

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The New Mexico Water Trust Board (Board) will hold a public hearing on Friday, March 14, 2025, from 10:00 – 11:00 a.m. The hearing will be conducted virtually via Zoom; the public may attend the hearing using the following methods:

Friday, March 14, 2025, 10:00-11:00 a.m. Mountain Time

Zoom Meeting Link:

<https://nmfa-net.zoom.us/j/84700538751?pwd=RbIY04DPjhF1SwpvBG54vt0fLQmlJP.1>

Meeting ID: 847 0053 8751

Passcode: 852858

To join the meeting by phone, dial:

+16694449171,,84700538751#,,,,*852858# US -or-

+17193594580,,84700538751#,,,,*852858# US

Find your local number: <https://nmfa-net.zoom.us/j/kcxR5DTpKE>

The purpose of the rule hearing is to obtain input and public comment on proposed rule amendments relating to 19.25.10 NMAC, review and eligibility of proposed water projects, consistent with changes made to the Water Project Finance Act, Laws 2024, Ch. 9 (House Bill 211 Approved February 28, 2024).

Copies of the proposed rule may be accessed online at <https://www.nmfinance.com/water-trust-board> or contact Board staff at OGC@nmfa.net, (505) 984-1454, or toll free 1-800-ASK-NMFA (1-877-275-6632).

The Board will accept written public comments on the proposed rule beginning February 11, 2025. Please submit written comments on the proposed rule to the NMFA via electronic mail at OGC@nmfa.net, or by regular mail at 810 W. San Mateo Road, Santa Fe, NM 87505. Written comments must be received no later than 5 p.m. on March 14, 2025. Comments received prior to the rule hearing will be posted to the Board website at <https://www.nmfinance.com/water-trust-board>. Interested persons will also be given the opportunity to present their comments during the rule hearing.

Individuals who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact the Board Staff as soon as possible at OGC@nmfa.net, (505) 984-1454, or toll free 1-800-ASK-NMFA (1-877-275-6632). The Board requests advance notice to provide required special accommodations at least one week prior to the meeting or as soon as possible.

Statutory Authority: Legal authority for this rulemaking may be found in the Water Project Finance Act, Section 72-4A-1 et seq., NMSA 1978, specifically 72-4A-5. Pursuant to Section 72-4A-6, NMSA 1978, the New Mexico Finance Authority is responsible for providing necessary administrative staff support to the Water Trust Board.

Proposed Amendment:

This is an amendment to 19.25.10 NMAC, Sections 6, 7, 8, 11, and 18, effective April 22, 2025.

19.25.10.6 OBJECTIVES:

A. Section 72-4A-5, NMSA 1978 provides that the New Mexico water trust board is required to adopt rules governing terms and conditions of grants and loans recommended by the board for appropriation by the state legislature from the water project fund giving priority to projects that have urgent needs, that have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission and that have matching contributions from federal or local funding sources; and authorizes qualifying water projects to the authority that are for: (1) storage, conveyance or delivery of water to end users; (2) implementation of federal Endangered Species Act of 1973; (3) restoration and management of watersheds; (4) flood prevention; and (5) conservation, recycling, treatment or reuse of water as provided by law. Additionally, the

board shall create a drought strike team to coordinate responses to emergency water shortages caused by drought conditions. Section 72-4A-9, NMSA 1978, creates the “water project fund” within the New Mexico finance authority.

B. Section 72-4A-5, NMSA 1978, provides that the board shall give priority to qualifying water projects that (1) have been identified by the board as being urgent to ~~[meet the needs of a regional water planning area that has had a completed regional water plan accepted by the interstate stream commission]~~ address public health and safety issues; (2) have matching contributions from federal or local funding sources available and (3) have obtained all requisite state and federal permits and authorizations necessary to initiate the qualifying water project. The purpose of these rules is to set forth the intent of the board and to outline, in general terms, the criteria and procedures to be used in evaluating and funding qualifying water projects.

C. Section 72-4A-5, NMSA 1978, provides that the board shall evaluate projects, including their environmental impacts, and recommend projects to the interstate stream commission pursuant to the provisions of Section 72-14-45, NMSA 1978.

~~[C]~~ **D.** Section 72-4A-6, NMSA 1978, provides that the authority shall provide support for the water trust board, develop application procedures and forms for qualifying entities to apply for grants and loans from the water project fund; and make loans or grants to qualifying entities for qualifying water projects authorized by the state legislature, provided that the service area for the project is wholly within the boundaries of the state or the project is an interstate project that directly benefits New Mexico.

~~[D]~~ **E.** Section 72-4A-9, NMSA 1978, provides that the authority may adopt separate procedures and rules for administration of the water project fund and recover from the water project fund costs of administering the water project fund and originating grants and loans.

[19.25.10.6 NMAC - Rp, 19.25.10.6 NMAC, 7/31/2008; A, 4/22/2025]

19.25.10.7 DEFINITIONS:

A. “**Act**” means the Water Project Finance Act, Sections 72-4A-1 through 72-4A-10, NMSA 1978, as the same may be amended and supplemented.

B. “**Agreement**” means the document or documents signed by the board and a qualifying entity which specify the terms and conditions of obtaining financial assistance from the water project fund.

C. “**Applicant**” means a qualifying entity which has filed a water project proposal with the authority for initial review and referral to the board’s project review committee.

D. “**Authority**” means the New Mexico finance authority.

E. “**Authorized representative**” means one or more individuals duly authorized to act on behalf of the qualifying entity in connection with its financial application, water project proposal or agreement.

F. “**Board**” means the New Mexico water trust board created by the act.

G. “**Bylaws**” means the bylaws of the board adopted on September 25, 2001, and amended on June 27, 2007, and as may be further amended and supplemented.

H. “**Financial application**” means a written document filed with the authority by an applicant for the purpose of evaluating the applicant’s qualifications for types of financial assistance which may be provided by the board.

I. “**Financial assistance**” means loans, grants and any other type of assistance authorized by the act, or a combination thereof, provided from the water project fund to a qualified entity for the financing of a qualifying water project.

J. “**Policy committee**” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review policies and policy related matters and make recommendations to the full board.

K. “**Political subdivision**” means a municipality, county, land grant-merced controlled and governed pursuant to Section 49-1-1 through 49-1-18 or 49-4-1 through 49-4-21 NMSA 1978, regional or local public water utility authority created by statute, irrigation district, conservancy district, special district, acequia or soil and water conservation district, water and sanitation district, or an association organized and existing pursuant to the Sanitary Projects Act, Chapter 3, Article 29 NMSA 1978.

L. “**Project review committee**” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review water projects to be recommended for funding from the water project fund.

M. “**Qualifying entity**” means a state agency, a political subdivision of the state, an intercommunity water or natural gas supply association or corporation organized under Chapter 3, Article 28 NMSA 1978, a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico or

an association of such entities created pursuant to the Joint Powers Agreement Act, Chapter 11, Article 1 NMSA 1978 or other authorizing legislation for the exercise of their common powers.

N. “Qualifying water project” means a project recommended by the board for funding by the legislature which includes a water project serving an area wholly within the boundaries of the state for (1) storage, conveyance or delivery of water to end users; (2) implementation of federal Endangered Species Act of 1973 collaborative programs; (3) wastewater conveyance and treatment; (4) restoration and management of watersheds; ~~[(4)]~~(5) flood prevention; or ~~[(5)]~~ (6) conservation, recycling, treatment or reuse of water as provided by law and which has been approved by the state legislature pursuant to Subsection B of Section 72-4A-9, NMSA 1978.

O. “State” means the state of New Mexico.

P. “State agency” means any agency or institution of the state.

Q. “Water project account” means a fund designated by a qualifying entity exclusively for receipt of financial assistance.

R. “Water project fund” means the fund of that name created in the authority by Section 72-4A-9, NMSA 1978.

S. “Water project proposal” means a written proposal submitted by a qualifying entity for review by the project review committee.

T. “Water trust fund” means the fund of that name created in the state treasury by Section 72-4A-8, NMSA 1978.

[19.25.10.7 NMAC - Rp, 19.25.10.7 NMAC, 7/31/2008; A, 12/30/2013; A, 4/22/2025]

19.25.10.8 ELIGIBILITY: PRIORITIZATION OF WATER PROJECTS: The board will develop and consider a variety of factors in reviewing and evaluating water project proposals to determine which water projects to recommend as qualifying water projects for appropriation by the state legislature. The board shall give priority to projects that have urgent needs ~~[, that have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission]~~ and that have matching contributions from federal or local sources as provided for in Section 72-4A-5 NMSA 1978. Pursuant to Section 72-4A-5.1 NMSA 1978, the board, in conformance with the state water plan and pursuant to the provisions of the Water Project Finance Act, shall prioritize the planning and financing of water projects required to implement the plan. The board shall identify opportunities to leverage federal and other funding. The board shall establish policies for prioritization of water projects.

[19.25.10.8 NMAC - Rp, 19.25.10.8 NMAC, 7/31/2008; A, 12/30/2013; A, 4/30/2015; A, 4/22/2025]

19.25.10.11 QUALIFYING WATER PROJECTS AND ELIGIBLE COSTS:

A. The board may authorize the authority to provide financial assistance from the water project fund to qualifying entities only for qualifying water projects as provided by Section 72-4A-6 and Section 72-4A-7, NMSA 1978.

B. Financial assistance shall be made only to qualify entities that:

(1) agree to provide for the operation and maintenance of the water project so that it will function properly over the structural and material design life ~~[, which shall not be less than twenty years];~~

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18, NMSA 1978;

(3) provide written assurance signed by an attorney or provide a title insurance policy that the political subdivision has proper title, easements and rights of way to the property upon or through which the water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the ~~[board]~~ authority to ensure sufficient revenues to operate and maintain the water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records ~~[and to do an audit of the project’s financial records]~~ in accordance with all applicable laws; and

(6) agree to pay costs of originating grants and loans as determined by rules adopted by the ~~[board]~~ authority.

C. Plans and specifications for a water project shall be approved by the ~~[New Mexico environment department or by another appropriate agency designated by the]~~ authority after review and upon the recommendation of the state engineer and the department of environment before grant or loan disbursements to pay for construction costs ~~[is]~~ are made to a qualifying entity. Plans and specifications for a water project shall incorporate available technologies and ~~[operations]~~ operational design for water efficiency.

D. Financial assistance shall be made for eligible items, which include:

- (1) matching requirements for federal and local cost shares;
- (2) engineering feasibility reports;
- (3) contracted engineering design;
- (4) inspection of construction;
- (5) special engineering services;
- (6) environmental or archeological surveys;
- (7) construction;
- (8) land acquisition;
- (9) easements and rights of way; and
- (10) legal costs~~[and fiscal agent fees within limits set by the board]~~.

E. A qualified entity which has had financial assistance approved by the state legislature for financing a qualifying water project may apply to the board to redirect the financial assistance to a different water project made necessary by unanticipated events. The decision to redirect the financial assistance to a different qualifying water project will be at the sole discretion of the board and subject to approval of the state legislature as required by Section 72-4A-9(B), NMSA 1978.

[19.25.10.11 NMAC - Rp, 19.25.10.11 NMAC, 7/31/2008; A, 5/28/2010; A, 4/22/2025]

19.25.10.18 ADMINISTRATION OF THE WATER PROJECT FUND:

A. The water project fund shall be administered by the authority as a separate account but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money in the water project fund may be used by the authority to (i) make loans or grants to qualified entities recommended by the water trust board, (ii) hire contractors to provide financial and administrative capacity development and direct technical assistance to entities on water projects, and (iii) pay administrative costs of the authority.

C. Money from repayments of loans made by the board for qualifying water projects shall be deposited in the water project fund. The water project fund shall also consist of any other money appropriated, distributed or otherwise allocated to the water project fund for the purpose of financing qualifying water projects.

~~[C]~~ **D.** The authority shall adopt a uniform accounting system for the water project fund and each account and subaccount established by the authority, based on generally accepted accounting principles.

~~[D]~~ **E.** The authority may establish procedures and adopt rules as required to administer the fund and to recover from the fund costs of administering the fund and originating grants and loans.

[19.25.10.18 NMAC - Rp, 19.25.10.18 NMAC, 7/31/2008; A, 4/22/2025]