

Watershed-Based Implementation Funding Policy – FY22-23

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

Effective Date: 10/27/21

Approval: Board Decision #21-51

Duration: Availability and use of funds appropriated by Laws of Minnesota 2021, 1st Special Session, Chapter 1, Article 2, Section 6 (a).

Policy Statement

This policy provides expectations for implementation activities conducted via the Board of Water and Soil Resources (BWSR) Clean Water Fund (CWF) Watershed-based Implementation Funding program as defined by the Clean Water Fund appropriation under Laws of Minnesota 2021, 1st Special Session, Chapter 1, Article 2, Section 6 (a).

Reason for the policy

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.

These funds are specifically to be used to advance Minnesota’s water resource goals through prioritized and targeted cost-effective actions with measurable water quality results.

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

For areas outside of the seven-county Twin Cities Metropolitan Area: To be eligible, local governments must have a current state approved and locally adopted comprehensive watershed management plan authorized under Minnesota statutes §103B.101, Subd. 14 or §103B.801 and have entered into an implementation agreement with other members of the planning partnership. If a local government within the geographic area of the plan has not adopted the plan, these funds can still be spent on implementation in that area by another eligible local government.

In the seven-county Twin Cities Metropolitan (Metro) Area: To be eligible, counties, watershed districts, watershed management organizations, soil and water conservation districts, and municipalities¹ must have a current state approved and locally adopted watershed management plan as 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. Participants, including one representative from each watershed district, watershed management organization, soil and water conservation district², county with a county groundwater plan, and up to two municipalities, must coordinate within the designated watershed planning areas before submitting a watershed-based implementation funding budget request that is prioritized, targeted and measurable. BWSR reserves the right for the Executive Director to determine if sufficient coordination exists to meet the goals of the program. Appeals of an Executive Director decision may be made to the BWSR Central Region Committee.

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 Implementation Funding received is required. Match can be provided by landowners, land occupiers, private organizations, local governments 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 and programs 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 implementation section of a state approved, locally adopted comprehensive watershed management plan developed under

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.

² Including Hennepin and Ramsey Counties if they have an enhanced comprehensive plan authorized under Minn. Statute 103C.331.

Minnesota statutes §103B.101, Subd. 14 or §103B.801, watershed management plan required under §103B.231, county groundwater plan authorized under §103B.255, or a Metro soil and water conservation district enhanced plan as identified in the “*Metro Enhanced SWCD Comprehensive Plan Options Guidance Document*” (<https://bwsr.state.mn.us/watershed-based-implementation-funding-program>) and authorized under §103C.331. The activity must have a primary benefit towards water quality. Activities must be first submitted through a budget request and 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 programs; program and project support, including staffing; 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 **Effective Life.** All structural 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 3.7.
- 3.2 **Project Assurances.** The grantee must provide assurances that landowners 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 and Practices Assurances chapter of the Grants Administration Manual.
- 3.3 **Operation, Maintenance and Inspections.** All practice designs must include identification of operation and maintenance activities specific to the installed practices. An operation and maintenance plan is critical to ongoing performance of installed practices as well as to planning and scheduling those activities and must be prepared by designated technical staff for the life of the practice. An inspection schedule, procedure, and assured access to the practice site shall be included as a component of maintaining the effectiveness of the practice.
- 3.4 **Technical and Administrative Expenses.** Eligible activities include actual technical and administrative expenses to advance plan implementation, site investigations and assessments, design and cost estimates, construction or installation supervision, and inspections. Technical and administrative expenditures must be documented according to the Grants Administration Manual.
- 3.5 **Project Support.** Eligible activities include public participation and engagement, equipment, and other activities necessary for the implementation of water quality practices and programs consistent with the purposes of these funds. Project support expenditures must be appropriately documented according to

the Grants Administration Manual. Refer to guidance within the Grants Administration Manual for Capital Equipment Purchases.

3.6 Grant Management and Reporting. Eligible activities include local grant administration, management, and reporting that are directly related to and necessary for implementing the project or activity. All grant recipients are required to report on the outcomes, activities, and accomplishments of Clean Water Fund grants. Grant management and reporting expenditures must be documented according to the Grants Administration Manual.

3.7 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.

Feedlots. Eligible activities are 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, not classified as a Concentrated Animal Feeding Operation (CAFO), and with 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 violations have been imposed on the operator.

- a. Funded projects must comply with standards in MN Rule Chapter 7020 upon completion.
- b. Eligible practices are limited to best management practices listed by the Minnesota NRCS.
- c. Eligible practices and project components must meet all applicable local, State, and federal standards and permitting requirements.
- d. Feedlot roof structures are eligible up to \$100,000 per project with state grant funds and not to exceed 100% of construction costs.
- e. Feedlot relocations are eligible, up to \$100,000 per project with state grant funds and not to exceed 100% of the construction costs. The existing eligible feedlot must be permanently closed in accordance with local and State requirements. The existing and relocated livestock waste management systems sites are considered one project for grant funding.

Subsurface Sewage Treatment Systems

- a. Local governments should first exhaust SSTS grant funding from the Minnesota Pollution Control Agency.
- b. Eligible activities are limited to identified imminent threat to public health systems (ITPHS) and systems that fail to protect groundwater. 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.
- c. Proposed community wastewater treatment solutions 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.

- d. In an unsewered area that is connecting into a sewer line to a municipal wastewater treatment plant (WWTP), the costs associated with connecting the home to the sewer line is eligible for funding if the criteria in b. and c. above are met.

Drainage Systems. Funds can be used as an external source of funding for Minnesota Statutes §103E.011 Subd 5 to facilitate multi-purpose drainage management practices with a primary purpose of improving water quality to reduce erosion and sedimentation and provide secondary benefits of reducing peak flows and flooding while protecting drainage system efficiency and reducing drainage system maintenance.

3.8 Non-Structural Practices and Measures. Eligible practices include 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. Non-structural vegetative practices must follow the Native Vegetation Establishment and Enhancement Guidelines: <https://bwsr.state.mn.us/sites/default/files/2019-07/Updated%20guidelines%20Final%2007-01-19.pdf>

a. **In-lake or in-channel treatment.** Eligible practices include management practices such as rough fish management, vegetation management, lake drawdown, and alum treatments that have been identified as an implementation activity in a TMDL study or Watershed Restoration and Protection Strategies report and/or in a comprehensive watershed management plan or metro watershed management plan. Eligible expenses include only initial costs for design and implementation. All subsequent applications and treatments under this subsection are considered to be a local operation and maintenance expense responsibility. A feasibility study must be completed, reviewed and approved by BWSR staff prior to these activities being proposed in a grant work plan. The feasibility study must include:

- Lake and watershed information (at minimum, include lake morphology and depth, summary of water quality information, and the assessment of aquatic invasive species);
- Description of internal load vs. external load nutrient reductions;
- History of projects completed in the watershed, as well as other in-lake activities if applicable;
- Cost benefit analysis of options considered;
- Projected effective life of the proposed activities;
- Expected water quality outcome;
- Plan for monitoring surface water quality to assure the project's total phosphorus goal will be achieved during the project's effective life, and
- For activities related to rough fish (example carp), the feasibility study must also include:
 - Methods used to estimate adult and juvenile carp populations;
 - Description of the known interconnectedness of waterbodies (lakes, ponds, streams, wetlands, etc.);
 - Identified nursery areas;
 - Methods used to track carp movement;
 - Proposed actions to limit recruitment and movement; and

- Proposed actions to reduce adult carp populations.

b. **Duration.** Projects proposing to install or adopt non-structural land management practices must have a minimum duration of 3 years with a goal of ongoing landowner adoption unless otherwise approved by BWSR. Any projects proposing a duration other than 3 years must be reviewed by BWSR staff and approved by the Assistant Director of Regional Operations prior to work plan approval.

c. **Easements.** Eligible practices include easements. Easements and payment amounts must be reviewed and approved by BWSR staff prior to expenditure of grant funds to acquire an easement. When implementing perpetual easements, state easement payments shall not exceed current standard Reinvest in Minnesota (RIM) rates.

d. **Ordinance Development.** Eligible practices include development of ordinances to protect water quality (example: Minimal Impact Design Standards) that supplement existing federal/state/local requirements.

3.9 **Incentives.** Incentives to install or adopt best management practices that improve or protect water quality are an eligible use of funds. Incentive payments should be reasonable and justifiable, supported by grant recipient policy, consistent with prevailing local conditions, and must be based on established standards. BWSR reserves the right to review and approve incentive payment rates established by grant recipient policy. Incentives to install or adopt best management practices can have a maximum duration of 3 years with a goal of ongoing landowner adoption unless otherwise approved by the Assistant Director of Regional Operations prior to work plan approval.

4. Ineligible Activities

The following activities will not be considered:

- Activities that do not have a primary benefit of groundwater and/or surface water quality.
- Water quality monitoring such as, but not limited to, routine, baseline, diagnostic, or effectiveness monitoring. This includes both surface and groundwater monitoring activities.
- Household water conservation appliances and water fixtures.
- Wastewater treatment systems with the exception of certain Subsurface Sewage Treatment Systems (see 3.7).
- Municipal drinking water supply facilities or individual drinking water treatment systems.
- Stormwater conveyances that collect and move runoff, but do not provide water quality treatment benefit.
- Replacement, realignment or creation of bridges, trails or roads.
- Aquatic plant harvesting.
- Routine maintenance activities or repair of capital equipment and infrastructure within the effective life of existing practices or projects.
- Feedlots (see 3.7)
 - Feedlot expansions beyond state registered number of animal units.
 - Slats placed on top of manure storage structures.
- 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.
- l. Drainage management
 - 1) Drain tile, except for tile outlets required for water and sediment control basins, tile required to make eligible drainage water management practices function, tile required to collect and move runoff to treatment system, and dense pattern tile to replace open tile inlet(s).
 - 2) Ditching except if needed for the creation of a storage and treatment wetland restoration.
 - 3) Back-flow preventing flap gates on side inlet structure pipes where a system-wide analysis has not been completed.
 - 4) Continuous berms greater than an average of 3 feet high (above existing ground) along Chapter 103E drainage ditches.
 - m. Fee title land acquisition (costs may count towards match).
 - n. Buffers or other alternative practices that are required by law (e.g., Buffer Law, Drainage Law, Shoreland Law).
 - o. Contribution to a contingency or reserve fund or payment(s) to an equipment replacement fund that extends beyond the grant agreement period.
 - p. Activities that outlet landlocked basins.
 - q. Development and delivery of educational activities and curriculum that do not support or lead to the implementation of water quality practices.
 - r. Components of projects needed to meet the statutory requirements of 103E Drainage Law.
 - s. Any project that contributes to, or otherwise is used to replace wetlands impacted under the Wetland Conservation Act (per Minn. Rules 8420).
 - t. Activities required under the Groundwater Protection Rule.

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 chapter 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 **Practice or Project Construction and Sign-off.** Local governments receiving these funds shall have the assigned technical assistance provider(s) certify 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.

5.3 **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. Grant Administration

6.1 **Work Plans, Reporting, and Reconciliation.** BWSR staff is authorized to develop grant agreements and requirements and processes for work plans, project outcomes reporting, fiscal reconciliations, and grant closeouts. All grantees must follow the Grants Administration Manual policy and guidance including requirements for proposed work plan revisions and grant amendments. BWSR reserves the right to:

1. Consider the extent of direct implementation activities and proposed outcomes in the approval of grant work plan;
2. Not approve all or a portion of a work plan if proposed work is not consistent with the purposes of these funds;
3. Modify, suspend, or cancel the grant agreement at any time if work under the grant agreement is found by BWSR to be unsatisfactory.

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 100% of grant funds.

6.2. **Approval of Expenditures.** The grantee board has the authority and responsibility to approve the expenditure of funds within their own organization. The approval or denial of individual expenditures of funds must be documented in the grantee board's meeting minutes.

6.3 **Failure to Maintain Practices.** Funds repaid to a grantee from a landowner or other land occupier who has failed to maintain a practice for its effective life must be reallocated to a local cost share program or project account consistent with MN Statutes Chapter 114D.50, less the administrative cost of the grantee.

7. Assurance Measures

Watershed-based Implementation Funding Assurance Measures are based upon fiscal integrity and accountability for achieving measurable progress towards water quality elements of eligible watershed management or comprehensive watershed management plans. Assurance measures will be used as a means to help grantees meaningfully assess, track, and describe the use of these grant funds to achieve clean water goals through prioritized, targeted, and measurable implementation. The following assurance measures are supplemental to existing reporting and on-going grant monitoring efforts.

1. Prioritized, targeted, and measurable work is making progress toward achieving clean water goals.
2. Programs, projects, and practices are being implemented in priority areas.
3. Grant work is on-schedule and on-budget.
4. Leverage of non-state funds.

History

This policy may be reviewed annually and updated as needed.

Description	Date
This policy was originally created in 2019.	9/25/19
This policy was updated in 2021 to add a few ineligible activities and clarify language related to eligible activities and entities and change Metro soil and water conservation district annual work plans to enhanced plans under eligible activities.	10/27/2021