

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF PROPOSED CHANGES
TO PROJECT PRIORITY RANKING SYSTEM
AND INTEREST RATE FOR FY2021.

WQCC No. 20-52

ORDER

THIS MATTER came before the New Mexico Water Quality Control Commission (“Commission”) at its regularly scheduled meeting held on September 8, 2020, on the New Mexico Environment Department’s (“Department”) Request for Approval of Wastewater Facility Construction Loan Fund Project Priority Ranking System and Interest Rates for FY2021. Based on the presentation by the Department’s technical staff to the Commission and the related exhibits submitted by the Department to the Commission, the Commission FINDS:

1. The Commission’s meeting was duly held, and notice of this matter was properly given to the public in accordance with NMSA 1978, § 10-15-1(D) (2013) of the Open Meetings Act, §§ 10-15-1 to -4 (1974, as amended through 2019), and with the Commission’s Annual Open Meetings Act Resolution. *See, Commission Minutes for September 8, 2020 Meeting.*
2. The New Mexico Legislature has required the Commission to adopt a system for ranking eligible projects for financial assistance under the Wastewater Facility Construction Loan Act, NMSA 1978, §§ 74-6A-1 to -15 (1986, as amended through 2019). NMSA 1978, § 74 6A-7(B) (1991); *see also Commission rule 20.7.5.12(B) NMAC.*
3. The Project Priority Ranking System (“PRS”) in 20.7.5.12 NMAC is the scoring system the Department uses to rank project applications for placement on the Project Priority List for

the Clean Water State Revolving Loan Fund (“CWSRF”). *See*, 20.7.6.12(B) NMAC; NMED Request for Approval of Wastewater Facility Construction Loan Fund Project Priority Ranking System and Interest Rates for FY2021 (“Department’s Request”), p. 1.

4. CWSRF financial assistance is only provided to projects (*i.e.*, qualified borrowers) on the Project Priority List. NMSA 1978, § 74-6A-8(A)(7) (2018); 20.7.5.10(B) NMAC; 20.7.5.12(A) NMAC; *See*, Department’s Request, p. 1.
5. The Department requested changes to the PRS to:
 - a. Reflect changes made in 2017 and 2018 to the Wastewater Facilities Construction Loan Act;
 - b. Remove financial considerations from the PRS to eliminate redundancy with the Affordability Criteria already required under the Clean Water Act, 33 U.S.C §§ 1251, *et seq.* (1972); and
 - c. More fully consider the merits of proposed projects relative to water quality and pollution reduction or remediation. *See*, Department’s Request, p. 2.
6. The current PRS does not allow ranking points for projects that impact both ground water and surface water. *See*, Department’s Request, p. 2.
7. The inclusion of financial considerations and the Affordability Criteria creates a redundancy in evaluating projects for CWSRF financial assistance. *See*, Department’s Request, p. 3.
8. The statutory purpose of the CWSRF is to provide 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. NMSA 1978, § 74-6A-2 (2018); *See*, Department's Request, p. 3.

9. The Department's proposed PRS:

- a. Allows consideration of groundwater and surface water scores, and awards points for both categories. *See*, Department's Request, NMED Attachment 1, Water Quality Improvement, p. 1.
- b. Allows sustainability points for regionalization; utility maintenance; licensed/certified operators; and environmentally aware concepts, including water efficiency, energy efficiency, green infrastructure and environmental innovation, climate vulnerability assessments, and ability to address climate change threats. *See*, Department's Request, NMED Attachment 1, Sustainability, pp. 3-4.
- c. The Department's proposed PRS provides adequate consideration of financial Affordability Criteria, including income data, unemployment data, and population trends, through the Affordability Criteria adopted in 2016 pursuant to the Water Resources Reform and Development Act, 33 U.S.C. § 1383(i)(2) (2018) (*see*, Department's Request, p. 3; NMED Attachment 3), as well as through annual loan interest rate (*see*, Department's Request, p. 5).

10. Based on a discussion between the Department's technical staff and the Commission at the September 8, 2020 meeting, up to 150 additional points will be awarded for Sustainability Criteria. Further, these criteria will include changes to the language in "Sustainability," as noted on page 4 of NMED Attachment 1.

11. The Commission may determine the base annual interest rate for financial assistance at the beginning of each State fiscal year. *See*, NMSA 1978, § 74-6A-8(D) (2018); 20.7.5.14(G) NMAC.
12. The Commission has by previous Order approved rule changes to 20.7.5 NMAC (“Wastewater Facility Construction Loans”), allowing the Department to set alternative interest rates; however, those rule changes will not be effective until published in the New Mexico Register. *See*, Department’s Request, p. 5.
13. The Department’s proposed base interest rates and alternative interest rates in Table 1 of its Request sufficiently reflect a review of other States’ CWSRF programs and New Mexico’s per capita income. *See*, Department’s Request, pp. 6-7.
14. Adoption of the rates in Table 1 of Department’s Request will allow the CWSRF to be more competitive while still maintaining the CWSRF in perpetuity. *See*, Department’s Request, pp. 6-7.

Based on the foregoing findings, the Commission hereby approves and adopts (A) the Department’s proposed PRS attached to this Order as Attachment 1; and (B) the proposed base interest rate and alternative rates set forth in Table 1.

IT IS SO ORDERED.

Dated this 6th day of October, 2020.

Jennifer Pruett

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Jennifer J. Pruett, Chair
New Mexico Water Quality Control Commission

PRIORITY RANKING SYSTEM FOR POINT SOURCE AND NON-POINT SOURCE PROJECTS

CRITERIA FOR PROJECTS PRIORITY RANKING SYSTEM

The Clean Water State Revolving Fund (CWSRF) program may be used for a wide variety of water quality protection efforts. The State's CWSRF Projects Priority Ranking System is used to evaluate and rank applications for projects based on several criteria. The priority ranking system awards the most points to projects that provide the highest level of water quality protection. Projects are ranked based on their contribution to water quality protection or restoration, the applicant's commitment to promoting sustainable infrastructure through asset(s) management, water and energy efficiencies, green infrastructure, environmentally innovative approaches, and the project's readiness to proceed.

Financial need and repayment capability of the applicant is addressed through the Affordability Criteria and through the application of annual interest rates as provided in 20.7.5 NMAC. In 2014, the Clean Water Act was amended by the Water Resources Reformation and Development Act (WRRDA). Included in the WRRDA was a requirement that all State CWSRF programs implement Affordability Criteria. The Affordability Criteria evaluates population trends, unemployment rates, and income as metrics to assess financial capability. New Mexico's CWSRF Affordability Criteria is available on the NMED's website [<https://www.env.nm.gov>].

POINT VALUES

WATER QUALITY IMPROVEMENT

This section is comprised of two factors used to evaluate the extent to which the proposed projects will protect water quality. Projects may receive up to 200 points from the ground water quality and/or the surface water quality improvement factor(s). Points may be awarded in both categories, if appropriate.

GROUND WATER QUALITY IMPROVEMENT FACTOR AND PERMIT COMPLIANCE 200 POINTS POSSIBLE

The Ground Water Quality Improvement Factor evaluates each project on how well it will protect, or correct impairments to, ground water resources. The NMED Ground Water Quality Bureau will assign points for ground water quality protection and improvement based on the following factors:

- Project addresses exceedances of one or more ground water quality standards;
- Project corrects individual wastewater disposal systems or wastewater discharge polluting ground water;
- Project addresses repeated failures including:
 - Plant disruption;
 - Bypasses;
 - Overflows;

- Project addresses known or potential ground water contamination;
- Project addresses facilities at or near capacity;
- Project includes measures to address Infiltration and inflow issues;
- Project addresses need for increased effluent disposal area to prevent nitrogen over-loading;
- Project includes site investigation or delineation of a known contamination;
- Project implements correct action or abatement plans for sites with ground water contamination;
- Project addresses discharges that adversely affect public health or safety;
- Project addresses permit requirements;
- Project addresses closure or corrective action requirements of no longer used system components;
- Project addresses regulatory compliance issues;
- Project addresses other ground water quality issues not included in these listed items.

SURFACE WATER QUALITY IMPROVEMENT FACTOR AND PERMIT COMPLIANCE

200 POINTS POSSIBLE

The Surface Water Quality Improvement Factor evaluates how well a proposed project addresses impairment of surface waters from both point source and non-point source pollution. The NMED Surface Water Quality Bureau will assess whether the project addresses exceedances in water quality standards and/or protects the designated uses of lakes, rivers, streams and other water bodies. Points for surface water quality will be awarded based on:

- Project includes infrastructure that will assist facilities in meeting an approved or draft TMDL;
- Project addresses water quality impairments identified in the most recent EPA approved 303(d) list;
- Projects enhances protection of one or more of the following designated uses of the receiving water:
 - Irrigation
 - Drinking Water Source
 - Livestock Watering
 - Wildlife Habitat
 - Aquatic Life
 - Recreation (*e.g.*, Boating, Swimming)
 - Ceremonial Uses
- Project addresses protection of receiving waters that flow through designated critical habitat for threatened or endangered species;
- Project implements corrective measures of a diagnostic study;
- Project includes elimination of septic systems through hook-up to public wastewater treatment;
- Project addresses sustainability and reduces overall water demand;
- Project implements BMP's designed to improve water quality;
- Project addresses regulatory compliance issues;
- Project addresses other surface water quality issues not specifically listed in these criteria.

SUSTAINABILITY

Sustainable wastewater and storm water infrastructure are critical to protecting limited water resources in New Mexico. It is important to consider how projects may increase sustainability in affected communities. Sustainability can include ensuring the cost and effectiveness of infrastructure investments, and efficient operation and management of the assets over time.

Physical regionalization or consolidation is also an important technique to help smaller systems move into the future with adequate resources to remain sustainable. Regionalization points will be awarded only for those projects that combine two or more existing systems into a single legal entity. Points will not be awarded for such things as the sharing of employees or other services.

Facilities should employ effective utility management practices to build and maintain the technical, financial, and managerial capacity necessary to ensure the long-term sustainability of wastewater infrastructure assets. The scoring criteria below were developed to capture the merits of project planning methodologies that address best practices in utility management, development of sustainable communities, and protection of both point source and non-point source infrastructure investments.

Projects should incorporate environmental efficiencies whenever possible. Projects that demonstrate and address environmental concerns through concepts such as water and energy efficiency, green infrastructure and innovation that addresses environmental concerns will be awarded points. Descriptions of each applicable category included in the project must be outlined in the application.

- **Green Infrastructure (GI):** GI includes a wide array of practices that manage and treat stormwater and maintain and restore natural hydrologic regimes by infiltration, evapotranspiration, and the capture and use of stormwater. Eligible projects may include, but are not limited to, riparian restoration, constructed wetlands and floodplains, bioretention, water harvesting (cisterns and distribution pipes) and reuse programs, and other practices that mimic natural hydrology and reduce impervious surfaces such as green streets that include permeable pavement, trees, green roofs and expansion of tree boxes. Equipment to maintain green streets such as vector trucks.
- **Water Efficiency (WE):** Use of improved technologies and practices to deliver equal or better services with less water. Eligible projects may include collection system leak detection equipment, installation of systems to recycle gray water, water reclamation, recycling and reuse, and efficient landscape or irrigation equipment. Retrofit or replace existing water meters to add automatic read (AMR) capability or leak detection equipment.
- **Environmentally Innovative (EI):** Projects that demonstrate new and/or improved approaches to manage water resources, achieve pollution prevention or pollutant removal with reduced costs. Eligible projects may include decentralized wastewater treatment solutions to existing deficient or failing on-site systems, water reuse projects that reduce energy consumption, recharge aquifers, or reduce water withdrawals and treatment costs, use of water resources management approaches, and projects that use water budgets at the project, local, or state level that preserve site, local or regional hydrology.

- Energy Efficiency (EE): Use of improved technologies and practices to reduce the energy consumption of water quality projects, including projects to produce clean energy used by a treatment works. Eligible projects may include energy efficient retrofits and upgrades to pumps and treatment processes including SCADA systems and variable frequency drives (VFD) for pumps, leak detection equipment for treatment works, and producing clean power with wind, solar, micro-hydroelectric, geothermal, or biogas combined heat and power.

**SUSTAINABILITY
150 POINTS POSSIBLE**

Points for sustainability will be awarded for:

- Project regionalizes/consolidates two or more existing systems;
- Project demonstrates adequate rate structure to maintain facility operations;
- Project entity has Licensed/Certified Operators and will continue to do so;
- Project is incorporating environmentally aware concepts such as:
 - Water efficiency, reuse, and/conservation;
 - Energy efficiency;
 - Environmentally innovative components/aspects;
 - Green infrastructure
- Project includes a climate vulnerability assessment;
- Project addresses climate change threats to infrastructure;
- System has a rate structure that addresses replacement costs at design life of project.

READINESS TO PROCEED

An important goal of the CWSRF program is to ensure the timely and expeditious use of funds. To achieve this goal, NMED will evaluate applications and the associated documents that provide a reasonable measure of how close an eligible applicant may be to starting the project. Points for Readiness to Proceed will be awarded for:

**READINESS TO PROCEED
100 POINTS POSSIBLE**

NMED will evaluate the following documents and corresponding approval status:

- Preliminary Engineering Report, Feasibility Study, or Technical Memorandum; 25 points
- Environmental Information Documents or Categorical Exclusion Request; 25 points
- Construction Plans and Specifications; 50 points

TOTAL SCORING

Scoring Factor	Points Available
Ground water quality improvement and permit compliance	200
Surface water quality improvement factor and permit compliance	200
Sustainability	150
Readiness to proceed	100
Total	650

Certificate of Service

I hereby certify that on 10/7/20 a copy of the foregoing Final Order was emailed to the persons listed below. A copy can be mailed via U.S. first-class mail upon request.

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