexico Subdivision Act;

(4) force account construction; and

(5) administrative ~~[fee]~~ fees.

[20.7.5.13 NMAC - Rp, 20.7.5.13 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND:

A. The loan program and fund is administered by the department as agent for the commission. Pursuant to Section 74-6A-9.A (10) of the Wastewater Facility Construction Loan Act, the department shall develop new, and implement existing, policies, procedures, and guidelines necessary and appropriate to implement the provisions of the act and the Clean Water Act.

B. The necessary administrative expenses required of the board, the commission, and the department to implement the provisions of the act will be appropriated from the fund.

C. The department may impose and collect a fee from each ~~[local authority]~~ qualified borrower that receives financial assistance from the fund, which fee shall be deposited into the clean water state revolving loan administrative fund, and used solely for the costs of administering the fund as follows:

(1) an administrative fee may be assessed on all financial assistance provided after January 1, 1996, and will be assessed on the refinancing of financial assistance after October 1, 1993;

(2) if an administrative fee is assessed pursuant to Paragraph (1) of Subsection C of 20.7.5.14 NMAC above, the total administrative fee assessed shall not exceed five percent of the total loan amount; the fee will be assessed on the outstanding principal balance of the loan payable; these fees are due on the same dates the payment of principal and interest on the loans are due, and shall be charged to each borrower, unless waived from the requirement by the department; the department may determine, establish and revise from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenue available to pay such costs; the administrative fee payments must be deposited in the clean water state revolving loan administrative fund as they are received; interest on the clean water state revolving loan administrative fund shall be transferred to the administrative fund as it is received; and

(3) an administrative fee of two percent of the unpaid principal balance of the refinanced loan will be assessed against the ~~[local authority]~~ qualified borrower and shall be paid into the clean water state revolving loan administrative fund at the time of closing of the refinancing.

D. Financial assistance agreements will be prepared by the department and executed by the ~~[local authority]~~ qualified borrower for the project which can be financed with available balances in the fund.

E. Repayment of the loan portion of the financial assistance shall begin no later than one year after completion of the project for which the loan was executed and shall be repaid in full no later than 30 years after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

F. The interest rate for the loan portion of the financial assistance shall be the rate in effect when the final loan agreement is executed. The interest rate shall not change during the term of the financial assistance unless refinanced in accordance with Subsection I of 20.7.5.14 NMAC. The interest rate shall be the base rate provided in Subsection G of 20.7.5.14 NMAC unless the local authority qualifies for a hardship rate provided in Subsection H of 20.7.5.14 NMAC.

G. 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.

H. 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) When the local authority's per capita income is less than the statewide per capita income based on the most current United States (U.S.) bureau of census statistics.

(2) The local authority's per capita income is less than three-fourths of the statewide per capita income based upon the most current 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 dollars 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]~~ per capita income is less than three-fourths of the statewide non-metropolitan ~~[median household income]~~ per capita income based upon the most current U.S. bureau of census statistics.

Interest Rate	Local Authority Criteria
2.375%	Per capita income equal to or above statewide average; base interest rate. (G.)
1.2%	Per capita income less than that statewide average. (H.)(1)
0.6%	Per capita income less than ¾ of the statewide average. (H.)(2)

0%	[Median household income] <u>Per capita income</u> less than $\frac{3}{4}$ if the statewide [median household income] <u>per capita income</u> and the average user cost is equal to or greater than \$15.00 per month. (H.)(4)(a)(b)
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I. The interest rate for a state agency shall be the lowest interest rate available above zero percent in 20.7.5.14 H.

~~[H.]~~ **J.** 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.

~~[J.]~~ **K.** Financial assistance recipients shall comply with all applicable federal, state, and local laws and regulations, including but not limited to:

- (1) procurement;
- (2) record keeping;
- (3) accounting;
- (4) audit and inspection;
- (5) occupational health and safety;
- (6) environmental review; and
- (7) non-discrimination.

~~[K.]~~ **L.** In the event of default by the ~~[local authority]~~ qualified borrower, the department as agent for the commission may enforce its rights by suit or mandamus or may utilize all other available remedies under state law. [20.7.5.14 NMAC - Rp, 20.7.5.14 NMAC, 12/16/2015; A, 05/30/2017; A, XX/XX/2018]

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of **Bernalillo** SS

Bernadette Gonzales, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

06/10/2018

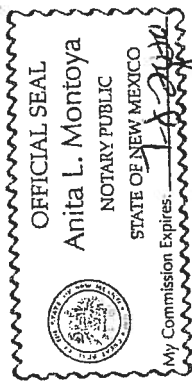


Sworn and subscribed before me, a Notary Public, in and for the County of **Bernalillo** and State of New Mexico this 10 day of June of 2018

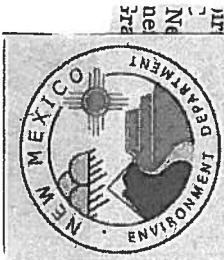
PRICE \$243.09

Statement to come at the end of month.

ACCOUNT NUMBER 1032474







NOTICE OF PUBLIC HEARING TO AMEND 20.7.5 NMAC. WASTEWATER FACILITY CONSTRUCTION LOANS

The New Mexico Water Quality Control Commission ("Commission" or "WQCC") will hold a public hearing beginning at 9:00 a.m. on Tuesday, August 14, 2018, and continuing thereafter as necessary in Room 307 at the State Capital Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should visit the WQCC website: <http://www.env.nm.gov/wqcc> prior to the hearing. The purpose of the hearing is to consider amendments to the rules on Wastewater Facility Construction Loans, 20.7.5 NMAC ("Rules") proposed by the New Mexico Department of Environment ("NMED").

The amendments would bring the Rules into compliance with recent changes to the Wastewater Facility Construction Loan Act (Sections 74-6A-1 thru 74-6A-15, NMSA 1978).

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Bernadette Gonzales, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

06/10/2018



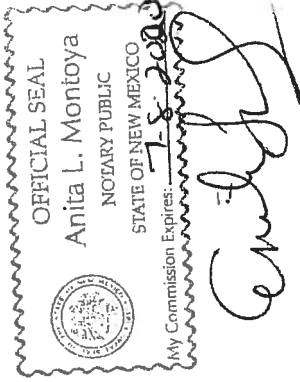
Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

10 day of June of 2018

PRICE \$288.47

Statement to come at the end of month.

ACCOUNT NUMBER 1032474



NEW MEXICO ENVIRONMENT & GOVERNMENT

AVISO DE AUDIENCIA PUBLICA PARA ENMIENDAR 20.7.5 NMAC, PRESTAMOS PARA LA CONSTRUCCION DE INSTALACIONES DE AGUAS RESIDUALES

La Comisión de Control de Calidad del Agua de Nuevo México ("Comisión" o "WQCC" por su sigla en inglés) llevará a cabo una audiencia pública a las 9:00 de la mañana, el martes 14 de agosto de 2018 que continuará según sea necesario en la Sala 307 en el Capitolio del Estado, ubicado en 490 Old Santa Fe Trail, Santa Fe, New Mexico. La ubicación de la audiencia puede cambiar antes de la fecha de la audiencia, y los interesados en asistir deben visitar el sitio web de WQCC: <http://www.env.nm.gov/wqcc> antes de la audiencia. El objetivo de la audiencia es considerar enmiendas a las normas sobre préstamos para



SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lt. Governor

NEW MEXICO ENVIRONMENT DEPARTMENT

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Phone (505) 827-2990 Fax (505) 827-1628
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BUTCH TONGATE
Cabinet Secretary
J. C. BORREGO
Deputy Secretary

July 20, 2018

Small Business Regulatory Advisory Commission
c/o Johanna Nelson
SBRAC Program Manager
New Mexico Economic Development Department
1100 St. Francis Drive, Suite 1242
Santa Fe, New Mexico 87501

Re: Proposed Amendments to 20.7.5 NMAC – *Wastewater Facility Construction Loans*

Dear Deputy Secretary Brazil,

The New Mexico Environment Department (“Department”) hereby provides notice to the Small Business Regulatory Advisory Commission, pursuant to the Small Business Regulatory Relief Act (“Act”), NMSA 1978, Sections 14-4A-1 *et seq.* that the Department submitted a petition to the New Mexico Water Quality Control Commission (“WQCC”) to amend the regulations administering Wastewater Facility Construction Loans found at 20.7.5 NMAC. This program is also known as the Clean Water State Revolving Loan Fund (“CWSRF”)

In 2017 and 2018, the New Mexico Legislature amended the Wastewater Facility Construction Loan Act NMSA 1978, Sections 74-6A-1 to -15, to expand the pool of eligible projects and borrowers for the CWSRF to include, for example, state agencies and certain storm water projects. The Legislature made an additional amendment to change the criteria for determining zero-percent interest loans from median household income to per capita income. These criteria are found in NMSA 1978, Section 74-6A-8(E).

The Legislature’s amendments require the WQCC to amend its regulations administering the CWSRF to ensure that it is in compliance with state statute. The Department proposes to amend 20.7.5 NMAC to incorporate the recent legislative changes.

Pursuant to Section 14-4A-4, NMSA 1978, the Department does not anticipate that the proposed regulatory amendments will have any adverse effect on small business. Indeed, the Department anticipates that adoption of the proposed amendments will help it utilize more of the funds currently residing in the CWSRF. The Department anticipates that this will, in turn, lead to increased construction and use of local businesses.

The WQCC will hold a hearing on the proposed regulatory amendments (Docket No. WQCC 18-01(R)) currently scheduled for Tuesday, August 14, 2018. For details regarding the time and location of the hearing

please check the WQCC website at: <https://www.env.nm.gov/wqcc/>. If you require further information about these proposed regulatory amendments, please call me at (505) 222-9554.

Sincerely,

/s/ Christopher Atencio
Christopher N. Atencio, Esq.
Assistant General Counsel
New Mexico Environment Department

cc: Jennifer Hower, General Counsel
New Mexico Environment Department

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/18
 SPONSOR Crowder LAST UPDATED 2/12/18 HB 66/aHFI#1
 SHORT TITLE Wastewater Project Funding Eligibility SB _____
 ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	Recurring	CWSRF

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB40

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of HFI#1 Amendment

The House Floor amendment to House Bill 66 includes language specifying that eligible wastewater projects and borrowers are those that qualify under the provisions of the federal Clean Water Act as of January 1, 2018.

Synopsis of Original Bill

House Bill 66 (HB66) amends the Wastewater Facility Construction Loan Act (WFCLA) to reflect changes made to the federal Clean Water Act (CWA). HB66 will align the definitions of “qualified borrower” and “eligible projects” with the CWA. The bill will also change the threshold for a zero percent interest loan.

HB66 align the WFCLA with recent amendments to the CWA. HB66 adds definitions for “eligible project” and “qualified borrower,” alphabetizes definitions and makes conforming changes. The eligible project definition encompasses projects including wastewater facilities, nonpoint source water pollution control projects, and watershed projects that meet the criteria of the CWA. The qualified borrower definition provides that any creditworthy borrower eligible pursuant to the CWA (see Attachment 1) may be eligible for CWSRF funding.

The definitions of “eligible project” and “qualified borrower” both reference the CWA and do not attempt to provide an exhaustive list of either. This is done to make the program as flexible as possible to accommodate a wide range of projects while staying within the confines of applicable federal law.

HB66 changes the criteria used to determine if a local authority is eligible for a zero (0%) percent interest rate for a CWSRF loan. Proposed criteria include the use of the local authority’s per capita income (PCI) in place of median household income and user rate analysis as a percentage of income. Use of PCI is proposed because an analysis of census data shows PCI has a lower margin of error and data are available for more communities. The new calculation will be a more accurate portrayal of the local authority’s financial situation and will align with industry standards. Accordingly, to qualify for a 0 percent loan, a local authority must have a PCI less than $\frac{3}{4}$ of the State PCI and average wastewater utility cost greater than 1.82 percent of the local authority’s PCI.

According to NMED, Adoption of HB66 may increase the number and diversity of applicants for CWSRF funding. This may in turn lead to increased utilization of the Fund.

FISCAL IMPLICATIONS

NMED did not report any increased costs to the agency as a result of enactment of the provisions of HB66.

SIGNIFICANT ISSUES

As of November, 2017, NMED reported an unobligated balance in the CWSRF of \$83.5 million. According to NMED, Increased numbers of eligible projects and borrowers will provide for expanded opportunities for the use of the fund and potentially result in higher utilization of the resources available.

Expanding the qualified borrower definition may help NMED make more loans out of the CWSRF as non-government entities will be eligible for funding awards. For example, NMED states:

A CWSRF loan may be provided to any borrower for projects to reuse the energy content of wastewater. This would include privately owned combined heat and power systems that generate energy from wastewater. However, any applications submitted by privately owned system owners will be thoroughly scrutinized on a case by case basis to assure compliance with both EPA guidance and the Anti-Donation Clause with the understanding that loans cannot be executed if they will result in an Anti-Donation Clause violation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB66 duplicates SB40.

CJ/al

**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PROPOSED
REVISIONS TO: 20.7.5 NMAC –
Wastewater Facility Construction Loans**

No. WQCC 18-01 (R)

PROPOSED STATEMENT OF REASONS

1. This matter comes before the New Mexico Water Quality Control Commission (“Commission”) pursuant to the Petition for Regulatory Change properly filed by the New Mexico Environment Department (“Department”) on April 2, 2018, and docketed at WQCC 18-01 (R). *See* Petition for Regulatory Change.
2. At a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Commission granted the Petition for Regulatory Change and scheduled a public hearing for this matter on Tuesday, August 14, 2018, at the State Capitol Building in Santa Fe, New Mexico to be held in accordance with 20.1.6 NMAC, Rulemaking Procedures – Water Quality Control Commission; the Wastewater Facility Construction Loan Act, Section 74-6A-9(A)(10) NMSA 1978 (“Act”); and other applicable procedures.
3. The Commission held the aforementioned hearing on Tuesday, August 14, 2018, and at this hearing the Commission heard testimony from the Department and admitted exhibits into the record. *See generally* Admin Record.
4. The public hearing was properly noticed pursuant to the requirements of 20.1.6.201 NMAC. NMED Exhibit 4, p. 1.

5. Specifically, the notice was published in the New Mexico Register on June 12, 2018. NMED Exhibit 7.
6. Additionally, the Notice was published in the *Albuquerque Journal* on June 10, 2018. NMED Exhibit 8.
7. The Department filed a Notice of Intent to Present Technical Testimony on July 25, 2018.
8. No other parties submitted a Notice of Intent to Present Technical Testimony.
9. The Wastewater Facility Construction Loan Act (“Act”) (NMSA 1978, §§ 74-6A-1 to -15 (1986)) creates the Wastewater Facility Construction Loan Fund, which is also referred to as the Clean Water State Revolving Loan Fund (“CWSRF”).
10. 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. NMSA 1978, § 74-6A-2 (2018).
11. The CWSRF is funded through a mixture of federal and state dollars pursuant to a capitalization grant agreement. 33 U.S.C. § 1382.
12. 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.
13. The Commission may, “...establish procedures [and] adopt regulations...as required to administer the clean water administrative fund in accordance with the Clean Water Act and state law.” NMSA 1978, § 74-6A-4.1(A) (2007).

14. The Commission has the power to, "...adopt regulations necessary and appropriate to implement the provisions of the Wastewater Facility Construction Loan Act." NMSA 1978, § 74-6A-9(A) (2017).
15. 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); NMSA 1978, § 74-6A-8(B); NMED Exhibit 5.
16. State agencies and local authorities may receive financial assistance from the CWSRF. *Id.*; NMSA 1978, 74-6A8(B) (2017).
17. 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. NMED Exhibit 4, p. 1.
18. On June 10, 2014, President Obama signed the Water Resources Reform and Development Act of 2014 ("WRRDA"). WRRDA, H.R. 3080, 113th Cong. (2014).
19. 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 funds. Generally, the EPA's guidance expands the entities eligible for CWSRF funding as well as the potential eligible projects. NMED Exhibit 4, p. 3.
20. 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); NMED Exhibit 6.

21. The 2018 amendments to the Act changed 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 States Code. *Id.*

22. The 2018 amendments to the Act changed 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. *Id.*

23. The 2018 amendments to the Act 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. *Id.*

24. The 2018 amendments to the Act changed 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. *Id.*

25. The 2018 amendments to the Act changed NMSA 1978, Section 74-6A-8(E) to list 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.*

26. The Bureau's proposed amendments to 20.7.5 NMAC expand the list of potential eligible applicants for CWSRF as well as potential projects. This will allow for greater drawdown of currently available funds and fulfilment of the purposes of the Act. NMED Exhibit 4, p. 7. This serves the public interest.

27. The Commission has the authority to approve these proposed amendments pursuant to NMSA 1978, Sections 74-6A-4.1(A) and 74-6A-9(A).

28. The proposed amendments are adopted for any or all of the reasons stated above.

ORDER

By a unanimous vote of a quorum of the Commission members, the proposed revisions were approved by the Commission on August 14, 2018. Amendments to 20.7.5 NMAC, with any appropriate corrections of typographical errors or formatting shall be filed with the New Mexico State Records Center. Notice of the Commission Action shall be completed pursuant to 20.1.6.307 NMAC. The regulatory change as described in this Order is hereby adopted, to be effective upon the date of publication in the New Mexico Register. NMSA 1978, § 14-4-5(D) (2017).

Larry Dominguez, Chair
New Mexico Water Quality Control Commission

Dated: _____

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/17

SPONSOR Crowder/Martinez, R LAST UPDATED _____ HB 415

SHORT TITLE State Agency Wastewater Project Financing SB _____

ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			None			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

NM Environment Department (NMED)

SUMMARY

Synopsis of Bill

House Bill 415 (HB415) amends the Wastewater Facility Construction Loan Act (“WWFCLA”), also known as the Clean Water State Revolving Loan Fund (“CWSRF”), to include state agencies as entities eligible to receive CWSRF funds. State agencies are eligible entities for funding under federal regulations, but have not been included in the state statute.

FISCAL IMPLICATIONS

As of January 3, 2017, the CWSRF had a cash balance of \$150 million, nearly \$90 million of which was unobligated. HB415 could result in a higher CWSRF utilization rate, meaning more funds would be loaned out and distributed to a broader constituency for the planning, design, and construction of eligible wastewater and storm water projects throughout the state. Historically, the fund has been under-utilized due to a lack of demand for loan funds. Creating a broader community of eligible entities will be useful in creating more demand for the funds and assist with a lack of funds available to state agencies to address wastewater and storm water needs.

SIGNIFICANT ISSUES

While HB415 will allow state agencies to apply for and receive CWSRF loans, the program requires a repayment stream and the ability of agencies to take on debt. Some agencies may not

have a repayment stream, such as a user fee or permit fees. This issue will have to be reviewed on a case by case basis depending on the agency to ensure compliance with statutory and constitutional provisions. NMED notes state agencies' ability to take on debt will have to be researched in more detail by a variety of entities at the state level.

PERFORMANCE IMPLICATIONS

NMED analysis states:

Passage of HB 415 will provide more funding options to state agencies to address wastewater and storm water issues. It will provide a larger market for CWSRF funds to be utilized and assist the state in addressing potential ground water and surface water impacts from outdated facilities.

ADMINISTRATIVE IMPLICATIONS

NMED's Construction Programs Bureau administers the CWSRF program for the Water Quality Control Commission ("WQCC"). The interest rate charged to eligible entities is determined by a variety of indicators and is five percent or less as determined by the commission. 74-6A-8(D) NMSA 1978. Currently, the interest rate charged is based on the borrower's per capita income ("PCI") and sewer user fees. Because neither PCI nor user fees would apply to a state agency, an appropriate interest rate to charge state agencies will need to be determined. This process can be done by the Environment Department and the results codified in a rule making process by the WQCC. NMED will also need to amend department rules governing the application process to reflect changes in the WQCC regulations and statute.

JA/sb

**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PROPOSED
REVISIONS TO: 20.7.5 NMAC –
Wastewater Facility Construction Loans**

No. WQCC 18-01 (R)

PROPOSED STATEMENT OF REASONS

1. This matter comes before the New Mexico Water Quality Control Commission (“Commission”) pursuant to the Petition for Regulatory Change properly filed by the New Mexico Environment Department (“Department”) on April 2, 2018, and docketed at WQCC 18-01 (R). *See* Petition for Regulatory Change.
2. At a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Commission granted the Petition for Regulatory Change and scheduled a public hearing for this matter on Tuesday, August 14, 2018, at the State Capitol Building in Santa Fe, New Mexico to be held in accordance with 20.1.6 NMAC, Rulemaking Procedures – Water Quality Control Commission; the Wastewater Facility Construction Loan Act, Section 74-6A-9(A)(10) NMSA 1978 (“Act”); and other applicable procedures.
3. The Commission held the aforementioned hearing on Tuesday, August 14, 2018, and at this hearing the Commission heard testimony from the Department and admitted exhibits into the record. *See generally* Admin Record.
4. The public hearing was properly noticed pursuant to the requirements of 20.1.6.201 NMAC. NMED Exhibit 4, p. 1.

5. Specifically, the notice was published in the New Mexico Register on June 12, 2018. NMED Exhibit 7.
6. Additionally, the Notice was published in the *Albuquerque Journal* on June 10, 2018. NMED Exhibit 8.
7. The Department filed a Notice of Intent to Present Technical Testimony on July 25, 2018.
8. No other parties submitted a Notice of Intent to Present Technical Testimony.
9. The Wastewater Facility Construction Loan Act (“Act”) (NMSA 1978, §§ 74-6A-1 to -15 (1986)) creates the Wastewater Facility Construction Loan Fund, which is also referred to as the Clean Water State Revolving Loan Fund (“CWSRF”).
10. 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. NMSA 1978, § 74-6A-2 (2018).
11. The CWSRF is funded through a mixture of federal and state dollars pursuant to a capitalization grant agreement. 33 U.S.C. § 1382.
12. 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.
13. The Commission may, “...establish procedures [and] adopt regulations...as required to administer the clean water administrative fund in accordance with the Clean Water Act and state law.” NMSA 1978, § 74-6A-4.1(A) (2007).

14. The Commission has the power to, "...adopt regulations necessary and appropriate to implement the provisions of the Wastewater Facility Construction Loan Act." NMSA 1978, § 74-6A-9(A) (2017).

15. 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); NMSA 1978, § 74-6A-8(B); NMED Exhibit 5.

16. State agencies and local authorities may receive financial assistance from the CWSRF. *Id.*; NMSA 1978, 74-6A8(B) (2017).

17. 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. NMED Exhibit 4, p. 1.

18. On June 10, 2014, President Obama signed the Water Resources Reform and Development Act of 2014 ("WRRDA"). WRRDA, H.R. 3080, 113th Cong. (2014).

19. 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 funds. Generally, the EPA's guidance expands the entities eligible for CWSRF funding as well as the potential eligible projects. NMED Exhibit 4, p. 3.

20. 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); NMED Exhibit 6.

21. The 2018 amendments to the Act changed 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 States Code. *Id.*

22. The 2018 amendments to the Act changed 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. *Id.*

23. The 2018 amendments to the Act 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. *Id.*

24. The 2018 amendments to the Act changed 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. *Id.*

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Larry Dominguez, Chair
New Mexico Water Quality Control Commission

Dated: _____