

FY 2018 Watershed-Based Funding Pilot Program Policy

From the Board of Water and Soil Resources, State of Minnesota

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Policy Statement

The Clean Water Fund was established to implement part of Article XI, Section 15, of the Minnesota Constitution, and Minnesota Statutes §114D with the purpose of protecting, enhancing, and restoring water quality in lakes, rivers, and streams and to protect groundwater and drinking water sources from degradation.

Applicable Clean Water Fund Programs and Grants

- Watershed-based Funding Pilot Program

Reason for the policy

The purpose of this policy is to provide expectations for implementation activities conducted via the Board of Water and Soil Resources (BWSR) Clean Water Fund (CWF) Watershed-based Funding Pilot program as defined by the Clean Water Fund appropriation under Laws of Minnesota 2017, Chapter 91, Article 2, Section 7 (a).

\$4,875,000 the first year and \$4,875,000 the second year are for a pilot program to provide performance-based grants to local government units. The grants may be used to implement projects that protect, enhance, and restore surface water quality in lakes, rivers, and streams; protect groundwater from degradation; and protect drinking water sources. Projects must be identified in a comprehensive watershed plan developed under the One Watershed, One Plan or metropolitan surface water management frameworks or groundwater plans. Grant recipients must identify a non-state match and may use other legacy funds to supplement projects funded under this paragraph.

BWSR will use grant agreements for assurance of deliverables and compliance with appropriate statutes, rules and established policies. Willful or negligent disregard of relevant statutes, rules and policies may lead to imposition of financial penalties or future sanctions on the grant recipient.

BWSR's Grants Administration Manual (<http://www.bwsr.state.mn.us/grants/manual/>) provides the primary framework for local management of all state grants administered by BWSR.

Program Requirements

1. Local Governmental Unit Eligibility Criteria

In the seven-county Twin Cities Metropolitan Area, eligible recipients through this policy include local governments (counties, watershed districts, watershed management organizations, soil and water conservation districts, and municipalities¹) having a current state approved and locally adopted: watershed management plan required under §103B.231, county groundwater plan authorized under §103B.255, or soil and water conservation district comprehensive plan under Minnesota statutes §103C.331, Subd. 11 who have partnered within a county boundary to develop a joint work plan. The BWSR reserves the right for the Executive Director to determine if the partnership is sufficient to meet the goals of the pilot program. Disputes to this decision may be brought to the BWSR Central Region Committee.

For areas outside of the seven-county Twin Cities Metropolitan Area, eligible recipients include partnerships of local governments (counties, soil and water conservation districts, watershed management organizations, watershed districts and other local governments) that have a current state approved and locally adopted comprehensive watershed management plan authorized under Minnesota statutes §103B.101, Subd. 14 or §103B.801 and a formal agreement to implement this plan together. Local governments within the partnership that have not adopted the state approved comprehensive watershed management plan cannot directly receive these funds; however, implementation may still occur with these funds in the geographic area of that local government by another entity within the partnership.

All recipients must be in compliance with applicable federal, State, and local laws, policies, ordinances, rules, and regulations. Recipients who have previously received a grant from BWSR must be in compliance with BWSR requirements for grantee website and eLINK reporting before grant execution and payment.

2. Match Requirements

A non-State match equal to at least 10% of the amount of the Watershed-Based Funding received is required. Match can be provided by a landowner, land occupier, private organizations, local government or other non-State sources and can be in the form of cash or the cash value of services or materials contributed to the accomplishment of grant objectives.

3. Eligible Activities

The primary purpose of activities funded through this program is to implement projects that protect, enhance, and restore surface water quality in lakes, rivers, and streams; protect groundwater from degradation; and protect drinking water sources. Eligible activities must be identified in the state approved, locally adopted comprehensive watershed management plan developed under Minnesota statutes §103B.101, Subd. 14 or §103B.801, watershed management plan required under §103B.231, or county groundwater plan authorized under §103B.255 and have a primary benefit towards water quality. Activities must be first submitted through a

¹ Municipalities (cities and townships) in the seven-county metropolitan area are eligible if they have a water plan that has been approved by a watershed district or a watershed management organization as provided under Minn. Stat. 103B.235.

work plan that will be reviewed by BWSR. The work plan must be approved by BWSR prior to funds being distributed.

Eligible activities can consist of structural practices and projects; non-structural practices and measures, program and project support, and grant management and reporting. Technical and engineering assistance necessary to implement these activities are considered essential and are eligible to be included. Activities that result in multiple benefits are strongly encouraged.

- 3.1 **Practice Standards.** All practices must be consistent with the Natural Resource Conservation Service (NRCS) Field Office Technical Guide (FOTG), Minnesota Stormwater Manual, or be professionally accepted engineering or ecological practices. Design standards for all practices must include specifications for operation and maintenance for the effective life of the given practice, including an inspection schedule and procedure.
- 3.2 **Effective Life.** All practices must be designed and maintained for a minimum effective life of ten years for best management practices and 25 years for capital improvement practices. The beginning date for a practice's effective life is the same date final payment is approved and the project is considered complete. Where questions arise under this section, the effective lifespan of structural practices and projects shall be defined by current and acceptable design standards or criteria as defined in Section 3.1.
- 3.3 **Project Assurances.** The grantee must provide assurances that land owners or land occupiers receiving this funding will keep the practice in place for its intended use for the expected lifespan of the practice. Such assurances may include easements, deed recordings, enforceable contracts, performance bonds, letters of credit, and termination or performance penalties. BWSR may allow replacement of a practice or project that does not comply with expected lifespan requirements with a practice or project that provides equivalent water quality benefits. See also the Projects Assurances section of the Grants Administration Manual.
- 3.4 **Operation, Maintenance and Inspections.** Identifying operation and maintenance activities specific to the installed practices is critical to ongoing performance of installed practices as well as to planning and scheduling those activities. An operation and maintenance plan must be prepared by designated technical staff for the life of the practice and be included with the design standards. An inspection schedule, procedure, and assured access to the practice site shall be included as a component of maintaining the effectiveness of the practice.
- 3.5 **Technical and Administrative Expenses.** Clean Water Funds may be used for actual technical and administrative expenses to advance plan implementation. Eligible expenses include the following activities: grant administration, site investigations and assessments, design and cost estimates, construction supervision, and construction inspections. Technical and administrative expenditures must be appropriately documented according to the Grants Administration Manual.
- 3.6 **Grant Management and Reporting.** All grant recipients are required to report on the outcomes, activities, and accomplishments of Clean Water Fund grants. The grant funds may be used for local grant management and reporting that are directly related to and necessary for implementing the project or activity.

3.7 Livestock Waste Management Practices. Funding for application of conservation practice components to improve water quality is limited to: livestock management systems that were constructed before **October 23, 2000**, and livestock operations registered with the Minnesota Pollution Control Agency Database or its equivalent and are not classified as a Concentrated Animal Feeding Operation (CAFO) and have less than 500 animal units (AUs), in accordance with Minnesota Rule Chapter 7020.

BWSR reserves the right to deny, postpone or cancel funding where financial penalties related to livestock waste management violations have been imposed on the operator.

- a. Funded projects must be in compliance with standards in MN Rule Chapter 7020 upon completion.
- b. Eligible practices and project components must meet all applicable local, State, and federal standards and permitting requirements.
- c. Eligible practices are limited to best management practices listed by the MN USDA-NRCS. (www.nrcs.usda.gov/wps/portal/nrcs/detail/mn/programs/financial/eqip/?cid=nrcs142p2_023513)
- d. Feedlot roof structure is an eligible practice with the following payment limitation: The maximum grant for a feedlot roof structure is not to exceed \$100,000. Funding is not eligible for projects already receiving flat rate payment equaling or exceeding this amount from the NRCS or other State grant funds.
- e. Feedlot relocation is an eligible practice, with the following conditions:
 - 1) The existing eligible feedlot must be permanently closed in accordance with local and State requirements,
 - 2) Payment Limitation: The maximum grant for a feedlot relocation is not to exceed \$100,000. Funding is not eligible for projects already receiving flat rate payment equaling or exceeding this amount from the NRCS or other State grant funds.
 - 3) The existing and relocated livestock waste management systems sites are considered one project for grant funding.

3.8 Subsurface Sewage Treatment Systems

- a. Only identified imminent threat to public health systems (ITPHS) are eligible for grants funds, except as provided under b. Project landowners must meet low income thresholds. Low income guidelines from U.S Rural Development are strongly encouraged as the basis for the definition of low income.
- b. Proposed community wastewater treatment systems involving multiple landowners are eligible for funding, but must be listed on the MPCA's Project Priority List (PPL) and have a Community Assessment Report (CAR) or facilities plan [Minn. Rule 7077.0272] developed prior to work plan submittal. For community wastewater system applications that include ITPHS, systems that fail to protect groundwater are also eligible.
- c. In an unsewered area that is connecting into a sewer line to a municipal waste water treatment plant (WWTP), the costs associated with connecting the home to the sewer line is eligible for funding if the criteria in a. and b. above are met.

3.9 Multipurpose Drainage Management. Proposed activities must be conducted adjacent to, on, or within the watershed of a priority Minnesota Statutes Chapter 103E Drainage System(s). Following is a list of eligible conservation practices and activities.

- a. NRCS Conservation Practice Standard (CPS) Code 410 Grade Stabilization Structure: When proposing side inlet structures in combination with a continuous berm along a Chapter 103E drainage ditch, eligibility is limited to the side inlet pipes and construction of an average 3 ft. high (above existing ground) berm.
- b. CPS Code 412 Grassed Waterway
- c. CPS Code 638 Water and Sediment Control Basin
- d. Open tile inlet replacement: Replacement of existing open tile inlets with water quality improvement inlets (e.g. perforated riser, dense pattern tile, or gravel inlet) in accordance with NRCS CPS Code 606 Subsurface Drain, as applicable, to reduce sediment entering a Chapter 103E drainage system via subsurface drainage tile.
- e. Storage and Treatment Wetland Restoration: This activity requires a perpetual flowage and conservation easement to be held by the Chapter 103E drainage system.
- f. A perpetual flowage and conservation easement must be approved by BWSR for entire contiguous storage and treatment wetland restoration(s) on, or within the watershed of, a Chapter 103E drainage system. Total payment rates, including match shall not exceed Reinvest in Minnesota (RIM) rates. The perpetual flowage and conservation easement must include an upland buffer of perennial native vegetation around the wetland area having a minimum width of 30 feet and average width of 50 feet, except where the wetland boundary is adjacent to a road right-of-way or property boundary, as approved by BWSR. The maximum upland buffer to increase multipurpose benefits or square off the easement area is limited to a 1:1 upland to wetland area ratio for each wetland, as approved by BWSR. Payable non-cropland buffer acres are limited to 20% of the total buffer acres. Design and construction components necessary for wetland and upland buffer restoration are eligible.
- g. NRCS Conservation Activity Plan (CAP) 130 Drainage Water Management Plan: The CAP 130 can include controlled subsurface drainage, denitrifying bioreactor, and saturated buffer components. The plan must be developed by a Technical Service Provider (TSP) certified in the NRCS Tech Regulation for CAP 130.
- h. CPS Code 587 Structure for Water Control:
- i. CPS Code 554 Drainage Water Management, Implementation/Operation: A CAP 130 is required. For areas where controlled subsurface drainage structures have been installed to manage water levels, NRCS rates must be applied.
- j. CPS Code 604 Saturated Buffer:
- k. Code 605 Denitrifying Bioreactor:

3.10 Non-Structural Practices and Measures. Non-structural practices and activities that supplement, or exceed current minimum State standards or procedures for protection, enhancement, and restoration of water quality in lakes, rivers, and streams or that protect groundwater from degradation are eligible. Non-structural vegetative practices must follow the Native Vegetation Establishment and Enhancement Guidelines: www.bwsr.state.mn.us/native_vegetation/seeding_guidelines.pdf.

- a. **In-lake or in-channel treatment.** Best management practices such as rough fish management, lake drawdown and alum treatments that have been identified as an implementation activity in a TMDL study or Watershed Restoration and Protection Strategies document are allowable. A feasibility study must be completed, reviewed and approved by BWSR staff prior to funds being spent on these activities. Eligible costs apply only to initial costs for design and implementation. All subsequent applications and treatments under this subsection are considered to be Operations and Maintenance expenses that are a local responsibility.
- b. **Incentives.** Incentives may be used to encourage landowners to install or adopt land management practices that improve or protect water quality. Incentive payments and enhanced protection measures should be reasonable and justifiable, supported by grant recipient policy, consistent with prevailing local conditions, and must be accomplished using established standards. All incentivized practices or procedures must have a minimum duration of at least 3 years with a goal of long-term landowner adoption. BWSR reserves the right to review and approve incentive payment rates established by grant recipient policy. Any projects proposing incentives for more than 3-years must be reviewed by BWSR staff and approved by the Executive Director prior to work plan approval.
- c. **Project Support.** Eligible activities include community engagement, education and outreach, equipment and other activities, which directly support or supplement the goals and outcomes expected with the implementation of items identified in section 3.0 above. Refer to guidance within the Grants Administration Manual for Capital Equipment Purchases.
- d. **Easements.** Proposed use of easements and payment amounts must be reviewed and approved by BWSR staff prior to expenditure of grant funds to acquire an easement. Total payment rates for perpetual easements, including match shall not exceed Reinvest in Minnesota (RIM) rates.

4. Ineligible Activities

The following activities will not be considered:

- a. Activities that do not have a primary benefit of water quality
- b. Stormwater conveyances that collect and move runoff, but do not provide water quality treatment benefit
- c. Replacement, realignment or creation of trails or roads
- d. Municipal wastewater treatment
- e. Municipal drinking water supply facilities or individual drinking water treatment systems
- f. Routine maintenance activities within the effective life of existing practices or projects
- g. General maintenance and repair of capital equipment
- h. Activities having the primary purpose of water quality monitoring
- i. Livestock Waste Management Practices: Practices and activities that are not listed in the USDA NRCS-EQIP docket or are not included in the USDA NRCS eFOTG
- j. Subsurface Sewage Treatment Systems (SSTS):
 - 1) Small community wastewater treatment systems serving over 10,000 gallons per day with a soil treatment system, and
 - 2) A small community wastewater treatment system that discharges treated sewage effluent directly to surface waters without land treatment.

- k. Drain tile, except for tile outlets required for water and sediment control basins, tile required to make eligible drainage water management practices function, and dense pattern tile to replace open tile inlet(s)
- l. Ditching except if needed for the creation of a storage and treatment wetland restoration
- m. Back-flow preventing flap gates on side inlet structure pipes where a system-wide analysis has not been completed
- n. Bridges
- o. Fee title land acquisition (costs may count towards match)
- p. Contribution to a contingency or reserve fund that extends beyond the grant agreement period
- q. Payment(s) to an equipment replacement fund

5. Technical Expertise

The grantee has the responsibility to ensure that the designated technical staff have the appropriate technical expertise, skills and training for their assigned role(s). See also the Technical Quality Assurances section of the Grants Administration Manual.

5.1 **Technical Assistance Provider.** Grantees must identify the technical assistance provider(s) for the practice or project and their credentials for providing this assistance. The technical assistance provider(s) must have appropriate credentials for practice investigation, design, and construction. Credentials can include conservation partnership Job Approval Authority (JAA), also known as technical approval authority; applicable professional licensure; reputable vendor with applicable expertise and liability coverage; or other applicable credentials, training, and/or experience.

5.2 **BWSR Review.** BWSR reserves the right to review the qualifications of all persons providing technical assistance and review the technical project design if a recognized standard is not available.

6. Practice or Project Construction and Sign-off

Local governments receiving these funds shall verify that the practice or project was properly installed and completed according to the plans and specifications, including technically approved modifications, prior to authorization for payment.

7. BWSR Grant Work Plan, Reporting, and Reconciliation Requirements

BWSR staff is authorized to develop grant agreements, requirements and processes for work plans and project outcomes reporting, closeouts, and fiscal reconciliations. All grantees must follow the Grants Administration Manual policy and guidance. BWSR recognizes that as a pilot program activities may be identified after the work plan is approved. Work plan revisions must follow the BWSR Grants Administration Manual procedures for Grant Agreement Amendments and Work Plan Revisions.

In the event there is a violation of the terms of the grant agreement, BWSR will enforce the grant agreement and evaluate appropriate actions, up to and including repayment of grant funds at a rate up to 150% of the grant agreement.

8. Performance

Watershed-based funding will be based upon accountability and performance in achieving measurable progress towards elements of the comprehensive watershed management plan. As a performance-based grant, BWSR reserves the right to modify, suspend, or cancel the grant agreement at any time if work under the grant agreement is found by BWSR to be unsatisfactory. Performance under this program may impact future watershed-based funding allocations.

A future performance measure under consideration for these grants is the amount or percent leveraged funds; therefore, grantees are encouraged to report all funds leveraged above and beyond the required match.

History

This version is the first for this policy

Contact

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