



- POLICY -

Disaster Recovery Assistance Program

Overview

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

Purpose

The Disaster Recovery Assistance Program provides designated appropriated funds and other BWSR designated funds to Local Governmental Units (LGUs) 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 **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 and programs, appropriated to or implemented by BWSR, that are associated with the DRAP.

Activation

The Board of Water and Soil Resources (BWSR) may activate the Disaster Recovery Assistance Program (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 natural disaster. This Policy is activated by BWSR resolution or by authority delegated to the Executive Director.

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Erosion and Sediment Control, and Water Quality and Watershed Protection

LGUs 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 LGU.

1.0 Project Allocation Priorities (in priority order)

1. Conservation practices where imminent human safety or health is a concern.
2. Conservation practices that address erosion and water quality problems associated with imminent threats to private or public improvements (infrastructure).
3. Projects that repair, rehabilitate, or replace, existing conservation practices on private lands.
4. New conservation practices that address other erosion, water quality, and watershed protection problems created by the disaster.
5. 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 Government Units must first pursue insurance assistance, and eligible federal program funding to repair damages on their properties, respectively, in accordance with M.S. 12A.03.
- 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:
 - 2.2.1 Emergency Watershed Protection Program (EWP) (NRCS)
 - 2.2.2 Emergency Conservation Program (ECP) (FSA)
 - 2.2.3 Environmental Quality Incentives Program (EQIP) (NRCS)
 - 2.2.4 Wetlands Reserve Program (WRP) (NRCS)
 - 2.2.5 Conservation Reserve Program (CRP) (FSA)

2.2.6 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 to LGUs based on the following minimum criteria:

3.1 Location within the applicable defined disaster area; and,

3.2 A Board Conservationist approved LGU damage assessment; and,

3.3 A MN Recovers Task Force Natural Resources Subcommittee or Board Conservationist review and approval of requests for funds; and,

3.4 BWSR Policy.

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. Specific preventative practices may also be allowed through policy or appropriation.

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.

The grant recipient 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.

4.3 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 reasonable technical and administrative (TA) expenses. Eligible TA expenses include the following activities: grant administration, site investigations and assessments, design and cost estimates, construction supervision, and construction inspections. These expenditures must be appropriately documented according to the Grants 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. (See also 2.0.)
- 6.2 Local Rates.** The LGU 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 LGU 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 LGU Board and staff have the responsibility to ensure that the designated technical staff have the appropriate technical expertise, skills and training for their assigned role(s). Appropriate expertise may include, but is not limited to, the following: conservation partnership Technical Approval Authority, professional licensure, reputable vendor with applicable expertise and liability coverage, or other applicable credentials, training and/or expertise.

- 7.1 Technical Provider Skills.** The LGU's cost-share policy must contain a description of staff skills, training, or credentials; or a description of other means the LGU will use to insure projects meet the requirements of this policy. This requirement is to demonstrate LGU capacity to design and install practices according to appropriate standards and specifications of the practice(s).

- 7.2 BWSR Review.** BWSR reserves the right to review the licensure and credentials of all technical provider staff selected by the LGU, where appropriate.

8.0 Expenditure of Funds on Practices and Contracts

The LGU Governing Body or delegated entity has the authority and responsibility to encumber and approve expenditure of funds within their own organization. The action taken must be documented in the LGU official records. 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 LGU's legal counsel.

- 8.1 Cost Share Contract.** All LGU expenditures of funds providing financial assistance to landowners require a contract with the land occupier. A contract between the LGU 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 LGU 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.). The required contract can be found on the BWSR website. 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.

8.1.1 Contract Modifications. Modifications to the contract may be made prior to execution.

8.1.2 Contract Amendments. Changes to an executed contract are considered an amendment to the contract and subject to review and approval by the LGU Board. Prior to approving an amendment, technical staff must attest that the amendment has merit. Amendments shall not be considered or approved after the end of the contract or after approval to issue final payment on the original contract has been made.

8.1.3 Group Projects. Where the cooperation of several land occupiers is required for implementation of a project; and the land occupiers have agreed to the project, division of payments for the project, and signed a group project addendum to the cost-share contract; the LGU may enter into a contract with only the group spokesperson of the contract.

- 8.2 Contract Approval.** LGU Boards must approve or deny the contract. The action taken must be documented in the LGU's meeting minutes. Approval of a contract is considered approval for expenditure of funds.

- 8.3 Emergency Work.** Projects where emergency work began prior to LGU or BWSR approval may be eligible for financial assistance with adequate documentation as detailed in DRAP Guidance.
- 8.4 Contract and Grant Agreement Timeframe.** LGUs have the authority to adopt timely starting and completion dates. Execution and completion of a contract with a land occupier must be within the grant period unless the project is deemed an emergency (see 8.3). Contracts not completed within the period of the grant agreement must be cancelled unless the contract has been extended and the grant agreement with the LGU has been extended such that the contract timeframe 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 re-encumbered to a new contract, or unspent funds must be returned, as provided in the grant agreement.
- 8.6 Removal of Practices.** LGUs may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice and the purpose of the original practice has been achieved.
- 8.7 Delegation.** LGUs may delegate signing contracts and supporting program documents to staff. This delegation must be identified in the LGU's policies or by resolution.
- 8.8 Grant Agreement Extensions.** Any other existing BWSR grant agreement may be extended up to two additional years. This extension must be by executed amendment. Grant agreement periods, with extensions, may not exceed five years.

9.0 Practice Sign-off and Payment

Prior to payment, technical staff must attest that the practice was properly installed and completed according to the plans and specifications, including technically-approved modifications, and that vouchers and receipts are accurate. Project costs for the purposes of determining cost share amounts include the materials and labor necessary to complete the project.

- 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.
- 9.2 Actual Cost Different Than Estimated Cost.** In cases where the actual cost of the practice exceeds the estimated cost, the LGU may only share the additional amount when an amendment to the contract has been approved per policy 8.1.2. Where the actual cost is less than the estimated cost, the LGU shall only share the approved percentage of the actual cost of the practice (per policy 6.1).

- 9.3 Project Review.** 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.
- 9.4 Combining Funding Sources.** Payment amounts from combined state and federal sources shall not exceed the 100% cost share rate.
- 9.5 Final Plans.** 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 LGU office.

10.0 Post-Construction and Follow-Up Activities

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. Scheduled site inspections by designated technical staff (per 7.0) are necessary to ensuring operation and maintenance has been taking place.

- 10.1 Operation and Maintenance Plan.** Designated technical staff must prepare an operation and maintenance plan specific to the practice and the site where it is located. The operation and maintenance plan must detail the maintenance activities that are likely to be needed for practice and contributing watershed, specify how and when to accomplish them, and identify the inspection schedule. The plan should be prepared and reviewed with the land occupier before installation of the conservation practices begins.
- 10.2 Inspections.** Designated technical staff shall ensure that the operation and maintenance plan is being followed and the practices have not been altered or removed by conducting periodic site inspections. Inspections are to:
 - 10.2.1** Verify that all components of the practice remain in place and are in good repair and providing designed environmental benefits and outcomes.
 - 10.2.2** Identify repairs necessary in accordance with the operation and maintenance plan.
 - 10.2.3** Identify further assessment or action necessary if repairs are beyond the scope of the operation and maintenance plan.
- 10.3 Failure to Maintain Practices.** 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 LGU board. The LGU shall provide the basis for repayment.

11.0 LGU Reporting Requirements

To ensure the continued success of the DRAP, regular reporting of accomplishments and benefits is required. This reporting is accomplished through entries and documentation in eLINK. Guidance for reporting in eLINK is available on the BWSR website.

11.1 Reporting. LGUs must enter information on activities accomplished with the grant funding in eLINK. Reporting is required for grant fund expenditures and is to be completed by BWSR established reporting deadlines.

11.2 Grant Closeout Reporting. Within thirty (30) calendar days of the conclusion of each grant agreement or expenditure of all grant funds, LGUs are required to provide the following to BWSR:

11.2.1 Entry of information on all projects completed with the grant funding in eLINK

11.2.2 Signed Final Financial Report from eLINK

11.2.3 Return any unspent funds as instructed on the Returned Check Form, found on the BWSR website.

11.3 Records Retention. Project files must be retained by the LGU pursuant to Minnesota Statutes, §138.17 and consistent with ongoing records retention schedules.

11.4 Non-compliance with Reporting Requirements. Any LGU that does not satisfactorily complete these requirements may be ineligible to receive funds from BWSR programs until all required past reporting has been completed.

12.0 BWSR Program Monitoring, Closeout, and Penalty Procedures

BWSR staff is authorized to develop grant agreements, including requirements and processes for fiscal closeouts, and project outcomes reporting. BWSR staff will review grant recipient compliance with contractual requirements in a manner which is consistent with the policies established by the Office of Grants Management and adopted by the BWSR Board.

Reinvest in Minnesota (RIM) Reserve Conservation Easements

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, MS 103F.501.

13.0 Eligible Activities and Priorities

13.1 Eligible lands

- 13.1.1** Flood damaged lands, both cropland and non-cropland areas. All eligible land types under MS 103F.515, Subd. 2 that have been damaged by flooding are eligible.
- 13.1.2** Riparian lands with a history of flooding within and beyond the 100 year floodplain, where an easement will help mitigate future flood impacts.
- 13.1.3** Wetland restorations where storage will help reduce future flood impacts.

13.2 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.

13.3 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.

14.0 Administrative and Technical Components

14.1 Easement sign-up procedures

- 14.1.1** BWSR easement staff have the authority to develop specific procedures required to conduct landowner sign-up with SWCDs in response to disasters. This includes a complete list of what is needed to be submitted with each landowner application package.
- 14.1.2** SWCDs will take applications from landowners during the BWSR prescribed sign-up period, and prioritize their applications based on their effectiveness in addressing flood impacts in their county prior to submitting them to their BWSR Board Conservationist (BC) by the sign-up deadline.
- 14.1.3** BWSR BCs will rank and prioritize applications from all of their respective SWCDs prior to submittal to BWSR Easement staff for final funding decisions.
- 14.1.4** BWSR Engineering staff will review all applications where wetlands are proposed for restoration, or existing drainage infrastructure may be impacted.

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

14.2 SWCD Payment for Services. SWCDs will be compensated for their services associated with the acquisition of easements and installation of required practices via the current BWSR approved payment process.

15.0 Easement Payment Rates and Conservation Practice Cost-Share Rates

15.1 Easement and Practice Payments.

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

15.1.2 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.

15.1.3 The only structural practices eligible for 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.

16.0 Post Easement Conveyance Monitoring and Management

16.1 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.

16.2 Management and Maintenance. SWCDs will assist landowners or authorized agent with on-going 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.

17.0 Drought Emergencies and Emergency Haying and Grazing

(If appropriation language permits emergency haying and grazing, then the following section applies.)

As authorized in MS 103F.501, subd. 4, (2) BWSR has developed policy for its RIM easement lands that is responsive to livestock producers needs while still protecting the wildlife habitat and other environmental concerns on these lands.

17.1 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.

17.2 Stand Alone RIM Reserve Easements. For lands with RIM easements only, the BWSR has established the following policy:

17.2.1 Landowners or designee sign-up for emergency haying and grazing provisions with the local SWCD.

17.2.2 At least 50% of the easement acreage will remain undisturbed for wildlife.

17.2.3 Tree plantings, food plots, water control structures, wetland basins and stream banks shall be excluded.

17.2.4 Where practical, mowing will begin in the center of the area to be harvested and commence inside out to allow wildlife to escape.

17.2.5 Haying/grazing will be limited to August 2 to September 30 to protect ground nesting wildlife.

17.2.6 Haying/grazing grasses should be harvested no shorter than 6" in height to ensure regrowth.