

Strawman Framework for an Alternative Implementation Approach – Version 1

Introduction

In 2018, the UNRBA began discussing an alternative implementation approach (AIA) in lieu of Stage I Existing Development Rules required by the Falls Lake Nutrient Management Strategy (the Rules). At the August 2019 Path Forward Committee (PFC) meeting, potential funding options were discussed. Following a review of funding, there was a general discussion of the concept. At the conclusion of the discussion, it was agreed to continue review of this concept and that a preliminary draft (strawman) of a potential framework for an AIA would be prepared to facilitate continued consideration of this approach. The following information represents a summary of a potential AIA framework based on the discussions to date and the comments received.

Objectives

The main objectives of the AIA include the following:

- Promote reasonable progress and communicate a commitment to maintain uses and provide water quality improvement
 - Implement projects in the watershed while the re-examination process continues toward completion
 - Use a simplified framework based on funding levels to overcome challenges with the Rules as currently written
- Reach agreement on an appropriate funding level for an implementation approach that looks forward based on investment while maintaining a commitment to count credit for actions taken prior to the implementation of this interim approach
- Include the determination of nutrient reduction values (when feasible) for each investment project and track these values while basing compliance with the approach on investment; for projects or activities without credit accounting methods place, track these using another metric to be determined by the UNRBA for each activity (e.g., investment, outreach achieved, septic systems pumped, etc.)
- Provide an interim approach that would be fair to all participating jurisdictions and help lay the foundation for 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, and equitable management strategy for Falls Lake supported by the Reexamination
- Provide an opportunity to coordinate a joint compliance effort within the participating members of the UNRBA
- Utilize existing programs when available to efficiently implement eligible projects and activities
 - Minimize administrative and process delays
 - Seek ways to lower costs in the development and installation of projects

Investment Distribution

At the August PFC meeting, the PFC generally agreed that using the current UNRBA fee structure would be sufficient for distributing investments under the AIA across the jurisdictions that are regulated under the Stage I Existing Development Rules. Subsequent drafts of this framework would include the distribution method approved by the UNRBA.

Potential Eligible Activities

Funding of projects and activities would be tracked against the minimum funding levels approved by the UNRBA for the AIA. Expenses associated with site screening and selection, planning, land acquisition, design, permitting, construction, operation, and maintenance would be eligible under the AIA for the following types of projects and activities that benefit water quality and quantity:

- Stormwater control measures, green infrastructure, and best management practices
- Stream and riparian buffer restoration and enhancement
- Programmatic measures addressing
 - Fertilizer application by businesses and homeowners
 - Onsite wastewater treatment system inspection programs, maintenance tracking, repair, replacement, and pump-out programs
 - Pet waste pickup education and waste management stations
- Infrastructure improvements including
 - Repair and replacement of leaky infrastructure
 - Reduction of sanitary sewer overflows
 - Extension of sewer lines to areas using onsite systems or package plants
- Illicit discharge detection and elimination
- Land conservation
- Greenways and parks with water quality and quantity benefits
- Projects and activities implemented to address other state and federal water quality regulations (MS4 permits/Phase I or II communities, TMDLs on streams, etc.)
- Additional projects and activities beyond those listed above pending vetting with other UNRBA members and DEQ

Administration

Primary roles of the UNRBA related to the AIA could be to assist the members in the establishment of a workable framework, compile progress reports from UNRBA members, summarize progress from the membership as a whole, and coordinate funding activities as appropriate, depending on approach taken by the jurisdictions to fund projects. The AIA would not require that the UNRBA receive and manage the funds from members investing through their own projects or with jurisdictional cooperating programs, but some members may wish to pool their resources through the UNRBA.

There are four potential options available to the members to demonstrate and manage their participation in the AIA. Each option would require reporting to the UNRBA for tracking purposes, and funding may be “cash” or in-kind. The UNRBA would provide a joint report to DWR. An individual

member would not be limited to one of the four available options, but rather may allocate resources using one or more funding options:

- Self-funded – An individual member may use funds for eligible projects and activities within and managed by their own jurisdiction.
- Interlocal agreement – Individual members may enter into an interlocal agreement where eligible projects and activities are jointly funded.
- Funding other local programs - Individual members may contribute funds to other local programs including local Soil and Water Conservation Districts, County Health Departments, watershed associations, and land conservation groups. The receiving local program would be responsible for prioritizing and selecting eligible projects and activities under their established procedures for setting priority. Use of funds by other local programs would be limited to projects and activities associated with water quality and watershed improvement benefits.
- Contribution to UNRBA pool of funds – individual members may contribute to a joint funding pool that would be used by the UNRBA to fund eligible projects and activities. The UNRBA may expend these funds through existing local programs, a mitigation bank, contractor, etc. The UNRBA would select projects and activities to fund through a joint selection process.

Regardless of the type of funding arrangement used to demonstrate participation under the AIA, each local government participating in the program would likely need to report the following for each funding option utilized (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
- 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 to be determined by the UNRBA for activities without crediting methods

Duration

The AIA could begin in the FY2021 budgeting cycle and continue until a revised nutrient management strategy was put in place and implementation under that framework could begin. The adoption of a revised strategy doesn't have a specific compliance date but must be achieved in accordance with Session Law 2018-5. It is anticipated that previous and ongoing nutrient reduction activities and projects will count in the newly developed management strategy. Investments made to maintain water quality/uses and improve water quality would include work performed previously. Depending on the amount of funds in the UNRBA pool of funds, the UNRBA may accumulate funds for one or more years until sufficient funds are acquired to support a meaningful project or activity. Funds accumulated at the end of the AIA would be allocated to a project, activity, or existing local program selected by the UNRBA.

Compliance Determination

Compliance could be determined either under the existing Falls Lake Rules or in accordance with the passage of a bill authorizing the use of this approach. [Provided the UNRBA moves forward with this approach, this question will be evaluated by the Legal Group, reviewed by the PFC and the Board and appropriate action taken.]

Based on the provisions of this framework, compliance would be determined based on total investment as developed by the participating members of the UNRBA. Financial allocation as determined by the distribution method approved by the UNRBA and budget allocation at the jurisdictional level would represent annual compliance. Specific project development would be documented and reported to the UNRBA. Project or action progress would be tracked, and final completion would be documented. Nutrient reduction estimates (or alternative tracking metric) would be developed based on approved practice values or estimated based on information developed for the action/practice. The UNRBA would consolidate the reports from each jurisdiction and make annual reports to DEQ.