

WRITTEN TESTIMONY OF RHONDA HOLDERMAN

PURPOSE OF 20.7.5 NMAC, “WASTEWATER FACILITY CONSTRUCTION LOANS” AND REVISIONS TO PROJECT PRIORITY RANKING SYSTEM

The purpose of the Wastewater Facility Construction Loan Act (NMSA 1978, Sections 74-6A-1 to -15) (“Act”) is to provide local authorities and other eligible borrowers in New Mexico with low cost financial assistance in the construction of necessary water quality projects through the creation of a self-sustaining program to improve and protect water quality and public health. These projects may include wastewater and storm water drainage projects that protect surface and ground water, including projects that control nonpoint source water pollution and projects involving solid waste and septic tank installations. The Clean Water State Revolving Loan Fund (“CWSRF”) is funded through a mixture of federal and state dollars pursuant to a capitalization grant agreement. 33 U.S.C. § 1382. The Construction Programs Bureau (“Bureau”) administers the CWSRF pursuant to the Act and 20.7.5, .6, and .7 NMAC.

The Bureau proposes that the Water Quality Control Commission revise the definition of the base interest rate and grant the Bureau the authority to establish other interest rates and interest rate conditions through policy.

Notice for this hearing was published in the New Mexico Register on May 5, 2020, in English and Spanish. NMED Exhibit 5. It was also published in English and Spanish in the *Albuquerque Journal*, on May 15, 2020. NMED Exhibits 6 and 7. Notice was properly provided pursuant to 20.1.6.201 NMAC. This includes notice to the New Mexico Small Business Regulatory Advisory Commission required by NMSA 1978, Section 14-4A-4. NMED Exhibit 8. Evidence of other required forms of notice is included as NMED Exhibits 9, 10, 11, and 12. The Bureau could not post notice at its offices because its offices were and remain closed to the public. NMED

Exhibit 13.

My written direct testimony consists of excerpts from the rule that capture the substantive proposed changes. Following each excerpt is a brief explanation for the change in italics. My resume and professional background is included as NMED Exhibit 3. A full copy of the proposed amendments to 20.7.5 NMAC is included as NMED Exhibit 2. For the WQCC's convenience, a proposed Statement of Reasons adopting the amendments is included as NMED Exhibit 15.

PROPOSED CHANGES TO 20.7.5 NMAC

20.7.5.7 Definitions

C. "Base Rate" means the highest loan interest rate.

The Bureau requests the addition of "Base Rate" to the definitions for 20.7.5 NMAC. This addition clarifies the rate structure outlined in 20.7.5.14 NMAC since all other rates would be an exception to this rate. Other changes to this section are for organization.

20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND 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.]~~ J. 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 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 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.~~

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%	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. (H.)(4)(a)(b)]

Local authority interest rates and interest rate conditions shall be determined by the department and reported to the commission at the beginning of each state fiscal year.

The Bureau requests changes to 20.7.5.14 NMAC to clarify Section F. The Bureau also requests to remove Section H. to allow NMED the ability to set local authority interest rates and associated rate conditions that will be less than the base rate set by the WQCC. By removing these rates from this section, the Bureau will have more flexibility to change the rates through policy and thereby have the ability to adapt to current economic trends. The Bureau will report changes of the local authority interest rates at the beginning of each fiscal year to the WQCC to ensure that the changes are properly monitored.

As the Bureau noted in its Petition for Regulatory Change, the New Mexico Finance Authority ("NMFA") has taken action in recent years and highlighted the difficulties that the Bureau has in responding to real world conditions. Currently, the hardship criteria and rates are codified at 20.7.5.14(H) NMAC. The base rate is codified in the table located at 20.7.5.14(H) NMAC. To change the base rate as contemplated by 20.7.5.14(G) NMAC or the local authority criteria and rates, the WQCC must conduct a rulemaking to amend the regulations. However,

neither state nor federal law requires these conditions to be codified as can be seen in NMSA 1978, Sections 74-6A-8(A), (D), or (E) or 33 U.S.C. § 1383(d) and (i). NMFA administers the similar Drinking Water State Revolving Loan Fund and establishes hardship criteria and rates through policy and procedures. Section VI, NMED Exhibit. 14. The Drinking Water State Revolving Loan Fund Act, NMSA 1978, Sections 6-21A-1 to -10, states that financial assistance may be made at an annual interest rate less than the market rate as determined by NMFA procedures and reported annually in the Intended Use Plan. NMSA 1978, § 6-21A-6(E). NMFA currently lists the interest rates for the Drinking Water State Revolving Loan Fund in Section VII of the Drinking Water State Revolving Loan Management Policy. Allowing the Bureau the same flexibility as NMFA will help increase annual drawdown of the CWSRF.

Local authority interest rate conditions will consist of a rate for local authorities with a per capita income ("PCI") at or above the statewide average PCI; a rate for local authorities with a PCI less than the statewide average; and a 0% rate, pursuant to NMSA 1978, Section 74-6A-8(E), for local authorities with a PCI less than three-fourths of the statewide PCI and an average user cost greater than 1.82% of the local authority PCI.

The Bureau also requests removal of language restricting the distribution of grant subsidies only to rural communities and allow the Bureau to award grant subsidy funds based on a combination of Project Priority List ranking and financial capability to service a loan to any eligible public borrower. By utilizing the Project Priority Ranking to award grant subsidy, the emphasis will be water quality considerations and pollution reduction, as opposed to population. Funding awards including subsidy consider socioeconomic and population factors through the Affordability Criteria as required by the Clean Water Act.

In order to assist communities with projects that will be funded in FY2021, the Bureau further requests, in another agenda item today, that the Commission approve proposed interest rates for FY2021 of the following:

- *Base Rate of 2.375% for private borrowers*
- *1% for Local Authorities with a PCI equal to or greater than the statewide average*
- *.5% for Local Authorities with a PCI less than the statewide average.*

This will make these rates effective immediately, and borrowers may take advantage of the lower rates without having to wait until the changes to 20.7.5 NMAC become effective and for the Department to set the new rates.

Conclusion

This concludes my written testimony. For the reasons included in above, I and the Bureau respectfully request that the Commission adopt the changes to 20.7.5 NMAC as proposed; doing so will allow the Department to better manage the CWSRF and increase drawdowns of current and future amounts.