

# New Mexico's Water and Wastewater Infrastructure Development: Implementation of the American Recovery and Reinvestment Act and into the Future

Karen Gallegos, New Mexico  
Environment Department

*Karen was appointed by Governor Richardson as the Director of the New Mexico Environment Department's Division of Water and Wastewater Infrastructure Development in May 2008. Karen has substantive knowledge of energy and environment issues, including oil and gas, natural resources, biodiversity and conservation and global climate change. She holds a juris doctorate degree with a concentration in natural resources and international law and a bachelor's degree in university studies from the University of New Mexico. She also has a diploma in Advanced International Legal Studies from McGeorge School of Law in Salzburg, Austria, and has completed doctoral level coursework at Emmanuel College, Cambridge University. Prior to returning to New Mexico, Karen served for 17 years as a Foreign Service Officer with the U.S. Department of State. As a Political Officer in the diplomatic service, Karen's overseas assignments included the U.S. embassies in Bogota, Colombia, San Jose, Costa Rica, and Port-au-Prince, Haiti where she worked on issues including human rights, judicial affairs, counternarcotics, counter-terrorism, elections, and democracy promotion. Her service in Washington, DC, included work as an Environmental and Scientific Affairs Officer addressing global climate change issues, desk officer for Panamanian affairs, and as Political-Military Affairs Officer for African regional security issues. Gallegos is also fluent in Spanish and French. Karen was born and raised just outside of London, England. She traces her New Mexico roots to Roswell, where she graduated from Goddard High School.*



Thank you very much, and thank you for the invitation to be before you and speaking today, it is quite an honor. I attended the University of New Mexico School of Law, and it was actually Professor Al Utton who convinced me to pursue a career at the State Department, which is where I was before I came to the Environment Department. I like to think that Professor Utton is smiling somewhere knowing that I was smart enough to take his advice to join the Foreign Service, but equally as smart to finally come back home. It is kind of a full circle for me so I'm very pleased to be here today.

I would like to run through how we are looking at the implementation of the American Recovery and Reinvestment Act, the economic stimulus bill. I work directly with two rather limited cases: the Clean Water State Revolving Loan Fund and the Drinking Water State Revolving Loan Fund. I have some information about other programs that are being funded, but those are the two programs are where my remarks will be directed today. The ARARA, American Recovery and Reinvestment Act, has provided a great opportunity to get some serious and critically needed projects on

wastewater funded and off the ground, but with that great opportunity have arrived significant challenges. The ARARA is a piece of legislation where Congress had a desire and a need to meet national multiple objectives, and so oftentimes the programs within the ARARA legislation are shoehorned into a method of deploying the funds that Congress wanted to make available. It was a giant piece of legislation, over 1,000 pages. The State Revolving Loan Funds and the EPA's portion are significantly shorter, although it did provide in those few pages significant additional program requirements for use of the funds. We are fortunate to have the State Revolving Loan Fund program in place so that Congress was able to use it as a mechanism to deploy the ARARA funding for particularly water and wastewater infrastructure projects.

As an appropriation to those two funds, \$6 billion was appropriated nationwide under the ARARA rubric, which is significantly more than the annual appropriation. We were presented with an opportunity, but also with the challenges that come along with that opportunity. Of those funds, \$4 billion went to the Clean Water Program on a nationwide basis, and \$2 billion to the Drinking Water Program. To New Mexico, it meant that the Clean Water Program will receive \$19.2 million for wastewater funding, and on the drinking water side, it will receive \$19.5 million. Those are the funds we must mobilize and get out the door to fund projects across the state in the two areas.

As I mentioned, the program does have its challenges. In the past, program changes to the State Revolving Loan Fund have required a 12-18 month process for EPA to develop implementation guidelines. That is a thoughtful process where all stakeholders are included. At the end of 12-18 months, we have implementation guidelines and we know exactly how we are going to move forward. Most people have had time to digest the new requirements and have figured out how they will go about meeting those requirements. Of course this is impossible with the ARARA legislation, and let me begin with some of the implementation issues.

The first implementation issue that is of significance and is almost frightening is the readiness factor. It was completely clear in the ARARA legislation with respect to these two programs the necessity of having all of the money awarded to the states under contract and

construction by February 17, 2010. That is a hard deadline and a significantly reduced timeframe than what we are used to dealing with when we look at financing water and wastewater infrastructure development. But there is no way around the deadline and as a result, one of the things we've had to do under both programs is to develop a timeline of equally firm deadlines moving backward from that February 17th date. Basically on February 18, 2010, Governor Richardson has to certify to EPA and the Office of Management and Budget that New Mexico has all of its money appropriately under contract. Any money that we cannot certify as being under contract must go back to EPA for reallocation to other states. Not only would a community who has been awarded funds lose that money, New Mexico loses those funds as well as the opportunity to compete for funds that other states were unable to use. I don't want to wake up on February 18th and have to ask Governor Richardson to please sign a check for Lisa Jackson and then have to put that check into the mail as I am on my way out of town to Texas because we have to send money back. We have tried to be very upfront with our communities with which we are working. Let me just mention on the clean water side, there are approximately 17 communities across the state participating and on the drinking water side, it fluctuates a bit between 21 to 23 communities that are receiving ARARA funds. This readiness factor – and I hesitate to say it but the new term in our lexicon is “shovel-ready” – means many different things to many different people. What it has come to mean to us and to the communities receiving funding is if you can't meet the timeline and the firm February 17 deadline, you are not shovel ready. We will be working with communities to make sure that they hit the mark and the funding gets out the door. In the event that a community misses a deadline, we do have contingency plans to move that funding that is lost by a particular community into another project. And that is just the first implementation challenge.

The second challenge is the Davis Bacon wage requirements. For New Mexico, this is not as big an issue as we do have Davis Bacon wage coverage. We thought we were really ahead on this issue. There is a wrinkle though that I'll mention in a moment, but we are probably going to be ok with at least meeting this requirement.

The Buy American Provision on its face sounds like it belongs in the American Recovery and Reinvestment Act piece of legislation and of

course there is a certain political expediency to the concept. However, what we have found is much of the technology and many of the manufacturing goods that are required by our participant counties can only be obtained by acquiring a waiver to the Buy American Provision. That obviously does mean that there is a waiver provision within the legislation but it is not an easy process. But a waiver is available and the EPA makes the decisions on our waiver requests (New Mexico is in EPA Region 6, which is headquartered in Dallas). Region 6 makes the decision on our waiver requests; however, all Buy American waivers go through a clearinghouse at the headquarters level so that there is some consistency across regions for the waivers provided. All waivers of the Buy American Provision require publication in the Federal Register with the attendant justifications. It is not an easy process but we have two communities that have had to go through the process on clean water side.

The fourth implementation issue is called the Green Project Reserve. Twenty percent of the money a state receives through its capitalization grant under the ARARA legislation must fund green projects up to at least twenty percent. When I first heard that, I thought it wasn't going to be a problem because we are protecting public health, we are insuring water quality for the future, and we are protecting the environment. Thus, water and wastewater infrastructure seems to me inherently a green project. Well, I was wrong. The requirement has a significantly more narrow and specialized definition of green projects. You will be pleased to know that we have been able to meet that requirement on both the clean water and drinking water side in this go around. We haven't needed to request a waiver or give up any funding, but it was a challenge. The four areas of green projects that were considered included: 1) water conservation, and this means significant water conservation, water conservation as a percentage of actual use; 2) energy conservation, again a rather high limit that must be reached before the energy conservation green project reserve is counted; 3) green infrastructure, and a lot of that meant roof gardens to people everywhere but the dry Southwest because that would mean greater water use for us – I'm not an engineer but it's not really an option for New Mexico; and 4) innovative technology.

I want to mention that we have two projects in the Ruidoso area; both the City of Ruidoso Downs and the Village of Ruidoso are joining together

and completing a wastewater treatment plant. After we got the Buy American Provision waiver for the membrane technology that is really leading technology, but only produced in Japan, we were able to apply for the Green Project Reserve to have some of that funding for those two projects count against our twenty percent on the Green Project Reserve. We supported the communities putting forth a business case on the significant water conservation and the energy conservation. They hit each of these four areas that EPA requires. It turns out the Office of Management and Budget (OMB) is interested in energy conservation associated with using high-energy pumps and also, interestingly enough, reducing the carbon footprint by not using as many chemicals thus reducing the amount of transportation costs and carbon expended in transportation, all due to the innovative technology being used. To the engineers here today, I'm going to simplify this too much and their heads are going to spin, but basically this technology is such that it shortens the treatment process, and that is where some of the water and energy savings occur. Also with the membrane bio-reactors, they are again using the leading edge of technology and really the only way that Ruidoso and Ruidoso Downs are going to be able to make their effluent discharge requirements. This was a significant process to go through, especially the Buy American waiver and then once that was clear, to go through the Green Project Reserve to make sure we could receive our complete funding allocation. It has been a very time consuming process and the February 17 deadline looms.

The road to guidance that I mentioned earlier, that 12-18 month road that we usually have, was not available. Guidance on all of these implementation guidelines has changed almost by the day. We've started in one place and gone through a whole series of back and forth efforts and have almost ended up in the same place on a couple of different issues. So it has been difficult. I will mention here that the Green Project Reserve for funding is probably not going away. It is an issue that OMB is directly interested in and a requirement that is currently in the federal fiscal year 2010 budget documents including in all versions currently under discussion. The Green Project Reserve is there for the future. In addition, there is also re-authorization legislation for both of these programs that contains the Green Project Reserve, so it is not going away and something of which we must be very cognizant.

One additional issue has been transparency and accountability. There is an exceptional level of oversight of ARARA funds from reporting requirements down to the contractor level. It is very significant and to where we must account for jobs created, jobs maintained, work hours, and so on. It is going to be onerous to collect the data and it will be very difficult to provide the level and the detail of reporting information being required. Concerning oversight, contractors must keep records sufficient for audits on whether Davis-Bacon wage rates are being met as well as the Buy American Provision. Those records have already been identified by the General Accounting Office as well as the inspectors within EPA. Significant scrutiny will be made to make sure that the Buy American Provision is maintained.

The good part and the opportunity with ARARA funding is the further subsidization of the amounts provided to states. Fifty percent are required to be given out as either negative interest loans or principle forgiveness (grants). Of course if you can figure out a negative interest loan, and the principle forgiveness is a little bit easier to understand, those operate essentially as grants. In New Mexico under the Drinking Water Program, each community receives between 50 to 80 percent principle forgiveness. In the Clean Water Program, all funding available under the ARARA was provided or is being provided as grant funding. However, we are unable to provide strictly grants; they must be in combinations with loans. So we have made loans to the communities from our base program. If you have a loan of \$2 million, you have to take 20 percent as a loan or if you have a grant, "x" percentage has to be in the form of a loan. We look at each community to make those calculations; it must reflect a backboard of affordability and not a standard projected percentage.

In New Mexico, under the Drinking Water Program, we had around \$16 million to move out the door. We received project requests in excess of \$230 million. Under the Clean Water Program, we have approximately \$17-18 million available for funding and we received \$670 million in requests. Between the two, we are just shy of \$1 billion in requests. And \$38 million doesn't really cover it. One of the benefits we found though, while we knew there were great and critical needs across New Mexico for water and wastewater infrastructure development and we had sort of an amorphous number in mind, was that we do have a billion dollars worth of needs. We now have

a list of concrete, specifically identified projects and though they may not have received funding through the ARARA opportunity, we can work with those communities as we go into the future to develop ways to help them find financing, which is ultimately the way forward.

I would like to leave you with the fact that the ARARA exercise has shown us the need for communities to plan. One of the gaps that we have identified and that will need to be addressed in the near term is how do we find funding for those communities. They need to have preliminary engineering reports and they need to be further along in their environmental documents so that we can make them shovel ready. We hope that the Uniform Funding Application Process, which some of you may be familiar with, will be a mechanism that we can use in the future as we go along this road to help communities.

Again, let's prepare for the future by identifying appropriate projects and move forward to find funding that is increasingly limited. In particular, the State Revolving Loan Funds appear to be healthy into the future. In the federal fiscal year budget for 2010, it looks as if New Mexico is likely to receive 2 to 4 times the amount of general capitalization grants, so we will have low cost subsidized loan funding as we move into the future.

Thank you very much.