

# New Mexico's Capacity to Effectively Manage Clean Water Infrastructure Funds Faces Challenges

June 5, 2024 | Report No. 24-E-0042



## This Report Is Part of an Oversight Series

The IIJA allocated \$11.7 billion over five years for the CWSRF Program, a federal-state partnership that provides low-cost financing to communities for water infrastructure projects. This represents an unprecedented investment in a program that received an average of \$1.6 billion annually in the five years before the IIJA was passed.

It is important that the EPA understands the capacity of states to administer and manage this significant increase in funds. To that end, the EPA OIG initiated a limited series of CWSRF capacity reviews of U.S. states and territories, with the goal of identifying both state-specific and overarching risks and challenges. This is the first report in that series.

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### Abbreviations

|        |  |
|--------|--|
| C.F.R. | Code of Federal Regulations                  |
| COSAP  | Capital Outlay Special Appropriation Program |
| CPB    | Construction Programs Bureau                 |
| CWA    | Clean Water Act                              |
| CWSRF  | Clean Water State Revolving Fund             |
| EPA    | U.S. Environmental Protection Agency         |
| FTE    | Full-Time Equivalent                         |
| FY     | Fiscal Year                                  |
| GAO    | U.S. Government Accountability Office        |
| IIJA   | Infrastructure Investment and Jobs Act       |
| NMED   | New Mexico Environment Department            |
| OIG    | Office of Inspector General                  |
| SRF    | State Revolving Fund                         |
| U.S.C. | United States Code                           |

### Cover Image

White Rock Overlook Park, facing northeast from the overlook platform. The overlook is 0.4 miles from the White Rock Wastewater Treatment Plant in White Rock, New Mexico. (EPA OIG photo)

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# At a Glance

## New Mexico's Capacity to Effectively Manage Clean Water Infrastructure Funds Faces Challenges

### Why We Did This Evaluation

#### To accomplish this objective:

The U.S. Environmental Protection Agency Office of Inspector General conducted this evaluation to determine the financial capacity of the New Mexico Environment Department to manage its Infrastructure Investment and Jobs Act funding for the Clean Water State Revolving Fund Program.

The EPA awards the New Mexico Environment Department federal funds to administer to administer its Clean Water State Revolving Fund for local water-infrastructure improvement projects. Grantees should meet four dimensions of capacity: financial, organizational, stakeholder, and human capital. Challenges in any of these four dimensions can adversely impact the grantee's capacity to effectively manage and implement federal grants.

New Mexico is a part of EPA Region 6.

#### To support this EPA mission-related effort:

- *Ensuring clean and safe water.*

#### To address these top EPA management challenges:

- *Managing grants, contracts, and data systems.*
- *Maximizing compliance with environmental laws and regulations.*
- *Overseeing, protecting, and investing in water and wastewater systems.*

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### What We Found

The New Mexico Environment Department, or NMED, is sufficiently meeting the financial and organizational dimensions of capacity to manage and use its infrastructure funds for the Clean Water State Revolving Fund, or CWSRF, Program. The NMED has consistently met or exceeded its financial match requirements, and both Region 6 and NMED staff indicated that the NMED's administrative fund can meet operational needs. Additionally, the NMED has made several structural and policy changes to increase visibility of its CWSRF Program and its pool of potential loan recipients. For example, the NMED has modified its staffing plan to create a loan marketing position, lowered its interest rate to 0.01 percent, and revised its affordability criteria so that more potential loan recipients may qualify for assistance.

However, the NMED faces stakeholder- and human-capital-related challenges that limit its capacity to effectively manage and use its CWSRF Infrastructure Investment and Jobs Act, or IJJA, funding. Specifically, the NMED has limited participation in its CWSRF Program because its stakeholders, or potential loan recipients, cannot afford to take out loans, generally operate only small water systems, or seek alternative funding. Competing funds undercut the CWSRF Program and offer grants or low-interest loans without additional federal requirements. As a result, the NMED is below the national average on several financial indicators that assess the overall health of its CWSRF and has an excess of available funds, projected to be \$75.6 million in fiscal year 2024. These challenges are compounded by the fact that the NMED is not fully staffed and has difficulty filling its vacancies. Should program participation increase, NMED staff may have difficulty managing the corresponding increase in the CWSRF workload. Addressing the NMED's capacity challenges should decrease the current excess of available funds and empower the NMED to manage and use future CWSRF funds more efficiently.

**Limited capacity can hinder the NMED's success in implementing its CWSRF IJJA funding, meaning that New Mexico would not fully benefit from the funds available for public health and water quality improvements.**

### Recommendations and Planned Agency Corrective Actions

We recommend that the regional administrator for Region 6 develop and implement a plan to conduct additional monitoring of the NMED's relevant hiring efforts until fiscal year 2026 or until all vacancies are filled, whichever is sooner. We also recommend that the regional administrator for Region 6 provide annual training through fiscal year 2026 on the CWSRF Program to the NMED's staff to enhance their knowledge of the program and IJJA requirements.

The Agency agreed with our recommendations and provided acceptable planned corrective actions with estimated completion dates. We consider the recommendations resolved with corrective actions pending. The Agency also provided technical comments, which we considered and incorporated, as appropriate.



**OFFICE OF INSPECTOR GENERAL**  
U.S. ENVIRONMENTAL PROTECTION AGENCY

June 5, 2024

**MEMORANDUM**

**SUBJECT:** New Mexico's Capacity to Effectively Manage Clean Water Infrastructure Funds  
Faces Challenges  
Report No. 24-E-0042

**FROM:** Sean W. O'Donnell, Inspector General *Sean W O'Donnell*

**TO:** Earthea Nance, Regional Administrator  
Region 6

This is our report on the subject evaluation conducted by the U.S. Environmental Protection Agency Office of Inspector General. The project number for this evaluation was [OSRE-FY23-0059](#). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Region 6 is responsible for the issues discussed in this report.

In accordance with EPA Manual 2750, your office provided acceptable corrective actions and estimated milestone dates in response to OIG recommendations. All recommendations are resolved with corrective actions pending, and no final response to this report is required. If you submit a response, however, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at [www.epaoig.gov](http://www.epaoig.gov).

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# Chapter 1

## Introduction

### Purpose

The U.S. Environmental Protection Agency Office of Inspector General [initiated](#) this evaluation to determine the financial capacity of the New Mexico Environment Department, or NMED, to manage its Infrastructure Investment and Jobs Act, or IIJA, funding for the Clean Water State Revolving Fund, or CWSRF, Program. While we originally limited the scope of this evaluation to financial capacity, we expanded it to include three other dimensions of capacity: organizational, stakeholder, and human capital.

#### Top management challenges addressed

This evaluation addresses the following top management challenges for the Agency, as identified in the OIG's *U.S. Environmental Protection Agency Fiscal Year 2024 Top Management Challenges [report](#)*, issued November 15, 2023:

- Managing grants, contracts, and data systems.
- Maximizing compliance with environmental laws and regulations.
- Overseeing, protecting, and investing in water and wastewater systems.

### Background

#### *The Clean Water State Revolving Fund Program*

The EPA is responsible for administering the CWSRF Program, which is a federal-state partnership that provides low-interest loans and other low-cost financing to communities for a wide range of water infrastructure projects. The CWSRF Program was created by the 1987 amendments to the Clean Water Act, or CWA, as a financial assistance program. The EPA makes CWSRF capitalization grants available to all 50 states and Puerto Rico from funding appropriated by Congress,<sup>1</sup> which includes annual appropriations as well as a significant influx of supplemental appropriations from the IIJA. The CWA mandates that each state also use its own funds to deposit an amount equal to at least 20 percent of the federal grant into the revolving fund. These funds are known as the state match.

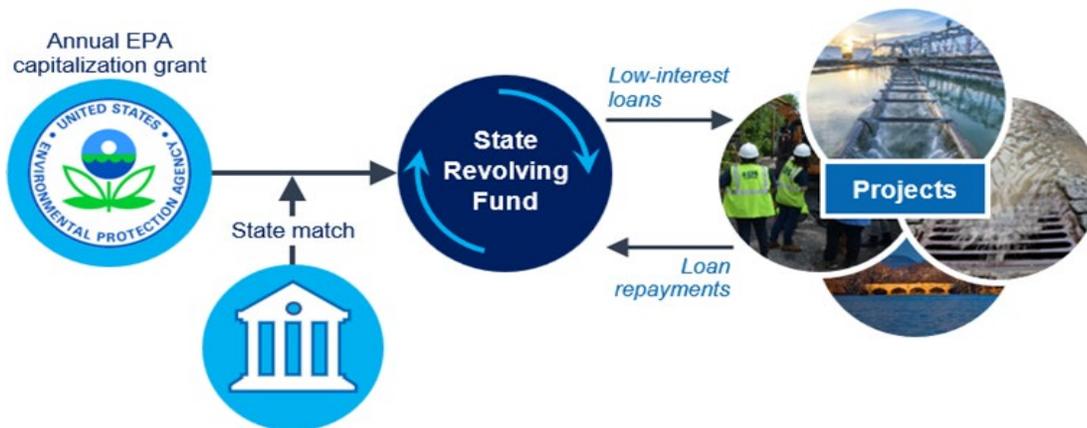
According to the EPA's *SRF Fund Management Handbook*, issued March 2018, a state revolving fund, or SRF, has two primary goals: (1) "to achieve the greatest environmental and public health results by improving water quality" and (2) "[t]o ensure that states use their SRF funding efficiently and maintain funding in perpetuity." Each state uses its CWSRF to provide low-interest loans to eligible recipients to fund water infrastructure projects. As funds are repaid, the state makes new loans to other recipients for other high-priority water quality activities; in other words, repayments of loan principal and interest are used to finance new projects, allowing the funds to "revolve" at the state level over time. Each state

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<sup>1</sup> For simplicity, our use of "states" in this report encompasses Puerto Rico. The CWSRF Program also provides direct grant funding for the District of Columbia and other U.S. territories.

is responsible for operating its own CWSRF program and providing various types of financial assistance, including providing loans; refinancing, purchasing, or guaranteeing local debt; and purchasing bond insurance. Figure 1 illustrates the flow of funds through the state CWSRF programs.

**Figure 1: General steps in awarding state capitalization grants**



Source: OIG summary of the SRF process. (EPA OIG image)

States have the authority to set specific loan terms, including an interest rate that can be from 0 percent to the market rate and a financing term that can be for the useful life of the project or up to 30 years, whichever is less. States may customize loan terms to meet the needs of small and disadvantaged communities, as established by state affordability criteria, or to incentivize certain types of projects. If the annual CWSRF appropriation to all states combined is greater than \$1 billion, the CWA authorizes CWSRF programs to provide further financial assistance through additional subsidization. Pursuant to IJJA amendments to the CWA at 33 U.S.C. § 1383(i), states must provide 10 percent, to the extent that there are sufficient applications, but may not exceed 30 percent of their annual capitalization grant as subsidy.<sup>2</sup> Additional subsidization methods may include grants, principal forgiveness, and negative interest rate loans. As a part of the annual application process to the EPA, states must prepare an intended use plan, provide opportunity for public comment on the plan, and then submit the plan to the EPA. The intended use plan must include a project priority list, long- and short-term CWSRF program goals, activities the state will support by the proposed projects, assurances and specific proposals for meeting the applicable CWA statutory requirements consistent with 33 U.S.C. § 1386(c)(4),<sup>3</sup> and the criteria and method for distributing funds.

There are 11 types of projects eligible to receive CWSRF assistance: (1) construction of publicly owned treatment works; (2) nonpoint source pollution management; (3) national estuary program projects;

<sup>2</sup> Recent annual appropriations have included separate subsidy amounts in addition to those provided at 33 U.S.C. § 1383(i).

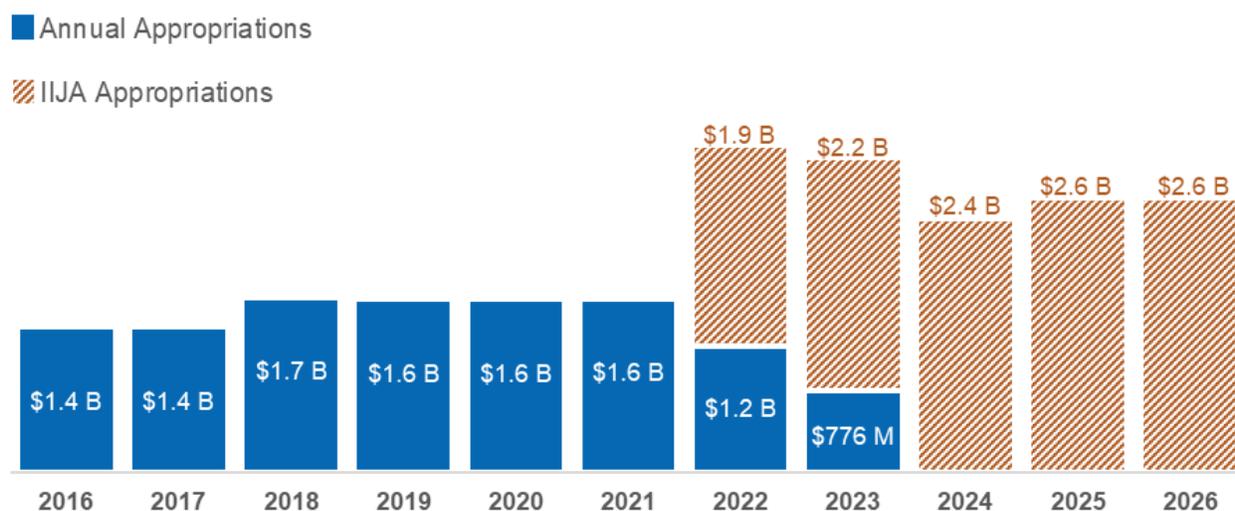
<sup>3</sup> These requirements are at 33 U.S.C. § 1382(b)(3-6) and include providing assistance in the amount equal to 120 percent of capitalization grants one year after receiving a grant payment, expending funds in an expeditious and timely manner, using funds first to assure maintenance of progress toward compliance with enforceable deadlines and requirements, and ensuring that all treatment plants will be constructed in compliance with applicable statutory requirements.

(4) construction, repair, and replacement of decentralized wastewater treatment systems; (5) stormwater management; (6) water conservation, efficiency, and reuse; (7) watershed pilot projects; (8) energy efficiency; (9) water reuse projects; (10) security measures at publicly owned treatment works; and (11) technical assistance.

### IIJA Funding to the CWSRF Program

Enacted on November 15, 2021, the IIJA provides the EPA with approximately \$50 billion to strengthen the nation’s drinking water and wastewater systems. It is the largest single investment that the federal government has ever made in clean water infrastructure. Of this, the CWSRF Program will receive over \$11.7 billion for water infrastructure projects to administer to the states from fiscal year, or FY, 2022 through 2026; this funding is available until it is expended. This appropriation will be in addition to the CWSRF Program’s annual appropriations from Congress, as shown in Figure 2.

**Figure 2: Total CWSRF Program appropriations, FY 2016–FY 2026**

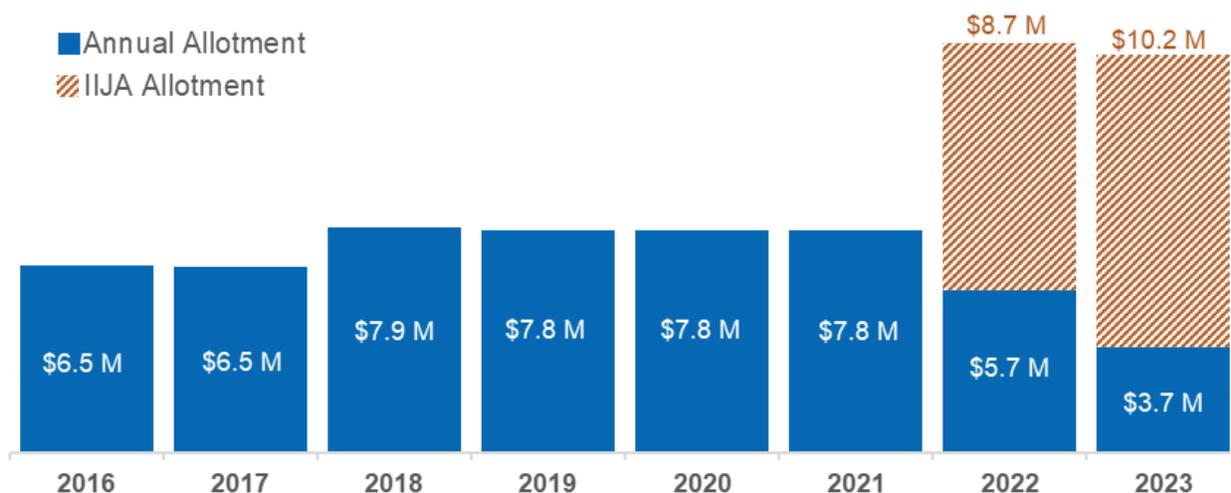


*Notes:* All dollar amounts are expressed in billions, except for the annual appropriations for 2023, which is expressed in millions. Funding levels for annual appropriations for FY 2024 through 2026 are not included because they had not been appropriated at the time of this evaluation. The figure does not include community project funding or congressionally directed spending items, commonly referred to as earmarks, for FYs 2022 and 2023. The IIJA appropriations excludes \$1 billion in funding for CWSRF funding to address emerging contaminants.

Source: OIG summary of CWSRF annual and IIJA appropriations. (EPA OIG image)

The CWA, at 33 U.S.C. § 1384, requires the EPA to use an allotment formula to distribute CWSRF funding to state programs. The EPA is distributing IIJA appropriations using the same formula. As seen in Figure 2, Congress has appropriated IIJA funds through FY 2026. The EPA publishes its annual allotments for states each fiscal year, so the funding amounts that New Mexico will receive from FY 2024 through 2026 were not available at the time of this evaluation. Figure 3 shows New Mexico’s annual allotments from FY 2016 through 2023 and its IIJA allotments for FYs 2022 and 2023.

**Figure 3: New Mexico CWSRF allotments, FY 2016–FY 2023**



*Notes:* All dollar amounts are expressed in millions. Amounts exclude funding pursuant to 33 U.S.C. § 1384(b) to carry out applicable water quality planning requirements. Amounts exclude CWSRF IIJA funding to address emerging contaminants.

Source: OIG summary of New Mexico CWSRF annual and IIJA allotments. (EPA OIG image)

According to the EPA’s March 8, 2022 SRF IIJA implementation memorandum,<sup>4</sup> “[a] key priority of [the IIJA] is to ensure that disadvantaged communities benefit equitably from the historic investment in water infrastructure.” In the memorandum, the EPA describes disadvantaged communities as those with environmental justice concerns that often comprise low-income people and communities of color. It states that disadvantaged communities exist in every state and that they experience, or are at risk of experiencing, disproportionately high exposure to pollution. The IIJA mandates that each state provides 49 percent of its CWSRF funds as subsidy in the form of grants or forgivable loans to municipalities or to support projects that meet its affordability or other specific criteria.<sup>5</sup> In New Mexico, the state determines affordability criteria based on per capita income, population, and unemployment rates. Any municipality or service area that meets the criteria in any category is eligible for subsidization. If the annual CWSRF appropriation is greater than \$1 billion and if there are sufficient applications for assistance, the CWA requires that between 10 and 30 percent of annual CWSRF appropriations be awarded as subsidy, so the IIJA mandate that 49 percent of CWSRF IIJA appropriations be awarded as subsidy is a significant increase in the amount historically reserved for these communities.

The IIJA also amended the CWA at 33 U.S.C. § 1383(k) to allow a state to use 2 percent of annually awarded CWSRF funds to provide technical assistance to rural, small, and tribal publicly owned treatment works. According to the EPA’s March 8, 2022 SRF IIJA implementation memorandum, this newly available technical assistance will allow states to devote funds to “enhance or build programs that proactively identify, reach out to, and provide assistance to rural, small, and tribal publicly owned

<sup>4</sup> EPA, *Implementation of the Clean Water and Drinking Water Revolving Fund Provisions of the Bipartisan Infrastructure Law* (Mar. 8, 2022).

<sup>5</sup> Subsidy recipients must meet either the state’s affordability criteria or project types pursuant to 33 U.S.C. § 1383(i).

treatment works ... particularly in disadvantaged communities.” The EPA stated in its SRF IIJA implementation memorandum that it is committed to maximizing the impact of its CWSRF IIJA funding and has outlined several recommendations that states should consider to effectively administer the funds to meet IIJA priorities, such as simplifying and streamlining the application processes; using set-asides and technical assistance for pre-construction project planning; encouraging integrated, regional approaches; and increasing internal and external outreach and communication about the SRF programs and the IIJA funding. The EPA further stated that it would “collaborate with state SRF programs to share models, examples, and build state capacity to target resources to disadvantaged communities.” The EPA also announced that it will launch an Agency-funded technical assistance program to directly assist disadvantaged communities that lack the financial, managerial, and technical capacity to access the SRF program. This program is intended to supplement the technical assistance funded by the states with their 2-percent SRF allotment.

### ***CWSRF Grantee Capacity to Manage and Use Funds***

Because of the IIJA’s historic investment in the CWSRFs, it is essential that state CWSRF programs, which are the grantees receiving these federal IIJA funds, have the capacity to manage and use the significant increase in funds. The U.S. Government Accountability Office, or GAO, has recognized that grantee capacity is a key issue in grants management that affects program success. Capacity impacts a grantee’s ability to maintain appropriate resources and to effectively manage those resources. The GAO defines capacity across the following four dimensions:<sup>6</sup>

- Financial capacity: the extent to which an organization has sufficient financial resources to administer or implement the grant.
- Organizational capacity: the degree of preparedness for grants management and implementation, including having appropriate leadership, management, and structure to implement the program efficiently and effectively and to adapt to changing conditions.
- Human capital capacity: the extent to which an organization has sufficient staff, knowledge, and technical skills to effectively meet its program goals.
- Stakeholder capacity: the extent to which an organization has sufficient support from its stakeholders.

The EPA also acknowledges the importance of grantee capacity. The *EPA Regional Capacity Development Coordinator’s Handbook*, dated May 2020, recognizes that, in the context of drinking water SRFs, “[c]apacity development implies a process and not static endpoint.” Further, the Safe Drinking Water Act of 1996 sections 1420(a)(c) and 1452(a)(3) set capacity development requirements for drinking

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<sup>6</sup> In [GAO-15-295](#), *Race to the Top: Education Could Better Support Grantees and Help Them Address Capacity Challenges*, issued April 13, 2015, the GAO defined capacity as the ability to successfully support, oversee, and implement reform efforts across financial, organizational, human capital, and stakeholder capacity dimensions.

water SRF grantees.<sup>7</sup> It requires each drinking water SRF program to ensure that recipients of drinking water SRF loans have the technical, managerial, and financial capacity to meet national drinking water regulations. While CWSRF programs do not have capacity development requirements codified like the drinking water SRF programs do, the EPA's *SRF Fund Management Handbook* notes that many CWSRF programs conduct technical, managerial, and financial capacity reviews.

Additional federal regulations also set requirements to ensure grantee capacity. "Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," or 2 C.F.R. part 200, established the governmentwide framework for grants management. These regulations reduce administrative burdens, guard against risks of waste or misuse, and require recipients to comply with all requirements of the federal award.

### ***The NMED's Administration of New Mexico's CWSRF Program and Other Water Infrastructure Financing Programs***

The NMED administers New Mexico's CWSRF program and enforces New Mexico state laws and regulations related to the environment and public health. According to the NMED's website, the NMED's mission "is to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations."

The NMED Construction Programs Bureau, or CPB, is responsible for implementing the state's CWSRF program. The NMED CPB staff responsibilities include conducting outreach, marketing to potential loan applicants, reviewing CWSRF applications, ensuring that loans and grants are appropriately disbursed to recipients, checking that the state match requirement is met, and performing technical review and oversight of CWSRF projects. In addition to the state's CWSRF program, the NMED administers other programs across the state to support water, wastewater, and solid waste infrastructure, such as the Capital Outlay Special Appropriation Program, or COSAP, and the Rural Infrastructure Program.

### ***New Mexico Is Below National Averages for CWSRF Financial Indicators***

The EPA monitors SRF financial indicators to assess the overall health of the funds for each state, spotlight risks, and help states develop strategies to mitigate risks. For an optimal approach, states must constantly balance their fund management activities against state-specific factors, such as water quality and public health priorities, demand for financial assistance and competition programs, demographics and affordability, market conditions, and legislative support. As shown in Table 1, as of FY 2022, the EPA reported that New Mexico is below the national average for several SRF financial indicators.

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<sup>7</sup> The capacity development requirements of the Safe Drinking Water Act of 1996 are codified at 42 U.S.C. § 300g-9.

**Table 1: FY 2022 CWSRF financial indicators**

| CWSRF financial indicator  | National average | New Mexico | Variance      |
|--|------------------|------------|---------------|
| <b>Pace Rate</b><br><i>The pace rate calculates the executed loans issued as a percentage of all funds available in the CWSRF.</i>   | 99%              | 86%        | <b>(13%)</b>  |
| <b>Ratio of Undisbursed Project Funds</b><br><i>This ratio calculates how many years it would take a state to distribute its CWSRF funds at the rate of distribution over the last three fiscal years.</i> | 2.9 years        | 11.4 years | 8.5 years     |
| <b>Disbursements as a Percentage of Executed Loans</b><br><i>This measures the rate at which the program is disbursing funds to active CWSRF projects.</i>   | 88%              | 82%        | <b>(6%)</b>   |
| <b>Federal Return on Investment</b><br><i>This measures cumulative assistance as a percentage of cumulative federal outlays.</i>   | 300%             | 187%       | <b>(113%)</b> |

Note: Parenthetical red font indicates negative numbers.

Source: EPA Region 6 New Mexico CWSRF Program Evaluation Report for State FY 2022. (EPA OIG table)

## Responsible Offices

The EPA Office of Water implements the CWA. Within the Office of Water, the Office of Wastewater Management is responsible for supporting the CWA by promoting effective and responsible water use, as well as wastewater treatment, disposal, and management, and by encouraging the protection and restoration of watersheds. It is also responsible for providing regulatory standards, voluntary management approaches, and financial and technical assistance to states, tribes, communities, and regulated entities to protect human health and aquatic ecosystems, reduce flooding, and protect the nation’s infrastructure investment. The FY 2023 budget for the Office of Wastewater Management was \$202.6 million.

The Office of Water works with the EPA’s ten regional offices. Regional water divisions are responsible for performing oversight and facilitating communication with grantees while helping to build capacity to administer their CWSRF programs. The EPA Region 6’s water division supports the NMED and New Mexico’s CWSRF program.

## Scope and Methodology

We conducted this evaluation from March 2023 to February 2024 in accordance with the *Quality Standards for Inspection and Evaluation* published in December 2020 by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that we perform the evaluation to obtain sufficient and appropriate evidence to support our findings.

The scope for this evaluation included the NMED’s CWSRF IJA funding. While we originally limited the scope of this evaluation to financial capacity, we expanded it to include the other three dimensions of capacity: organizational, stakeholder, and human capital.

We conducted 17 interviews during this evaluation, including two with Region 6 staff and 15 with NMED staff across three offices. We conducted interviews virtually and in person during our site visit to the NMED's facilities in Albuquerque and Santa Fe, New Mexico.

To obtain an understanding of the New Mexico CWSRF program and the NMED's operations, we reviewed:

- Federal and New Mexico laws and regulations.
- EPA memorandums and CWSRF guidance.
- The NMED's oversight reports prepared by the EPA and independent public accountants; New Mexico's state FYs 2022, 2023, and 2024 CWSRF intended use plans; and New Mexico's definition of affordability criteria.
- A water infrastructure evaluation report by the New Mexico Legislative Finance Committee Program Evaluations Unit.

During our site visit, we toured the Los Alamos County White Rock Wastewater Treatment Plant under construction in White Rock, New Mexico. This project is using some of New Mexico's CWSRF IIJA funds to finance construction. We toured the site with NMED staff, local government officials, and the construction contractor. During the tour, we asked questions about the project and photographed the site.

## Prior Reports

EPA OIG Report No. [23-N-0004](#), *American Recovery and Reinvestment Act Findings for Consideration In the Implementation of the Infrastructure Investment and Jobs Act*, issued December 7, 2022, addressed how entities used American Recovery and Reinvestment Act funding. CWSRF programs may use the considerations outlined in this report as a guide for managing IIJA funds. The report noted that project inspections varied in frequency and that this poor oversight increased risk of fraud, waste, abuse, and noncompliance with the Act's economic recovery goals. The report also found that states underused available funds due to contracting delays and difficulty in implementing American Recovery and Reinvestment Act requirements.

EPA OIG Report No. [11-R-0519](#), *EPA and States Should Strengthen Oversight of Clean Water State Revolving Fund Recovery Act Projects*, issued August 24, 2011, noted the \$4 billion in funding the CWSRF received through the American Recovery and Reinvestment Act and expressed concerns that the EPA's oversight guidance was too vague to ensure state compliance with the Act. The report recommended that the EPA supplement state inspections and provide standardized checklists on a semiannual basis.

## Chapter 2

# The NMED Has Sufficient Financial and Organizational Capacity to Effectively Manage and Use CWSRF IIJA Funding

The NMED's CWSRF program sufficiently meets two of the four dimensions of capacity: financial and organizational. While New Mexico's CWSRF financial indicators are behind national averages, it is not due to concerns with the NMED's financial or organizational capacity. Instead, the NMED demonstrated through its state match and administrative fund that it has the financial resources to sustain and implement its CWSRF program. Further, the NMED changed its organizational structure and loan policies to optimize its CWSRF program. The NMED added a dedicated CWSRF marketing position to enhance its outreach to potential CWSRF applicants to increase CWSRF use, as Region 6 recommended in its *New Mexico CWSRF Program Evaluation Report for State FY 2022*. The NMED also revised its loan terms to make its financing more attractive to prospective loan recipients. According to Region 6's *New Mexico CWSRF Program Evaluation Report for State FY 2022*, these changes should improve New Mexico's CWSRF implementation and its financial indicators over time.

### The NMED's Financial Capacity Is Sufficient to Effectively Manage and Use CWSRF IIJA Funding

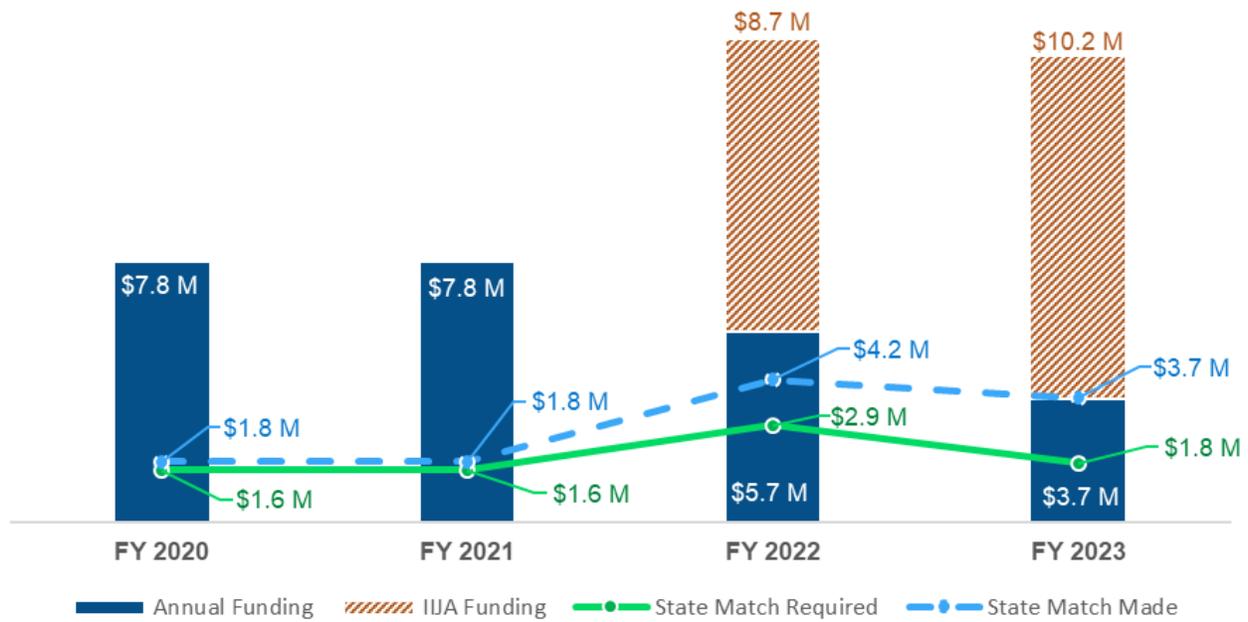
The NMED has sufficient financial resources and processes to manage and use its CWSRF IIJA funding. As discussed earlier, the GAO defines financial capacity as the extent to which an organization has sufficient financial resources to administer or implement the grant that it is receiving. In the context of the CWSRF programs, we consider this to be a state's ability to meet its financial requirements relating to the grant. This includes funding the state match and paying for administrative expenses, such as payroll and office equipment, so that core program staff and systems can perform designated tasks.

The CWA, at 33 U.S.C. § 1382(b), requires that the EPA only enter into a capitalization agreement with a state for CWSRF funding if the state can establish, to the EPA's satisfaction, that it will be able to deposit an amount equal to at least 20 percent of the total amount of all its CWSRF capitalization grants. The IIJA reduced the state match requirement for CWSRF IIJA funds to 10 percent for FYs 2022 and 2023. For FY 2024 through FY 2026, the state match requirement for CWSRF IIJA funds is 20 percent. The return to the 20 percent match requirement will increase the state match amount significantly. To successfully manage and use CWSRF IIJA funds, the NMED must have the financial capacity to meet these requirements.

The NMED has consistently met or exceeded its state match requirements. Figure 4 summarizes New Mexico's CWSRF IIJA funding, New Mexico's CWSRF annual funding, and the corresponding state match requirements since FY 2020. In FY 2022, the NMED received approximately \$8.7 million in CWSRF IIJA funding and approximately \$5.7 million in CWSRF annual funding. The NMED exceeded the required 10 percent state match of \$873,800 for its CWSRF IIJA funds and the 20 percent match of \$1.1 million

for its CWSRF annual funds. In FY 2023, the NMED received approximately \$10.2 million in CWSRF IJA funding and approximately \$3.7 million in CWSRF annual funding. The NMED exceeded the required 10 percent state match of \$1 million for its CWSRF IJA funds and the 20 percent match of \$736,600 for its CWSRF annual funds.

**Figure 4: New Mexico CWSRF federal awards and state match**



*Notes:* All funding amounts are expressed in millions. Amounts exclude funding pursuant to 33 U.S.C. § 1384(b) to carry out applicable water quality planning requirements.

Source: OIG analysis of New Mexico federal awards and state match. (EPA OIG image)

CWSRF capitalization grant allotments for states are based on a statutory formula, so the amount of funds New Mexico receives in its capitalization grants depends on congressional appropriations; the EPA cannot alter a state’s allotment based on need or performance. As shown previously in Figure 2, CWSRF IJA funding increased from \$2.2 billion in FY 2023 to \$2.4 billion in FY 2024, which means that New Mexico’s CWSRF IJA allotment will also increase slightly. However, New Mexico’s state match requirements will increase substantially because the 20 percent state match requirement for CWSRF IJA funding goes into effect in FY 2024.

The NMED primarily meets its state match requirements by requesting funds from the state’s Public Projects Revolving Fund. In past years, the NMED has received an overmatch from the Public Projects Revolving Fund; in other words, it has received funds exceeding the federally required state match amount. The NMED has deposited these overmatches into its CWSRF, carrying them over to subsequent years and applying them to future required state match payments. This approach lessens the amount of state match funds needed from the Public Projects Revolving Fund in future years. As of July 2023, the NMED’s total overmatch amount was \$1,940,100.

NMED staff indicated that there are alternative pathways to meet the state match requirements if the Public Projects Revolving Fund was ever unavailable. NMED staff also expressed confidence in New Mexico's legislature recognizing the importance of the state match to leverage federal investment in the state.

According to the CWA at 33 U.S.C. § 1383(d)(7), states may use money from their CWSRFs for reasonable administration costs. States have the option to use whichever of the two amounts is greatest: (1) 4 percent of all CWSRF-awarded funds or (2) \$400,000 per year for every grant or one-fifth percent of the value of the CWSRF, plus any amount of program fees collected to administer the CWSRF program. Region 6 and NMED staff indicated that the NMED's administrative funds can continue to meet operational needs for the foreseeable future. The NMED elects to use one-fifth percent of the value of its CWSRF to assist in the administration of its CWSRF program. It also has a Clean Water Administration Fund, which the NMED funds by taking a percentage of the interest paid on loans.

To fund employee salaries for the full-time equivalents, or FTEs, implementing the CWSRF program, the NMED uses a variety of funding streams to diversify its reliance on its administrative funds. For CPB salaries in state FY 2024, the NMED will pay 28 percent with the Clean Water Administration Fund, 13 percent from the CWSRF, and 59 percent primarily through its general state fund. NMED management indicated that its administrative fund budgets were healthy and can only be used for CWSRF implementation. NMED management acknowledged that reduced interest rates, as discussed in the next section on organizational capacity, will lessen the amount of program fees collected but that increased use of its CWSRF due to the lower interest rates will ultimately benefit the organization.

Both 33 U.S.C. § 1386(b) of the CWA and 40 C.F.R. § 35.3165(d) require annual audits of SRF programs. Independent public auditors issued unqualified opinions on the NMED's financial statements for the state FYs ending June 30, 2022 and 2021, which means that the financial statements were fairly presented and complied with generally accepted accounting principles. Further, 33 U.S.C. § 1386(e) requires the EPA to annually review all CWSRF programs, and the EPA instructs regions to prepare an annual program evaluation report to document the review. Following its FY 2022 annual review of the NMED, Region 6 stated in its *New Mexico CWSRF Program Evaluation Report for State FY 2022* that the NMED is administering its program in accordance with the CWA, as amended. Region 6 further stated in both its FY 2022 and FY 2021 program evaluation reports that the NMED is following all terms, schedules, provisions, and assurances of its CWSRF intended use plans and the conditions of its CWSRF capitalization grant.

## **The NMED's Organizational Capacity Is Sufficient to Effectively Manage and Use CWSRF IIJA Funding**

The NMED CPB has the management, policies, and structure to successfully manage and use its CWSRF IIJA funding. As discussed earlier, the GAO defines organizational capacity as the degree of preparedness for grants management and implementation, including having appropriate leadership, management, and structure to implement the program and adapt it efficiently and effectively. In the context of the state CWSRF programs, we considered the states' leadership, management, policies, and structure of

the organization administering the CWSRF program and other water infrastructure financing programs. For New Mexico, this organization is the NMED CPB.

In its *New Mexico CWSRF Program Evaluation Report for State FY 2022*, Region 6 recommended that the NMED increase the visibility of New Mexico's CWSRF program and participate more in national, regional, state, and local workshops and conferences to better market the program to New Mexico communities. To address these recommendations, the NMED CPB modified its staffing plan in 2023 to create a loan marketing position that would provide CWSRF education, outreach, and application assistance to communities with limited financial capacity and would prioritize recruitment of additional loan recipients to the program. Prior to this modification to the staffing plan, marketing the CWSRF program was a collateral duty for the NMED CPB staff.

The IIJA also amended the CWA at 33 U.S.C. § 1383(k) to allow a state to use 2 percent of CWSRF funds to provide technical assistance to rural, small, and tribal publicly owned treatment works. As discussed in Chapter 1, the EPA's March 8, 2022 SRF IIJA implementation memorandum recommended that state SRF programs use these newly available technical assistance funds for outreach and assistance to rural, small, and tribal publicly owned treatment works. In its state FY 2024 CWSRF intended use plan, the NMED followed the EPA's recommendation and stated that it was planning to use these funds to contract with a technical service provider to assist small and rural entities. NMED management confirmed this plan during an interview with us. The technical service provider the NMED intends to contract with has worked with water and wastewater entities in a variety of capacities, including training and technical assistance, and it is a member of the EPA's Environmental Finance Centers network, which aims to help communities access federal funding for infrastructure projects.

In addition, the NMED has made policy changes to increase its pool of loan recipients and thereby facilitate effective use of CWSRF IIJA funding. In April 2022, the NMED publicly announced that it lowered its CWSRF interest rate to 0.01 percent for all public entities that do not qualify for the 0 percent rate, which will make it easier for New Mexico communities to take on loans. Prior to the change, public entities that did not qualify for the 0 percent rate were offered rates at 0.5 or 1 percent, depending on their per capita income relative to the state per capita income. The lowered interest rate coincided with the increase of interest rates on bonds, which should also increase demand from municipalities that historically turned to the bond market for funding.

In March 2023, the NMED revised its affordability criteria to attract additional loan recipients to the CWSRF program and make it easier for them to qualify. The NMED CPB reviews whether applicants meet the affordability criteria based on their per capita income, population size or population trends, and unemployment rates. Any municipality or service area demonstrating that it can meet the criteria in any of these categories is eligible for subsidy. With the March 2023 revision, the NMED staff told us that almost every community in New Mexico could qualify for subsidy. NMED staff also said that they work strategically to distribute subsidies across the state as equitably as possible.

This approach aligns with IIJA priorities to serve disadvantaged communities, and NMED staff indicated that they foresee no issues in satisfying the requirement that states distribute 49 percent of funds as

subsidy in the form of grants or forgivable loans. The disadvantaged community subsidy is a powerful tool to encourage communities to participate in the CWSRF program. This is especially important given the CWSRF program's competition with other grant-based funding like the COSAP program, discussed in the next chapter.

# Chapter 3

## The NMED's Limited Stakeholder and Human Capital Capacity Challenges Its Management and Use of CWSRF IIJA Funding

The NMED faces stakeholder- and human-capital-related challenges, which limit its capacity to effectively manage and use its CWSRF IIJA funding. The NMED has limited participation in its CWSRF program because its stakeholders, or potential loan recipients in the state, cannot afford to take out loans, generally operate a small water system, or seek alternative funding through competing funds. These competing funds undercut the CWSRF program by offering grants or low-interest loans without additional federal requirements or by providing direct funding. As a result, the NMED is behind the national average on several financial indicators that assess the overall health of its CWSRF program, and it has an excess of available funds, projected to be \$75.6 million in FY 2024. These issues are compounded by the fact that the NMED is not fully staffed and has difficulty filling its vacancies, which limits its ability to market the CWSRF program and expand participation. Also, should program participation increase because of the structural and policy changes the NMED has made, which we outlined in Chapter 2, NMED staff say that there would be difficulties managing the corresponding increase in workload.

### Stakeholder-Related Challenges Limit the NMED's Capacity to Effectively Use CWSRF IIJA Funding

Limited stakeholder capacity, which is mostly outside of the NMED's control, limits the NMED's success in implementing its CWSRF program. As discussed earlier, the GAO defines stakeholder capacity as the extent to which an organization has sufficient support from its stakeholders. In the context of the CWSRF program, we consider stakeholders to be CWSRF loan recipients or potential CWSRF loan recipients within the state. Loan recipients include the various entities responsible for maintaining the water infrastructure for their localities. In New Mexico, this includes municipalities, counties, water and sanitation districts, mutual domestic water associations, pueblos and tribes, and private entities for specific project types.

A potential CWSRF loan recipient must complete several steps before entering into a loan agreement with the NMED. The NMED's annual intended use plan must include a list of priority projects, which is a list of eligible CWSRF projects ranked according to the state's priority ranking criteria. The NMED accepts applications from potential CWSRF loan recipients on a rolling basis and updates its project priority list quarterly. Before entering into a loan agreement with a potential recipient, the NMED considers the applicant's willingness to accept the loan, financial capacity to service the loan, capacity to operate and maintain the proposed project, readiness to proceed, and ability to meet the state's affordability criteria.

Several factors negatively impact New Mexico stakeholder capacity and participation in the state CWSRF program. Many small communities in New Mexico do not have the financial capacity to incur debt and,

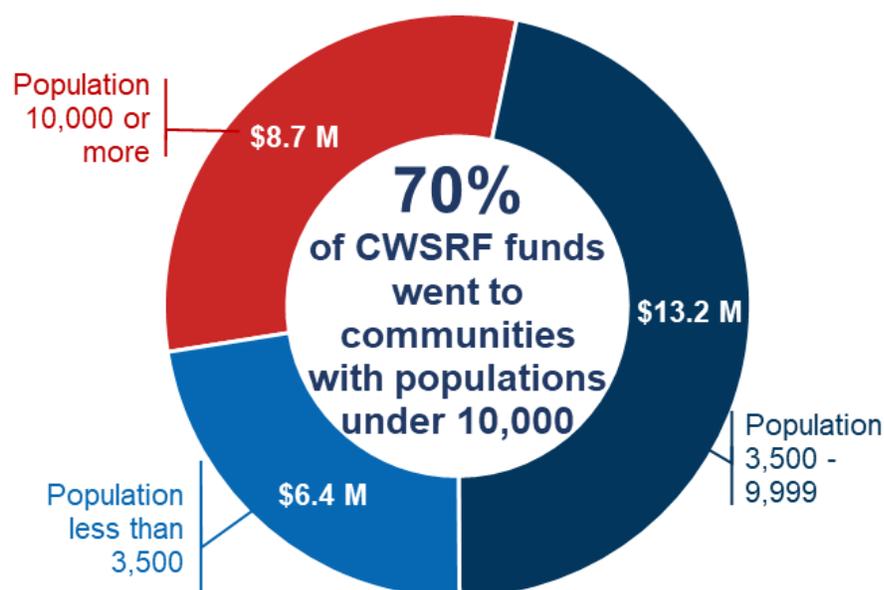
therefore, are unable to take out a loan even with partial subsidy and the NMED's low interest rates. Furthermore, these small communities often have limited human capital capacity, as they are often understaffed or staffed by volunteers. This results in limited awareness of the CWSRF program, as well as limited technical skills to successfully plan, apply for, and complete a CWSRF project. In addition, there are several competing funds, with overlapping eligibilities, that finance water infrastructure projects in New Mexico, and potential recipients could pursue these funds instead of CWSRF loans. Some of these competing funds may either offer low-cost loans to recipients without their needing to meet additional federal requirements or give the project funds directly to recipients, undercutting the CWSRF program.

The limited capacity of stakeholders results in an excess of available funds, also referred to as uncommitted funds, in the NMED's CWSRF program. At the end of state FY 2022, New Mexico had an uncommitted funds balance of \$86.7 million in its CWSRF. In its state FY 2024 intended use plan, New Mexico projected that it would have an uncommitted fund balance of \$75.6 million unless the NMED funded additional projects for stakeholders that had not yet applied for CWSRF loans. The change from \$86.7 million to \$75.6 million in uncommitted funds is an improvement, but that is still a large balance of funds not being used as intended to address both the CWSRF program's and the IJJA's goal to improve the environment and public health through water quality improvement projects. The CWA, at 33 U.S.C. § 1382(b)(4), requires states to establish that all funds in the CWSRF "will be expended in an expeditious and timely manner." In its *New Mexico CWSRF Program Evaluation Report for State FY 2022*, Region 6 recommended that the NMED continue to improve program visibility and provide a timeline to the EPA on its expected use of its uncommitted funds. Also, large excess fund balances could wane future state and congressional support for CWSRF appropriations.

### ***Most Potential Loan Recipients in New Mexico Operate Small Water Systems***

New Mexico has only two communities with populations greater than 100,000, meaning that the NMED CWSRF program stakeholders are typically smaller communities that often have limited financial and human capital capacity. According to the EPA's CWSRF National Information Management System data, in FY 2022, 70 percent of the \$28.3 million in CWSRF loans were made to communities with populations of fewer than 10,000, as shown in Figure 5.

**Figure 5: New Mexico FY 2022 CWSRF funds loaned, by community size**



Note: All funding amounts are expressed in millions.

Source: EPA CWSRF National Information Management System. (EPA OIG image)

The NMED’s loan recipient pool demonstrates the limited size of communities and water systems in New Mexico, which results in limited overall participation in New Mexico’s CWSRF program. Larger municipalities are not routinely seeking funding through the CWSRF, which leads to the CWSRF targeting smaller communities. Although larger municipalities have the capacity to acquire debt, NMED managers informed us that these municipalities tend to seek funding through other state programs to obtain grants or low-interest loans that do not have additional federal requirements to follow.<sup>8</sup> An NMED manager indicated that, with the March 2023 revisions to the NMED’s affordability criteria, many of these larger communities could qualify for subsidy. However, NMED management told us that it hesitates to award full subsidy to larger municipalities because that subsidy is limited and needed to assist smaller entities that, without subsidy, would not be able to qualify for funding at all.

New Mexico’s CWSRF financial indicators, which lag national averages, reflect this limited program participation. With the increase of supplemental CWSRF capitalization grants through the IIJA, these indicators will likely lag further, unless the NMED is able to increase the number or size of CWSRF loans that it awards.

### ***Despite Great Need Within the State, Water Infrastructure Funds in New Mexico Compete for Recipients***

Despite the existing \$2.8 billion of municipal and wastewater infrastructure needs within New Mexico, other water infrastructure financing programs in the state directly compete with the CWSRF program for

<sup>8</sup> Additional federal requirements that may apply to CWSRF-funded projects include, but are not limited to, the Build America, Buy America Act; the American Iron and Steel provision; and the Davis-Bacon Act.

recipients, leaving uncommitted funds in New Mexico’s CWSRF. While the NMED CPB considers its CWSRF to be its flagship program, New Mexico has ten water infrastructure financing programs across four agencies that fund water project planning, design, and construction. Many of these financing programs have overlapping eligibilities. Competing funds include the COSAP and the Rural Infrastructure Program. Competing with these programs contributes to New Mexico’s CWSRF excess funds and below-average performance on national CWSRF financial indicators.

According to the *Program Evaluation: State Funded Water Projects* issued by the New Mexico Legislative Finance Committee, stakeholders stated that there was a “pecking order” among the funds, with many potential loan recipients first attempting to secure the “free money,” or money that does not have to be paid back, before pursuing other sources like the CWSRF program. The NMED staff echoed this sentiment during our interviews with them, indicating that it was difficult to recruit communities to borrow from the CWSRF program when the COSAP could potentially fully fund, or partially fund over several years, their water infrastructure projects. In FY 2022, the COSAP provided \$11.4 million in assistance for 35 wastewater and stormwater projects. In FY 2022, the CWSRF program provided \$28.3 million in assistance and executed six new loans. Also in FY 2022, the Rural Infrastructure Program provided just over \$1 million in assistance for two projects involving wastewater and landfills. Figure 6 summarizes the NMED’s total water infrastructure program assistance to program participants in FY 2022.

**Figure 6: NMED water infrastructure program assistance to participants in FY 2022, by program**



Notes: All funding amounts are expressed in millions. RIP is the Rural Infrastructure Program.

Source: EPA Region 6 New Mexico CWSRF Program Evaluation Report for State FY 2022. (EPA OIG image)

While the bulk of assistance that the NMED provides is through its CWSRF program, the *Program Evaluation: State-Funded Water Projects* ultimately concluded that New Mexico’s funding for water projects is fragmented and that the COSAP undercuts federally backed loan programs such as the CWSRF. According to the same report, communities resist raising utility rates to take on additional debt and prefer to wait for the “free money” appropriated to them by the legislature, even if it takes several years of requests for full project funding.

The COSAP is the primary competitor of the CWSRF program. The COSAP does not have a formal or consistent vetting process for urgency, project readiness, local capacity, or financial need. It also does not have any loan component or require any match from communities, making it an attractive option for potential loan recipients. However, as described in the *Program Evaluation: State-Funded Water Projects*, the lack of vetting has negative consequences. For example, it is difficult for a community to

develop an accurate project budget without completing the planning and design phases. As a result, many COSAP requests are not fully funded. Without full funding, communities may delay projects and return to the state legislature with additional funding requests in subsequent years.

By contrast, consistent with the CWA requirements, the CWSRF program has a more robust application and review process. The NMED ranks all CWSRF applicant projects against its priority ranking system, which assesses the project's potential contribution to water quality protection or restoration, the applicant's commitment to promoting sustainable infrastructure, and the project's readiness to proceed. The NMED also assesses the applicant's ability to repay the loan through its affordability criteria. Moreover, while subsidy is available to supplement CWSRF project costs, the CWSRF is a loan-based program that is designed to exist in perpetuity and can therefore continue to fund projects until completion. The NMED's CWSRF program also has a prescribed subrecipient monitoring program for loan recipients to track project progress and compliance with CWSRF program requirements.

The *Program Evaluation: State-Funded Water Projects* recommended that the New Mexico legislature pass legislation to reform the COSAP so that it uses criteria that are as similar as possible to those used by other water financing programs; to require state agencies to standardize policies, scoring criteria, and funding prerequisites across state programs; and to require annual reports on all state water project requests, enabling the state to track outcomes of the spending. According to Region 6's *New Mexico CWSRF Program Evaluation Report for State FY 2022*, there has been minimal progress on these recommendations. Without structural changes in state water financing programs, the NMED's CWSRF program will continue to face competition. However, the NMED's increased emphasis on CWSRF marketing and the newly available technical assistance funds to help small communities navigate the CWSRF program, as discussed in Chapter 2, may increase small community participation.

## **Human-Capital-Related Challenges Limit the NMED's Capacity to Effectively Manage and Use IJA CWSRF Funding**

The NMED's success is challenged by its limited human capital capacity, which is partly outside of the NMED's control. The GAO defines human capital capacity as the extent to which an organization has sufficient staff, knowledge, and technical skills to effectively meet its program goals. In the context of the CWSRF programs, we consider human capital resources to be the number of staff with CWSRF responsibilities and their technical knowledge to administer the CWSRF program. According to the EPA's *SRF Fund Management Handbook*, the first objective for successful implementation of an SRF program is related to human capital capacity. It states that "appropriate staffing is essential for successful administration of an SRF program" and that a "lack of qualified financial staff and management attention can undermine the success of the program."

The CWA at 33 U.S.C. § 1386(e) requires the EPA to annually review state intended use plans and annual reports that the states submit to ensure their compliance with the CWSRF federal requirements. Similarly, 40 C.F.R. § 35.3165(c) requires the EPA regional administrator to annually assess the success of the state's performance and to determine compliance with the grant agreement terms. The EPA's *SRF Annual Review Guidance*, dated October 2022, recommends that as part of this assessment, which is

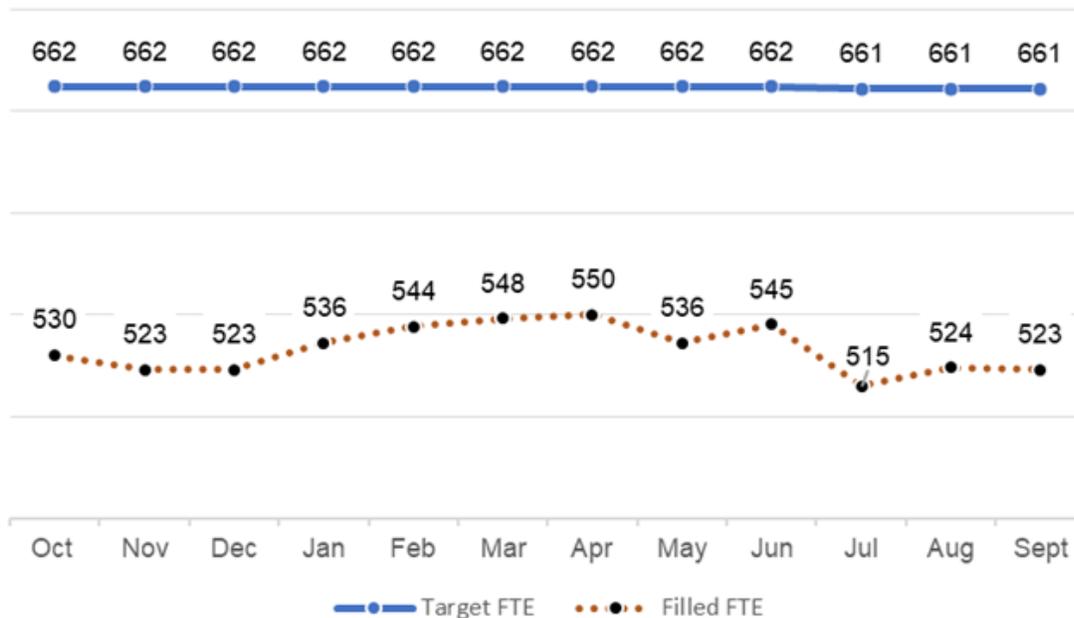
referred to as an annual review, the EPA discuss whether the state has any staffing concerns or challenges and whether the CWSRF program could benefit from additional specialized staffing positions, such as a marketing coordinator. The guidance also instructs the EPA regions to document all staffing inadequacies in the program evaluation report that summarizes the results of the annual review.

The *SRF Annual Review Guidance* states that:

SRF programs continue to experience significant staff turnover and loss of key experienced personnel. At the same time, programs are increasingly complex to manage due to supplemental appropriations, sophisticated financing structures and additional federal requirements.

New Mexico’s CWSRF program follows this national trend. The NMED CPB, which administers New Mexico’s CWSRF program, is not fully staffed, and the NMED struggles to fill vacancies. In its *New Mexico CWSRF Program Evaluation Report for State FY 2022*, Region 6 acknowledges the hiring demand required to execute the financial and technical commitments related to IIJA funding. Region 6 encouraged the NMED to fully staff the CWSRF program to meet these financial and technical demands. The NMED reported that it made gains in its hiring overall, reaching its highest filled FTE level in a decade, but the organization remains well below its FTE target, as shown in Figure 7. The EPA’s *SRF Fund Management Handbook* reports that the “EPA has also been successful in promoting hiring by highlighting staffing needs in its [program evaluation reports], which are often read by high-level managers.” While annual reviews have historically promoted SRF-related hiring, the additional demands of the IIJA and the NMED’s insufficient FTE levels signal a need for enhanced attention in this area. Accordingly, the NMED may benefit from additional monitoring and guidance from Region 6 to address its hiring needs.

**Figure 7: FY 2023 NMED FTE count**



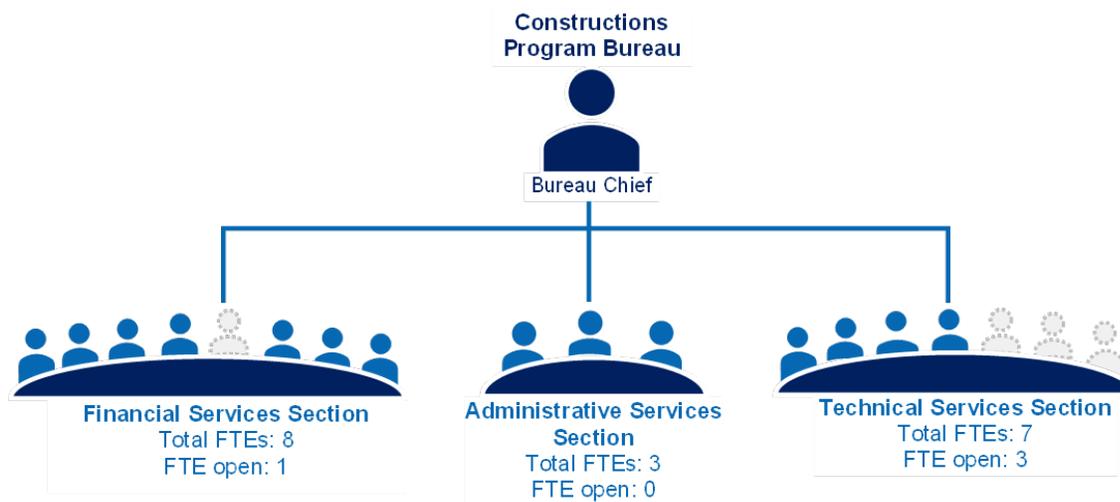
Source: NMED FTE staffing levels. (EPA OIG image)

Significant gaps remain in the administration of the CWSRF program. As of July 2023, the NMED CPB is composed of a bureau chief who oversees three sections: Financial Services, Administrative Services, and Technical Services. The following is a brief explanation of each section’s responsibility in disbursing CWSRF loans:

- The Financial Services section reviews all loan applications and completes all loan disbursements. When fully staffed, the section has eight FTEs. As of July 2023, one FTE was vacant. Of the filled positions, one loan manager FTE was slated to start in August 2023, after the position was vacant for four months.
- The Administrative Services section manages the grant and loan databases and houses the loan marketing specialist discussed earlier. As of July 2023, the section was fully staffed with three FTEs.
- The Technical Services section manages all the technical oversight components in the life cycle of a project, including project planning, design, and construction. When fully staffed, the section has seven FTEs. As of July 2023, three engineer FTEs were vacant. Staff told us that there have been continuous vacancies and that hiring engineers for this section is difficult.

Counting the bureau chief, if fully staffed, the NMED CPB would have 19 FTEs with some degree of CWSRF responsibility. As of July 2023, 15 of those 19 positions were filled. Figure 8 shows the NMED CPB organizational structure and staffing.

**Figure 8: The NMED CPB organizational chart**



Source: OIG summary of the NMED organizational chart as of July 2023. (EPA OIG image)

NMED CPB staff stated that the CWSRF program is complex, and new hires need many months of on-the-job training. With existing vacancies in the NMED CPB, NMED managers told us that they worry about staff workload and how it negatively impacts the staff’s ability to attend training and engage in strategic planning, process improvements, and loan marketing to increase participation in the CWSRF.

Additionally, tenured NMED staff are unable to devote their time to updating processes and procedures or evaluating loan business practices to improve the program because they need to absorb the workload of vacant positions or train new hires.

While NMED staff with CWSRF-related duties generally stated that they felt comfortable with their workload, they also told us that they would be concerned if the number of CWSRF loans increased significantly. Region 6's *New Mexico CWSRF Program Evaluation Report for State FY 2022* stated that the NMED was adequately staffed to comply with CWSRF requirements and complete necessary activities. However, it also noted that, with the increased funds and requirements associated with the IJJA, the demands on staff will increase, and it encouraged the NMED to fill vacant positions. This need is particularly acute as NMED staff told us that they are concerned about federal requirements in the IJJA, such as the Build America, Buy America Act, and that they have received limited guidance from the EPA about these requirements.<sup>9</sup>

### ***The NMED Has Difficulty Filling Vacancies***

In its 2023 *Employee Engagement Survey Report*, the NMED cited insufficient funding in previous years as a limitation in its ability to fill vacancies. We also observed that the NMED has difficulty hiring because of limited candidate pipelines, uncompetitive salaries compared to private industry, and the time-consuming hiring process that New Mexico state agencies must follow.

The NMED has difficulty recruiting engineers to fill vacancies in its Technical Services section. As noted earlier, three engineer FTEs were vacant as of July 2023. According to a professional engineering society, the U.S. Bureau of Labor Statistics projected a nationwide need for about 25,000 new civil engineers each year throughout the 2020s, but that projection accounted for only the number of engineers leaving the workforce who need to be replaced, not any new positions. With the IJJA, that same professional engineering society pointed to a global risk assessment firm's estimate that infrastructure projects will create 883,600 new jobs by 2030. Due to the technical expertise needed for the implementation and oversight of infrastructure projects, the demand for engineers will increase.

NMED managers said that there is a shortage of engineers in New Mexico and that the NMED is competing with the private sector to fill vacancies. According to the New Mexico State Personnel Office, to qualify for an Engineer Professional I position, candidates must have their professional engineer license. As a result, the NMED cannot recruit at colleges and universities because newly graduated engineers do not have the experience to obtain a professional license. The NMED CPB is seeking to expand its hiring of engineering interns to fill its vacant Technical Services positions. These engineering interns will apprentice under the NMED CPB engineers to gain the skills and experience needed to obtain their professional engineer license, and the NMED indicated that this approach would improve its recruitment for recent graduates.

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<sup>9</sup> To gain a more comprehensive view on additional CWSRF IJJA requirements, we initiated a review of the EPA's guidance on Build America, Buy America Act requirements. The notification memorandum is available [here](#).

NMED managers also told us that the private sector can offer significantly higher salaries, which are more attractive to job candidates. According to the New Mexico State Personnel Office's *Classification and Pay Listings* published in July 2023, the starting salary for an entry-level engineer is \$64,486. The national mean salary for engineering professions is \$96,530.<sup>10</sup> Between May and June 2023, the NMED paused hiring actions because its human resources office was conducting a salary analysis of all NMED staff to ensure compensation levels were appropriate relative to the required education and experience for each position. While this analysis caused a short-term delay in the NMED's hiring, NMED leadership said that it hopes the analysis will have long-term improvement in retaining and recruiting staff. As a result of the analysis, NMED management told us that one staff member in the NMED CPB will receive a salary increase. Furthermore, an NMED official informed us that New Mexico's legislature passed a 6 percent raise for all state employees, which became effective July 1, 2023. While salaries for NMED staff, especially technical positions like engineers, lag the private sector, an NMED manager expressed optimism that the pay raise will improve staff recruitment and retention.

In New Mexico, the State Personnel Office must approve all hiring actions. An NMED manager told us that this can result in a lengthy hiring process. Relatedly, NMED managers also told us that there has been high turnover in the human resources department, which negatively impacts their ability to execute hiring actions.

## Conclusions

New Mexico is behind the national averages in the CWSRF financial indicators that are tracked by the EPA, and the large influx of CWSRF IIJA funds may exacerbate these existing shortfalls. The NMED's financial indicators reflect its inability to significantly increase program participation in its CWSRF program. New Mexico faces specific challenges related to its stakeholder and human capital capacity. To combat these challenges, the NMED plans to increase outreach and technical assistance to communities in New Mexico and has lowered its interest rate, revised its affordability criteria so more communities can qualify for subsidy, and created a loan marketing position. However, the full impact of these changes is yet to be realized. Region 6's implementation of our recommendations and suggestion should empower the NMED to decrease its excess of available funds, projected to be \$75.6 million in FY 2024, and more efficiently use its current IIJA CWSRF allotment, totaling \$18.9 million from FY 2022 through FY 2023 and future IIJA CWSRF allotments planned through FY 2026. Until existing challenges are fully addressed, the NMED's CWSRF program may continue to underperform.

## Suggestion

We suggest that the regional administrator for Region 6 provide training to the NMED CPB's existing and newly hired staff on marketing, outreach, and technical assistance strategies to help increase overall CWSRF program participation across New Mexico.

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<sup>10</sup> Based on publicly available wage and occupation data collected from employers of all sizes, in metropolitan and nonmetropolitan areas, as of August 29, 2023.

## Recommendations

We recommend that the regional administrator for Region 6:

1. Develop and implement a plan to conduct additional monitoring of the New Mexico Environment Department Construction Programs Bureau on its hiring efforts until fiscal year 2026, when New Mexico receives its last anticipated Clean Water State Revolving Fund Infrastructure Investment and Jobs Act allotment, or until all vacancies in the Construction Programs Bureau have been filled, whichever is sooner.
2. Provide annual training on the Clean Water State Revolving Fund program through fiscal year 2026 to New Mexico Environment Department Construction Programs Bureau staff to enhance their knowledge of the program requirements and other grant requirements enacted with the passage of the Infrastructure Investment and Jobs Act.

## Agency Response and OIG Assessment

Appendix A includes Region 6's response to our draft report. The region, in collaboration with the Office of Water, also provided technical comments, which we reviewed and incorporated into the report, as appropriate. Region 6 agreed with our recommendations and provided corrective actions with estimated completion dates. For Recommendation 1, Region 6 stated that, by October 1, 2024, it will discuss staffing issues as a standard agenda item in quarterly meetings with the NMED. For Recommendation 2, Region 6 stated that, by December 31, 2024, it will provide training to the NMED on SRF and federal grants management, as well as on specific federal requirements, such as the Build America, Buy America Act requirements and Davis-Bacon wage rates, and will develop a methodology to track and highlight the provided training in its annual reports.

The proposed corrective actions and estimated completion dates satisfy the intent of our recommendations. Therefore, Recommendations 1 and 2 are resolved with corrective actions pending.

## Status of Recommendations

| Rec. No. | Page No. | Recommendation   | Status* | Action Official                     | Planned Completion Date |
|----------|----------|--|---------|-------------------------------------|-------------------------|
| 1        | 23       | Develop and implement a plan to conduct additional monitoring of the New Mexico Environment Department Construction Programs Bureau on its hiring efforts until fiscal year 2026, when New Mexico receives its last anticipated Clean Water State Revolving Fund Infrastructure Investment and Jobs Act allotment, or until all vacancies in the Construction Programs Bureau have been filled, whichever is sooner. | R       | Regional Administrator for Region 6 | 10/1/24                 |
| 2        | 23       | Provide annual training on the Clean Water State Revolving Fund program through fiscal year 2026 to New Mexico Environment Department Construction Programs Bureau staff to enhance their knowledge of the program requirements and other grant requirements enacted with the passage of the Infrastructure Investment and Jobs Act.   | R       | Regional Administrator for Region 6 | 12/31/24                |

\* C = Corrective action completed.  
 R = Recommendation resolved with corrective action pending.  
 U = Recommendation unresolved with resolution efforts in progress.

## Agency Response to Draft Report



### REGION 6 ADMINISTRATOR

DALLAS, TX 75270

#### MEMORANDUM

**SUBJECT:** Response to the Office of Inspector Draft Report, Project No. OSRE-FY23-0059, *New Mexico's Capacity to Effectively Manage Clean Water Infrastructure Funds Faces Challenges*, February 27, 2024

**FROM:** Earthea Nance, PhD, PE  
Regional Administrator

**EARTHEA  
NANCE**

Digitally signed by  
EARTHEA NANCE  
Date: 2024.03.22 13:53:21  
-05'00'

**TO:** Lindsey Clarke Brubaker, Director, Environmental Infrastructure Oversight  
Office of Special Review and Evaluation  
Office of Inspector General

Thank you for the opportunity to respond to the issues and considerations in the subject Draft Report. The following is a summary of the U.S. Environmental Protection Agency Region 6 overall position and includes a summary of how Region 6 is currently working to address them.

#### OVERALL POSITION OF REGION 6

The draft Office of Inspector General report finds that the New Mexico Environment Department has the capacity to organizationally and financially manage the Clean Water State Revolving Fund program and the influx of IIJA funds, but that the program may lack stakeholder and human capital capacity to manage the CWSRF and other state programs within its Construction Programs Bureau.

The OIG issues two (2) recommendations for Region 6 action:

1. Develop and implement a plan to conduct additional monitoring of the NMED's CPB on its hiring efforts until FY 2026 or when all current vacancies are filled.
2. Provide annual training on the CWSRF through FY 2026 to NMED's CPB to enhance their knowledge of program and grant requirements enacted with the IIJA.

The EPA does not disagree with the facts presented in the OIG's report. The region's acceptance of these recommendations and incorporation of the practices in program implementation should coincide with the recent EPA SRF programs' focus on ensuring timely and expeditious use of SRF funding. Immediately, the region will be working with NMED to improve the NM CWSRF performance and will recommend incorporation of the OIG recommendations into the formal plan that NMED will be developing.

#### CORRECTIVE ACTION(S)

| Recommendation  | Office                            | High-Level Intended Corrective Action(s)  | Estimated Completion Date   |
|---|-----------------------------------|---|---|
| <p>1. Develop and implement a plan to conduct additional monitoring of the NMED’s CPB on its hiring efforts until FY 2026 or when all current vacancies are filled.</p> | <p><b>EPA Region 6</b></p>        | <p><u>Concur</u></p> <p>The EPA Region 6 CWSRF program will continue to discuss staffing issues in the PERs and will make staffing updates a regular agenda item in quarterly meetings with the NMED.</p>   | <p><b>October 1, 2024</b></p> <p><b>Work with NMED to incorporate into NMED’s program improvement plan</b></p> <p><b>Continuous tracking throughout the year</b></p>  |
| <p>2. Provide annual training on the CWSRF through FY 2026 to NMED’s CPB to enhance their knowledge of program and grant requirements enacted with the IJA.</p>         | <p><b>EPA Region 6/EPA HQ</b></p> | <p>The EPA Region 6 CWSRF program will regularly provide the NMED CPB with information on national SRF training programs that focus on the SRF program as a whole or in specific federal requirements such as Build America, Buy America, Davis-Bacon wage rates, or federal grants management.</p> | <p><b>December 31, 2024</b></p> <p><b>Continuous updates/tracking on SRF and grants related training will be highlighted in the Region 6 Program Evaluation Reports, NMED Intended Use Plans, and NMED CWSRF Annual Reports</b></p> |

**CONTACT INFORMATION**

If you have any questions regarding this response, please contact the Region 6 Audit Follow-up Coordinator, Josephine Hah, at (214) 665-9780 or by email at [hah.josephine@epa.gov](mailto:hah.josephine@epa.gov).

**ATTACHMENT**

1. Technical Comments

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