

## **Appendix M – Water Resource Restoration Sponsor Program (WRRSP)**

### Background – Why We Have This Program

The Water Resource Restoration Sponsor Program (WRRSP) was developed by the Ohio EPA, and has been part of the Water Pollution Control Loan Fund (WPCLF) since 2000. In the Thirteen years that have transpired since the first WRRSP award, Ohio EPA has awarded over \$160 million for WRRSP projects. The WRRSP is an Ohio-grown SRF innovation, and widely considered to be a real environmental financing success story.

The intent of the WPCLF Water Resource Restoration Sponsor Program is to address a limited and under-assisted category of water resource needs in Ohio through direct WPCLF loans. While significant progress has been made in reducing the impact of municipal wastewater treatment on water quality, the best available data indicates that impacts from nonpoint source runoff, habitat degradation, and watershed disturbances may be impeding over-all rates of water resource improvements and threatening much of the progress that has been made. The goal of the WRRSP is to counter the loss of ecological function and biological diversity that jeopardize the health of Ohio's water resources. The WRRSP will achieve this goal by providing funds, through WPCLF loans, to finance implementation of projects that protect or restore water resources, by ensuring either maintenance or attainment of General Warmwater Habitat or higher designated aquatic life uses under Ohio Water Quality Standards.

### Types of Eligible WRRSP Activities

All activities to be undertaken through the WRRSP must focus on biological habitat issues and may range from the preservation and protection of stream and other aquatic habitats to intensive repair and recovery of such impaired habitats. WRRSP funding cannot be used for activities outside the water quality-related goals of either preservation or restoration.

To assist applicants in developing successful WRRSP projects, we encourage them to meet with Ohio EPA – DEFA to discuss the program in general and their potential WRRSP projects in particular, prior to formally nominating projects for funding consideration.

### Basic Concepts of Two-Year Funding Cycle for WRRSP

Through the years of administering and implementing the WRRSP, Ohio EPA has made modifications and improvements to enhance the program. Some of these improvements have been suggested through external feedback, and other improvements have been suggested from within Ohio EPA. One major observation has been that there is not enough time within the program year to do sufficient planning and review of projects prior to them being “awarded” with a sponsor loan. During the “one-year” cycle of WRRSP projects, the implementer may have only two to three months to complete all the necessary tasks prior to the sponsoring project’s loan award. This can result in poorly-planned projects, frustration on the part of the implementers (and Ohio EPA staff), and sometimes projects that cannot be awarded as conceived because there was not adequate time to complete the requisite work. Alternatively, projects were occasionally hastily awarded, and later found to be un-implementable (a huge waste of resources). The concept of a two-year funding cycle is quite simple – take the current processes for awarding WRRSP projects and spread them out over a two year period instead of one. Essentially, the first year is used for the implementer to prepare the Restoration/Protection Plan, Ohio EPA to review and approve the Plan, and for the implementer and Ohio EPA to complete the work on the Environmental Covenant(s), etc. Basically, all project approvals would be completed in the first year. At the end of the first year, the WRRSP program will have a group of projects that have been reviewed and approved, and are poised to be awarded with a sponsoring loan. If the project has not advanced to the point of receiving all of its approvals by the end of the first year, it will be removed from funding consideration.

The second year of the program is the year in which the WRRSP project will actually be awarded along with its sponsor's loan. This could occur early or late in the year – it is entirely dependent upon when the sponsor loan will be awarded. Essentially it will not matter at what point in the program year that the sponsor's loan is awarded because the WRRSP project approvals will have already occurred.

This two-year cycle is depicted in the figure below. During any given program year there will be two groups of WRRSP projects – those that are planning for the following year's funding, and those that have completed their planning and other program requirements in the previous year, and are awaiting their sponsor's loan award.

Schedules in the Two-Year WRRSP Funding Cycle

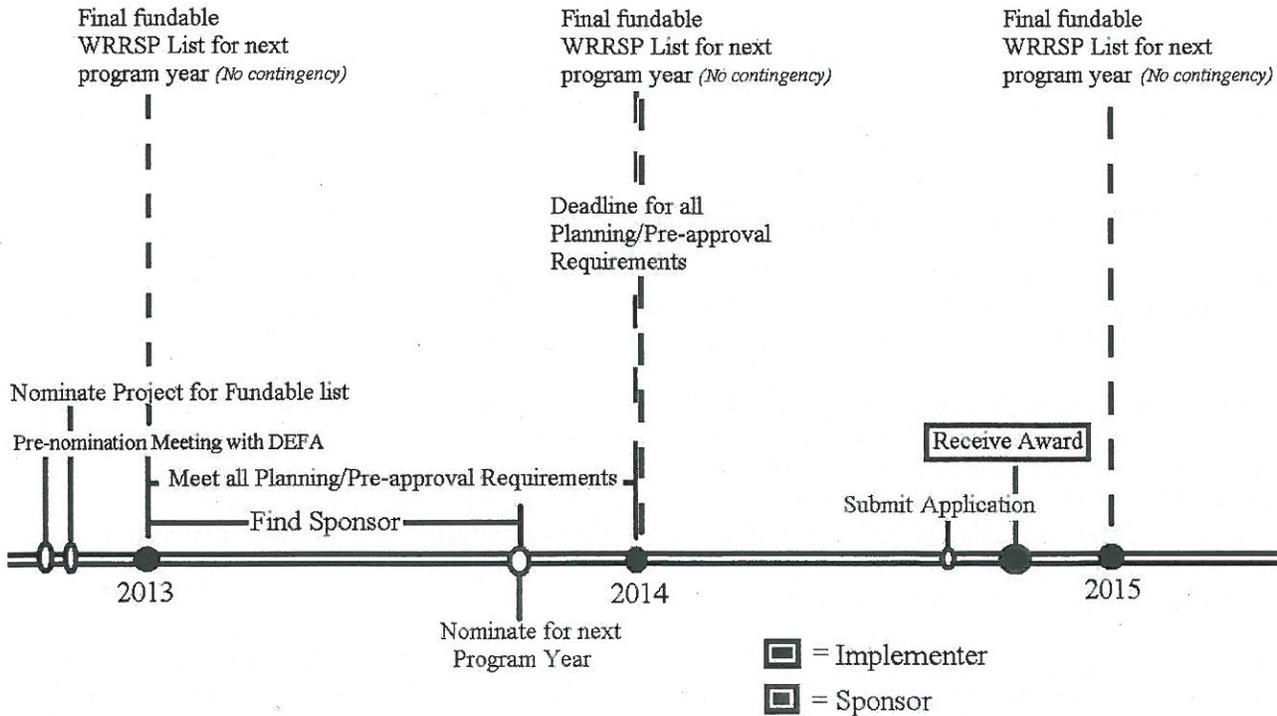
Potential WRRSP projects would be nominated by implementers in the same way as they are now. Nominations would be accepted in August, be scored and ranked, and put on the project priority list/Intended Use Plan (IUP). Only projects that are in the fundable range will be considered for funding in the two-year cycle. There will be no contingency list (contingency projects do not allow for sufficient planning/review time). A specifically-designated dollar amount (\$15 million in previous years) will be available for each two-year funding cycle. Since a new two-year funding cycle will begin each year, this will maintain the annual allocation for WRRSP projects.

Projects in the fundable range must meet all program requirements within the first year of the two-year cycle. Any projects that do not meet program requirements in the first year will be dropped from funding consideration in the second year. For restoration projects, this means either final (biddable) design must be prepared, submitted to and approved by Ohio EPA along with all other program materials by the end of the first year, or a request for proposals (RFP) must be submitted to Ohio EPA – DEFA that is sufficiently detailed to enable potential contractors (design/build or traditional) to successfully respond. Projects will not be awarded in the first year; awards will only occur in the second year of the two-year cycle. Implementers of the projects on the fundable list must find a sponsor by the end of the nomination period of the first year.

Phasing in the Two-year Funding Cycle

Ohio EPA is currently completing its transition from a one-year to a two-year WRRSP award cycle. In 2014, Ohio EPA will be completing the WRRSP project awards from the \$20 million made available over program years 2013 through 2014. Beginning in the upcoming PY2014, a specifically-designated dollar amount will be available for each program year's two-year cycle, and the WRRSP funds will only be awarded in the second year of the two-year cycle. The table and figure below illustrate an example of how this may function:

<b>Program Year</b>	<b>Amount of funds Available</b>	<b>Funding can be awarded</b>
2013	\$20 million	2013 – 2014
2014	\$15 million	Beginning in PY 2015



### WRRSP Project Schedule

In previous years, the sponsoring WPCLF project determined the amount of time available to complete the WRRSP project based on the project schedule of the WPCLF loan. Once the WPCLF project certified it was complete, the WRRSP project was closed whether it had time to complete and receive the water quality results anticipated or not. The timeline of the sponsor often would not provide the implementer enough time to complete the WRRSP project. What occurred was the WRRSP implementer would attempt to complete the project in a shortened time period which could be detrimental to the outcome expected. In an effort to more closely tie the WRRSP project to a realistic and effective timeline, Ohio EPA-DEFA has decided to require a project schedule based on the activities of the WRRSP project itself. This approach will help ensure the water quality outcomes expected by the WRRSP project will have sufficient time to be achieved.

When a project is listed on the final IPL as being fundable, the implementer must submit a schedule which identifies major pre-award milestones such as the date of the submittal of the preliminary plan, the date of the submittal of the final plan, the date for the submittal of all environmental covenant materials. In addition, for restoration projects the schedule must include the date detailed plans will be submitted to Ohio EPA-DEFA for review.

When an implementer submits a WRRSP project plan to the Ohio EPA, the plan must have a detailed implementation schedule to be considered a complete plan. For restoration project, the schedule should include (at a minimum) the date construction is estimated to occur, and the date of construction completion. For protection projects the schedule must include (at a minimum) the date of the first property purchase, and the date of the last property purchase. In addition, Ohio EPA-DEFA reserves the right to accept or reject a project schedule based on the reasonableness of the dates in the proposed schedule.

The new approach may or may not allow the completion of the WRRSP in the same time period as the sponsoring WPCLF project. However, Ohio EPA-DEFA believes the new approach will allow a better chance of success for the WRRSP project.

If a WRRSP project needs more time to accomplish the goals of the project, the implementer will submit a request to extend the budget period. Ohio EPA-DEFA will consider the request and approve or reject the extension based on the reasonableness of the request. Again, Ohio EPA-DEFA reserves the right to accept or reject a project schedule based on the reasonableness of the dates in the proposed schedule.

#### Funds Available and Where WRRSP Money Comes From

These funds will be allotted to each WRRSP project on the IPL in priority sequence in an amount not to exceed either the amount requested in the WRRSP project nomination or the amount of interest available for WRRSP projects from the sponsor's WPCLF loan, whichever is less.

Where the distribution of available funds down the WRRSP priority list leaves a project at the end of the fundable range without sufficient WRRSP funds to cover the amount requested for the project, Ohio EPA will place that project on the WRRSP intended projects list and may provide partial funding for the project. The partial funding will only be provided if it is sufficient to enable achievement of the project's environmental benefit as reflected in the IPS score for the project, or the project sponsor or the project implementer has secured other sources of funding to pay for the balance of the project costs at the time of project award. There will be no contingency list.

Funds for WRRSP projects will be made available by advancing a portion of the estimated amount of interest to be repaid by the sponsor over the life of the loan and is based upon the initial principal amount (less project contingency), the term of the loan and the interest rate. Except for sponsors applying for 30-year funding, a WPCLF loan applicant that is sponsoring a WRRSP project will receive a discount to its WPCLF loan interest rate based upon the ratio of the WRRSP assistance amount to the amount of the WPCLF loan principal. For specifics on calculating the approximate interest rate discount that a sponsoring project/s may receive, see chart in Appendix F.

The initial estimated amount of interest available for WRRSP projects from the sponsor's WPCLF loan is 90 percent of the total interest to be accrued, based on the Standard or Small Community interest rate (less applicable discounts) for which the sponsor and its WPCLF project qualify, and the estimated WPCLF loan amount as identified on the Intended Projects List. The actual amount of interest available for WRRSP projects from a sponsor's loan cannot exceed this amount, but may be reduced should the actual loan amount and/or interest rate be less. When a sponsoring project does receive any type of interest rate discount, the amount of WRRSP money available will be reduced.

#### Roles of Implementers and Sponsors

WPCLF loan applicants who qualify as implementers may participate in the WRRSP program by undertaking projects themselves or by sponsoring an approved project that is undertaken by a second entity, such as a public body, land trust, park district, or other not-for-profit corporation that has the ability to protect and manage such resources.

If a sponsoring entity has more than one loan project on the Intended Projects List, in keeping with the restrictions noted herein, the sponsor may request to shift its sponsorship from one loan to another, but must request from Ohio EPA in writing any such change a minimum of 120 days, and receive concurrence for the change no later than 90 days, prior to the estimated dates for all affected loans. \*(During the phasing-in of the two-year funding cycle, this sponsorship shift request schedule would be applicable in either 2013 or 2014). Ohio EPA's decision whether to concur with the request will be based on the sponsoring projects' loan award schedules, timely progress of WRRSP project development and the sponsoring projects' priority rankings.

A part of any WRRSP project that includes land acquisition, whether through fee simple purchase or through easements, includes the execution of an environmental covenant which outlines use limitations on the property and stresses the overall protection of the property to preserve its conservation values. The parties to the covenant include the property owner, holder, (if applicable), implementer and the Ohio EPA. As part of Environmental Covenant review process, Ohio EPA reviews all existing encumbrances on the property. Ohio EPA's review of the existing encumbrances is done to determine if these encumbrances are (or could be) at odds with the conservation values that the WRRSP program is trying to protect. If so, then WRRSP funding for that particular property is not appropriate, and will be denied. Along those same lines, prior to the award of WRRSP funds, any new or recently added encumbrances to a property will be viewed unfavorably by Ohio EPA because of their potential to disrupt the conservation values of the property and because they have diminished the appraised value of the property. Further, once a property has been covered by an executed Environmental Covenant, no new easements or other interests may be granted by the property owner.

For the above reasons, it is in the Implementer's best interests to coordinate property specific Environmental Covenants (and the review of existing encumbrances) with Ohio EPA as soon as possible in the WRRSP review process.

The Environmental Covenant should be completely assembled, reviewed and agreed to by the owner/holder of specific properties by the end of the first year. To meet this schedule implementers need to review the Environmental Covenant template and work with the appropriate DEFA team. DEFA will then assemble the Final Covenant and send it to the implementer for signatures.

#### WRRSP Appraisals

A. In the WRRSP program, Ohio EPA-DEFA requires implementers to provide, at a minimum, two appraisals:

1. At the time of nomination, a windshield appraisal on property they wish to purchase or place an easement upon. This allows the implementer to nominate a cost for the project and;
2. With the submission of the Restoration and Protections Plan, an appraisal report prepared by a certified appraiser from the list of appraisers. The appraisal will be provided in the form of a Complete Appraisal Summary Report in conformance with the most recent edition of the Uniform Standards of Professional Appraisal Practice (USPAP) that has been prepared no earlier than 1 year prior to the purchase of the property.

B. Basis for appraisal: Fair Market Value.

1. Consideration of WRRSP participation will be limited to Conservation Use Value. The implementer must finance all costs in excess of this amount and identify the source of funding for the costs not covered by WRRSP funding.
2. For WRRSP purposes, the fair market value of any property that is not being sold with all rights intact will be decreased by an amount equal to those rights that are being retained by the owner. Thus, if mineral rights are not included with a proposed property purchase, then the purchase price will be reduced accordingly.

C. Costs that will be considered allowable as part of the property's acquisition expense may include reasonable and customary closing costs, but costs such as brokerage fees and appraisal report fees will not be reimbursable.

## Timelines for WRRSP Projects

Project implementers must have submitted WRRSP project nominations to Ohio EPA no later than September 3, 2013, to have their projects considered for funding during the 2014 -2015 program year. Ohio EPA will rank WRRSP projects on the applicable project priority list according to project scores developed using the surface water resources portion of the Integrated Priority System (IPS), as described in Section III. B. of this Program Management Plan.

Implementers of 2013-2014 fundable WRRSP projects that will be awarded in 2014 will have the opportunity to associate their projects with direct WPCLF loan sponsors that has been identified as fundable through the ranking process for Program Year 2014, assuming successful completion of the first year's WRRSP requirements. For 2014-2015 fundable projects, identified in Appendix B-2 above will have until the end of the public comment period on the upcoming year's Draft PMP (estimated to be November 2014) to identify sponsors on that list for their projects, and for both sponsors and implementers to provide letters to Ohio EPA indicating they intend to enter into sponsorship agreements for the WRRSP projects.

To receive consideration for funding, WRRSP project nominations must include sufficient documentation to: 1) enable Ohio EPA to determine whether or not the projects are eligible for financing, and 2) to score the project for ranking on the project priority list. This is accomplished by supplying the information requested in the Water Resource Restoration Sponsor Program Project Nomination Form.

## How Ohio EPA Determines Eligibility of WRRSP Projects

Ohio EPA will determine the eligibility of projects for WRRSP assistance. In order to receive funding, a project must be consistent with the following general terms, and must meet other applicable portions of ORC 6111.036.

1. An entity that is required, as a part of a consent decree, to undertake a Supplemental Environmental Project may not use WRRSP funds as a source for the monetary contributions required under such consent decree for an otherwise eligible WRRSP project. However, WRRSP assistance may, for eligible WRRSP projects, be used in addition to such required monetary contributions in order to achieve the full restoration or protection of water resources. Similarly, WRRSP funds cannot be used to pay for projects required as mitigation, through the Clean Water Act's 404/401 program, for activities that adversely impact streams, wetlands, or other waters of the state.
2. The project will provide, either by itself or in conjunction with other projects that are committed to be undertaken, complete protection or restoration of aquatic habitat sufficient to meet or protect the designated uses of the benefited water resource as defined under Ohio Water Quality Standards, with the specific exceptions that are defined within III.B.6. of this program management plan.
3. In the case of rivers, streams, inland lakes and Lake Erie, the benefited water resource shall attain at least warmwater habitat standards or better unless the project benefits a high quality but impaired water body where habitat protection is an immediate need to prevent habitat loss.
4. In the case of wetlands, the benefit to wetlands from projects will be evaluated using the most current version of the Ohio rapid assessment method (ORAM), version 5.0 for wetlands and be rated according to categories established in the assessment method. If the project is for protection of the benefited water resource, then the wetland shall attain Category 3. If the project is for restoring and protecting an impaired wetland, then the wetland shall attain at least the gray zone (ORAM score of 60.0 – 64.9) between Categories 2 and 3, or higher. The specific water resource concerns the project addresses should include the physical and/or biological

factors that have been identified to be among the primary reasons for the water body not fully attaining its designated aquatic life use criteria, or that constitute a threat to full attainment with the designated aquatic life use criteria.

5. The project will implement Ohio's Nonpoint Source Management Program, and address specific water resource concerns identified either by Ohio EPA's *Integrated Water Quality Monitoring and Assessment Reports* (various years) and supporting database, an Ohio EPA Technical Support Document, a Remedial Action Plan for a Great Lakes Area of Concern, a TMDL report and/or comprehensive watershed management plan, a WAP or other similar document;
6. The project represents a long-term solution to the identified problems and the cost of the activity is reasonable considering monetary and non-monetary factors.
7. Implementers of WRRSP projects must either be political entities such as municipalities or park districts, or other qualifying not-for-profit organizations under the Internal Revenue Code.
8. Project plans must be completed and approved prior to loan award, following a planning outline provided by Ohio EPA, identifying the measures to be implemented as a part of the WRRSP project, including land acquisition, remediation, re-vegetation, and long-term project management. Reasonable planning and design costs will be reimbursed through the WRRSP only as a part of funding project implementation.
9. Encumbrances associated with a property that conflict with the ecological and water quality goals of the WRRSP will make a project ineligible for WRRSP funding. For example, properties proposed for acquisition with WRRSP funds that do not include all subsurface mineral rights as part of the transaction will not be eligible for such funding, except under the following conditions:
  - a) Severance of the subsurface rights must have occurred prior to January 1, 2014.
  - b) For properties with existing active/formerly active oil/gas wells, such wells must be properly capped/sealed and the associated lease(s) either transferred to the WRRSP recipient for termination, or otherwise legally vacated to prevent any future exercise of surface exploration or drilling rights.
  - c) All new (i.e., not yet implemented or exercised) oil/gas leases shall prohibit any surface disturbance of the WRRSP property, including testing, exploration, production, or monitoring associated with oil/gas removal. This prohibition must be formally agreed to and incorporated into the property deeds, in advance of WRRSP property purchase, by all parties involved (property owner, oil/gas company, mineral rights holder, etc.).
  - d) These "new" oil/gas leases shall be limited to exploration/production work of such a nature (e.g., deep well exploration accessed from remote locations) that they can be clearly shown to pose no possible threat (i.e., physical disturbance, dewatering, contamination, etc.) to the surface/near surface resource features that are the subject of the WRRSP acquisition.
  - e) No other types of mineral or resource extraction (e.g., coal, peat, sand and gravel, etc.) are permitted on or under any WRRSP purchased property.

Similarly, properties with existing surface encumbrances that allow construction/expansion of roadways, pipelines, electric transmission lines, sewer and water lines, or other such surface-disturbing features will not be considered for WRRSP funding.

## Eligibility vs. Allowability

WRRSP projects are funded as Clean Water Act Section 319 (nonpoint source) projects, which are defined as eligible projects in 40 CFR 35.3115 ("Eligible Activities of the SRF"). Ohio's utilization of the WPCLF to fund nonpoint source projects is governed in Ohio law within the Ohio Revised Code (ORC 6111.036(Q)), which states:

"The director may provide financial assistance for the implementation of a nonpoint source management program activity only after determining all of the following.... (3) The cost of the activity is reasonable considering monetary and nonmonetary factors..."

Thus, while a large set of practices may potentially be eligible for WRRSP assistance under Section 319, Ohio EPA must also look at the allowability of the request, which may be more narrowly defined. Before Ohio EPA can provide cost reimbursement for any WRRSP project, the cost must be *both eligible and allowable*.

Recently, there have been a few WRRSP projects where allowability has been questioned. Therefore, Ohio EPA would like to clarify the position on WRRSP allowability for both "protection" and "restoration" projects. The guiding principal for making an allowable determination is that to be allowable, the cost must be directly related to the protection or restoration of the aquatic life uses of the water resource. Furthermore, the cost must be reasonable (i.e. non-excessive) to accomplish the project's objective.

For restoration projects, this means that the allowable costs are restricted to those necessary to address the sources of impairment for the water resource. Any costs that are not directly related (as determined by Ohio EPA) to the sources of impairment will be unallowable for WRRSP participation. For example, for a dam removal project on a stream where the dam is the only listed cause of impairment, restoration (or excessive landscaping) costs beyond the actual dam removal cost may be determined to be unallowable for WRRSP participation by Ohio EPA.

For protection projects involving land acquisition, this means that the allowable costs are restricted to the portion of the property that is needed to protect the water resource. Property unrelated or far removed from the protection of the water resource may be determined to be unallowable, even if it is all contained in one parcel. For example, an implementer may only receive partial funding for a project if it contains a large parcel of property that abuts a water resource and Ohio EPA determines that a portion of the property is so far removed from the water resource that it will have negligible value (i.e. large upland areas, far removed from streams).

Ohio EPA recognizes that a determination of unallowable costs will result in a partially fundable project. With this in mind, implementers should be aware that Ohio EPA must review projects for the "reasonable cost" provision of ORC 6111.036(Q), and design their project accordingly. Additionally, implementers are encouraged to provide as much detail as possible, upfront, in the nominating materials and in the Restoration and/or Protection Plan, so that Ohio EPA can make a preliminary determination of unallowable costs. Failure on the part of the implementer to provide detailed information on the project may lead to a later determination of unallowable costs.