

This is an amendment to 19.25.10 NMAC. Sections 6, 7, 8, 9, 11, 13, 14, 15, and 16 are amended, effective April 15, 2004.

19.25.10.6 OBJECTIVES:

A. 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 pursuant to Section 72-4A-5, NMSA 1978. Section 72-4A-9, NMSA 1978, creates the “water project fund” within the New Mexico Finance Authority and authorizes the authority to establish procedures and rules as required to administer the water project fund. The authority may adopt separate procedures and rules for administration of the water project fund and to recover from the water project fund costs of administering the water project fund and originating financial assistance.

B. Section 72-4A-5, NMSA 1978, provides that the board shall give priority to qualifying water projects that (i) ~~have urgent needs;~~ (ii) have been identified ~~[for implementation]~~ as being urgent to meet the needs of a regional water planning area that has had [of] a completed regional water plan ~~[that is]~~ accepted by the interstate stream commission; ~~and (iii)~~ (ii) have matching contributions from federal or local funding sources available and (iii) 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.

[19.25.10.6 NMAC - N, 09/16/02; A, 04/15/04]

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 ~~[qualified]~~ qualifying entity which specify the terms and conditions of obtaining financial assistance from the water project fund.

C. “**applicant**” means a ~~[qualified]~~ qualifying entity which has filed a water project proposal with the authority for initial review and referral to the project 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 ~~[qualified]~~ 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, as 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. “**political subdivision**” means a municipality, county, irrigation district, conservancy district, special district, ~~[acequia or]~~ acequia, soil and water conservation district, water and sanitation district or an association organized and existing pursuant to the Sanitary Projects Act (Sections 3-29-1 through 3-29-19 NMSA 1978, as amended and supplemented) or any combination thereof operating pursuant to a joint powers agreement.

K. “**[qualified] qualifying entity**” means ~~[a political subdivision or]~~ a state agency, a political subdivision of the state or a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico.

L. “**qualifying water project**” means a water project serving an area wholly within the boundaries of the state for (i) storage, conveyance or delivery of water to end users; (ii) implementation of federal Endangered Species Act of 1973 collaborative programs; (iii) restoration and management of watersheds; ~~[or]~~ (iv) flood prevention; or (v) conservation, recycling, treatment or reuse of water as provided by law and which has been recommended by the board for funding by the state legislature and which has been approved by the state legislature pursuant to Section 72-4A-9(B), NMSA 1978.

M. “**state**” means the State of New Mexico.

N. “**state agency**” means any agency or institution of the state.

O. “**water project account**” means a fund designated by a ~~[qualified]~~ qualifying entity exclusively for receipt of financial assistance.

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

Q. “water project proposal” means a written proposal submitted by a [qualified] qualifying entity for review by the project review committee.

R. “water 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.

S. “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 - N, 09/16/0; A, 04/15/04]

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. In addition to other factors deemed relevant by the board, those factors will include the items described in this Section 19.25.10.8 NMAC.

A. Regional Dispersion. The board will consider the location of the water project in the State of New Mexico and will attempt to ensure that qualifying water projects are dispersed throughout the state to the benefit of all citizens of the state.

B. Local Effort. The amount of local financial, in-kind-contribution, political and infrastructure support and resources given to the water project will be evaluated by the board. Water projects must demonstrate significant local support, especially in the area of committed financial resources and in-kind-contributions (including contributions by individual property owners as well as public contributions) to meet local cost share requirements. When evaluating local support, the board will consider and evaluate the support and available resources of the local entities affected by the proposed water project when the proposed water project is located in or overlaps more than one jurisdiction.

C. Ability to Pay. A water project that benefits or is suggested by a [qualified] qualifying entity that has ability to pay will be expected to receive a loan instead of a grant in order to maximize the number of qualifying water projects that can be funded from the limited financial resources expected to be available in the water project fund. Water projects that do not benefit a definitive group or entity or that are suggested by a [qualified] qualifying entity without the ability to repay a loan may receive a grant instead of a loan. The ability to pay will be evaluated by the authority in accordance with the financial application submitted by the [qualified] qualifying entity.

D. Ability to Leverage Federal Funds. The board will analyze the amount of federal funding committed or likely to be committed for construction and completion of the water project. If federal funding is not anticipated to be available within 3 years of the estimated start date of the water project, no consideration will be given to federal funding for the particular water project.

E. Priority. ~~[Projects]~~ Water projects which:
(1) ~~[have urgent needs]~~ have been identified 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;
(2) ~~[have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission;]~~ have matching contributions from federal or local funding sources available; and
(3) ~~[have matching contributions from federal or local funding sources may]~~ have obtained all requisite state and federal permits and authorizations necessary to initiate the water project shall be given priority by the board.

F. Scientific, Hydrologic and Biological Studies. Water projects must be backed by sound and established scientific, hydrologic and biological studies prepared by registered engineers, hydrologists, biologists or other consultants acceptable to the board which demonstrate that the water project will accomplish its planned objectives.

G. Comprehensive Solution/Measurable Outcome. The planned objective of a water project must be comprehensive in scope, address all of the component parts necessary to accomplish its planned objective and lead to measurable outcomes.

H. Immediate Threats to Public Health, Safety and Welfare. Water projects required to eliminate an immediate threat to public health, safety and welfare may be given priority consideration by the board; however, the board expects most qualifying water projects will address long term water uses and needs.

I. Readiness to Proceed. An applicant should demonstrate that adequate planning, engineering, evaluation and study have been or are scheduled to be completed for the water project to allow construction or implementation to begin upon receipt of financial assistance.

J. Cost-Effectiveness of Water Project. An applicant should demonstrate that the water project is the most cost-effective method of accomplishing its planned objective. The board expects that alternative methods and cost analysis of accomplishing the planned objective will be explored by an applicant prior to submitting a water project to the board. A summary of the alternatives will be reviewed by the board and the board may consult independent advisors regarding alternative methods of accomplishing the planned objectives of a water project.

K. Life of Water Project. The planned objective of a water project should provide a solution to the need for the predicted life of the water project. Projections and forecasts supporting the adequacy of a storage, delivery or conveyance project to address the water needs for 40 years should be provided by the applicant. Water projects addressing other objectives should be supported by projections and forecasts demonstrating the expected life of the water project.

L. Urgent ~~[Needs]~~. Water projects intended to address problems that are expected to become severe within five (5) years of the date of application shall be considered ~~[as addressing urgent needs as described in]~~ urgent under the act.

M. Water Rights. An applicant proposing a storage, delivery or conveyance water project must demonstrate that adequate water rights are or will be owned or controlled to allow the water project to accomplish its planned objectives.

[19.25.10.8 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.9 WATER PROJECT PROPOSAL, PROCEDURES AND APPROVAL PROCESS:

A. The board and the authority will administer an outreach program to notify ~~[qualified]~~ qualifying entities that water project proposals are being accepted to identify water projects for review by the water project review committee and the board for recommendation for funding to the state legislature as qualifying water projects.

B. The authority will provide forms and/or guidelines for water project proposals and financial applications. A water project proposal and financial application must include the following:

- (1) information required to allow the board to give the water project a priority ranking pursuant to Section 19.25.10.8 of these Rules;
- (2) type of financial assistance being sought and itemization of the proposed uses of the financial assistance;
- (3) detailed description of the water project to be evaluated, which information must include:
 - (a) description of the scope of work of the water project;
 - (b) estimated cost of the water project;
 - (c) target date for the initiation of the water project and the estimated time to completion;
 - (d) estimated cost/benefit analysis for the water project;
 - (e) estimated life of the water project;
 - (f) the availability of performance bonds and insurance for the water project; and
 - (g) other financial and technical data as requested by the authority or the board;
- (4) letter certifying that the water project was duly approved by the applicant's governing body;
- (5) identification of the source of funds for repayment of the financial assistance and the source of funds to operate and maintain the water project over its useful life;
- (6) requested type of financial assistance, *i.e.*, loan or grant; and
- (7) additional information as requested by the authority or the board.

C. The authority staff will forward all completed water project proposals to the water project review committee. The water project review committee will consider the water project and may confer with outside parties, including any local interdisciplinary teams familiar with the water project, as necessary to obtain more information on the feasibility, merit, and cost of the water project. The water project review committee will make a written recommendation to the board on each water project proposal. Such recommendation will include approval or disapproval of specific water project proposals as qualifying water projects.

D. Once a recommendation has been made on the water project proposal by the water project review committee, the board will act on the water project proposal no later than the next regular board meeting at which such item may be properly considered. The board may approve all or part of the water project proposal as recommended by the water project review committee.

E. Commencing in 2003, a ~~[qualified]~~ qualifying entity shall submit its water project proposal and financial application to the authority no later than first day of June of any year for review if the water project is to be considered at the next regular legislative session. After completion of the review process and approval of the water project proposal by the water project review committee and the board and receipt of a favorable recommendation on the water project proposal, the water project will be recommended by the board for approval by the state legislature

at the next regular session of the state legislature, which recommendation and approval are required by Sections 72-4A-5 and 72-4A-9, NMSA 1978. Water projects [~~intended to address urgent needs~~] entitled to priority under 19.25.10.8 (E) NMAC may be submitted after the first day of June of any year and may still be considered at the next regular legislative session.

[19.25.10.9 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.11 QUALIFYING WATER PROJECTS AND ELIGIBLE COSTS:

A. The board and the authority may provide financial assistance from the water project fund to [~~qualified~~] qualifying entities only for qualifying water projects. As provided by Section 72-4A-7, NMSA 1978, eligible items which may be financed from the water project fund 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.

B. 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 - N, 09/16/02; A, 04/15/04]

19.25.10.13 FINANCING APPROVAL REQUIREMENTS: Based on the priority and evaluation factors set forth in Sections 19.25.10.8 and 19.25.10.10, the board may recommend approval of the qualifying water project and financial assistance to the applicant provided the following requirements are satisfied:

A. In approving an application for financial assistance, the board shall find that the qualifying water project is important to the overall needs of the state and its citizens.

B. In determining the qualification for financial assistance, the board shall consider the ability of a [~~qualified~~] qualifying entity to secure financing from other sources and the costs of the financial assistance.

C. In approving a grant application, the board shall first consider if the applicant has the ability to repay a loan.

D. In approving a loan application, the board must find that the useful life of the qualifying water project will meet or exceed the maturity of the loan made.

F. In approving a loan application, the board must find that the applicant has the financial capability to ensure that sufficient revenues will be available to operate and maintain the qualifying water project for its useful life and to repay the loan.

G. To be eligible for financial assistance, the applicant must agree to properly maintain separate project accounts and financial records in accordance with generally accepted accounting principles during the construction or implementation of the qualifying water project and, in the case of a loan, to conduct an annual audit of the qualifying water project's financial records during its useful life.

H. In order to receive financial assistance, the [~~applicant~~] qualifying entity must provide title insurance with respect to the qualifying water project or a written assurance, signed by an attorney, that the [~~qualified~~] qualifying entity has or will acquire proper title, easements and rights-of-way to the property upon or through which the qualifying water project is to be constructed or extended.

I. Any contract or subcontract executed for the completion of any qualifying water project shall contain a provision that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin.

J. In order to receive financial assistance, the applicant must require any contractor providing construction services for a qualifying water project to post a performance and payment bond in accordance with the requirements of Section 13-4-18, NMSA 1978.

K. In order to receive financial assistance, the [qualified] qualifying entity must agree to operate and maintain a qualifying water project addressing storage, conveyance and delivery needs so that it will function properly over the structural and material design life, which shall not be less than 20 years.

L. In order to receive financial assistance, the [qualified] qualifying entity must agree to pay the costs of originating grants and loans from the proceeds of the grant or loan or from other legally available moneys of the [qualified] qualifying entity.

M. In order to receive financial assistance, the [qualified] qualifying entity must agree to provide plans and specifications for the qualifying water project to the [board] authority for approval after review and upon the recommendation of the state engineer and department of environment, before any financial assistance disbursements to pay for construction costs are made for the qualifying water project. Plans and specifications for a qualifying water project shall incorporate available technologies and operational design for water use efficiency.

N. In addition to the foregoing, a [qualified] qualifying entity must satisfy any other requirements as may be determined by the board.

[19.25.10.13 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.14 APPEALS. Any applicant or [qualified] qualifying entity may appeal a decision of the board by notifying the board in writing within forty-five days of the date on which notice of an adverse decision is given by the board to an applicant. Notice is deemed to be given on the fifth business day following the date on which written notice is mailed to the applicant by the board by U.S. mail. Appeals not timely or properly made will be barred thereafter. The chairman of the board will promptly review each timely appeal and will recommend, at the next regular meeting of the board, action to be taken by the board on the appeal. The board will review and take action on the appeal and will notify the applicant or [qualified] qualifying entity of the board's decision, in writing, within five working days of the board's decision. The decision of the board is final.

[19.25.10.14 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.15 FINANCIAL ASSISTANCE AGREEMENT:

A. The board and the [qualified] qualifying entity will enter into an agreement to establish the terms and conditions of financial assistance from the board. The agreement will include the terms of repayment and remedies available to the board in the event of a default. The board, or the authority, on behalf of the board, will monitor terms of the agreement and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection.

B. The interest rate on any financial assistance extended shall be determined by the authority based on the cost of funds and ability of a [qualified] qualifying entity to repay a loan. The interest rate shall not change during the term of the financial assistance unless refinanced or unless the financial assistance is structured as a variable rate obligation.

C. The agreement will contain provisions which require financial assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. In the event of default under a financial assistance agreement by a [qualified] qualifying entity, the board, or the authority, on behalf of the board, may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

[19.25.10.15 NMAC - N, 09/16/02; A, 04/15/04]

19.25.10.16 ADMINISTRATIVE FEES:

A. The board may impose and collect a reasonable fee in connection with the filing of a water project proposal or a financial application for approval of a water project and for financial assistance with the board and the authority. The board also may impose and collect an administrative fee from each [qualified] qualifying entity that receives financial assistance from the water project fund. If an administrative fee is assessed, the administrative fee will be a percentage of the principal amount of the financial assistance provided to a [qualified] qualifying entity. The administrative fee may be withheld from the principal amount of the financial assistance and will be retained in the water project fund. Alternatively, the board may levy an annual fee equal to a percentage of the outstanding principal amount of a loan. Specific percentages will be based on, among other things, the volume of financial assistance being provided to [qualified] qualifying entities, the administrative costs of the board and the authority, and the availability of other revenue sources to cover the board's and the authority's administrative costs. The filing and administrative fee or fees may be used for, among other purposes, reimbursing the board or the authority for all or part of the costs of issuing bonds and other administrative costs, including any audits of the water project fund and the water trust fund.

B. The board and the authority may establish such other charges, premiums, fees and penalties deemed necessary for the administration of the water project fund and the water trust fund.
[19.25.10.16 NMAC - N, 09/16/02; A, 04/15/04]