

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 25 ADMINISTRATION AND USE OF WATER-GENERAL PROVISIONS**  
**PART 10 REVIEW AND ELIGIBILITY OF PROPOSED WATER PROJECTS**

**19.25.10.1 ISSUING AGENCY:** New Mexico Water Trust Board.  
[19.25.10.1 NMAC - Rp, 19.25.10.1 NMAC, 7/31/08]

**19.25.10.2 SCOPE:** All persons applying for financial assistance under the water project fund from the New Mexico finance authority, NMSA 1978, 72-4A-5 and NMSA 1978, 72-4A-9.  
[19.25.10.2 NMAC - Rp, 19.25.10.2 NMAC, 7/31/08]

**19.25.10.3 STATUTORY AUTHORITY:** NMSA 1978, 72-4A-5 and NMSA 1978, 72-4A-9.  
[19.25.10.3 NMAC - Rp, 19.25.10.3 NMAC, 7/31/08]

**19.25.10.4 DURATION:** Permanent.  
[19.25.10.4 NMAC - Rp, 19.25.10.4 NMAC, 7/31/08]

**19.25.10.5 EFFECTIVE DATE:** July 31, 2008, unless a later date is cited at the end of a section.  
[19.25.10.5 NMAC - Rp, 19.25.10.5 NMAC, 7/31/08]

**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 (i) 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; (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.

**C.** 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.** 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, 7/31/08]

**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 (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; (iv) flood prevention; or (v) conservation, recycling, treatment or reuse of water as provided by law and which has been approved by the state legislature pursuant to Section 72-4A-9(B), 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, 7/31/08; A, 12/30/13]

**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, 7/31/08; A, 12/30/13; A, 4/30/15]

**19.25.10.9 WATER PROJECT PROPOSAL, PROCEDURES AND APPROVAL PROCESS:**

**A.** The authority will administer an outreach program to notify qualifying entities that water project proposals are being accepted to identify water projects for review by the 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 guidelines for water project proposals and financial applications.

**C.** The authority staff will forward all completed water project proposals from qualified applicants for qualified water projects to the project review committee. The 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 project review committee will make a recommendation to the board on each water project proposal.

**D.** Upon the recommendation of the project review committee, the board will evaluate the qualifying water projects for recommendation to the legislature.

**E.** After completion of the review process by the 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, which recommendation and approval are required by Sections 72-4A-5 and 72-4A-9, NMSA 1978.

**F.** No later than January of each year, the board will recommend to the legislature a list of projects recommended for funding. After the legislature authorizes qualifying water projects, the project review committee will review evaluations of financial applications and water project proposals prepared by staff and recommend to the board a final list of projects to be authorized by the board for funding by the authority. The authority will provide financial assistance for qualifying projects as authorized by the legislature under policies jointly established by the board and authority.

[19.25.10.9 NMAC - Rp, 19.25.10.9 NMAC, 7/31/08; A, 12/30/13; A, 4/30/15]

**19.25.10.10 EVALUATION OF FINANCIAL APPLICATION AND WATER PROJECT PROPOSAL:**

The authority staff will complete an initial evaluation of the financial application and water project proposal upon receipt. Such evaluation will include, to the extent applicable, an evaluation of water project feasibility, administrative capacity, financial position, debt management and economic and demographic factors. The authority may rely upon the advice of an interdisciplinary team in evaluating water project proposals and financial applications.

[19.25.10.10 NMAC - Rp, 19.25.10.10 NMAC, 7/31/08]

**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 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; and
- (6) agree to pay costs of originating grants and loans as determined by rules adopted by the board.

**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 before grant or loan disbursement to pay

for construction costs is made to a qualifying entity. Plans and specifications for a water project shall incorporate available technologies and operations 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, 7/31/08; A, 5/28/10]

**19.25.10.12 QUALIFYING WATER PROJECT FINANCING:** The authority may provide financial assistance packages that include loans, grants and any other type of assistance authorized by the authority. The structure, terms and conditions of the financial assistance will be determined by the authority. Financial assistance for qualifying water projects may be pooled, at the sole discretion of the authority, under policies jointly established by the board and authority.

[19.25.10.12 NMAC - Rp, 19.25.10.12 NMAC, 7/31/08; A, 4/30/15]

**19.25.10.13 FINANCING APPROVAL REQUIREMENTS:** Based on the priority and evaluation factors set forth in Sections 19.25.10.8, 19.25.10.10, and 19.25.10.11, the board may recommend to the authority approval of the qualifying water project for financial assistance.

[19.25.10.13 NMAC - Rp, 19.25.10.13 NMAC, 7/31/08]

**19.25.10.14 RECONSIDERATION OF BOARD DECISIONS:** Any applicant or qualifying entity may request reconsideration of a decision of the board by notifying the board in writing within 15 days following the meeting at which the decision was made. Notice of a decision made in an open meeting of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for reconsideration, including any factual or legal matter on which the applicant or qualifying entity believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chairman of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant or qualifying entity of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.

[19.25.10.14 NMAC - Rp, 19.25.10.14 NMAC, 7/31/08; A, 5/28/10]

**19.25.10.15 FINANCIAL ASSISTANCE AGREEMENT:**

**A.** The authority and the qualified entity will enter into an agreement to establish the terms and conditions of financial assistance from the water project fund. The agreement will include the terms of repayment and remedies available to the authority in the event of a default. The authority 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 on any financial assistance extended shall be determined by the authority based on the cost of funds and ability of a qualified 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 entity, the authority 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 - Rp, 19.25.10.15 NMAC, 7/31/08; A, 12/30/13]

**19.25.10.16 ADMINISTRATIVE COSTS:**

**A.** The board may impose and collect reasonable fees and costs 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 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 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 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 - Rp, 19.25.10.16 NMAC, 7/31/08]

**19.25.10.17 ADMINISTRATION OF THE WATER TRUST FUND:**

**A.** The water trust fund shall be administered by the state treasurer's office and shall be invested by the state investment officer in the same manner as land grant permanent funds are invested under state law. All investment earnings on the water trust fund shall be credited to the water trust fund. The water trust fund shall not be expended for any purpose.

**B.** Annual distributions to the water project fund from the water trust fund shall be made as required by the authority.

[19.25.10.17 NMAC - Rp, 19.25.10.17 NMAC, 7/31/08]

**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 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.** 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.** 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, 7/31/08]

**19.25.10.19 BOND ISSUANCE:**

**A.** The authority may issue and sell revenue bonds as required to provide funds to:

(1) replenish the principal balance of the water project fund;

(2) pay, fund or refund the principal of or interest or redemption premiums, if any, on bonds issued by the authority whether the bonds or interest to be paid, funded or refunded have or have not become due;

(3) establish or increase reserve funds to secure bonds; and

(4) pay the costs and expenses incident to the issuance of bonds.

**B.** The authority will consider market and other economic conditions in determining the type of sale and the timing of the issuance of bonds.

**C.** The bonds shall be authorized and issued by the authority in accordance with the provisions of the New Mexico Finance Authority Act, Chapter 6, Article 21, NMSA 1978.

[19.25.10.19 NMAC - Rp, 19.25.10.19 NMAC, 7/31/08]

**19.25.10.20 AMENDMENT OF RULES:** This rule may be amended or repealed at any time by a majority vote of a quorum of the board.

[19.25.10.20 NMAC - Rp, 19.25.10.20 NMAC, 7/31/08]

**HISTORY OF 19.25.10 NMAC:**

**Pre-NMAC History:** None.

**History of Repealed Material:**

19.25.10 NMAC, Review and Eligibility of Proposed Water Projects (filed 9/3/2002) repealed 7/31/08.

**NMAC History:**

19.25.10 NMAC, Review and Eligibility of Proposed Water Projects (filed 9/3/2002) was replaced by 19.25.10 NMAC, Review and Eligibility of Proposed Water Projects, effective 7/31/08.