

# Disaster Recovery Assistance Program Policy

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

**Version:** 2.00

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## Policy Statement

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Disasters and emergency legislative funding occur frequently and usually unpredictably. These characteristics require a standard operating procedure for Board of Water and Soil Resources (BWSR) and local government staff to follow in order to optimize efficiencies, responsiveness, and use of legislative appropriations. In the event of a disaster, program policy (and guidance) will provide BWSR and local government staff the needed implementation information and related processes of BWSR and other state and federal assistance providers.

## Reason for the policy

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The Disaster Recovery Assistance Program (DRAP) provides designated appropriated funds, and other BWSR designated funds, to local governments to install, repair, or rehabilitate erosion and sediment control and water quality and watershed protection projects in the disaster area. This program will utilize appropriations for disaster recovery, such as: **Erosion and Sediment Control and Water Quality, and Watershed Protection Projects** and acquisition of **Reinvest in Minnesota (RIM) Reserve Conservation Easements**. The purpose of this policy is to provide clear expectations for the implementation of funds appropriated to, and programs implemented by BWSR, that are associated with the DRAP.

## Activation

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The BWSR may activate the DRAP in the event of a natural disaster or extreme environmental impact. The DRAP is authorized by Minnesota Statutes §12A.05 to address critical conservation problems resulting from a presidentially declared disaster. This policy is activated for any given disaster by BWSR resolution or by authority delegated to the Executive Director.

# Erosion and Sediment Control and Water Quality, and Watershed Protection

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Local governments are responsible for the administration and decisions concerning the local use of these funds in accordance with Minnesota Statutes, Minnesota Rules, BWSR policies; and all other applicable laws. BWSR will use grant agreements and contracts for assurance of deliverables and compliance, with applicable laws, rules and policies. Non-compliance with relevant statutes, rules, and policies may lead to imposition of financial penalties on the grantee. Willful or negligent disregard of relevant statutes, rules and policies may lead to imposition of financial penalties or future sanctions on the grant recipient.

The BWSR Grants Administration Manual provides the primary framework for local management of these funds.

## 1.0 BWSR Project Allocation Priorities (in priority order)

The following priorities are for conservation practices and projects that address erosion and sediment control and water quality, and watershed protection, problems and needs caused by the disaster.

1. Conservation practices where imminent human safety or health is a concern.
2. Projects that repair, rehabilitate, or replace, existing conservation practices damaged by the disaster.
3. New conservation practices that address erosion and sediment control, water quality, and watershed protection problems created by the disaster.
4. New practices that will help prevent flood damages in the future.

These allocation priorities may consider other project specific factors including long-term solutions, relative benefits, cost/benefits, and the amount of federal contributions.

## 2.0 Funding Source Priorities

- 2.1. Landowners and local governments must first pursue insurance assistance and eligible federal program funding to repair damages, respectively, in accordance with Minnesota Statutes §12A.03, Subdivision 2 and Subd. 3.
- 2.2. State funds appropriated for a disaster response should be used when possible to partner with federal funding for applicable disaster assistance on private lands as non-federal match for federal programs including, but not limited to:
  - Emergency Watershed Protection Program (EWP) (NRCS)
  - Emergency Conservation Program (ECP) (FSA)
  - Environmental Quality Incentives Program (EQIP) (NRCS)
  - Wetlands Reserve Easements (WRE) (NRCS)
  - Conservation Reserve Program (CRP) (FSA)
  - Individual Assistance (IA) - FEMA

2.3. State disaster appropriated funds with no match.

2.4. Other state or local funds.

### 3.0 Local Governmental Unit Eligibility Criteria

Funds are allocated based on the following minimum criteria:

- Location within the applicable presidentially declared disaster area; and
- Local government unit prioritized damage assessment project list approved by the Board Conservationist; and
- Board Conservationist review and approval of requests for funds; and
- Specific BWSR Policy adopted at the time of the disaster declaration.

### 4.0 Eligible Activities

The primary purpose of activities funded with Disaster Recovery and Assistance funds is to apply structural or vegetative conservation practices to address problems associated with the disaster. Local spending priorities may be directed by BWSR or appropriation language for specific allocations. Specific preventative practices may also be allowed through policy or appropriation. See also the Technical Quality Assurances section of the Grants Administration Manual.

- 4.1 **Practice Standards.** All practices must be consistent with the NRCS Field Office Technical Guide (FOTG), MN 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. Practices where runoff or sediment from the contributing watershed prevents the practice from achieving the intended purpose with normal operation and maintenance are ineligible. Vegetative practices must follow the BWSR Native Vegetation Establishment and Enhancement Guidelines, to the extent practicable.
- 4.2 **Effective Life.** All structural practices must be designed and maintained for a minimum effective life of ten years unless a longer term is specified in the design. The beginning date for a practice's effective life is the same date final payment is approved and the project is considered complete.
- 4.3 **Project Assurances.** The grantee must provide assurances that the landowner or land occupier 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. See also the Projects Assurances section of the Grants Administration Manual.
- 4.4 **Repair or Replacement of Damaged Practices.** Repair of damage to a conservation practice is eligible if the practice was installed using approved standards, damage was caused by reasons beyond the control of the land occupier, and damage or failure of the practice was not due to improper maintenance of the practice within the effective life. BWSR may allow replacement of a

damaged practice or project that does not comply with expected lifespan requirements with a practice or project that provides equivalent water quality benefits.

## 5.0 Technical and Administrative Expenses

Disaster Recovery and Assistance Program funds may be used for actual technical and administrative expenses. Eligible expenses include the following activities: grant administration, site investigations and assessments, design and cost estimates, construction oversight, and construction inspections. Technical and administrative expenditures must be appropriately documented according to the Grants Administration Manual.

## 6.0 Cost Share Rates

Cost share rates represent the percent of the installation cost of a practice that may be provided to a land occupier for materials and labor necessary to install the practice.

- 6.1 **Maximum Rates.** Projects are eligible for up to 100% state and/or federal cost share on disaster impacted sites unless other rates apply due to a particular funding source (see 2.0).
- 6.2 **Local Rates.** The grantee may set cost share rates less than 100% to help manage project costs and provide consistency for conservation programs. Prior to entering into any contracts with land occupiers, the LGU shall set cost share rates for activities.
- 6.3 **Match and In-Kind.** A land occupier may provide the remainder of the installation cost through in-kind services or materials, or non-state funds. The grantee shall determine whether charges for in-kind services and materials are practical and reasonable. Standard rates for in-kind services shall be identified in the LGU's cost share program policy or governing body resolution.

## 7.0 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.

- 7.1 **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 Engineering Job Approval Authority (EJAA), 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.
- 7.2 **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.

## 8.0 Expenditure of Funds on Practices and Contracts

The grantee has the authority and responsibility to approve expenditure of funds within their own organization. The action taken must be documented in the grantee's official records. The grantee may delegate this authority as long as delegation is supported by a documented local board or council action, such as a motion, resolution, or adoption of a policy. Grant reporting, fiscal management, and administration requirements are the responsibility of the grant recipient (See also 11.0.). BWSR recommends contracts be reviewed by the grantee's legal counsel. See also the Implementing Contracts with Land Occupiers section of the Grants Administration Manual.

- 8.1 **Cost Share Contract.** All grantee expenditures of funds providing financial assistance to landowners require a contract with the land occupier. A contract between the grantee and land occupier receiving state funds is required to provide a legal standing to ensure practices are installed according to approved standards and specifications, and maintained according to operations and maintenance plans. The contract must specify grantee enforcement provisions, including repayment of cost share funds and costs to recover and enforce the contract at a rate up to 150% of the original landowner agreement (see also 10.3). Land occupier means a person, corporation, or legal entity that holds title to or is in possession of land as an owner, lessee, tenant, or otherwise. If the land occupier is not the landowner, the contract must also bear the landowner's signature.
- 8.1.2 **Procedures.** The required procedures and conservation practice assistance contract can be found on the BWSR website in the Grant Administration Manual. Procedures include: contract modifications, amendments, group projects, contract approval, and projects that cross organizational boundaries.
- 8.3 **Emergency Work.** Under this policy, projects within a declared disaster area where emergency work began prior to grantee or BWSR approval may be eligible for financial assistance with adequate documentation as detailed in DRAP Guidance on the BWSR webpage.
- 8.4 **Contract Timeframe.** Grantees have the authority to adopt timely completion dates. Completion of a contract with a land occupier must be within the grant period. Contracts not completed within the period of the grant agreement must be cancelled unless the contract and the grant agreement have both been extended such that the contract completion date is within the amended grant period.
- 8.5 **Canceled Projects.** Funds from canceled projects or remaining from completed projects where the final cost was less than the estimated amount may be allocated to a new contract if within the grant period, or unspent funds must be returned as provided in the grant agreement.
- 8.6 **Removal of Practices.** Grantees may authorize the removal of a practice installed under this program, within the effective life of the practice, provided the land occupier can show good cause for removal of the practice and the purpose of the original practice is achieved. Grant funds may not be used to remove a practice.

## 9.0 Practice Sign-off and Payment

Payments to land occupiers are made only after all practices are installed and certified complete by the technical representative according to the plans and specifications, including technically-approved modifications, and that vouchers and receipts are accurate. Partial payment may be considered for projects that are phased or in cases where weather or unanticipated circumstances force postponement of completing the project. Payments must be made to the party that the contract is with or, if recommended by the grantee's attorney, a joint payment may be made to the land occupier and contractor. See also the Implementing Contracts with Land Occupiers section of the Grants Administration Manual.

- 9.1 **Reimbursement.** Land occupiers must incur all expenses for project implementation and provide vouchers and invoices or copies of paid receipts to verify all expenses prior to requesting reimbursement. An example payment voucher form is available on the BWSR website. In cases where the actual cost of the practice exceeds the estimated cost, the grantee may only share the additional amount when an amendment is made to the contract. Where the actual cost is less than the estimated cost, the grantee shall only share the approved percentage of the actual cost of the practice (per 6.1). Payment amounts from combined state and federal sources shall not exceed the 100% cost share rate.
- 9.2 **Project Review and Final Plan.** After receiving a request for final reimbursement, technical staff must review for each project; the as-built plan, vouchers, and invoices or copies of paid receipts submitted by the land occupier for completion and technical approval. One copy of the final as-built plan must be given to the land occupier and one copy retained with the project file located in the grantee's office.

## 10.0 Operation, Maintenance, and Inspection of Practices

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. Designated technical staff must prepare an operation and maintenance plan specific to the practice and the site where it is located and review it with the land occupier before installation of the conservation practices begins. Scheduled site inspections by designated technical staff (per 7.0) are necessary to ensuring operation and maintenance has been taking place. See also the Operation, Maintenance, and Inspection of Practices section of the Grants Administration Manual.

- 10.1 **Failure to Maintain Practices / Conservation Practice Contract Noncompliance.** Should the land occupier fail to maintain the practices during their effective life according to the operation and maintenance plan, the land occupier is liable for repayment of cost share funds and costs to recover and enforce contract, at a rate up to 150% of the original landowner agreement as determined by the grantee board. The grantee shall provide the basis for repayment. See also the Implementing Contracts with Land Occupiers section of the Grants Administration Manual.

## 11.0 BWSR Grant Reporting and Reconciliation Requirements

To ensure the continued success of the DRAP, regular reporting of accomplishments and benefits is required. BWSR staff is authorized to develop grant agreements, including requirements and processes for monitoring,

project outcomes reporting, closeouts, and fiscal reconciliations. All grantees must follow the grant agreement and Grants Administration Manual. See specifically the Reporting Requirements and Grant Closeout Process sections of the Grants Administration Manual.

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 100% of the grant agreement.

## Reinvest in Minnesota (RIM) Reserve Conservation Easements

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In responding to flood disasters, the BWSR seeks to acquire permanent conservation easements from willing landowners on damaged lands in declared disaster counties to provide flood attenuation, restore and protect soil and water resources, and to support and restore related fish and wildlife habitat. Easements will be acquired via the RIM Reserve program, Minnesota Statutes §103F.501.

### 12.0 Eligible Activities and Priorities

#### 12.1 Eligible lands include:

12.1.1 Flood damaged lands, both cropland and non-cropland areas. All eligible land types under Minnesota Statutes §103F.515, Subd. 2 that have been damaged by flooding are eligible.

12.1.2 Riparian lands with a history of flooding within and beyond the 100 year floodplain, where an easement will help mitigate future flood impacts.

12.1.3 Wetland restorations where storage will help reduce future flood impacts.

12.2 **Priorities.** Cropland areas are the priority for funding consideration. Removing cropland from flood-prone areas will have positive water quality impacts, reduce runoff, and lessen negative economic impacts due to flooding for landowners and governments. Non-cropland areas are a lower priority.

12.3 **Conservation Plans.** All lands placed under easement will have an approved conservation plan developed to establish and maintain permanent vegetative cover and required structural practices consistent with the Practice Specifications section of the RIM Handbook.

### 13.0 Administrative and Technical Components

#### 13.1 Easement sign-up procedures

13.1.1 BWSR easement staff have the authority to develop specific procedures required to conduct landowner sign-up with Soil and Water Conservation Districts (SWCDs) in response to disasters. This includes a complete list of what is needed to be submitted with each landowner application package.

13.1.2 SWCDs will take applications from landowners during the BWSR prescribed sign-up period, and prioritize their applications based on the effectiveness in addressing flood impacts in their county prior to submitting them to BWSR Easement staff by the sign-up deadline.

13.1.3 BWSR Easement staff will select applications for funding and may consult with BWSR Board Conservationists before making decisions if questions arise with specific projects, SWCD prioritization, or if there are questions with the community disaster application assistance forms.

13.1.4 BWSR Engineering staff will review all applications where wetlands are proposed for restoration, or existing drainage infrastructure may be impacted.

13.1.5 All easement program procedures contained in the RIM Handbook found on the BWSR website will be used to secure easements and pay for practice establishment.

13.2 **SWCD Payment for Services.** SWCDs will be compensated for their services associated with the acquisition of easements and installation of required practices. The payment process is identified within the agreement between the SWCD and BWSR for easement services.

## **14.0 Easement Payment Rates and Conservation Practice Cost Share Rates**

### **14.1 Easement and Practice Payments.**

14.1.1 The most recent BWSR approved conservation easement payment rates will be used to compute payment for enrolled lands.

14.1.2 The current practice rate limits, as prescribed by the BWSR, will be used to reimburse landowners for their cost of establishing required vegetative and/or structural conservation practices.

14.1.3 The only structural practices eligible for RIM cost share are those required to restore wetlands via the RIM Reserve program. Other desired structural practices on lands under RIM easements will NOT be eligible for RIM cost share.

## **15.0 Post Easement Conveyance Monitoring and Management**

15.1 **Monitoring/Site Inspections.** All easements acquired will be inspected by SWCD staff on an annual basis for the first 5 years after an easement is recorded, and every 3rd year thereafter. BWSR will provide a list of easements for inspections to the SWCD.

15.2 **Management and Maintenance.** SWCDs will assist landowners or authorized agent with ongoing management activities on their easements. Weed control, boundary issues, activities on the easement, and maintenance of water control structures are the main activities that landowners will need assistance with.

## 16.0 Drought Emergencies and Emergency Haying and Grazing

As required by Minnesota Statutes §103F.515, subd. 4, (2), RIM conservation easements must prohibit agricultural crop production and livestock grazing, unless specifically approved by the board for conservation management purposes or extreme drought. BWSR will approve emergency haying and grazing for its RIM easement lands only if appropriation language does not prohibit emergency haying and grazing, and in a manner that is responsive to livestock producers needs while still protecting the wildlife habitat and other environmental concerns on these lands.

- 16.1 **Federal Partnership Easements, CREP and RIM-WRP.** Many RIM easements are enrolled jointly with a federal program, such as the Conservation Reserve Program (CRP), or the Wetlands Reserve Program (WRP). For these joint easements BWSR defers to federal guidelines, requiring landowners to comply with federal provisions for haying and grazing during the federal contract or easement period.
- 16.2 **Standalone RIM Reserve Easements.** Emergency declarations to open lands for haying and grazing do not apply to RIM lands. For lands with RIM easements only, the BWSR has established the following policy:
  - 16.2.1 Landowners or designee will sign-up for haying and grazing provisions with the local SWCD.
  - 16.2.2 At least 50% of the easement acreage will remain undisturbed for wildlife.
  - 16.2.3 Tree plantings, food plots, water control structures, wetland basins and stream banks shall be excluded from haying and grazing.
  - 16.2.4 Where practical, mowing will begin in the center of the area to be harvested and commence inside out to allow wildlife to escape.
  - 16.2.5 Haying/grazing will be limited to August 2 to September 30 to protect ground nesting wildlife.
  - 16.2.6 Haying/grazing grasses should be harvested no shorter than 6" in height to ensure regrowth.

## History

Version	Description	Date
1.0	Disaster Recovery Assistance Program; first adoption	8/23/2013
2.0	Disaster Recovery Assistance Program; first revision	4/25/2017

## Contact

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For Erosion and Sediment Control, and Water Quality and Watershed Protection, contact BWSR's Grants Coordinator or Chief Engineer.

For Reinvest in Minnesota (RIM) Reserve Conservation Easements, contact the BWSR Conservation Easements Assistant Section Manager.