

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

IN THE MATTER OF:

No. WQCC 20-52

**PROPOSED CHANGES TO PROJECT PRIORITY RANKING
SYSTEM AND INTEREST RATE SET FOR FY2021**

**NEW MEXICO ENVIRONMENT DEPARTMENT'S
REQUEST FOR APPROVAL OF WASTEWATER FACILITY CONSTRUCTION LOAN FUND
PROJECT PRIORITY RANKING SYSTEM AND INTEREST RATES FOR FY2021**

Pursuant to NMSA 1978, Section 74-6A-7(B) (2018) and 20.7.5.12(B) NMAC, the New Mexico Environment Department (“Department”) requests that the New Mexico Water Quality Control Commission (“Commission”) approve the proposed Project Priority Ranking System attached hereto as Attachment 1. Additionally, pursuant to 20.7.5.14(G) NMAC, the Department requests that the Commission approve a change to the base interest rate and alternative interest rates for the Wastewater Facility Construction Loan Fund, also known as the Clean Water State Revolving Loan Fund (“CWSRF”).

I. PRIORITY RANKING SYSTEM

The Project Priority Ranking System (“PRS”) is the scoring system that the Department uses to rank projects for placement on the Priority List. 20.7.6.12(B) NMAC. The priority list is a list of eligible projects that have applied for CWSRF funding ranked by points determined by the priority ranking system; projects not on the Priority List are ineligible for financial assistance from the CWSRF. NMSA 1978, § 74-6A-8(A)(7) (2018); 20.7.5.10(B) and 20.7.5.12(A) NMAC. The Priority List is included as a part of the State’s Intended Use Plan (“IUP”). 33 U.S.C. § 1386(c). The IUP is the document submitted to EPA to describe the work that will take place in the CWSRF program for the upcoming fiscal year. The Department submits the draft IUP to EPA around July

1st each year, and it updates the IUP quarterly to add new projects to the priority list that have applied since the last submission.

The Department requests changes to the current PRS to:

1. Reflect changes made to the Wastewater Facilities Construction Loan Act, NMSA 1978, Sections 74-6A-1 to -15, in 2017 and 2018;
2. Remove financial considerations from the ranking system to eliminate the redundancy with the Affordability Criteria already required by the Clean Water Act; and
3. To more fully consider the merits of proposed projects relative to water quality and pollution reduction or remediation.

a. Current Priority Ranking System

The Commission adopted the current ranking system on January 24, 2014, with clarifications made January 23, 2018. The Department notes the following about the current PRS:

1. The current PRS considers either groundwater improvement and compliance or surface water improvement and compliance. It does not allow points in both categories. Attachment 2, Water Quality Improvement, p. 1; NMED attachment 4, p. 1. This system also provides specific point categories that do not encompass the impacts on water quality and/or pollution prevention of non-traditional projects. *Id.*
2. The current PRS considers affordability or greatest financial need, by evaluating socioeconomic metrics including per capita income, population, user fees, and rate structure to award subsidy. Attachment 2, Financial/Affordability, p. 3.

3. The current PRS ranks sustainability through regionalization, utility maintenance, water efficiency, and non-point source best management practices. Attachment 2, Sustainability, p. 5.
4. The current system includes Readiness to Proceed. Attachment 2, p. 6.

In 2014, the newly adopted Water Resources Reform and Development Act (“WRRDA”) required states to consider Affordability Criteria. 33 U.S.C. § 1383(i)(2). Pursuant to WRRDA, Affordability Criteria must consider income data, unemployment data, and population trends. *Id.* New Mexico implemented Affordability Criteria for its CWSRF in 2016, creating redundancy between it and the current PRS. See NMED Attachment 3. Ultimately, this redundancy distorted the environmental scoring by overweighing the socio-economic scoring. Prior to implementation of the Affordability Criteria, the PRS was the means to consider socio-economic criteria. However, the primary purpose of the CWSRF is to improve and protect water quality and public health. NMSA 1978, § 74-6A-2 (2018). The Department seeks to ensure that those points are not diluted by financial criteria. Further, in addition to the Affordability Criteria, the Department uses interest rate conditions that consider the income of the applicant relative to the statewide average, and in the case of a 0% rate, the user fees of the applicant. See 20.7.5.14(H) NMAC. Thus, these factors are likewise redundant.

b. Proposed Priority Ranking System

To address some of issues identified above, the Department requests that the Commission adopt the proposed PRS. The Department notes the following highlights of the proposed PRS:

1. Allows consideration of both groundwater and surface water scores, including awarding of points for both categories. Attachment 1, Water Quality Improvement, p. 1. The proposed PRS allows both the Department's Surface Water Quality Bureau and Ground Water Quality Bureau to award points. The Department may award points based on science, data, innovation, and compliance considerations comprehensively, as opposed to setting a scoring matrix. Many projects impact both ground and surface water and should, therefore, be awarded points for both. Technical staff will conduct the scoring for surface water and ground water, ensuring that the project's water quality impacts are the most important part of the ranking system.
2. Allows sustainability points not only for regionalization and utility maintenance, as in the previous PRS, but also for licensed/certified operators and environmentally aware concepts, such as: water efficiency, energy efficiency, green infrastructure and environmental innovation, climate vulnerability assessments, or the ability to address climate change threats. NMED Attachment 1, Sustainability, pp. 3-4.
3. Allows points for readiness to proceed. The proposed PRS allows points for completion of required planning documents, environmental reviews, and construction plans. This awards more points to applications ready to proceed with a project in short order. This is critical to provide projects that are construction ready with higher points so that funds are expended in an expeditious manner. NMED Attachment 1, Readiness to Proceed, p. 4.
- 4.

Importantly, the Department will still consider socioeconomic factors through Affordability Criteria and interest rates, a function of per capita income, to be determined through the rate conditions set in policy and presented to this Commission.

II. BASE INTEREST RATE

a. Background

The Department also requests that the Commission set a base interest rate for FY2021 and alternative interest rates. Assuming the Commission adopts the rule change in the matter heard earlier in the day, WQCC 20-07(R), those rule changes are not effective until published in the New Mexico Register. 1.24.1.7(E)(1) NMAC. The Commission must set the base interest rate pursuant to NMSA 1978, Section 74-6A-8(D). Thus, the Commission must still set the base interest rate regardless of the proposed amendments to 20.7.5 NMAC, and the Department will not have the authority to set alternative rates until the amended rule is effective. To avoid delay in applying new rates to existing loan applications, the Department asks the Commission to set a base rate and alternative rates pursuant to its statutory authority. However, the Department recognizes that approval of zero-percent interest rates still rests with the Department. NMSA 1978, § 74-6A-8(E). The zero-percent rate is included in this section for clarity.

If approved by the Commission the base rate and alternative rates would be effective upon approval, allowing the Department to utilize the new rates for all loans executed prospectively. That is to say, all loans made after the Commission's approval will be made at the proposed rates. Further, existing loans will have the ability to refinance if it is financially feasible and fits the borrower's circumstances. The Department will analyze existing loans, determine those eligible for refinancing, and reach out to those borrowers to discuss.

The Department proposes to adjust the interest rate to make the loans more affordable to communities and loan more money to local authorities needing wastewater or storm water infrastructure. The Department’s goal is to utilize more of the available CWSRF balance to meet wastewater and stormwater infrastructure needs across the state. The proposed rate structure is shown in Table 1 below.

Table 1 – Proposed interest rates beginning October 2020

Interest Rate	Borrower Type	Rate Criteria
1.0%	Local Authority	Per capita income equal to or above statewide average
.5%	Local Authority	Hardship Rate--Per capita income less than that statewide average
0%	Local Authority	Hardship Rate--Per capita income less than three-fourths of the statewide per capita income and the average user cost is greater than one and eighty-two hundredths percent of the local authority’s per capita income.
.5%	State Agency	The lowest interest rate available above zero percent.
2.375%	All other eligible borrowers	

b. Rate Development

The Department developed the proposed rates based on a review of state programs beyond New Mexico. Specifically, the Department researched the interest rates used by all states for their CWSRF programs. This information is included as NMED Attachment 5. The national CWSRF average interest rate is 1.5% based on 2019 data from the CWSRF reported data to EPA. NMED Attachment 5. The Commission set New Mexico’s current top interest rate in 2017, lowering it from 3% to 2.375%. 20.7.5.14(H) NMAC.

In 2018, New Mexico’s per capita income (“PCI”) was approximately 78% of the national average, according to American Community Survey provided by the United States Census Bureau. Thus, setting an interest rate lower than the national CWSRF average interest rate was

reasonable because it aligns the rate closer to actual income levels. Wastewater systems are the primary borrowers for CWSRF loans and are funded primarily through user fees. This creates the correlation between PCI and CWSRF interest rates. Additionally, the current economic situation spurred by COVID-19 is putting greater stress on utilities as utilities are forced to cope with an increase in rate payer delinquencies, further underscoring the income to interest rate relationship. Assuming the proposed tiered interest rate structure, the CWSRF financial staff ran the financial model used to project the fund balance in the program annual report. This model indicated that there would be adequate funds available for the loan program in “perpetuity” with the proposed rates. “Perpetuity” is term of art used in state programs to analyze the loan fund assuming EPA discontinued making capitalization grants to the states. See 33 U.S.C. § 1382(b)(11). The model is used to ensure that the program is permanently available to make loans for eligible projects.

Since the last time the Commission lowered interest rates in 2017, market rates have continued to fall, and New Mexico’s CWSRF has fallen behind in lowering rates due to the long process to change interest rates. As discussed in the arguments for the 20.7.5 NMAC amendments, it is critical to be able to lower rates quickly to be competitive with other available funding sources. The New Mexico Finance Authority Public Project Revolving Fund can finance many of the same types of projects funded by the CWSRF; their interest rates are adjusted monthly based on market conditions. Without a change to the present interest rates, the CWSRF remains difficult to market due to competition from capital outlay and other loan programs not subject to the federal requirements such as compliance with the National Environmental Policy Act (“NEPA”), Davis Bacon wage rates, American Iron and Steel, and Disadvantaged Business

Enterprises requirements. See NMSA 1978, § 6-21-6. Thus, competitive interest rates are imperative to making loans.

In the proposed rate table, the Department simplified the tiered structure for alternative interest rates from four levels to three. The Department did this to clarify the rate structure for the public and to eliminate unnecessary complexities in the program. The Department uses the alternative interest rate tiered structure to determine the interest rate for local authorities based on the income level of the authority compared to the statewide income levels. If a local authority has a PCI that is less than the statewide PCI as determined by the most recent U.S. Bureau of Census statistics, then the proposed maximum interest rate charged will be 0.5%. If the local authority has a PCI less than three-fourths of the statewide PCI and an average user cost greater than one and eighty-two hundredths (1.82%) of the local authority's per capita income, then the proposed maximum interest rate will be zero percent (0%). The calculation of average user cost shall be consistent with a statewide methodology established by the Department. With these changes, the CWSRF should be more marketable across the state, and alternative interest rates will be better able to serve communities in need of these loans.

III. CONCLUSION

The Department respectfully requests that the Commission approved the proposed Priority Ranking System and sets the rates as indicated in Table 1. Adopting the proposed Priority Ranking System will better balance the environmental considerations of each project in ranking applications. Additionally, setting the proposed interest rates will allow the Department to increase drawdowns of the CWSRF and better serve New Mexican communities.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

**Christopher
Atencio**

Digitally signed by
Christopher Atencio
Date: 2020.08.19 16:21:13
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Christopher Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102-3400
Telephone: (505) 222-9554
christopher.atencio@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Approval of Wastewater Facility Construction Loan Fund Project Priority Ranking System and Interest Rates for FY2021 was served by electronic mail to the following on August 19, 2020.

Robert F. Sanchez
New Mexico Attorney General's Office
rfsanchez@nmag.gov
Commission Counsel



Christopher Atencio