

Draft Program Description: Stage I Existing Development (ED) Interim Alternative Implementation Approach (IAIA)

Overview

Since 2018, the Upper Neuse River Basin Association (UNRBA) has been exploring an alternative option for achieving compliance with Stage I Existing Development (ED) nutrient load reductions required by the current Falls Lake Nutrient Management Strategy (the Rules). An important aspect of this alternative approach is to promote additional reductions in ED nutrient loading over the interim period between the time an alternative approach is established and when the Falls Lake Rules are readopted (expected in 2025 or later). This Stage I interim alternative implementation approach (IAIA) would be based on voluntary participation and would still allow jurisdictions to seek compliance with Stage I ED nutrient load reductions under the existing Rules. Opting out of the Stage I IAIA would require a jurisdiction to develop a Stage I ED program consistent with the Rules. However, participating in the IAIA, if put in place, is intended to allow a jurisdiction to achieve full Stage I ED compliance once a regulatory pathway is established (see section on compliance determination).

In addition to evaluating the Stage I implementation options, the UNRBA is continuing its effort to re-examine Stage II of the Rules. Figure 1 shows the two options for Stage I compliance and summarizes the ongoing re-examination process for Stage II.

This Program Description provides information on the regulatory background, objectives, and implementation of a Stage I ED IAIA. This program is preliminary and is still under consideration by the UNRBA. Prior to moving forward with actions that would seek to establish an IAIA, Board action is required. This action would include: 1) endorse a final Program Description Document and 2) authorize actions directed toward legally establishing the provisions of the IAIA. Implementation of a Stage I ED IAIA would follow the completion of actions or agreements that establish the program consistent with State law and rules.

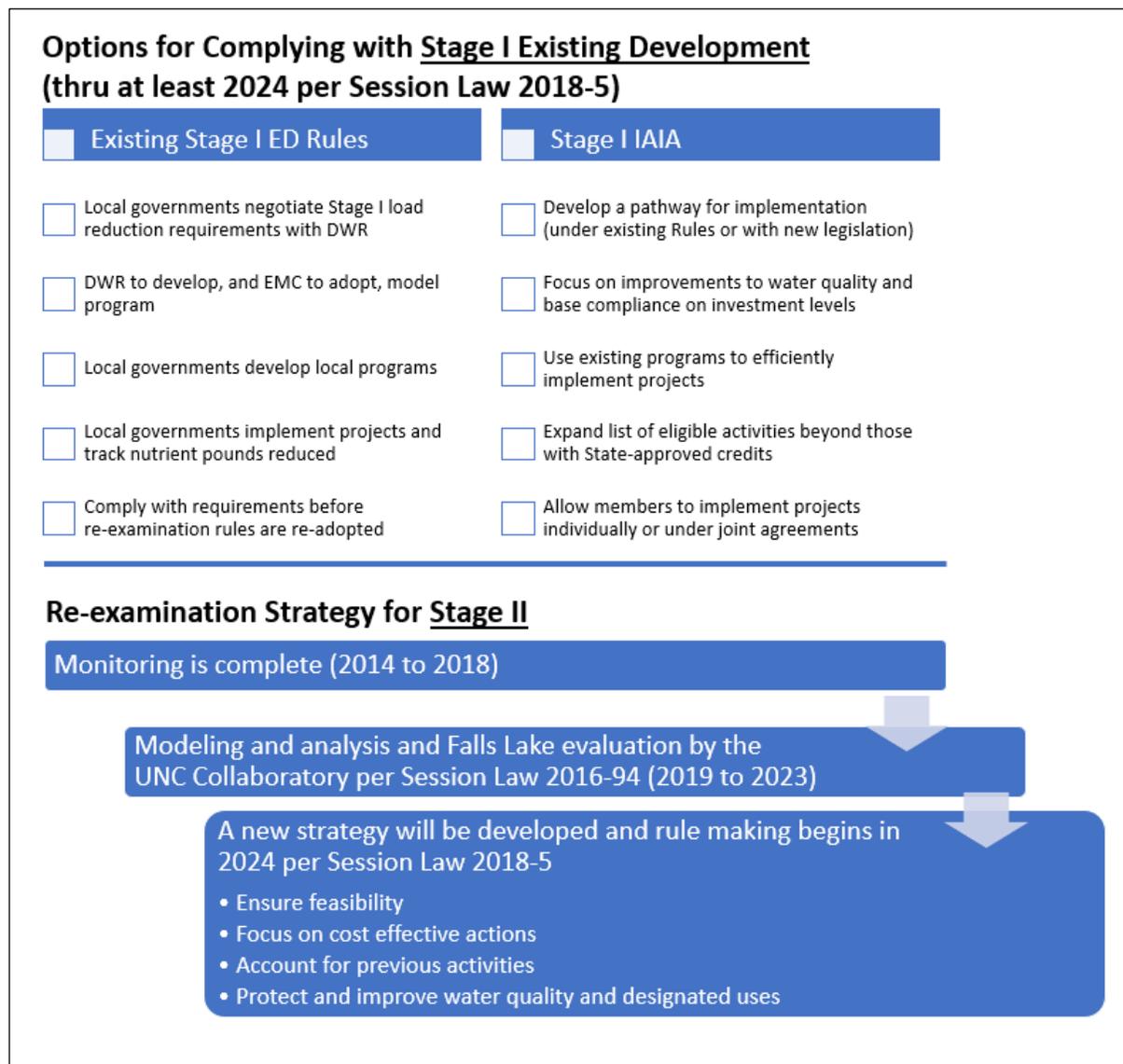


Figure 1. Stage I Existing Development Compliance Options and Stage II Re-examination Strategy

Regulatory Background

In 2011, the NC Environmental Management Commission adopted the Falls Lake Nutrient Management Strategy (“the Rules”). The Rules include two stages of nutrient reductions that are the most stringent and costly nutrient reduction requirements ever passed in NC. The Rules acknowledged that there is considerable uncertainty associated with the requirements under Stage II, and the Rules allow for a re-examination if certain steps are followed. The UNRBA began planning for the re-examination of Stage II in 2011, and the re-examination is based on a significant monitoring and modeling effort. All of the steps required to undertake the re-examination have been completed or are underway, and approvals from DEQ have been secured at each step of the process.

Monitoring started in August 2014 and was completed in October 2018. Modeling and other analyses to support the re-examination are underway.

The Rules define specific requirements for Stage I and Stage II for different sectors of the regulated community. The Stage I requirements have been met by major point sources (wastewater treatment systems operated by local governments and utilities in the watershed) and agriculture. The Stage I ED requirements for local governments have not been set by the NC Division of Water Resources (DWR). The original schedule included development of a Model Program for ED by DWR by 2013, approval by the NC Environmental Management Commission (EMC), and implementation of local government programs beginning within six months of EMC approval and completed by 2021.

Through the passage of Session Laws [2016-94](#) and [2018-5](#), the legislature modified the schedule for completion of Stage I ED to the date at which the Falls Lake Rules would be re-adopted (after completion of the UNRBA re-examination and the Collaboratory's evaluation of Falls Lake). The Session Laws do not alter the rule requirements for implementation of Stage I, but implementation cannot formally proceed until the preliminary actions by DWR and the EMC are taken as called for in the rule. [Session Law 2018-5](#) states that the rules re-adoption process for the Falls Lake Strategy must be started by the EMC no later than December 31st, 2024. It also states that the due dates for reduction actions and goals originally set to be completed by December 31, 2020, and the reduction actions and goals identified as Stage II in the Falls Lake Rules are delayed until readopted Falls Lake Rules become effective.

The IAIA would be an alternative to Stage I Existing Development requirements under the Falls Lake Nutrient Management Strategy. While the implementation of an IAIA may provide important information about how a similar approach may work as an alternative to Stage II, it is separate from the UNRBA re-examination that relies on an extensive water quality monitoring program and development of watershed and lake models. The IAIA is a “bridge” to continue water quality improvements until a new nutrient management strategy can be put in place for the watershed. The re-examination strategy would account for and provide jurisdictional “credit” for all reduction projects implemented since 2006.

Some parts of the Rules associated with Stage I ED present challenges in both interpretation and implementation. The internal and external stakeholders that have contributed to discussions of an IAIA, including DWR, acknowledge an opportunity to use the joint-compliance language in the Rules to demonstrate compliance with Stage I ED. Also, the extent of reductions already accomplished through nutrient treatment improvements at the major wastewater treatment facilities (City of Durham, Town of Hillsborough, and SGWASA), as well as reductions from nonpoint sources such as impervious surface removal and repair of leaking sewer lines, result in loading reductions above and beyond estimates of the total requirements for Stage I ED. If the jurisdictions combine their efforts as the Rule allows, these reductions could be shared (by agreement) and used by all participating jurisdictions to show the required ED reductions for Stage I have been achieved. The additional reductions from point sources in particular represent loading decreases much higher than the total of the estimated reductions required by local governments to meet Stage I ED requirements. Compliance with the Stage I ED requirements could be approached through the sharing of these

wastewater credits, however, additional progress on reducing impacts from ED would not necessarily occur. **Members of the UNRBA have supported the idea of taking additional reasonable and cost-effective actions aimed at reducing water quality impacts to the Lake from existing development in the watershed.**

In 2018, the UNRBA began discussing a Stage I IAIA that could be used to legally comply with the Stage I ED requirements by taking supplemental reduction actions and to provide a pilot for a potential alternative approach when developing a revised nutrient management strategy through the re-examination. A Stage I IAIA would allow jurisdictions to undertake actions in the interim period (before the Stage II re-examination is complete and a new strategy is adopted and in place) that would provide short and long-term improvements in water quality in the watershed and the lake. The Stage I IAIA would use an investment-based tracking system rather than a nutrient load reduction-based tracking system as prescribed under the jurisdiction-by-jurisdiction provisions of the Rules. Some UNRBA members began implementing projects toward reducing the impacts from existing development well before the Falls Lake Rules were adopted and put in place. Some actions can be tracked back to 2006, the baseline year in the Rules. This was well before load reduction targets were established. For simplicity and to expedite program implementation, the Stage I IAIA would not attempt to account for projects implemented since 2006 and would focus on projects implemented between the start of the IAIA and the re-examination and re-adoption of a revised Stage II nutrient management strategy. While the Stage I IAIA would not account for early implementation, the UNRBA and its members agree that jurisdictions that undertook early project development will receive full credit for those projects under the revised strategy developed through the re-examination process. The Rules state that “the Commission shall recognize reduction credit for early implementation of policies and practices implemented after January 1, 2007 and before timeframes required by this Rule, to reduce runoff and discharge of nitrogen and phosphorus per Session Law 2009-486.” **There is solid agreement among UNRBA members that early implementation efforts will be fully acknowledged and credited under the UNRBA’s proposal for a revised nutrient management strategy for Falls Lake.**

The following information represents a preliminary draft Stage I IAIA Program Description based on earlier discussions by the Path Forward Committee (PFC) and the IAIA Workgroup. This draft will be discussed at the upcoming IAIA Workgroup meeting to be held on December 3rd at 12:45 in the Butner Town Hall. A revised draft program description is anticipated for Board review at the January 15, 2020 Board meeting.

Objectives and Guiding Principals

The UNRBA members, with input from external stakeholders including DWR staff, representatives from agriculture, and non-governmental organizations (NGOs), have identified the following objectives and guiding principles for the development and consideration of a Stage I IAIA:

- Promote additional progress and communicate a commitment to maintain designated uses and improve water quality in the Lake through the following actions:
 - Implement projects in the watershed focused on water quality improvements while the re-examination process continues toward completion

- Use a simplified approach based on funding levels to overcome challenges within the Rules as currently written
- Reach agreement on an appropriate, fair and equitable funding level among participants for a Stage I IAIA based on investment accounting while maintaining a commitment to develop information on nutrient loading reductions expected from each project/program based on adopted credit practice information or best available information
- Maintain a commitment to developing a replacement strategy through the re-examination process that will provide credit for actions taken or projects developed since the end of 2006 including those implemented under a Stage I IAIA and those exceeding the minimum investment levels set for a Stage I IAIA.
- Determine nutrient reduction values (when feasible) for each project or activity and track these values for future use with the understanding that Stage I IAIA compliance will be strictly based on financial investment
- Provide an interim approach that would be fair to all participating jurisdictions and help lay the foundation for ongoing consideration of innovative management approaches
- Expand the list of available management practices to encourage a broad use of watershed improvement actions
- Demonstrate the UNRBA's continued commitment to achieving a reasonable, fair, cost-effective, and equitable management strategy for Falls Lake
- Provide an opportunity to coordinate a joint compliance effort within the participating members of the UNRBA
- Utilize existing water quality improvement programs (see Administration section) when available to efficiently implement eligible projects and activities in order to:
 - Minimize administrative and process delays
 - Seek ways to lower costs in the development and installation of projects
 - Allow flexibility with program implementation
- Provide multiple, flexible and innovative options for funding projects and activities that include individual jurisdictions, partnerships, or consolidation of funds by the UNRBA
- Achieve agreement with DWR, with stakeholder input, that an adopted Stage I ED IAIA would be recognized as providing full Stage I ED compliance through the interim period leading to a new strategy for nutrient management in Falls Lake (i.e., the re-examination of Stage II).

Potential Eligible Activities

Funding of Stage I IAIA eligible projects and activities would be tracked against the minimum investment levels determined by the UNRBA. Cost effectiveness in terms of water quality improvement would be factored into selection of projects and activities. Expenses associated with site screening and selection, planning, land acquisition, design, permitting, demolition and removal (e.g., impervious surfaces); construction, operation, and maintenance **for the following types of projects and activities that benefit water quality and quantity and that represent a full financial commitment for installation/adoption of the program or project** would be eligible under the Stage I IAIA (see Administration section that includes general reporting requirements for demonstrating project linkage to improving water quality in the watershed and the lake):

- All State-approved practices with established nutrient credits including stormwater control measures including retrofits
- Green infrastructure and best management practices that include water quality and quantity improvements
- Stream and riparian buffer restoration and enhancement
- Programmatic measures addressing above and beyond baseline levels
 - Fertilizer application by businesses and homeowners
 - Onsite wastewater treatment system inspection programs, maintenance tracking, repair, replacement, and pump-out programs, education of owners regarding proper maintenance, and training of professionals who inspect and repair onsite systems
 - Pet waste pickup education, waste management stations, and enforcement
- Infrastructure improvements including
 - Repair and replacement of leaky infrastructure
 - Reduction of sanitary sewer overflows
 - Extension of sewer lines to areas using onsite systems (targeting areas with known failure issues) or package plants
- Illicit discharge detection and elimination
- Land conservation in high priority areas
- Floodplain restoration and reconnection
- Greenways and parks with water quality and quantity benefits
- Projects and activities that focus on flooding that have an associated water quality benefit

Projects and activities implemented by individual members to address other state and federal water quality regulations would not be excluded from eligibility (MS4 permits/Phase I or II communities, TMDLs on streams, etc.), but would require that project-by-project eligibility would be established through consultation with DWR and in consideration of the funding source. Projects implemented by the UNRBA using consolidated funds would not be used to meet individual member regulatory requirements without written agreement by the UNRBA.

Additional projects and activities **beyond those listed above** would be allowed pending approval by DEQ/DWR. Any project, practice, or program undertaken must demonstrate that its application has a positive connection to improving or protecting water quality or managing water quantity in the watershed or catchment where it is being implemented. Project selection and commitment will be coordinated through DWR and receive concurrence before being implemented. The member(s) proposing an addition to the list of eligible practices, or an individual project or activity, should coordinate directly with DEQ/DWR for approval. The member(s) should inform the UNRBA on the status so the IAIA Program Description can be updated and other members are aware of the additional options available for compliance.

Stage I IAIA Participant Minimum Investment Amounts

At the August PFC meeting, the PFC generally agreed that using the current UNRBA fee structure calculation method (excluding members without ED requirements) would be sufficient and acceptable for assigning the proportion of annual minimum investment level for individual participants in the IAIA. The IAIA Workgroup agreed by consensus to apply the current fee structure to develop minimum investment amounts. The example total funding level of \$1.5 million per year has been discussed by the IAIA Workgroup and the PFC. Table 1 shows how \$1.5 million would be assigned to the UNRBA members assuming 1) all jurisdictions with an ED requirement participate and 2) this fee structure is adopted for the program. These funding levels would allow roll over from year to year if a participant made a large upfront contribution.

Table 1. Example Funding Levels for a Stage I ED IAIA

Member	Annual Funding Level	Member	Annual Funding Level
Town of Butner	\$23,393	Town of Hillsborough	\$34,221
City of Creedmoor	\$16,926	Orange County	\$161,943
City of Durham	\$337,587	Person County	\$114,394
Durham County	\$133,300	City of Raleigh	\$466,081
Franklin County	\$19,058	Wake County	\$88,968
Granville County	\$100,453	Town of Wake Forest	\$13,692

Minimum investment amounts are not restricted to a contribution to a UNRBA pool of funds. As described in the Administration section below, there are four general funding options that Stage I ED IAIA participants may use to satisfy their minimum investment level.

Administration

Primary roles of the UNRBA related to the Stage I IAIA could be to assist the members in the establishment of a workable framework and program, compile progress reports from UNRBA members, summarize progress from the membership as a whole, and coordinate funding activities based on the approach taken by the jurisdictions to fund projects (see funding options below). The UNRBA could also assist jurisdictions in developing methods and processes for prioritizing projects and activities that focus on water quality improvement. The Stage I IAIA would not require the UNRBA to receive and manage the funds from members investing through their own projects or with other cooperating programs between participants, but some members may wish to pool their resources through the UNRBA. It would, however, be the responsibility of each participating jurisdiction to account for and report its projects/actions and provide the investment levels made under the IAIA.

This program description has identified four potential options available to the members to demonstrate and manage their participation in the Stage I IAIA. Every effort will be made to provide flexibility in the application of each option. Investment amounts on an annual basis by project/action would be reported to DEQ and the UNRBA for tracking purposes, and funding may be “cash” or in-kind (e.g., self-funded projects, donation of technical-service hours, or use of equipment). The UNRBA would provide a summary report to DWR. An individual IAIA participant would not be limited to one of the four available options, but rather may allocate resources using one or more of the funding options:

- Self-funded – An individual participant may use funds for eligible projects and activities within and managed by their own jurisdiction.
- Interlocal agreement – Individual participants may enter into an interlocal agreement where eligible projects and activities are jointly funded by two or more jurisdictions.
- Funding existing local organizations - Individual participants may contribute funds towards eligible projects or activities to other local organizations including local Soil and Water Conservation Districts, County Health Departments, watershed associations, land conservation groups, and UNRBA members that do not have ED requirements that are implementing projects to improve water quality. The receiving local organization would be responsible for prioritizing and selecting from the list of eligible projects and activities under their established procedures for setting priority. Use of funds by other local organizations would be limited to projects and activities associated with water quality and watershed improvement benefits. A separate agreement may be required to specify use of funds through other local organizations.
- Contribution to UNRBA pool of funds – individual participants may contribute to a joint funding pool that would be coordinated by the UNRBA to fund eligible projects and activities. The UNRBA may expend these funds through existing local organizations (see examples listed in bullet above), a mitigation bank, contractor, etc. The UNRBA, with input from the contributing jurisdictions, would select projects and activities to fund through a joint selection process for use of the UNRBA pool of funds.

Regardless of the type of funding arrangement used to demonstrate participation under the Stage I IAIA, each local government participating in the program may need to report the following types of information depending on the funding option utilized (i.e., as information is available):

- Funding option and participants
- Primary organization responsible for management and distribution of funds
- Types and locations of projects and activities planned and linkage to addressing water quality in the watershed and lake
- Status of projects and activities
- Funds allocated (cash and in-kind)
- Estimated nitrogen and phosphorus reductions associated with projects and activities if quantifiable, or other tracking metric, based on the information available for the action/project, for activities without State-approved nutrient credits
- Anticipated timeline for completion

Duration

The Stage I IAIA would likely begin in the fiscal year 2022 budgeting cycle (July 2021 to June 2022) and continue until a revised nutrient management strategy is put in place and implementation of the revised strategy could begin. However, the actual implementation date will depend on the administrative and legal approaches used to establish the IAIA. To minimize implementation delays that may otherwise occur while the IAIA is formally adopted, eligible activities implemented following approval of the Program Description by the Board would be counted toward the formal implementation of the program.

The end of the IAIA Program would occur with the adoption and implementation of the revised nutrient management strategy. The adoption of the revised nutrient management strategy does not have a specific compliance date but must be achieved in accordance with [Session Law 2018-5](#) which specifies that the EMC must begin rule re-adoption no later than December 31, 2024. Depending on the process used to re-adopt the rules or implement a revised Falls Lake Nutrient Management Strategy, it could be two or more years beyond the “beginning” of the process.

It is essential to the viability of the IAIA that previous and ongoing nutrient reduction activities and projects, including those implemented prior to and under a Stage I IAIA, would be credited as actions/investments/reductions specified in whatever newly developed management strategy is finally adopted (as developed through the re-examination of Stage II). Projects and activities implemented during the interim period that maintain and improve water quality and designated uses would include the cost of work performed previously.

If participating jurisdictions seek to pool funds using the UNRBA, those funds may be allowed to accumulate, by participant agreement, for one or more years until sufficient amounts are acquired to support a meaningful project or activity. Project selection for pooled funds will be determined through coordination with the UNRBA and the jurisdictions contributing to the pool. Funds

accumulated at the end of the Stage I IAIA would be allocated by the UNRBA to a project, activity, or existing local organization selected through consultation with the contributing jurisdictions.

Stage I Implementation Options

If an IAIA is approved by the UNRBA and established, then local governments would have the option of complying with the Stage I ED Rules under the IAIA or under the existing Rule structure. Provided the UNRBA membership and those jurisdictions agreeing to participate move forward with this alternate approach, an appropriate IAIA compliance process will need to be evaluated by the Legal Workgroup and PFC, approved by the Board, and coordinated with DEQ before a final process for putting the program in place is developed.

Jurisdictions choosing to operate under the existing Falls Lake Rules, would need to negotiate Stage I ED load reduction requirements with DWR. DWR would use these jurisdictional reduction requirements for inclusion in the draft Model Program for consideration by the EMC. Clearly, those jurisdictions taking this path will want to engage in the review of the draft Model Program and provide input and adjustments in the draft before it is acted on by the EMC. Depending on the acceptability of the program to the jurisdictions seeking compliance under the established rule requirements, there is some risk that one or more of the jurisdictions could challenge the validity of the Model Program. If this happens, implementation could be delayed. Provided the Model Program process proceeds and is adopted by the EMC, jurisdictions are required within six months of the EMC action, to develop and submit a Local Program to DWR and the EMC and begin immediately to implement that plan (the Rules establish a specific Local Program approval process).

An alternative to this process is the Stage I IAIA outlined in this document. The UNRBA, with input from DWR, is exploring three possible approaches for implementing an IAIA (Table 2).

First, it may be possible to implement the Stage I IAIA under the provisions of the existing Rules which allow for trading among regulated entities. **Because the wastewater dischargers have greatly exceeded their Stage I nutrient load reductions, producing a temporary credit that is roughly an order of magnitude greater than that projected to be required in total under the Stage I ED program, actual ED compliance is essentially assured for the short-term.** This trading and joint-compliance approach may require an agreement among the WWTP owners and the IAIA participants that would be approved under the existing Stage I ED Rule. This process requires an assessment of the existing Rule provisions that address joint compliance and a determination by DWR that such an approach is viable. This approach could, with quick agency action, allow the IAIA to be implemented within a relatively short period of time.

Second, the Model Program under development by DWR and required under the current Rule structure could be drafted to allow for the IAIA to provide an individual compliance option for jurisdictions that participate. The agency would need to develop its regulatory basis for using the current Rules to allow this option. The Model Program would also include the option to comply using the current construct of the Rules.

A third approach for implementing the IAIA would be the passage of legislation crafted to authorize the IAIA as an alternative to the current Rule requirements. As noted, the General Assembly has prevented the EMC from revising the Falls Lake Rules, but that does not prevent the Legislature from

modifying the requirements by making the IAIA an alternative to compliance under the Rule. The specific provisions of the program could be included in the legislation. If a bill is required for implementation, DWR has expressed interest in collaborating on the language. Legislative action could allow for quick implementation; however, since there are significant details within an IAIA, crafting legislation and building a regulatory program within law will require a significant effort.

Compliance Determination

Under a Stage I IAIA, compliance would be determined based on an investment level determined by the participating members of the UNRBA and accepted by DEQ. Financial investment levels set by an apportionment method approved by the participating jurisdictions of the UNRBA and accepted by DEQ, and budget allocation for this purpose at the jurisdictional level would represent annual compliance (or for multi-year projects, compliance over that period). Specific project development would be documented and reported to DEQ and, for coordination purposes, the UNRBA. Projects and activities would be tracked, and final completion would be documented. Nutrient reduction estimates would be developed based on approved practice values or best available information. Depending on the approach specified in the revised strategy developed under the re-examination, this tracking information may be used.

Stage I IAIA participants would individually submit reports to DEQ and provide copies to the UNRBA. The UNRBA would consolidate the reports from each jurisdiction and submit a summary report to DEQ showing overall investment level and project status for all participating jurisdictions.

Table 2. Potential Regulatory Pathways for the Stage I ED IAIA

Pathway	Establishment	Measure of Compliance
Joint compliance under the existing Rules	Owners of WWTPs with Stage I nutrient credits may agree to provide temporary nutrient credits to IAIA participants to cover their Stage I ED load reduction requirements. A joint agreement among the parties would establish a joint compliance framework that relies on the IAIA investment levels to track compliance.	A joint agreement among the WWTP owners and IAIA participants would shift compliance with the Stage I ED Rules from the current structure of the Rules to participation in an IAIA. Investments at the local government level would be used to demonstrate each participant's compliance with the IAIA and in turn, the Stage I ED Rules.
Individual compliance under the existing Rules with a Model Program allowance for an IAIA	<p>DWR would allow for the IAIA in the Model Program as one option for compliance at the local level (assuming DWR can establish the regulatory authority to provide this option within the Model Program).</p> <p>The Model Program would also allow for compliance under the current framework of the Rules.</p>	<p>For IAIA participants, the level of investment at the local government level would be used to demonstrate compliance with the IAIA and Stage I ED until the revised strategy is in place.</p> <p>For local governments that do not wish to participate in the IAIA but elect to operate under the current framework of the Rules, compliance would be demonstrated by negotiating Stage I ED load reduction requirements with DWR, implementing practices with State-approved nutrient credits, and tracking load reductions relative to the Stage I ED load reduction requirements.</p>
Legislation to allow the IAIA as an alternative to the Stage I ED Rules	The UNRBA, with input from interested stakeholders, would draft legislation that would allow for investment-based compliance under the IAIA as an alternative to complying with Stage I ED Rules. A sponsor of the legislation as well as support from DWR and NGOs would be needed to successfully carry this option through the legislative process.	Level of investment at the local government level would be used to demonstrate compliance with the IAIA.

IAIA Program Components

The IAIA Workgroup and the PFC, with input from external stakeholders including staff from DWR and representatives from agriculture and NGOs, have discussed several program components to guide implementation of an IAIA. These discussions have acknowledged the overall goals of the IAIA as described above and the use of the IAIA as a pilot for a future revised strategy developed through the reexamination process. Given the goals of the program, the collaborative participation of the internal and external stakeholders, and the ability of this pilot to provide lessons learned for the re-examination strategy, many of the program components are designed to promote flexible implementation. Each of the discussions on the program components described below has noted that these components of implementation are preliminary. The UNRBA members and external stakeholders will meet periodically to discuss progress and evaluate whether or not the overall goals of the program are being met (i.e., providing a flexible program of investment credit, improving water quality, and maintaining the designated uses of the Lake). The UNRBA prefers to allow the general components of the IAIA to be revised during implementation as needed, rather than initially developing a rigidly managed system with limited flexibility. If a similar program is recommended as part of the re-examination strategy, these components will certainly be revisited to identify those provisions that are working effectively and those that require some revision prior to establishing the re-examination strategy.

Examples of program components that the IAIA Workgroup has decided to not constrain at this time but to monitor from year to year and revise as needed include the following:

- The UNRBA has established a goal of having a diversified portfolio of projects that are implemented under the IAIA. The amount of investment that can be allocated to specific types of projects, (e.g., land conservation) will not be limited during the initial implementation of the program. Once the program is underway and projects and activities are being implemented, the UNRBA will assess if the portfolio is relatively diverse and determine if constraints are needed in the future.
- Expenses associated with project planning, permitting, operation and maintenance will not be limited under the IAIA. Expenses associated with site screening and selection, planning, land acquisition, design, permitting, demolition and removal (e.g., impervious surfaces), construction, operation, and maintenance would be eligible under the Stage I IAIA for eligible projects and activities.
- The amount of investment that can be allocated from donation of in-kind technical-service hours or use of equipment will not be limited under the IAIA. Participants that donate in-kind matches are responsible for providing justification and documentation that the in-kind match has satisfied an equivalent portion of their investment. Participants may rely on staff hourly rates, equipment rental rates, etc. to provide a translation from service hours to investment level. However, a participant would not be required to include these in-kind matches for credit.
- One of the eligible activities under the IAIA is land conservation in high priority areas. There are several methods and databases that have been developed by local governments and NGOs to identify priority conservation areas for the benefit of water quality. IAIA participants have the flexibility to utilize local methods to identify high priority areas for conservation.

Participants should document the methods applied and the results of the site selection process in their reporting under the IAIA. It is the responsibility of the IAIA participant(s) to ensure that land conservation projects are consistent with existing rules (e.g., the Neuse Buffer Rules).

- Programmatic measures that are included in the list of eligible activities and that were put in place after the baseline year of the Rules (2006) and continue during the interim period of the approach would be eligible under the Stage I IAIA.

Additional program components discussed by the IAIA Workgroup include the following:

- If investments are used to contribute a match to a grant-funded project, it is the responsibility of the IAIA participant(s) to ensure that the requirements of the grant are met (allocations are not claimed as match on more than one project, expenditures are allowed under the grant, etc.)
- If investments are used to contribute to a local organization such as a soil and water conservation district, it is the responsibility of the IAIA participant and the local organization to ensure that written agreements are in place that describe how the funds may be used (e.g., for specific projects and activities that result in improvements to water quality). If funding is related to agricultural projects, then issues regarding credit sharing must be negotiated with the farmer/land owner with input from the Falls Lake Watershed Oversight Committee and included in the written agreement with the local organization. However, it is anticipated that most investments made through the IAIA will go toward projects related to ED, stream restoration, etc. that would not directly relate to agriculture.
- Contributions from participants that exceed the minimum investment level for one year may be rolled over to the next year(s).
- All contributions from participants made prior to the IAIA or used to meet, or exceed, the IAIA will be counted under the UNRBA's proposal for a revised Nutrient Management Strategy developed through the re-examination process.
- Participants should report all eligible contributions, even those exceeding the investment level established for the IAIA. This information will facilitate tracking of beneficial activities in preparation for the re-examination of Stage II and will communicate to external stakeholders the substantial work of the UNRBA jurisdictions to improve and protect water quality and maintain designated uses in the lake.
- Some projects may be implemented through a "UNRBA pool" of funds.
 - It may be necessary to establish a separate non-profit organization comprised of the IAIA participants that choose to utilize the option of contributing to a pool of funds (similar to how the Lower Neuse Basin Association and Neuse River Compliance Association are managed), but this should be determined before establishing an IAIA program. This entity would need to be established prior to the transfer of funds to a pool. It is unclear how many, if any, members would contribute funds to a consolidated pool rather than through their own programs or joint agreements with other members. It would be beneficial for planning purposes to begin discussions about the extent of investments that are anticipated to be managed under a consolidated pool of funds. The UNRBA, in coordinating this provision of the program, may also suggest the use of jurisdictional partnerships between the

contributing jurisdictions as a more efficient process than a UNRBA-managed project using pooled funds.

- A process will need to be developed by the UNRBA, the contributing members, and interested stakeholders to prioritize and select projects if a pool of funds is used. It is likely that a workgroup coordinated by the UNRBA and formed from representatives of the contributing members and perhaps including stakeholder representatives would be established to work through a process that would consider many factors including cost effectiveness in terms of water quality improvement. However, until the IAIA is being implemented and funds are contributed, it is unknown how many jurisdictions will utilize a “pool of funds” approach to meet their investment requirement. Thus, there is not an immediate need to develop the prioritization process until this need emerges.
- Participants should acknowledge there is some risk in the selection of projects and activities that do not have State-approved nitrogen and phosphorus credits. While DWR has agreed to coordinate with the UNRBA in the development of a Stage I ED IAIA, there is some uncertainty regarding the framework for the re-examination of Stage II. However, the UNRBA is directing and managing the re-examination process and aims to structure the re-examination strategy to account for all of the investments made under the IAIA and prior to its implementation. In addition, the representatives of the NGOs have been vocal supporters of an alternative approach like the IAIA and have recognized the water quality benefits of projects and activities that may not have State-approved nutrient credits. DWR staff have noted the possibility of dealing with this uncertainty in accounting during rule making process if the re-examination strategy reverts back to counting nutrient pounds reduced. The UNRBA and participating members should seek and secure cooperation and concurrence from the regulatory agency that types of projects that do not have State-approved nutrient credits. will be acceptable for achieving compliance with the IAIA and therefore Stage I ED Rules.

Components of the program that may be discussed during the December 3rd IAIA Workgroup meeting for inclusion in a later version of the Program Description include the following:

- The IAIA Workgroup has discussed three regulatory options for moving the IAIA forward, and DWR staff have contributed to these discussions. Each option varies in terms of complexity to establish the pathway and documentation to demonstrate compliance. Table 2 describes these three options. Additional discussions are needed with the IAIA workgroup, legal workgroup, PFC, and DWR to select the most efficient, broadly accepted pathway that can be presented to and reviewed by the Board before endorsement by the UNRBA.
- The IAIA Workgroup has discussed the need for negotiating reporting elements with DWR to document compliance under a Stage I ED IAIA. This reporting process needs to provide a flexible and acceptable process for securing joint concurrence on the viability of a project or action under an IAIA, even if a project/action does not have an approved load reduction credit. It is important to the UNRBA membership that the investments made on projects with discernable water quality benefits be consider viable now and, in the future. The specific components of reporting will vary depending on the type of practice or activity implemented and the funding option used. The extent of reporting will also depend on which regulatory

pathway is sought. Therefore, specific reporting elements will be discussed following identification of the most likely regulatory pathway.

Next Steps

The UNRBA Board of Directors approved moving forward with further development of a Stage I ED IAIA Program Description at the November 20, 2019 Board meeting. The following steps are needed to provide a draft of the Program Description to the Board for approval in January 2020. These development activities include the following (completed steps are italicized):

- *IAIA Workgroup to discuss additional details on program implementation and recommended investment levels in early November (this discussion occurred on November 5, 2019)*
- *IAIA Workgroup to review a draft program in mid-November (this draft represents the draft program and it was distributed on November 13, 2019)*
- IAIA Workgroup to provide additional comments and edits on program by November 20, 2019
- *IAIA Workgroup to meeting after the December 3, 2019 PFC meeting to discuss the draft program description*
- *PFC to review revised program (anticipated delivery to PFC by December 11, 2019)*
- PFC to provide comments and edits via email by December 18, 2019
- Program revised in response to PFC comments and distributed to Board by January 8, 2020
- Program to be presented to the Board at the January 15, 2020 Board meeting as an action item with recommendation for jurisdictional investment levels

If the Board approves the IAIA Program Description at the January meeting, then the additional steps needed to pursue implementation of the IAIA include the following:

- Confirm the viability of a regulatory pathway under the current Rule with DWR
- Pursue selected regulatory pathway
- Further develop program details (e.g., reporting elements)